



# Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Acting Commissioner

**MEGAN E. BALDWIN**  
Acting Executive Deputy Commissioner

March 30, 2023

Todd McMillion  
Director  
Department of Health and Human Services  
Centers for Medicare and Medicaid Services  
233 North Michigan Ave, Suite 600  
Chicago, IL 60601

RE: SPA #23-0011  
Non-Institutional Services

Dear Mr. McMillion:

The State requests approval of the enclosed amendment #23-0011 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective January 1, 2023 (Appendix I). This amendment is being submitted based on enacted legislation. A summary of the plan amendment is provided in Appendix II.

The State of New York reimburses these services through the use of rates that are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area as required by § 1902(a)(30) of the Social Security Act and 42 CFR § 447.204.

A copy of pertinent sections of enacted legislation is enclosed for your information (Appendix III). A copy of the public notice of this plan amendment, which was given in the New York State Register on December 28, 2022, is also enclosed for your information (Appendix IV). In addition, responses to the five standard funding questions are also enclosed (Appendix V).

If you have any questions regarding this State Plan Amendment submission, please do not hesitate to contact Regina Deyette, Medicaid State Plan Coordinator, Division of Finance and Rate Setting, Office of Health Insurance Programs at (518) 473-3658.

Sincerely,

Amir Bassiri  
Medicaid Director  
Office of Health Insurance Programs

Enclosures

**TRANSMITTAL AND NOTICE OF APPROVAL OF  
STATE PLAN MATERIAL  
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER <u>2 3</u> — <u>0 0 1 1</u>	2. STATE <u>NY</u>
3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT <input checked="" type="radio"/> XIX <input type="radio"/> XXI	

TO: CENTER DIRECTOR  
CENTERS FOR MEDICAID & CHIP SERVICES  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE  
**January 1, 2023**

5. FEDERAL STATUTE/REGULATION CITATION  
**§ 1905(a)(9) Clinic Services**

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)  
a. FFY 01/01/23-09/30/23 \$ 7,446  
b. FFY 10/01/23-09/30/24 \$ 9,928

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT  
**Attachment 4.19-B: Page 2(p)(ii)**

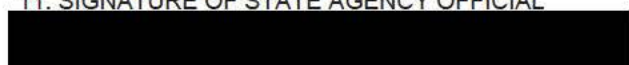
8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)  
**Attachment 4.19-B: Page 2(p)(ii)**

9. SUBJECT OF AMENDMENT  
**Minimum Wage Update for Article 28 Freestanding Clinics and Ambulatory Surgery Centers**

10. GOVERNOR'S REVIEW (Check One)

GOVERNOR'S OFFICE REPORTED NO COMMENT  
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED  
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

OTHER, AS SPECIFIED:

11. SIGNATURE OF STATE AGENCY OFFICIAL  


12. TYPED NAME  
**Amir Bassiri**

13. TITLE  
**Medicaid Director**

14. DATE SUBMITTED **March 30, 2023**

15. RETURN TO  
New York State Department of Health  
Division of Finance and Rate Setting  
99 Washington Ave – One Commerce Plaza  
Suite 1432  
Albany, NY 12210

**FOR CMS USE ONLY**

16. DATE RECEIVED	17. DATE APPROVED
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**PLAN APPROVED - ONE COPY ATTACHED**

18. EFFECTIVE DATE OF APPROVED MATERIAL	19. SIGNATURE OF APPROVING OFFICIAL
20. TYPED NAME OF APPROVING OFFICIAL	21. TITLE OF APPROVING OFFICIAL

22. REMARKS

**Appendix I**  
**2023 Title XIX State Plan**  
**First Quarter Amendment**  
**Amended SPA Pages**

New York  
2(p)(ii)

1905(a)(9) Clinic Services

Minimum Wage – Article 28 Freestanding Clinics

**Adjustment for Minimum Wage Increases.** Effective January 1, 2017, and every January 1, thereafter until the minimum wage reaches the state statutorily described per hour wage as shown below, a minimum wage add-on will be developed and applied to the Ambulatory Patient Group (APG) rate for freestanding clinics and ambulatory surgery centers under Article 28.

Minimum Wage (MW) Region	12/31/2016	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021	12/31/2022
New York City (Large employers)	\$11.00	\$13.00	\$15.00	\$15.00	\$15.00	\$15.00	<u>\$15.00</u>
New York City (Small employers)	\$10.50	\$12.00	\$13.50	\$15.00	\$15.00	\$15.00	<u>\$15.00</u>
Nassau, Suffolk, & Westchester counties	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00	<u>\$15.00</u>
Remainder of the State	\$9.70	\$10.40	\$11.10	\$11.80	\$12.50	\$13.20*	<u>\$14.20**</u>

\*Effective January 1, 2022, the minimum wage value for the Remainder of the State will be \$13.20.  
\*\*Effective January 1, 2023, the minimum wage value for the Remainder of the State will be \$14.20.

The minimum wage add-on and the adjusted APG rate will be posted to Health Commerce System (HCS: [https://commerce.health.state.ny.us/public/hcs\\_login.html](https://commerce.health.state.ny.us/public/hcs_login.html)). The minimum wage add-on will be developed and implemented as follows;

- a. Minimum wage costs will mean the additional costs incurred beginning January 1, 2017, and thereafter, as a result of New York state statutory increases to minimum wage until all regions of the state reach \$15.00 per hour.
  - i. Minimum wage cost development based on survey data collected.
    - 1. Survey data will be collected for facility specific wage data.
    - 2. Facilities will report by specified wage bands, the total count of FTEs and total hours paid to employees earning less than the statutory minimum wage applicable for each MW Region.
    - 3. Facilities will report an average fringe benefit percentage for the employees directly affected by the minimum wage increase.
    - 4. The minimum wage costs are calculated by multiplying the total hours paid by the difference between the statutory minimum wage and the midpoint of each wage band where the facility has reported total hours paid. To this result, the facility’s average fringe benefit percentage is applied and added to the costs.
  - ii. Minimum wage cost development based on the AHCF cost report data.
    - 1. The average hourly wages of employees in occupational titles where the reported average hourly wage is below the regional statutory minimum wage are identified.
    - 2. The total payroll hours of the titles identified are then multiplied by the regional statutory minimum wage resulting in a projected payroll. The actual payroll as reported in the AHCF cost report is then subtracted from the projected payroll resulting in the expected wage costs increase.
    - 3. The facility’s fringe benefit costs directly affected by the wage increase are identified, and the average fringe benefit percentage is calculated.
    - 4. The fringe benefit percentage is applied to the increased wage costs and added resulting in the minimum wage costs.

TN #23-0011

Approval Date \_\_\_\_\_

Supersedes TN #22-0019

Effective Date January 1, 2023

**Appendix II**  
**2023 Title XIX State Plan**  
**First Quarter Amendment**  
**Summary**

**SUMMARY**  
**SPA #23-0011**

This State Plan Amendment proposes a continuation of minimum wage adjustments through the current Ambulatory Patient Group (APG) rates for Article 28 freestanding clinics and ambulatory surgery centers until all regions have reached an hourly wage of \$15.00 per hour.

**Appendix III**  
**2023 Title XIX State Plan**  
**First Quarter Amendment**  
**Authorizing Provisions**

Chapter 54 of the Laws of 2016

PART K

Section 1. Subdivision 1 of section 652 of the labor law, as amended by section 1 of part P of chapter 57 of the laws of 2013, is amended to read as follows:

1. Statutory. Every employer shall pay to each of its employees for each hour worked a wage of not less than:  
\$4.25 on and after April 1, 1991,  
\$5.15 on and after March 31, 2000,  
\$6.00 on and after January 1, 2005,  
\$6.75 on and after January 1, 2006,  
\$7.15 on and after January 1, 2007,  
\$8.00 on and after December 31, 2013,  
\$8.75 on and after December 31, 2014,  
\$9.00 on and after December 31, 2015, and until December 31, 2016, or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

(a) New York City. (i) Large employers. Every employer of eleven or more employees shall pay to each of its employees for each hour worked in the city of New York a wage of not less than:

\$11.00 per hour on and after December 31, 2016,  
\$13.00 per hour on and after December 31, 2017,  
\$15.00 per hour on and after December 31, 2018, or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

(ii) Small employers. Every employer of ten or less employees shall pay to each of its employees for each hour worked in the city of New York a wage of not less than:

\$10.50 per hour on and after December 31, 2016,  
\$12.00 per hour on and after December 31, 2017,  
\$13.50 per hour on and after December 31, 2018,  
\$15.00 per hour on and after December 31, 2019, or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

(b) Remainder of downstate. Every employer shall pay to each of its employees for each hour worked in the counties of Nassau, Suffolk and Westchester a wage not less than:

\$10.00 per hour on and after December 31, 2016,  
\$11.00 per hour on and after December 31, 2017,  
\$12.00 per hour on and after December 31, 2018,  
\$13.00 per hour on and after December 31, 2019,  
\$14.00 per hour on and after December 31, 2020,  
\$15.00 per hour on and after December 31, 2021,

or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

(c) Remainder of state. Every employer shall pay to each of its



employees for each hour worked outside of the city of New York and the counties of Nassau, Suffolk, and Westchester, a wage of not less than:  
\$9.70 on and after December 31, 2016,  
\$10.40 on and after December 31, 2017,  
\$11.10 on and after December 31, 2018,  
\$11.80 on and after December 31, 2019,  
\$12.50 on and after December 31, 2020,  
and on each following December thirty-first, a wage published by the commissioner on or before October first, based on the then current minimum wage increased by a percentage determined by the director of the budget in consultation with the commissioner, with the result rounded to the nearest five cents, totaling no more than fifteen dollars, where the percentage increase shall be based on indices including, but not limited to, (i) the rate of inflation for the most recent twelve month period ending June of that year based on the consumer price index for all urban consumers on a national and seasonally unadjusted basis (CPI-U), or a successor index as calculated by the United States department of labor, (ii) the rate of state personal income growth for the prior calendar year, or a successor index, published by the bureau of economic analysis of the United States department of commerce, or (iii) wage growth; or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.  
(d) The rates and schedules established in paragraphs (a) and (b) of this subdivision shall not be deemed to be the minimum wage under this subdivision for purposes of the calculations specified in subdivisions one and two of section five hundred twenty-seven of this chapter.

**Appendix IV  
2023 Title XIX State Plan  
First Quarter Amendment  
Public Notice**

# MISCELLANEOUS NOTICES/HEARINGS

## Notice of Abandoned Property Received by the State Comptroller

Pursuant to provisions of the Abandoned Property Law and related laws, the Office of the State Comptroller receives unclaimed monies and other property deemed abandoned. A list of the names and last known addresses of the entitled owners of this abandoned property is maintained by the office in accordance with Section 1401 of the Abandoned Property Law. Interested parties may inquire if they appear on the Abandoned Property Listing by contacting the Office of Unclaimed Funds, Monday through Friday from 8:00 a.m. to 4:30 p.m., at:

1-800-221-9311  
or visit our web site at:  
[www.osc.state.ny.us](http://www.osc.state.ny.us)

Claims for abandoned property must be filed with the New York State Comptroller's Office of Unclaimed Funds as provided in Section 1406 of the Abandoned Property Law. For further information contact: Office of the State Comptroller, Office of Unclaimed Funds, 110 State St., Albany, NY 12236.

## PUBLIC NOTICE

Department of Civil Service

PURSUANT to the Open Meetings Law, the New York State Civil Service Commission hereby gives public notice of the following:

Please take notice that the regular monthly meeting of the State Civil Service Commission for January 2023 will be conducted on January 11 and January 12 commencing at 10:00 a.m. This meeting will be conducted at NYS Media Services Center, Suite 146, South Concourse, Empire State Plaza, Albany, NY with live coverage available at <https://www.cs.ny.gov/commission/>

For further information, contact: Office of Commission Operations, Department of Civil Service, Empire State Plaza, Agency Bldg. One, Albany, NY 12239, (518) 473-6598

## PUBLIC NOTICE

Department of Health

Pursuant to 42 CFR Section 447.205, the Department of Health hereby gives public notice of the following:

The Department of Health proposes to amend the Title XIX (Medicaid) State Plan for non-institutional services to revise provisions of the Ambulatory Patient Group (APG) reimbursement methodology in accordance with the Public Health Law § 2807(2-a)(e). The following changes are proposed:

### Non-Institutional Services

Effective on or after January 1, 2023, the Ambulatory Patient Group (APG) reimbursement methodology is revised to include recalculated weight and component updates in order to update reimbursement for APG payments.

The estimated annual aggregate increase in gross Medicaid expenditures as a result of this proposed amendment is \$1,548,199.

The public is invited to review and comment on this proposed State Plan Amendment, a copy of which will be available for public review on the Department's website at <http://www.health.ny.gov/regulations/>

state\_plans/status. Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

For the New York City district, copies will be available at the following places:

New York County  
250 Church Street  
New York, New York 10018

Queens County, Queens Center  
3220 Northern Boulevard  
Long Island City, New York 11101

Kings County, Fulton Center  
114 Willoughby Street  
Brooklyn, New York 11201

Bronx County, Tremont Center  
1916 Monterey Avenue  
Bronx, New York 10457

Richmond County, Richmond Center  
95 Central Avenue, St. George  
Staten Island, New York 10301

For further information and to review and comment, please contact: Department of Health, Division of Finance and Rate Setting, 99 Washington Ave., One Commerce Plaza, Suite 1432, Albany, NY 12210, [spa\\_inquiries@health.ny.gov](mailto:spa_inquiries@health.ny.gov)

## PUBLIC NOTICE

Department of Health

Pursuant to 42 CFR Section 447.205, the Department of Health hereby gives public notice of the following:

The Department of Health proposes to amend the Title XIX (Medicaid) State Plan for all services in accordance with § 652 of Article 19 of the New York State Labor Law. The following changes are proposed:

### All Services

Effective on or after December 31, 2022, the Department of Health will adjust rates to take into account increased labor costs resulting from statutorily required increases in the New York State minimum wage. The State requires, the increases in the minimum wage be phased in over a number of years until the minimum wage is \$15 per hour in the Remainder of State region, and Medicaid rates will be adjusted in those years to account for such increases.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal years 2022/2023 and 2023/2024 is \$4,397,307 and \$17,589,228, respectively.

Providers	SFY 2022-2023 (1/1/2023 - 3/31/ 2023)	SFY 2023-2024 (4/1/2023 - 3/31/ 2024)
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Article 16 Freestanding Clinics	\$11,810	\$47,240
Article 28 Freestanding Clinics & Ambulatory Surgery Centers	\$4,964	\$19,856
Assisted Living Programs	\$214,286	\$857,144
Certified Home Health Agencies	\$1,324	\$5,296
Article 28 Federally Qualified Health Centers (Freestanding Clinics)	\$624	\$2,496
Hospice	\$53,571	\$214,284
Hospital Inpatient	\$15,286	\$61,144
Intermediate Care Facilities	\$895,281	\$3,581,124
Nursing Homes	\$525,023	\$2,100,092
Personal Care	\$2,669,281	\$10,677,124
Residential Treatment Facilities	\$5,857	\$23,428
<b>TOTALS</b>	<b>\$4,397,307</b>	<b>\$17,589,228</b>

The public is invited to review and comment on this proposed State Plan Amendment, a copy of which will be available for public review on the Department’s website at [http://www.health.ny.gov/regulations/state\\_plans/status](http://www.health.ny.gov/regulations/state_plans/status). Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

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1916 Monterey Avenue  
Bronx, New York 10457

Richmond County, Richmond Center  
95 Central Avenue, St. George  
Staten Island, New York 10301

*For further information and to review and comment, please contact:*  
Department of Health, Division of Finance and Rate Setting, 99 Washington Ave., One Commerce Plaza, Suite 1432, Albany, NY 12210, [spa\\_inquiries@health.ny.gov](mailto:spa_inquiries@health.ny.gov)

**PUBLIC NOTICE**  
Department of Health

Pursuant to 42 CFR Section 447.205, the Department of Health hereby gives public notice of the following:

The Department of Health proposes to amend the Title XIX (Medicaid) State Plan for long term care services in accordance with § 2826 of New York Public Health Law. The following changes are proposed:

Long Term Care Services

The following is a clarification to the September 28, 2022, noticed provision for the Nursing Home Vital Access Provider program which

will be instituted to support ongoing workforce challenges in order to provide stronger staff continuity and quality of care to residents. Eligible facilities must demonstrate both financial challenges and participation in a comprehensive health, retirement and training benefit fund.

With clarification, the estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2022/2023 is \$51 million. Medicaid expenditures attributable to state fiscal year 2023/2024 and 2024/2025 are \$102 million each.

The public is invited to review and comment on this proposed State Plan Amendment, a copy of which will be available for public review on the Department’s website at [http://www.health.ny.gov/regulations/state\\_plans/status](http://www.health.ny.gov/regulations/state_plans/status). Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

For the New York City district, copies will be available at the following places:

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Kings County, Fulton Center  
114 Willoughby Street  
Brooklyn, New York 11201

Bronx County, Tremont Center  
1916 Monterey Avenue  
Bronx, New York 10457

Richmond County, Richmond Center  
95 Central Avenue, St. George  
Staten Island, New York 10301

*For further information and to review and comment, please contact:*  
Department of Health, Division of Finance and Rate Setting, 99 Washington Ave., One Commerce Plaza, Suite 1432, Albany, NY 12210, [spa\\_inquiries@health.ny.gov](mailto:spa_inquiries@health.ny.gov)

**PUBLIC NOTICE**  
Department of Health

Pursuant to 42 CFR Section 447.205, the Department of Health hereby gives public notice of the following:

The Department of Health proposes to amend the Title XIX (Medicaid) State Plan for long term care services in accordance with Public Health Law Section 2808 (2-c)(d). The following changes are proposed:

Long Term Care Services

Effective on or after January 1, 2023, the quality incentive program for non-specialty nursing homes will continue to recognize improvement in performance and provide for other minor modifications in the measurement set. The following four measures will be added to the measurement set: Percent of Long Stay High Risk Residents with Pressure Ulcers, Percent of Long Stay Residents Who have Depressive Symptoms, Percent of Long Stay Residents Who Lose Too Much Weight, and Potentially Avoidable Hospitalization.

There is no estimated change to annual gross Medicaid expenditures as a result of this proposed amendment.

The public is invited to review and comment on this proposed State Plan Amendment, a copy of which will be available for public review on the Department’s website at [http://www.health.ny.gov/regulations/state\\_plans/status](http://www.health.ny.gov/regulations/state_plans/status). Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

**Appendix V**  
**2023 Title XIX State Plan**  
**First Quarter Amendment**  
**Responses to Standard Funding Questions**

**NON-INSTITUTIONAL SERVICES  
State Plan Amendment #23-0011**

**CMS Standard Funding Questions**

The following questions are being asked and should be answered in relation to all payments made to all providers reimbursed pursuant to a methodology described in Attachment 4.19-B of the state plan.

- 1. Section 1903(a)(1) provides that Federal matching funds are only available for expenditures made by States for services under the approved State plan. Do providers receive and retain the total Medicaid expenditures claimed by the State (includes normal per diem, supplemental, enhanced payments, other) or is any portion of the payments returned to the State, local governmental entity, or any other intermediary organization? If providers are required to return any portion of payments, please provide a full description of the repayment process. Include in your response a full description of the methodology for the return of any of the amount or percentage of payments that are returned and the disposition and use of the funds once they are returned to the State (i.e., general fund, medical services account, etc.)**

**Response:** Providers receive and retain 100 percent of total Medicaid expenditures claimed by the State and the State does not require any provider to return any portion of such payments to the State, local government entities, or any other intermediary organization.

- 2. Section 1902(a)(2) provides that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan. Please describe how the state share of each type of Medicaid payment (normal per diem, supplemental, enhanced, other) is funded. Please describe whether the state share is from appropriations from the legislature to the Medicaid agency, through intergovernmental transfer agreements (IGTs), certified public expenditures (CPEs), provider taxes, or any other mechanism used by the state to provide state share. Note that, if the appropriation is not to the Medicaid agency, the source of the state share would necessarily be derived through either an IGT or CPE. In this case, please identify the agency to which the funds are appropriated. Please provide an estimate of total expenditure and State share amounts for each type of Medicaid payment. If any of the non-federal share is being provided using IGTs or CPEs, please fully describe the matching arrangement including when the state agency receives the transferred amounts from the local government entity transferring the funds. If CPEs are used, please describe the methodology used by the state to verify that the total expenditures being certified are eligible for Federal matching funds in accordance with 42 CFR 433.51(b). For any payment funded by CPEs or IGTs, please provide the following:**
  - (i) a complete list of the names of entities transferring or certifying funds;**
  - (ii) the operational nature of the entity (state, county, city, other);**

- (iii) the total amounts transferred or certified by each entity;
- (iv) clarify whether the certifying or transferring entity has general taxing authority; and,
- (v) whether the certifying or transferring entity received appropriations (identify level of appropriations).

**Response:** The Non-Federal share Medicaid provider payment is funded by a combination of the following funds/funding sources through enacted appropriations authority to the Department of Health (DOH) for the New York State Medicaid program.

Payment Type	Non-Federal Share Funding	4/1/22 – 3/31/23	
		Non-Federal	Gross
Normal Per Diem	General Fund; Special Revenue Funds; County Contribution	\$184M	\$368M

A. **General Fund:** Revenue resources for the State’s General Fund includes taxes (e.g., income, sales, etc.), and miscellaneous fees (including audit recoveries). Medicaid expenditures from the State’s General Fund are authorized from Department of Health Medicaid.

- 1) New York State Audit Recoveries: The Department of Health collaborates with the Office of the Medical Inspector General (OMIG) and the Office of the Attorney General (AG) in recovering improperly expended Medicaid funds. OMIG conducts and coordinates the investigation, detection, audit, and review of Medicaid providers and recipients to ensure they are complying with all applicable laws and regulation. OMIG recovers any improper payments through cash collections and voided claim recoveries. Cash collections are deposited into the State’s General Fund to offset Medicaid costs.

In addition to cash collections, OMIG finds inappropriately billed claims within provider claims. To correct an error, OMIG and DOH process the current accurate claim, and reduce this claim by the inappropriate claim value to recoup the previous overclaim and decrease state spending.

**B. Special Revenue Funds:**

- 1) Health Care Reform Act (HCRA) Resource Fund: as authorized in section 92-dd of New York State Finance Law and was established in 1996, pursuant to New York State Public Health Law 2807-j. HCRA resources include:
  - Surcharge on net patient service revenues for specified provider types including Comprehensive Diagnostic and Treatment Centers and Ambulatory Surgery Centers.
    - The rate for commercial payors is 9.63 percent.
    - The rate for governmental payors, including Medicaid, is 7.04 percent.
    - Federal payors, including Medicare, are exempt from the surcharge.

NOTE: New York's Health Care taxes are either broad based and uniform (as in all HFCAP assessments except for the Personal Care Provider Cash Assessment) or have a specific exemption known as the "D'Amato provision (Federal PHL section 105-33 4722 (c))" which allows the HCRA surcharges to exist in their current format. The single tax which has been determined by the State to be an impermissible provider tax is the HFCAP charge on Personal Care Providers. The State does not claim any Federal dollars for the surcharge collected in this manner in order to comply with all Federal provider tax rules.

**C. Additional Resources for Non-Federal Share Funding:**

County Contribution: In State Fiscal Year 2006, through enacted State legislation (Part C of Chapter 58 of the laws of 2005), New York State "capped" the amount localities contributed to the non-Federal share of providers claims. This was designed to relieve pressure on county property taxes and the NYC budget by limiting local contributions having New York State absorb all local program costs above this fixed statutory inflation rate (3% at the time).

However, in State Fiscal Year 2013 New York State provided additional relief to Localities by reducing local contributions annual growth from three percent to zero over a three-year period. Beginning in State Fiscal Year 2016, counties began paying a fixed cost in perpetuity as follows:

Entity	Annual Amount
New York City	\$4.882B
Suffolk County	\$216M
Nassau County	\$213M
Westchester County	\$199M
Erie County	\$185M
Rest of State (53 Counties)	\$979M
<b>Total</b>	<b>\$6.835B</b>

By eliminating the growth in localities Medicaid costs, the State has statutorily capped total Statewide County Medicaid expenditures at 2015 levels. All additional county Medicaid costs are funded by the State through State funding as described above. DOH provides annual letters to counties providing weekly contributions. Contributions are deposited directly into State escrow account and used to offset 'total' State share Medicaid funding.

NOTE: The Local Contribution is not tied to a specific claim or service category and instead is a capped amount based on 2015 county spending levels as stated above.

- 3. Section 1902(a)(30) requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) provides for Federal financial participation to States for expenditures for services under an approved State plan. If supplemental or enhanced payments are made, please provide the total amount for each type of supplemental or enhanced payment made to each provider type.**



**Response:** The Medicaid payments under this State Plan Amendment are not supplemental payments.

- 4. For clinic or outpatient hospital services please provide a detailed description of the methodology used by the state to estimate the upper payment limit (UPL) for each class of providers (state owned or operated, non-state government owned or operated, and privately owned or operated). Please provide a current (i.e., applicable to the current rate year) UPL demonstration. Under regulations at 42 CFR 447.272, States are prohibited from setting payment rates for Medicaid inpatient services that exceed a reasonable estimate of the amount that would be paid under Medicare payment principals.**

**Response:** The clinic UPL demonstration utilizes cost-to-payment methodology to estimate the upper payment limit for each class of providers. The Medicaid payments under this State Plan Amendment will be included in the 2023 clinic UPL when it is submitted to CMS.

- 5. Does any governmental provider receive payments that in the aggregate (normal per diem, supplemental, enhanced, other) exceed their reasonable costs of providing services? If payments exceed the cost of services, do you recoup the excess and return the Federal share of the excess to CMS on the quarterly expenditure report?**

**Response:** Providers do not receive payments that in the aggregate exceed their reasonable costs of providing services. If any providers received payments that in the aggregate exceeded their reasonable costs of providing services, the State would recoup the excess and return the Federal share of the excess to CMS on the quarterly expenditure report.

#### **ACA Assurances:**

- 1. Maintenance of Effort (MOE). Under section 1902(gg) of the Social Security Act (the Act), as amended by the Affordable Care Act, as a condition of receiving any Federal payments under the Medicaid program during the MOE period indicated below, the State shall not have in effect any eligibility standards, methodologies, or procedures in its Medicaid program which are more restrictive than such eligibility provisions as in effect in its Medicaid program on March 10, 2010.**

#### **MOE Period.**

- **Begins on: March 10, 2010, and**
- **Ends on: The date the Secretary of the Federal Department of Health and Human Services determines an Exchange established by a State under the provisions of section 1311 of the Affordable Care Act is fully operational.**

**Response:** This SPA complies with the conditions of the MOE provision of section 1902(gg) of the Act for continued funding under the Medicaid program.

2. Section 1905(y) and (z) of the Act provides for increased FMAPs for expenditures made on or after January 1, 2014 for individuals determined eligible under section 1902(a)(10)(A)(i)(VIII) of the Act. Under section 1905(cc) of the Act, the increased FMAP under sections 1905(y) and (z) would not be available for States that require local political subdivisions to contribute amounts toward the non-Federal share of the State's expenditures at a greater percentage than would have been required on December 31, 2009.

Prior to January 1, 2014 States may potentially require contributions by local political subdivisions toward the non-Federal share of the States' expenditures at percentages greater than were required on December 31, 2009. However, because of the provisions of section 1905(cc) of the Act, it is important to determine and document/flag any SPAs/State plans which have such greater percentages prior to the January 1, 2014 date in order to anticipate potential violations and/or appropriate corrective actions by the States and the Federal government.

Response: This SPA would [ ] / would not [✓] violate these provisions, if they remained in effect on or after January 1, 2014.

3. Please indicate whether the State is currently in conformance with the requirements of section 1902(a)(37) of the Act regarding prompt payment of claims.

Response: The State complies with the requirements of section 1902(a)(37) of the Act regarding prompt payment of claims.

**Tribal Assurance:**

Section 1902(a)(73) of the Social Security Act the Act requires a State in which one or more Indian Health Programs or Urban Indian Organizations furnish health care services to establish a process for the State Medicaid agency to seek advice on a regular ongoing basis from designees of Indian health programs whether operated by the Indian Health Service HIS Tribes or Tribal organizations under the Indian Self Determination and Education Assistance Act ISDEAA or Urban Indian Organizations under the Indian Health Care Improvement Act.

IHCIA Section 2107(e)(I) of the Act was also amended to apply these requirements to the Children's Health Insurance Program CHIP. Consultation is required concerning Medicaid and CHIP matters having a direct impact on Indian health programs and Urban Indian organizations.

- a) Please describe the process the State uses to seek advice on a regular ongoing basis from federally recognized tribes Indian Health Programs and Urban Indian Organizations on matters related to Medicaid and CHIP programs and for consultation on State Plan Amendments waiver proposals waiver extensions waiver amendments waiver renewals and proposals for demonstration projects prior to submission to CMS.

- b) Please include information about the frequency inclusiveness and process for seeking such advice.**
- c) Please describe the consultation process that occurred specifically for the development and submission of this State Plan Amendment when it occurred and who was involved.**

**Response:** Tribal consultation was performed in accordance with the State's tribal consultation policy as approved in SPA 17-0065, and documentation of such is included with this submission. To date, no feedback has been received from any tribal representative in response to the proposed change in this SPA.