NEW YORK STATE OF OPPORTUNITY. Department of Health

KATHY HOCHUL
Governor

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

JOHANNE E. MORNE, M.S.
Executive Deputy Commissioner

September 18 ,2024

James G. Scott, Director
Division of Program Operations
Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
Kansas City, Missouri 64106

RE: SPA #24-0073
Non-Institutional Services

Dear Director Scott:

The State requests approval of the enclosed amendment #24-0074 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective August 1, 2024 (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 July 31, 2024, 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,

[redacted]

Amir Bassiri
Medicaid Director
Office of Health Insurance Programs

Enclosures

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB No. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES

1. TRANSMITTAL NUMBER: 24 — 0073

2. STATE: NY

3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT: (●) XIX ( ) XXI

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

4. PROPOSED EFFECTIVE DATE
August 1, 2024

5. FEDERAL STATUTE/REGULATION CITATION
§ 1905(a)(12) Prescribed Drugs, Dentures, Prosthetic Devices; and Eyeglasses

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY 08/01/24-09/30/24 $ 0
b. FFY 10/01/24-09/30/25 $ 0

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
Attachment 3.1-A Supplement: Page 2(c.1)
Attachment 3.1-B Supplement: Page 2(c.1)

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*
Attachment 3.1-A Supplement: Page 2(c.1)
Attachment 3.1-B Supplement: Page 2(c.1)

9. SUBJECT OF AMENDMENT
Coverage of Prescribed Drugs in Cases of a Drug Shortage

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
[redacted]

12. TYPED NAME
Amir Bassiri

13. TITLE
Medicaid Director

14. DATE SUBMITTED
September 18, 2024

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

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
2024 Title XIX State Plan
Third Quarter Amendment
Amended SPA Pages

New York
2(c.1)

1905(a)(12) Prescribed Drugs, Dentures, and Prosthetic Devices; and Eyeglasses

8. The State will cover APIs that are included in extemporaneously compounded prescriptions when the API serves as the active drug component in the compounded formulation. A current list of covered APIs can be found at the following at:

https://www.emedny.org/info/formfile.aspx

9. Drug Shortages: Prescribed drugs that are not covered outpatient drugs (including drugs authorized for import by the Food and Drug Administration) are covered when medically necessary during drug shortages identified by the Food and Drug Administration.

13c. Preventive Services

New York State Medicaid covers and reimburses all United States Preventive Services Task Force (USPSTF) grade A and B preventive services and approved vaccines recommended by the Advisory Committee on Immunization Practices (ACIP), and their administration, without cost-sharing, when provided in a practitioner's office.

Preventive Services specified in section 4106 of the Affordable Care Act are all available under the State Plan and are covered under the physician, other practitioner, nurse-midwife and nurse practitioner service benefits and are reimbursed according to the methodologies provided in Attachment 4.19-B.

The State will maintain documentation supporting expenditures claimed for these Preventive Services and ensure that coverage and billing codes comply with any changes made to the USPSTF or ACIP recommendations.

Lactation Consultant Services

Effective April 1, 2021, evidence-based breastfeeding education and lactation counseling consistent with the United States Preventive Services Task Force (USPSTF) recommendation will be covered as a preventive service to prevent adverse outcomes and promote health of infants. Qualified providers include licensed physicians, licensed physician assistants, licensed pediatric or family nurse practitioners, licensed midwives, and licensed registered nurses. All practitioners must be certified as lactation educators/counselors by a nationally recognized accrediting agency.

Breastfeeding education and lactation counseling services must be recommended by a physician or other licensed practitioner of the healing arts acting within his or her scope of practice under state law.

New York
2(c.1)

1905(a)(12) Prescribed Drugs, Dentures, and Prosthetic Devices; and Eyeglasses

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Breastfeeding education and lactation counseling services must be recommended by a physician or other licensed practitioner of the healing arts acting within his or her scope of practice under state law.

Appendix II
2024 Title XIX State Plan
Third Quarter Amendment
Summary

SUMMARY
SPA #24-0073

This State Plan Amendment proposes to cover prescribed drugs when medically necessary in cases of a drug shortage.

Appendix III
2024 Title XIX State Plan
Third Quarter Amendment
Authorizing Provisions

(B) provides a specific accounting of the source and use of all funds used by the Foundation to carry out such activities; and

(C) provides information on how the results of Foundation activities could be incorporated into the regulatory and product review activities of the Food and Drug Administration.

(m) SEPARATION OF FUNDS.—The Executive Director shall ensure that the funds received from the Treasury are managed as individual programmatic funds under subsection (i), according to best accounting practices.

(n) FUNDING.—From amounts appropriated to the Food and Drug Administration for each fiscal year, the Commissioner shall transfer not less than $1,250,000 and not more than $5,000,000, to the Foundation to carry out subsections (a), (b), and (d) through (m).

SEC. 771. [21 U.S.C. 379dd–1] LOCATION OF FOUNDATION.

The Foundation shall, if practicable, be located not more than 20 miles from the District of Columbia.

SEC. 772. [21 U.S.C. 379dd–2] ACTIVITIES OF THE FOOD AND DRUG ADMINISTRATION.

(a) IN GENERAL.—The Commissioner shall receive and assess the report submitted to the Commissioner by the Executive Director of the Foundation under section 770(l)(2).

(b) REPORT TO CONGRESS.—Beginning with fiscal year 2009, the Commissioner shall submit to Congress an annual report summarizing the incorporation of the information provided by the Foundation in the report described under section 770(l)(2) and by other recipients of grants, contracts, memoranda of understanding, or cooperative agreements into regulatory and product review activities of the Food and Drug Administration.

(c) EXTRAMURAL GRANTS.—The provisions of this subchapter and section 566 shall have no effect on any grant, contract, memorandum of understanding, or cooperative agreement between the Food and Drug Administration and any other entity entered into before, on, or after the date of the enactment of this subchapter.

CHAPTER VIII—IMPORTS AND EXPORTS

IMPORTS AND EXPORTS

SEC. 801. [21 U.S.C. 381] (a)[170] The Secretary of the Treasury shall deliver to the Secretary of Health and Human Services, upon his request, samples of food, drugs, devices, tobacco products, and cosmetics which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Secretary of Health and Human Services and have the right to introduce testimony. The Secretary of Health and Human Services shall furnish to the Secretary of the Treasury a list of establishments registered pursuant to subsection (i) of section 510 or section 905(h) and shall request that if any drugs, de-

[170] For s version of law for section 801(a), as amended by section 3503(a)(4)(C) of Public Law 117–328, see note below.

vices, or tobacco products manufactured, prepared, propagated, compounded, or processed in an establishment not so registered are imported or offered for import into the United States, samples of such drugs, devices, or tobacco products be delivered to the Secretary of Health and Human Services, with notice of such delivery to the owner or consignee, who may appear before the Secretary of Health and Human Services and have the right to introduce testimony. If it appears from the examination of such samples or otherwise that (1) such article has been manufactured, processed, or packed under insanitary conditions or, in the case of a device, the methods used in, or the facilities or controls used for, the manufacture, packing, storage, or installation of the device do not conform to the requirements of section 520(f), or (2) such article is forbidden or restricted in sale in the country in which it was produced or from which it was exported, or (3) such article is adulterated, misbranded, or in violation of section 505 or the importer (as defined in section 805) is in violation of such section 805, or prohibited from introduction or delivery for introduction into interstate commerce under section 301(ll), or is a controlled substance subject to an order under section 569D, or (4) the recordkeeping requirements under section 204 of the FDA Food Safety Modernization Act (other than the requirements under subsection (f) of such section) have not been complied with regarding such article or (5) such article is being imported or offered for import in violation of section 301(cc), then any such article described in any of clauses (1) through (5) shall be refused admission, except as provided in subsection (b) of this section. If it appears from the examination of such samples or otherwise that the article is a counterfeit drug or counterfeit device, such article shall be refused admission. With respect to an article of food, if importation of such food is subject to, but not compliant with, the requirement under subsection (q) that such food be accompanied by a certification or other assurance that the food meets applicable requirements of this Act, then such article shall be refused admission. If such article is subject to a requirement under section 760 or 761 and if the Secretary has credible evidence or information indicating that the responsible person (as defined in such section 760 or 761) has not complied with a requirement of such section 760 or 761 with respect to any such article, or has not allowed access to records described in such section 760 or 761, then such article shall be refused admission, except as provided in subsection (b) of this section.The Secretary of the Treasury shall cause the destruction of any such article refused admission unless such article is exported, under regulations prescribed by the Secretary of the Treasury, within 90 days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations, except that the Secretary of Health and Human Services may destroy, without the opportunity for export, any drug or device refused admission under this section, if such drug or device is valued at an amount that is $2,500 or less (or such higher amount as the Secretary of the Treasury may set by regulation pursuant to section 498(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1498(a)(1))) and was not brought into compliance as described under subsection (b). The Secretary of Health and Human Services shall issue regulations providing for notice and an opportunity to

appear before the Secretary of Health and Human Services and introduce testimony, as described in the first sentence of this subsection, on destruction of a drug or device under the seventh sentence of this subsection. The regulations shall provide that prior to destruction, appropriate due process is available to the owner or consignee seeking to challenge the decision to destroy the drug or device. Where the Secretary of Health and Human Services provides notice and an opportunity to appear and introduce testimony on the destruction of a drug or device, the Secretary of Health and Human Services shall store and, as applicable, dispose of the drug or device after the issuance of the notice, except that the owner and consignee shall remain liable for costs pursuant to subsection (c). Such process may be combined with the notice and opportunity to appear before the Secretary and introduce testimony, as described in the first sentence of this subsection, as long as appropriate notice is provided to the owner or consignee. Neither clause (2) nor clause (5) of the third sentence of this subsection shall be construed to prohibit the admission of narcotic drugs, the importation of which is permitted under the Controlled Substances Import and Export Act.

[Note: Effective on December 29, 2023, section 3503(a)(4)(C) of division FF of Public Law 117–328 provides for amendments to section 801(a). Upon such date, section 801(a) reads as follows:]

(a) The Secretary of the Treasury shall deliver to the Secretary of Health and Human Services, upon his request, samples of food, drugs, devices, tobacco products, and cosmetics which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Secretary of Health and Human Services and have the right to introduce testimony. The Secretary of Health and Human Services shall furnish to the Secretary of the Treasury a list of establishments registered pursuant to subsection (i) of section 510 or section 905(h) and shall request that if any drugs, devices, or tobacco products manufactured, prepared, propagated, compounded, or processed in an establishment not so registered are imported or offered for import into the United States, samples of such drugs, devices, or tobacco products be delivered to the Secretary of Health and Human Services, with notice of such delivery to the owner or consignee, who may appear before the Secretary of Health and Human Services and have the right to introduce testimony. If it appears from the examination of such samples or otherwise that (1) such article has been manufactured, processed, or packed under insanitary conditions or, in the case of a device, the methods used in, or the facilities or controls used for, the manufacture, packing, storage, or installation of the device do not conform to the requirements of section 520(f), or (2) such article is forbidden or restricted in sale in the country in which it was produced or from which it was exported, or (3) such article is adulterated, misbranded, or in violation of section 505 or the importer (as defined in section 805) is in violation of such section 805, or prohibited from introduction or delivery for introduction into interstate commerce under section 301(ll), or is a controlled substance subject to an order under section 569D, or (4) the record-

keeping requirements under section 204 of the FDA Food Safety Modernization Act (other than the requirements under subsection (f) of such section) have not been complied with regarding such articleor (5) such article is being imported or offered for import in violation of section 301(cc), then any such article described in any of clauses (1) through (5) shall be refused admission, except as provided in subsection (b) of this section. If it appears from the examination of such samples or otherwise that the article is a counterfeit drug or counterfeit device, such article shall be refused admission. With respect to an article of food, if importation of such food is subject to, but not compliant with, the requirement under subsection (q) that such food be accompanied by a certification or other assurance that the food meets applicable requirements of this Act, then such article shall be refused admission. If such article is subject to a requirement under section 605, 760, or 761 and if the Secretary has credible evidence or information indicating that the responsible person (as defined in section 604, 760, or 761) has not complied with a requirement of such section 605, 760, or 761 with respect to any such article, or has not allowed access to records described in such section 605, 760, or 761, then such article shall be refused admission, except as provided in subsection (b) of this section. The Secretary of the Treasury shall cause the destruction of any such article refused admission unless such article is exported, under regulations prescribed by the Secretary of the Treasury, within 90 days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations, except that the Secretary of Health and Human Services may destroy, without the opportunity for export, any drug or device refused admission under this section, if such drug or device is valued at an amount that is $2,500 or less (or such higher amount as the Secretary of the Treasury may set by regulation pursuant to section 498(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1498(a)(1))) and was not brought into compliance as described under subsection (b). The Secretary of Health and Human Services shall issue regulations providing for notice and an opportunity to appear before the Secretary of Health and Human Services and introduce testimony, as described in the first sentence of this subsection, on destruction of a drug or device under the seventh sentence of this subsection. The regulations shall provide that prior to destruction, appropriate due process is available to the owner or consignee seeking to challenge the decision to destroy the drug or device. Where the Secretary of Health and Human Services provides notice and an opportunity to appear and introduce testimony on the destruction of a drug or device, the Secretary of Health and Human Services shall store and, as applicable, dispose of the drug or device after the issuance of the notice, except that the owner and consignee shall remain liable for costs pursuant to subsection (c). Such process may be combined with the notice and opportunity to appear before the Secretary and introduce testimony, as described in the first sentence of this subsection, as long as appropriate notice is provided to the owner or consignee. Neither clause (2) nor clause (5) of the third sentence of this subsection shall be construed to prohibit the admission of narcotic drugs, the importation of which is permitted under the Controlled Substances Import and Export Act.

(b)[172] Pending decision as to the admission of an article being imported or offered for import, the Secretary of the Treasury may authorize delivery of such article to the owner or consignee upon the execution by him of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury. If it appears to the Secretary of Health and Human Services that (1) an article included within the provisions of clause (3) of subsection (a) of this section can, by relabeling or other action, be brought into compliance with the Act or rendered other than a food, drug, device, or cosmetic, or (2) with respect to an article described in subsection (a) relating to the requirements of sections 760 or 761,,[171] the responsible person (as defined in section 760 or 761) can take action that would assure that the responsible person is in compliance with section 760 or 761, as the case may be, final determination as to admission of such article may be deferred and, upon filing of timely written application by the owner or consignee and the execution by him of a bond as provided in the preceding provisions of this subsection, the Secretary may, in accordance with regulations, authorize the applicant, or, with respect to clause (2), the responsible person, to perform such relabeling or other action specified in such authorization (including destruction or export of rejected articles or portions thereof, as may be specified in the Secretary's authorization). All such relabeling or other action pursuant to such authorization shall in accordance with regulations be under the supervision of an officer or employee of the Department of Health and Human Services designated by the Secretary, or an officer or employee of the Department of the Treasury designated by the Secretary of the Treasury.

[Note: Effective on December 29, 2023, section 3503(a)(4)(D) of division FF of Public Law 117–328 provides for amendments to section 801(b). Upon such date, section 801(b) (as so amended) will read as follows:]

(b) Pending decision as to the admission of an article being imported or offered for import, the Secretary of the Treasury may authorize delivery of such article to the owner or consignee upon the execution by him of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury. If it appears to the Secretary of Health and Human Services that (1) an article included within the provisions of clause (3) of subsection (a) of this section can, by relabeling or other action, be brought into compliance with the Act or rendered other than a food, drug, device, or cosmetic, or (2) with respect to an article described in subsection (a) relating to the requirements of section 605, 760, or 761, the responsible person (as defined in section 604, 760, or 761) can take action that would assure that the responsible person is in compliance with section 605, 760, or 761, as the case may be, final determination as to admission of such article may be deferred and,

[171] Double commas are so in law.
[172] For a version of law of section 801(b), as amended by section 3503(a)(4)(D) of Public Law 117–328, see note below.

upon filing of timely written application by the owner or consignee and the execution by him of a bond as provided in the preceding provisions of this subsection, the Secretary may, in accordance with regulations, authorize the applicant, or, with respect to clause (2), the responsible person, to perform such relabeling or other action specified in such authorization (including destruction or export of rejected articles or portions thereof, as may be specified in the Secretary's authorization). All such relabeling or other action pursuant to such authorization shall in accordance with regulations be under the supervision of an officer or employee of the Department of Health and Human Services designated by the Secretary, or an officer or employee of the Department of the Treasury designated by the Secretary of the Treasury.

(c) All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in subsection (a) of this section and the supervision of the relabeling or other action authorized under the provisions of subsection (b) of this section, the amount of such expenses to be determined in accordance with regulations, and all expenses in connection with the storage, cartage, or labor with respect to any article refused admission under subsection (a) of this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

(d)(1)(A) Except as provided in paragraph (2) and section 804, no drug subject to section 503(b) or composed wholly or partly of insulin which is manufactured in a State and exported may be imported into the United States unless the drug is imported by the manufacturer of the drug.

(B) Except as authorized by the Secretary in the case of a drug that appears on the drug shortage list under section 506E or in the case of importation pursuant to section 804, no drug that is subject to section 503(b)(1) may be imported into the United States for commercial use if such drug is manufactured outside the United States, unless the manufacturer has authorized the drug to be marketed in the United States and has caused the drug to be labeled to be marketed in the United States.

(2) The Secretary may authorize the importation of a drug the importation of which is prohibited by paragraph (1) if the drug is required for emergency medical care.

(3)(A) Subject to subparagraph (B), no component of a drug, no component part or accessory of a device, or other article of device requiring further processing, which is ready or suitable for use for health-related purposes, and no article of a food additive, color additive, or dietary supplement, including a product in bulk form, shall be excluded from importation into the United States under subsection (a) if each of the following conditions is met:

(i) The importer of such article of a drug or device or importer of such article of a food additive, color additive, or dietary supplement submits to the Secretary, at the time of initial importation, a statement in accordance with the following:

(I) Such statement provides that such article is intended to be further processed by the initial owner or con-

Appendix IV
2024 Title XIX State Plan
Third 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

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 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 Health Home Services Provided by Care Coordination Organization services to comply with the Fiscal Year 2025 Enacted Budget. The following changes are proposed:

Non-Institutional Services

Effective on or after August 1, 2024, the reimbursements for Health Home Services Provided by Care Coordination Organizations (CCO's) will be reduced in accordance with the Fiscal Year 2025 Enacted Budget.

The estimated net aggregate decrease in gross Medicaid expenditures attributable to this initiative for State Fiscal Year 2025 is ($12.7M).

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

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 comply with Social Security Act Section 1905(a)(12), 42 Code Federal Regulation Section 440.120. The following changes are proposed:

Non-Institutional Services

Effective on or after August 1, 2024, the New York State Plan will allow the coverage of certain imported drugs deemed medically necessary per 21 United States Code Section 381(d)(1)(B).

There is no estimated change to the 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. Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

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New York, New York 10018

Queens County, Queens Center
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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

PUBLIC NOTICE

Department of State
Uniform Code Variance / Appeal Petitions

Pursuant to 19 NYCRR Part 1205, the variance and appeal petitions below have been received by the Department of State. Unless otherwise indicated, they involve requests for relief from provisions of the New York State Uniform Fire Prevention and Building Code. Persons wishing to review any petitions, provide comments, or receive actual notices of any subsequent proceeding may contact Brian Tollisen or Neil Collier, Building Standards and Codes, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-4073 to make appropriate arrangements.

2024-0104 Matter of EXP, Volodymyr Lytvyn, 1170 Route 22, Suite 103, Bridgewater, NJ 08807, for a variance concerning safety requirements, including dead-end corridors. Involved is an elevated signal tower building known as Beach 105th Station located at Beach 105th Street and Rockaway Freeway in the Borough of Queens, City of New York, State of New York.

2024-0332 Matter of Emerald Point Developers, LLC, 3850 Buffalo Road, Rochester, NY 14624, for a variance concerning safety requirements, including fire apparatus access roads. Involved is an addition to an existing building located at 3841 Buffalo Road, Town of Ogden, County of Monroe, State of New York.

2024-0340 Matter of MTA Construction and Development, 2 Broadway, 8th Floor, New York, NY 10004, for a variance concerning safety requirements, including Wide Aisle Gates. Involved is an existing transit station, known as the Kingsbridge Road Station, located in the City of New York, Borough of the Bronx, County of Bronx, State of New York.

PUBLIC NOTICE

Department of State
Uniform Code Variance / Appeal Petitions

Pursuant to 19 NYCRR Part 1205, the variance and appeal petitions below have been received by the Department of State. Unless otherwise indicated, they involve requests for relief from provisions of the New York State Uniform Fire Prevention and Building Code. Persons wishing to review any petitions, provide comments, or receive actual notices of any subsequent proceeding may contact Brian Tollisen or Neil Collier, Building Standards and Codes, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-4073 to make appropriate arrangements.

2024- 0341 Matter of Blue Line 9 Inc., Angel Aponte, 1330 Washington Avenue, Bayshore, NY 11706, for a variance concerning safety requirements, including height under projection. Involved is an existing dwelling located at 149 Hilltop Drive, Town of Brentwood, County of Suffolk, State of New York.

2024-0342 Matter of Captain Permit, Mike Arato, 245 NY-109, Suite D, West Babylon, NY 11704, for a variance concerning safety requirements, including basement ceiling height requirements. Involved is an existing dwelling located at 50 Sunset Blvd.; Town of Oyster Bay, County of Nassau, State of New York.

2024-0344 Matter of Jose David Ventura, 52 Long Drive, Hempstead, NY 11550, for a variance concerning safety requirements, including basement ceiling height requirements. Involved is an existing dwelling located at 52 Long Drive, Village of Hempstead, County of Nassau, State of New York.

2024-0346 Matter of Captain Permit, Mike Arato, 245 NY-109, Suite D, West Babylon, NY 11704, for a variance concerning safety requirements, including ceiling height requirements. Involved is an existing dwelling located at 703 Provost Avenue, Town of Brookhaven, County of Suffolk, State of New York.

2024-0348 Matter of Arpitha Chakalakal, 1653 Highland Ave., New Hyde Park, NY 11040, for a variance concerning safety requirements, including basement ceiling height requirements. Involved is an existing dwelling located at 1653 Highland Avenue, Town of North Hempstead, County of Nassau, State of New York.

PUBLIC NOTICE

Susquehanna River Basin Commission
General Permit Notice

SUMMARY: This notice lists General Permits approved by the Susquehanna River Basin Commission during the period set forth in DATES.

DATES: June 1-30, 2024

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238-0423, ext. 1312; fax (717) 238-2436; e-mail: joyler@srbc.gov. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists General Permits for projects, described below, pursuant to 18 CFR § 806.17(c)(4), for the time period specified above.

1. Lear Corporation Pine Grove – Penn Dye and Finishing Plant, General Permit Approval of Coverage No. GP-01-20240606, Pine Grove Borough, Schuylkill County, Pa.; groundwater remediation system withdrawal approved up to 0.297 mgd (30-day average); Approval Date: June 13, 2024.

Authority: Public Law 91-575, 84 Stat. 1509 et seq., 18 CFR parts 806 and 808.

Dated: July 11, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

PUBLIC NOTICE

Susquehanna River Basin Commission
Projects Approved for Consumptive Uses of Water

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in DATES.

DATES: June 1 - 30, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238-0423, ext. 1312; fax: (717) 238-2436; e-mail: joyler@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR § 806.22(e) and (f) for the time period specified above.

Water Source Approval - Issued Under 18 CFR 806.22(e):

1. Cargill Cocoa & Chocolate, Inc. - Hazleton Plant; ABR-202406002; Hazle Township, Luzerne County, Pa.; Consumptive Use of Up to 0.0800 mgd; Approval Date: June 14, 2024.

2. Hershey Creamery Co. – Middletown Manufacturing, ABR-202406003; Lower Swatara Township, Dauphin County, Pa.; Consumptive Use of Up to 0.0500 mgd; Approval Date: June 14, 2024.

Water Source Approval - Issued Under 18 CFR 806.22(f):

1. RENEWAL - Chesapeake Appalachia, L.L.C.; Pad ID: Chancellor; ABR-20090532.R3; Asylum Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: June 5, 2024.

Appendix V
2024 Title XIX State Plan
Third Quarter Amendment
Responses to Standard Funding Questions

NON-INSTITUTIONAL SERVICES
State Plan Amendment #24-0073

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.

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.

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: This is not a supplemental or enhanced payment.

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 Medicaid payments authorized under this State Plan Amendment do not impact the UPL demonstrations.

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.