



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

Mr. Michael Melendez
Associate Regional Administrator
Department of Health & Human Services
Centers for Medicare & Medicaid Services
New York Regional Office
Division of Medicaid and Children's Health Operations
26 Federal Plaza - Room 37-100 North
New York, New York 10278

JUN 12 2017

RE: SPA #17-0029
Non-Institutional Services

Dear Mr. Melendez:

The State requests approval of the enclosed amendment #17-0029 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective July 1, 2017 (Appendix I). This amendment is being submitted in accordance with SSL §367-a(6)(c)(iii). 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 and promote 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.

Copies of pertinent sections of NY Social Services Law are 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 March 29, 2017 and May 10, 2017, is also enclosed for your information (Appendix IV).

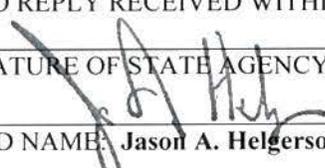
If you have any questions regarding this State Plan Amendment submission, please do not hesitate to contact John E. Ulberg, Jr., Medicaid Chief Financial Officer, Division of Finance and Rate Setting, Office of Health Insurance Programs at (518) 474-6350.

Sincerely,



Jason A. Helgerson
Medicaid Director
Office of Health Insurance Programs

Enclosures

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION		1. TRANSMITTAL NUMBER: 17-0029	2. STATE New York
		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE July 1, 2017	
5. TYPE OF PLAN MATERIAL (<i>Check One</i>): <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (<i>Separate Transmittal for each amendment</i>)			
6. FEDERAL STATUTE/REGULATION CITATION: §1902(r)(5) of the Social Security Act, and 42 CFR 447		7. FEDERAL BUDGET IMPACT: (<i>in thousands</i>) a. FFY 0701/17-09/30/17 \$ 0 b. FFY 10/01/17-09/30/18 \$ 0	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.18-A: Page 1c Attachment 4.18-C: Page 1c		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (<i>If Applicable</i>): Attachment 4.18-A: Page 1c Attachment 4.18-C: Page 1c	
10. SUBJECT OF AMENDMENT: Compliance with Pharmacy Copayment Requirements (FMAP = 50%)			
11. GOVERNOR'S REVIEW (<i>Check One</i>): <input checked="" type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> OTHER, AS SPECIFIED: <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL: 		16. RETURN TO: New York State Department of Health Division of Finance & Rate Setting 99 Washington Ave – One Commerce Plaza Suite 1432 Albany, NY 12210	
13. TYPED NAME: Jason A. Helgeson			
14. TITLE: Medicaid Director Department of Health			
15. DATE SUBMITTED: JUN 12 2017			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED:		18. DATE APPROVED:	
PLAN APPROVED – ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL:		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME:		22. TITLE:	
23. REMARKS:			

Appendix I
2017 Title XIX State Plan
Second Quarter Amendment
Amended SPA Pages

New York
 1c

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

The following charges are imposed on the categorically needy for services:

SERVICE	TYPE OF CHARGE			AMOUNT AND BASIS FOR DETERMINATION
	DEDUCTIBLE	COINSURANCE	CO-PAY	
Pharmacy				
1. Brand- name drugs			X	\$2.50
2. Generic drugs and brand name drugs when cost after consideration of all rebates is less than the generic equivalent			X	\$1.00
3. Non-prescription drugs			X	\$0.50

TN #17-0029

Approval Date _____

Supersedes TN #09-0052

Effective Date _____

New York
1c

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

The following charges are imposed on the medically needy for services other than those provided under Section 1916 of the Act:

SERVICE	TYPE OF CHARGE			AMOUNT AND BASIS FOR DETERMINATION
	DEDUCTIBLE	COINSURANCE	CO-PAY	
Pharmacy				
1. Brand- name drugs			X	\$2.50
2. Generic drugs and brand name drugs when cost after consideration of all rebates is less than the generic equivalent			X	\$1.00
3. Non-prescription drugs			X	\$0.50

TN #17-0029

Approval Date _____

Supersedes TN #09-0052

Effective Date _____

**Appendix II
2017 Title XIX State Plan
Second Quarter Amendment
Summary**

SUMMARY
SPA #17-0029

This State Plan Amendment proposes to amend the copayment for brand name prescription drugs to eliminate the difference in copay between a preferred drug and a non-preferred drug, in accordance with SSL §367-a(6)(c)(iii).

Appendix III
2017 Title XIX State Plan
Second Quarter Amendment
Authorizing Provisions

Section 367-a of the Social Services Law:

* (iii) Notwithstanding any other provision of this paragraph, co-payments charged for each generic prescription drug dispensed shall be one dollar and for each brand name prescription drug dispensed shall be two dollars and fifty cents; provided, however, that the co-payments charged for each brand name prescription drug reimbursed pursuant to subparagraph (ii) of paragraph (a-1) of subdivision four of section three hundred sixty-five-a of this title shall be one dollar.

* NB Effective July 1, 2017

**Appendix IV
2017 Title XIX State Plan
Second Quarter Amendment
Public Notice**

provided by a county operated freestanding mental health or substance abuse DTC. Distributions shall be based on each eligible facility's proportionate share of the sum of all DTC and clinic visits for all eligible facilities receiving payments for the base year two years prior to the rate year. The proportionate share payments may be added to rates of payment or made as aggregate payments to eligible facilities.

- Effective on or after April 1, 2017, eliminates supplemental medical assistance payments of up to \$6 million annually made to providers of emergency medical transportation.
- Continues, effective for periods on and after April 1, 2017, funds to certified home health agencies, AIDS home care providers, and hospice service providers for the purpose of improving recruitment, training, and retention of home health aides or other personnel with direct patient care responsibility.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2017/2018 is \$26 million.

- Extends current provisions to services on and after April 1, 2017 through March 30, 2020, the reimbursable operating cost component for general hospital outpatient rates and adult day health care services provided by RHCs rates will be established with the final 2006 trend factor equal to the final consumer price index (CPI) for all urban consumers less 0.25%.
- Extends current provisions for certified home health agency administrative and general cost reimbursement limits for the periods April 1, 2017 through March 31, 2020.
- Effective April 1, 2017, continues the supplemental upper payment limit payments made to general hospitals, other than major public general hospitals under non-institutional services of \$339 million annually.
- Capital related costs of a general hospital excluding 44% of the major movable costs and excluding staff housing costs will continue effective April 1, 2017 through March 31, 2020.

The estimated gross annual decrease in Medicaid expenditures for state fiscal year 2017/2018 for this initiative is (\$35.1) million.

Prescription Drugs:

- Effective April 1, 2017, in an effort to mitigate high drug costs, the Department proposes to establish requirements for manufacturers to pay a penalty in the form of a rebate, as well as impose a surcharge on wholesalers and manufacturers for certain high priced drugs.
 - o The Department will collect confidential information from drug manufacturers related to drug costs and prices, and with the assistance of the drug utilization review board (DURB), identify for review drugs which: are first introduced to market at prohibitively expensive prices, experience a large increase in price not explained by a relevant factor, or are priced disproportionately given limited therapeutic benefits. If a manufacturer's price exceeds the reasonable value of the drug, as determined by the DURB, the Board would recommend that a benchmark price be established and the excess amount would be subject to a Medicaid rebate and a surcharge.
 - o A list of such designated high priced drugs shall be published on the Department's website, along with the date on which each drug first appeared on the list, and its associated benchmark price.
 - o A surcharge of 60% shall be imposed on the excess charge amount of the gross receipt from the first in-state sale of a high priced drug. The surcharge shall be deposited into a designated High Priced Drug Reimbursement Fund, and paid out through the Department of Financial Services to health insurers and the Medicaid program in proportion to their respective costs attributable to the drug.

The estimated annual aggregate decrease in Medicaid expenditures for state fiscal year 2017/2018 for this initiative is \$110 million.

- The Department proposes to amend the reimbursement for prescription drugs dispensed, effective April 1, 2017. These changes will bring the reimbursement methodology into compliance with Federal regulations.
 - o Reimbursement for prescribed drugs will be the lower of ingredient cost (plus a professional dispensing fee when a covered outpatient drug), or the billing pharmacy's usual and customary charge.
 - o For brand name drugs, the ingredient cost will be the National Average Drug Acquisition Cost (NADAC); or, in the event of no NADAC pricing available, Wholesale Acquisition Cost (WAC) less 3.3%.
 - o For generic drugs, ingredient cost will be the lower of NADAC; or the Federal Upper Limit (FUL); or the State Maximum Acquisition Cost (SMAC). In the event of no NADAC pricing available, ingredient cost is the lower of WAC less 17.5%; or the FUL; or SMAC.
 - o For over-the-counter drugs, ingredient cost will be the lower of NADAC; or FUL; or SMAC. In the event of no NADAC pricing available, ingredient cost is the lower of WAC; FUL; or SMAC.
 - o The professional dispensing fee for brand name, generic, and OTC covered outpatient drugs will be \$10.00.

The estimated annual aggregate increase in Medicaid expenditures for state fiscal year 2017/2018 for this initiative is \$11 million.

- Effective July 1, 2017, the co-pay for over-the-counter (OTC) non-prescription drug/items will be increased from \$0.50 to \$1.00. In addition, modifications to the list of covered drug/items in this category may be filed as regulations by the commissioner of health without prior notice and comment.

The estimated annual aggregate decrease in Medicaid expenditures for state fiscal year 2017/2018 for this initiative is \$12.6 million.

- **Effective July 1, 2017, the Department proposes to amend the copayment for brand name prescription drugs dispensed in order to eliminate the difference in co-pay between a preferred drug and a non-preferred drug, in accordance with federal requirements:**
 - o **The co-pay for brand-name prescription drugs will be changed to \$2.50, regardless of their status on or off the preferred drug list; provided, however, that the copayments for brand name prescriptions drugs in the Fee-for-Service Brand Less Than Generic program will continue to be \$1.00.**

There is no additional estimated annual change to gross Medicaid expenditures as a result of the clarifying proposed amendments.

The overall estimated annual net aggregate decrease in gross Medicaid expenditures attributable to reform and other initiatives contained in the budget for state fiscal year 2017/2018 is \$282,506,637 million; and the estimated annual net aggregate increase in gross Medicaid expenditures attributable to an extension of upper payment limit (UPL) payments for state fiscal year 2017/2018 in \$2.5 billion.

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

Copies of the proposed State Plan Amendments will be on file in each local (county) social services district and available for public review.

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

- 2-14197 Commercial and Residential Real Estate Agents and Brokers and Property Management Services Policies covering the liability of real estate agents and brokers and property managers who are engaged in large commercial and residential real estate projects. The policies would include, but are not limited to, liability coverage for acts arising out of the brokerage of sales and lease of real estate, property management, construction management and consulting, general consulting, franchising, joint ventures, mortgage brokering, appraisals, auction, referrals, business brokerage activities and the development of owned commercial and residential real estate.
- 2-22002 [Automobile] Motorsports Racing Liability Liability coverage for owners or lessors of motorsports racing venues (e.g. race tracks for oval track events, drag races, monster truck rallies, motocross, motorcycle, boat or snowmobile racing, and other types of motorized vehicle competitive events).
- 2-22003 [Auto] Motorsports Racing and [Automobile Race Track] Motorsports Liability Coverage for claims of spectators, participants or other third parties in connection with the operation of [an automobile race track or drag strip] motorsports venues, or the staging or conduct of [an automobile race] motorsports events or participation therein by teams and individuals.
- 2-02038 Television Broadcast Interruption [Breakdown-Closed Circuits] Covers the reduction in gross admission fees caused by interruption by breakdown, failure, malfunctioning or any disorder of equipment lines and appurtenances thereto, which prevents presentation of the audio or showing of [the] a telecast.

For further information you may contact: Hoda Nairooz by email at hoda.nairooz@dfs.ny.gov, by mail at Department of Financial Services, Property Bureau, One State St., New York, NY 10004, or by calling (212) 480-5595

PUBLIC NOTICE Department of Health

The New York State Department of Health (DOH) is required by the provisions of the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act to provide for public review and comment on the Department's beach monitoring and notification plan. The BEACH Act (Section 406(b) of the Clean Water Act) enacted a federal Environmental Protection Agency grant program available to states, such as New York, with coastal recreational waters. Coastal recreational waters include the Great Lakes and marine coastal waters that are designated for swimming, bathing, surfing, or similar water contact activities. The Act is not applicable to inland waters or waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea.

The beach monitoring and public notification plan also includes information on the beach evaluation and classification process, including a list of waters to be monitored and beach ranking. Also included in this plan, is the sampling design and monitoring plan, including sampling location and sampling frequency. Lastly, the plan contains information on procedures for public notification and risk communication, including methods to notify the public of a swimming advisory or beach closure.

Any interested parties and/or agencies desiring to review and/or comment on the beach monitoring and notification plan for coastal recreational waters may do so by writing to: Timothy M. Shay, Assistant Bureau Director, Department of Health, Center for Environmental Health, Bureau of Community Environmental Health and Food Protection, Empire State Plaza, Corning Tower Bldg., Rm. 1395, Albany, NY 12237, Fax: (518) 402-7609

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 institutional, non-institutional, long term care, and prescription drug services to comply with enacted statutory provisions. The following changes are proposed:

All Services

- Payments to Critical Access Hospitals based on criteria as determined by the Commissioner of Health.

The estimated annual increase in gross Medicaid expenditures for this initiative is \$20 million.

Institutional Services

- Payments to hospitals that meet the criteria as an enhanced safety net hospital. The criteria are as follows: In any of the previous three calendar years, the hospital has had not less than fifty percent of the patients it treats receive Medicaid or be medically uninsured; not less than forty percent of its inpatient discharges are covered by Medicaid; twenty-five percent or less of its discharged patients are commercially insured; not less than three percent of the services are attributed to the care of uninsured patients; it provides care to uninsured patients in its emergency room, hospital based clinics and community based clinics, including the provision of important community services such as dental care and prenatal care.

The estimated annual increase in gross Medicaid expenditures for this initiative is \$20 million.

Long Term Care Services

- The Enacted Budget limits reimbursement to Nursing Homes for bed hold days to therapeutic leaves of absence.

The estimated annual net decrease in gross Medicaid expenditures attributable to this cost containment initiative contained in the budget for state fiscal year 2017/2018 is (\$20) million.

Non-Institutional Services

- The initiative previously noticed regarding the elimination of supplemental medical assistance payments of up to \$6 million annually made to providers of emergency medical transportation was not included in the Enacted Budget for state fiscal year 2017/2018.

Prescription Drugs:

- The initiative previously noticed regarding the co-pay for over-the-counter (OTC) non-prescription drug/items increased from \$0.50 to \$1.00 was eliminated from the budget for state fiscal year 2017/2018.

- Effective April 1, 2017, to mitigate high drug costs, the Department will establish a Medicaid prescription drug cap as a separate component of the Medicaid global cap with year to year spending targets. Drug expenditures will be reviewed quarterly. If it is determined that expenditures will exceed annual growth limitation, the Commissioner may identify and refer drugs to the Drug Utilization Review Board (DURB) for a recommended target supplemental rebate. The Department shall notify affected manufacturers prior to referring drug(s) to DURB, and attempt to reach a rebate agreement.

When determining whether to recommend a drug to the DURB for a target supplemental rate, the department shall consider the actual cost of a drug to the state, including current rebate amounts, taking into consideration whether the drug manufacturer provides significant discounts relative to other covered drugs. When considering whether to recommend a target supplemental rate for a drug, the DURB shall consider the actual cost of the drug to the Medicaid program including state and federal rebates, and may consider:

- o Impact on spending target, capitation rates and affordability and value to the program;
- o Significant and unjustified price increases;
- o Whether the drug may be priced disproportionately to its therapeutic benefits.

If a target rebate is recommended by the DURB, and the department is unable to negotiate a rebate of at least 75% of the target rebate

amount with the manufacturer(s), the "prescriber prevails" provision (if applicable), may be waived for the target drug(s).

If a target rebate is recommended by the DURB, and the department is unable to negotiate a rebate which it deems satisfactory, the Department may collect additional cost information from the manufacturer.

If, regardless of rebates, total Medicaid drug expenditures are still projected to exceed the prescription drug cap, the department may invoke prior authorization on the targeted drug(s) or other drugs made by the same manufacturer, direct Medicaid managed care plans to remove the target drug(s) from their formularies, or promote the use of alternative cost and clinically effective drugs.

The estimated annual aggregate decrease in Medicaid expenditures for state fiscal year 2017-18 for this initiative is \$110 million.

The overall estimated annual net aggregate increase in gross Medicaid expenditures attributable to reform and other initiatives contained in the budget for state fiscal year 2017/2018 is \$233,906,637.

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

Copies of the proposed State Plan Amendments will be on file in each local (county) social services district and available for public review.

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

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Queens County, Queens Center
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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 1460, Albany, NY 12210. spa_inquiries@health.ny.gov

PUBLIC NOTICE

Office of Parks, Recreation and Historic Preservation

Pursuant to section 14.07 of the Parks, Recreation and Historic Preservation Law, the Office of Parks, Recreation and Historic Preservation hereby gives notice of the following:

In accordance with subdivision (c) of section 427.4 of title 9 NYCRR notice is hereby given that the New York State Board for Historic Preservation will be considering nomination proposals for listing of properties in the State and National Register of Historic Places at a meeting to be held on Thursday, June 15, 2017 at Peebles Island State Park, 1 Delaware Avenue, Cohoes, NY 12188.

The following properties will be considered:

1. Delaware Avenue Baptist Church, Buffalo, Erie County
2. Newberry Building, Batavia, Genesee County

3. Linde Air Products Factory, Buffalo, Erie County
4. Springville Baptist Church (Boundary Expansion), Springville, Erie County
5. Allegany Council House, Jimmersonstown, Allegany Indian Territories (AIR), Cattaraugus County
6. Morgan Dunne House, Syracuse, Onondaga County
7. West High School, Auburn, Cayuga County
8. Congregation Ohab Zedek, New York County
9. Swan River Schoolhouse, East Patchogue, Suffolk County
10. Second & Ostrander Historic District, Riverhead, Suffolk County
11. Charles & Anna Bates House, Greenport, Suffolk County
12. 390 Ocean Avenue, Massapequa, Nassau County
13. George Sumner Kellogg House, Baldwin, Nassau County
14. Oak Hill Historic District, Durham, Greene County
15. Gumaer Cemetery, Deerpark, Orange County
16. Crandell Theatre, Chatham, Columbia County
17. Phillipsport Methodist Church and Phillipsport District 16 Schoolhouse, Phillipsport, Sullivan County
18. Oneida Downtown Commercial Historic District, Oneida, Madison County
19. Sagamore Apartment House, Syracuse, Onondaga County
20. Oswego & Syracuse Railroad Freighthouse, Oswego, Oswego County
21. First Lewis County Clerk's Office, Martinsburg, Lewis County
22. Lady Tree Lodge, Saranac Inn, Franklin County
23. Stillwater Fire Observation Station, Webb, Herkimer County
24. St. Matthew's Episcopal Church, Horseheads, Chemung County
25. House at 5680 Seneca Point Rd., South Bristol vic., Ontario County
26. Coeymans Landing Historic District, Coeymans, Albany County

To be considered by the board, comments may be submitted to Michael F. Lynch, P.E., A.I.A., Deputy State Historic Preservation Officer and Director, Division for Historic Preservation, Peebles Island, P.O. Box 189, Waterford, New York 12188-0189, no later than Wednesday, June 14, 2017 or may be submitted in person at the meeting by contacting Michael F. Lynch at the same address no later than June 14.

For further information, contact: Michael F. Lynch, P.E., A.I.A., Deputy State Historic Preservation Officer and Director, Division for Historic Preservation, Peebles Island, P.O. Box 189, Waterford, NY 12188-0189, (518) 268-2130

PUBLIC NOTICE

County of Seneca

The County of Seneca is requesting proposals from qualified administrative service agencies, and/or financial organizations relating to administration, trustee services and/or funding of a deferred compensation plan for employees of The County of Seneca meeting the requirements of Section 457 of the Internal Revenue Code and Section 5 of the State Finance Law, including all rules and regulations issued pursuant thereto.

A copy of the proposal questionnaire may be obtained from: Kathy Corona, Personnel Officer, Seneca County Personnel Office, One DiPronio Dr., Waterloo, NY 13165, (315) 539-1712, Fax (315) 539-1658, e-mail: kcrona@co.seneca.ny.us

All proposals must be submitted no later 30 days from the date of publication in the New York State Register no later than 4:30 p.m.

PUBLIC NOTICE

Department of State

F-2016-0130

Date of Issuance – May 10, 2017

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities