



# Department of Health

KATHY HOCHUL  
Governor

MARY T. BASSETT, M.D., M.P.H.  
Commissioner

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

March 31, 2022

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 #22-0004  
Non-Institutional Services

Dear Mr. McMillion:

The State requests approval of the enclosed amendment #22-0004 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective January 1, 2022 (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 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.

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 29, 2021, 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,

Brett R. Friedman  
Acting 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

2. STATE

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

5. FEDERAL STATUTE/REGULATION CITATION

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)

a. FFY \_\_\_\_\_ \$ \_\_\_\_\_

b. FFY \_\_\_\_\_ \$ \_\_\_\_\_

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

9. SUBJECT OF AMENDMENT

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

15. RETURN TO

12. TYPED NAME

13. TITLE

14. DATE SUBMITTED March 31, 2022

**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**  
**2022 Title XIX State Plan**  
**First Quarter Amendment**  
**Amended SPA Pages**

**New York  
3h12.2**

**1905(a)(9) Clinic Services**

Effective July 1, 2021, reimbursement fees for Ambulatory Services in Facilities Certified Under Article 16 of the Mental Health Law Clinic Day Treatment program providers are as follows:

Corp Name	Site	Rate Codes				
		4170 Full Day	4171 Half Day	4172 Collocated Model	4173 Intake	4174 Diagnosis & Evaluation
Family Residence & Essential Enterprises	120 Plant Avenue	\$206.66	\$103.33	\$0.00	\$206.66	\$206.66
Monroe County ARC	1651 Lyell Avenue	\$0.00	\$0.00	\$37.33	\$0.00	\$0.00
Otsego County ARC	3 Chenango Road	\$99.80	\$49.91	\$0.00	\$99.80	\$99.80
UCP Nassau	380 Washington Avenue	\$171.31	\$85.66	\$0.00	\$171.31	\$171.31
UCP Suffolk	250 Marcus Boulevard	\$153.06	\$76.54	\$0.00	\$153.06	\$153.06

Effective [April 1] January 1, 2022, reimbursement fees for Ambulatory Services in Facilities Certified Under Article 16 of the Mental Health Law Clinic Day Treatment program [providers are] provider is as follows:

Corp Name	Site	Rate Codes				
		4170 Full Day	4171 Half Day	4172 Collocated Model	4173 Intake	4174 Diagnosis & Evaluation
[Family Residence & Essential Enterprises]	[120 Plant Avenue]	[\$205.98]	[\$102.99]	[\$0.00]	[\$205.98]	[\$205.98]
[Monroe County ARC]	[1651 Lyell Avenue]	[\$0.00]	[\$0.00]	[\$37.21]	[\$0.00]	[\$0.00]
[Otsego County ARC]	[3 Chenango Road]	[\$99.47]	[\$49.74]	[\$0.00]	[\$99.47]	[\$99.47]
[UCP Nassau]	[380 Washington Avenue]	[\$170.75]	[\$85.38]	[\$0.00]	[\$170.75]	[\$170.75]
UCP Suffolk	250 Marcus Boulevard	[\$152.56] \$221.22	[\$76.29] \$110.61	\$0.00	[\$152.56] \$221.22	[\$152.56] 221.22

TN #22-0004

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

Supersedes TN #21-0047Effective Date January 1, 2022

**Appendix II**  
**2022 Title XIX State Plan**  
**First Quarter Amendment**  
**Summary**

**SUMMARY**  
**SPA #22-0004**

This amendment proposes to revise the State Plan to amend reimbursement fees for OPWDD Day Treatment services to reflect changes in costs and service providers.

**Appendix III**  
**2022 Title XIX State Plan**  
**First Quarter Amendment**  
**Authorizing Provisions**

Chapter 59 of the Laws of 2021

PART FFF

43 Section 1. Subdivisions 3-b and 3-c of section 1 of part C of chapter  
44 57 of the laws of 2006, relating to establishing a cost of living  
45 adjustment for designated human services programs, as amended by section  
46 1 of part Y of chapter 57 of the laws of 2019, are amended to read as  
47 follows:

48 3-b. Notwithstanding any inconsistent provision of law, beginning  
49 April 1, 2009 and ending March 31, 2016 and beginning April 1, 2017 and  
50 ending March 31, 2021, the commissioners shall not include a COLA  
51 for the purpose of establishing rates of payments, contracts or any  
52 other form of reimbursement, provided that the commissioners of the  
53 office for people with developmental disabilities, the office of mental  
54 health, and the office of

S. 2509--C

138

A. 3009--C

1 addiction services and supports shall not include a COLA beginning April  
2 1, 2017 and ending March 31, 2021.

3 3-c. Notwithstanding any inconsistent provision of law, beginning  
4 April 1, 2021 and ending March 31, 2022,  
5 the commissioners shall develop the COLA under this section using the  
6 actual U.S. consumer price index for all urban consumers (CPI-U)  
7 published by the United States department of labor, bureau of labor  
8 statistics for the twelve month period ending in July of the budget year  
9 prior to such state fiscal year, for the purpose of establishing rates  
10 of payments, contracts or any other form of reimbursement.

11 § 2. Section 1 of part C of chapter 57 of the laws of 2006, relating  
12 to establishing a cost of living adjustment for designated human  
13 services programs, is amended by adding a new subdivision 3-g to read as  
14 follows:

15 3-g. Notwithstanding any other provision of law to the contrary, and  
16 subject to available appropriations therefore, for all eligible programs  
17 as determined pursuant to subdivision four of this section, the commis-  
18 sioners shall provide funding to support a one percent (1.0%) cost of  
19 living adjustment, as determined pursuant to subdivision three-c of this  
20 section, beginning April 1, 2021 and ending March 31, 2022.

21 § 3. Section 4 of part C of chapter 57 of the laws of 2006, relating  
22 to establishing a cost of living adjustment for designated human  
23 services programs, as amended by section 1 of part I of chapter 60 of  
24 the laws of 2014, is amended to read as follows:

25 § 4. This act shall take effect immediately and shall be deemed to  
26 have been in full force and effect on and after April 1, 2006; provided  
27 section one of this act shall expire and be deemed repealed April 1,  
28 2022; provided, further, that sections two and three of this act  
29 shall expire and be deemed repealed December 31, 2009.

30 § 4. This act shall take effect immediately and shall be deemed to  
31 have been in full force and effect on and after April 1, 2019; provided,  
32 however, that the amendments to section 1 of part C of chapter 57 of the  
33 laws of 2006, relating to establishing a cost of living adjustment for



34 designated human services programs made by sections one and two of this  
35 act shall not affect the repeal of such section and shall be deemed  
36 repealed therewith.

**Appendix IV  
2022 Title XIX State Plan  
First Quarter Amendment  
Public Notice**

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:

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 qualifying Mental Hygiene services to comply with enacted statutory provisions. The following changes are proposed:

Non-Institutional

Effective on or after December 30, 2021 the Department of Health will adjust rates to reflect labor costs resulting from statutorily required increases in the New York State minimum wage. The minimum wage rate increases apply to services provided in Office of Mental Health licensed rehabilitation programs, effective December 31, 2021.

The estimated annual aggregate increase in gross Medicaid expenditures attributable to the rate increase is \$14,032 in State Fiscal Year 2022 and \$56,128 in State Fiscal Year 2023.

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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**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 to comply with Public Health Law Section 2808 (2-c)(d). The following changes are proposed:

Long Term Care Services

Effective on and after January 1, 2022, the quality incentive program for non-specialty nursing homes will continue to recognize improvement in performance and provide for other minor modifications.

There is no estimated annual change to 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.

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**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 enacted statutory provisions. The following changes are proposed:

#### Non-Institutional Services

Effective on or after January 1, 2022, the Department of Health will adjust the reimbursement rate for Ambulatory Services in Facilities Certified Under Article 16 of the Mental Health Law Clinic Day Treatment program to remove the providers that no longer offer the service and update the reimbursements for the remaining providers based on more current cost data.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2022 is \$300,000.

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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## 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 to comply with sections 2803, 2895-b, and 2828 of the Public Health Law. The following changes are proposed:

#### Long Term Care Services

Effective on or after January 1, 2022, the Department of Health will adjust rates for residential health care facilities meeting the requirements set forth in section 2828 of the Public Health Law and implementing regulations. This rate adjustment will support increases in resident-facing staffing services provided by registered nurses, licensed practical nurses, certified nurse aides, and nurse aides in accordance with standards set forth in section 2895-b of the Public Health Law and implementing regulations, which shall be sufficient to attain the highest practicable physical, mental, and psychological well-being of the residents of such residential health care facilities.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to the residential health care facility rate

adjustment is \$128 million as appropriated in the budget for state fiscal year 2021/2022.

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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## 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 services to comply with enacted statutory provisions. The following changes are proposed:

#### Institutional Services

Effective on or after December 31, 2021, the Department of Health will adjust Residential Treatment Facility (RTF) rates for providers to consider increased labor costs resulting from increases in the New York State minimum wage in the Remainder of State region.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2021/2022 is \$16,000.

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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**Appendix V**  
**2022 Title XIX State Plan**  
**First Quarter Amendment**  
**Responses to Standard Funding Questions**

**NON-INSTITUTIONAL SERVICES**  
**State Plan Amendment #22-0004**

**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. For SPAs that provide for changes to payments for clinic or outpatient hospital services or for enhanced or supplemental payments to physician or other practitioners, the questions must be answered for all payments made under the state plan for such service.

- 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 payments, a complete listing of providers that return a portion of their payments, 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 do retain the payments made pursuant to this amendment. However, this requirement in no way prohibits the public provider, including county providers, from reimbursing the sponsoring local government for appropriate expenses incurred by the local government on behalf of the public provider. The State does not regulate the financial relationships that exist between public health care providers and their sponsoring governments, which are extremely varied and complex. Local governments may provide direct and/or indirect monetary subsidies to their public providers to cover on-going unreimbursed operational expenses and assure achievement of their mission as primary safety net providers. Examples of appropriate expenses may include payments to the local government which include reimbursement for debt service paid on a provider's behalf, reimbursement for Medicare Part B premiums paid for a provider's retirees, reimbursement for contractually required health benefit fund payments made on a provider's behalf, and payment for overhead expenses as allocated per federal Office of Management and Budget Circular 2 CFR 200 regarding Cost Principles for State, Local, and Indian Tribal Governments. The existence of such transfers should in no way negate the legitimacy of these facilities' Medicaid payments or result in reduced Medicaid federal financial participation for the State. This position was further supported by CMS in review and approval of SPA 07-07C when an on-site audit of these transactions for New York City's Health and Hospitals Corporation was completed with satisfactory results.

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 through 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 governmental 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:** Payments made to service providers under the provisions of this SPA are funded through a general appropriation received by the State agency that oversees medical assistance (Medicaid), which is the Department of Health (DOH).

The source of the funds under the provision of this SPA are appropriations in the Office for People With Developmental Disabilities General Fund Local Assistance Account.

There have been no new provider taxes and no existing taxes have been modified.

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 payments authorized for this provision are not supplemental or enhanced 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.

**Response:** This SPA is not subject to upper payment limit (UPL) calculations.

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:** There are various state agencies that perform audits each year to determine the appropriateness of Medicaid payments. In the event that inappropriate payments are determined, recoupments would be initiated and the Federal share would be returned to CMS within the associated 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 does comply 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.