



Department of Health

ANDREW M. CUOMO
Governor

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

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

December 31, 2018

National Institutional Reimbursement Team
Attention: Mark Cooley
CMS, CMCS
7500 Security Boulevard, M/S S3-14-28
Baltimore, MD 21244-1850

Re: SPA #18-0066
Inpatient Hospital Services

Dear Mr. Cooley:

The State requests approval of the enclosed amendment #18-0066 to the Title XIX (Medicaid) State Plan for inpatient hospital services to be effective October 1, 2018 (Appendix I). This amendment is being submitted based upon enacted legislation. A summary of the proposed amendment is contained in Appendix II.

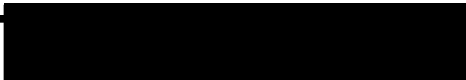
This amendment is submitted pursuant to §1902(a) of the Social Security Act (42 USC 1396a(a)) and Title 42 of the Code of Federal Regulations (CFR), Part 447, Subpart C.

Notice of the changes in the methods and standards for setting payment rates for general hospital inpatient services were given in the New York State Register on **September 26th, 2018**.

Copies of pertinent sections of enacted legislation are enclosed for your information (Appendix III). In addition, responses to the five standard funding questions are 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,


Donna Frescatore
Medicaid Director
Office of Health Insurance Programs

Enclosures
cc: Mr. Michael Melendez
Mr. Tom Brady

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES	1. TRANSMITTAL NUMBER <u>1 8 — 0 0 6 6</u>	2. STATE New York
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID) TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR CENTERS FOR MEDICARE & MEDICAID SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE October 1, 2018	

5. TYPE OF PLAN MATERIAL (Check One)

NEW STATE PLAN AMENDMENT TO BE CONSIDERED AS NEW PLAN AMENDMENT


COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION §1902(a) of the Social Security Act, and 42 CFR 447	7. FEDERAL BUDGET IMPACT a. FFY 10/01/18-09/30/19 \$ 6,720 b. FFY 10/01/19-09/30/20 \$ 6,720
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT Attachment 4.19-A: Page 117(k)	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable) Attachment 4.19-A: Page 117(k)

10. SUBJECT OF AMENDMENT
INPATIENT PSYCHIATRIC SERVICES RATE ADJUSTMENTS
(FMAP=50%)

11. GOVERNOR'S REVIEW (Check One)

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

12. SIGNATURE 	16. 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
13. TYPED NAME Donna Frescatore	
14. TITLE Medicaid Director, Department of Health	
15. DATE SUBMITTED December 31, 2018	

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED	18. DATE APPROVED
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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
2018 Title XIX State Plan
Fourth Quarter Amendment
Amended SPA Pages

**New York
117(k)**

- ix. For dates of service beginning on or after July 1, 2014, an additional ten percent increase will be applied for hospitals located in an upstate region as defined in subdivision (l) of this section.
- x. For dates of service on or after October 1, 2018, an additional increase of 5.22 percent will be applied to the current statewide per diem rate.
- e. The first day of a patient's readmissions to the same hospital within 30 days of discharge will be treated as day four for purposes of the variable payment factor computed as aforementioned, with subsequent days treated in a conforming manner with the provisions.
- f. Reimbursement for physician services will not be included in rates and such services may be billed on a fee-for-services basis pursuant to the Hospital Physician Billing Section in Attachment 4.19-B.
- g. Reimbursement for electroconvulsive therapy will be established at a statewide fee of \$281, as adjusted for each facility's WEF, for each treatment during a patient's stay.
- h. New inpatient psychiatric exempt hospitals or units established pursuant to Article 28 of the Public Health Law will be reimbursed at the statewide price plus budgeted capital and Direct GME. Budgeted capital will be adjusted as described in this section and will be adjusted to actual costs in future years. Direct GME will be adjusted to actual costs based upon the first twelve months reporting following the calendar year after the opening of the new unit.
- i. The base period costs and statistics used for inpatient psychiatric per diem rate setting operating cost components including the weights assigned to diagnostic related groups (DRG) designated as psychiatric DRGs for per diem reimbursement, will be updated as soon as is practical at which time the State will submit a state plan amendment for the implementation of rebasing. The payment factors for rural designation, age, certain defined comorbidities, and the presence of mental retardation may also be updated to reflect more current data.
- j. For rate periods through December 31, 2014, reimbursement will include transition payments of \$25 million on an annualized basis, which will be distributed as follows:

TN #18-0066

Approval Date _____

Supersedes TN #14-0029

Effective Date _____

Appendix II
2018 Title XIX State Plan
Fourth Quarter Amendment
Summary

SUMMARY
SPA #18-0066

This State Plan Amendment proposes to increase reimbursement for Article 28 hospital inpatient psychiatric services to better meet community mental health needs.

Appendix III
2018 Title XIX State Plan
Fourth Quarter Amendment
Authorizing Provisions

SPA 18-0066

Section 2807 - c(4)(e-1) of Public Health Law, and will amend subdivision (e) of Section 86-1.39 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York by adding a new subdivision.

Approp: S-7503-D (A9503-D) Aid to Localities Approp Medical Assistance Program, pp. 545-553.

AID TO LOCALITIES 2018-19

1 MEDICAL ASSISTANCE PROGRAM 136,676,732,000
2 -----

3 General Fund
4 Local Assistance Account - 10000

5 For the medical assistance program, includ-
6 ing administrative expenses, for local
7 social services districts, and for medical
8 care rates for authorized child care agen-
9 cies.

10 Notwithstanding section 40 of the state
11 finance law or any other law to the
12 contrary, all medical assistance appropri-
13 ations made from this account shall remain
14 in full force and effect in accordance, in
15 the aggregate, with the following sched-
16 ule: not more than 48 percent for the
17 period April 1, 2018 to March 31, 2019;
18 and the remaining amount for the period
19 April 1, 2019 to March 31, 2020.

20 Notwithstanding section 40 of the state
21 finance law or any provision of law to the
22 contrary, subject to federal approval,
23 department of health state funds medicaid
24 spending, excluding payments for medical
25 services provided at state facilities
26 operated by the office of mental health,
27 the office for people with developmental
28 disabilities and the office of alcoholism
29 and substance abuse services and further
30 excluding any payments which are not
31 appropriated within the department of
32 health, in the aggregate, for the period
33 April 1, 2018 through March 31, 2019,
34 shall not exceed \$20,960,018,000 except as
35 provided below and state share medicaid
36 spending, in the aggregate, for the period
37 April 1, 2019 through March 31, 2020,
38 shall not exceed \$22,044,311,000, but in
39 no event shall department of health state
40 funds medicaid spending for the period
41 April 1, 2018 through March 31, 2020
42 exceed \$43,004,329,000 provided, however,
43 such aggregate limits may be adjusted by

44 the director of the budget to account for
45 any changes in the New York state federal
46 medical assistance percentage amount
47 established pursuant to the federal social
48 security act, increases in provider reven-
49 ues, reductions in local social services
50 district payments for medical assistance

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1 administration, minimum wage increases and
2 beginning April 1, 2012 the operational
3 costs of the New York state medical indem-
4 nity fund, pursuant to chapter 59 of the
5 laws of 2011, and state costs or savings
6 from the essential plan program. Such
7 projections may be adjusted by the direc-
8 tor of the budget to account for increased
9 or expedited department of health state
10 funds medicaid expenditures as a result of
11 a natural or other type of disaster,
12 including a governmental declaration of
13 emergency. The director of the budget, in
14 consultation with the commissioner of
15 health, shall assess on a monthly basis
16 known and projected medicaid expenditures
17 by category of service and by geographic
18 region, as defined by the commissioner,
19 incurred both prior to and subsequent to
20 such assessment for each such period, and
21 if the director of the budget determines
22 that such expenditures are expected to
23 cause medicaid spending for such period to
24 exceed the aggregate limit specified here-
25 in for such period, the state medicaid
26 director, in consultation with the direc-
27 tor of the budget and the commissioner of
28 health, shall develop a medicaid savings
29 allocation plan to limit such spending to
30 the aggregate limit specified herein for
31 such period.

32 Such medicaid savings allocation plan shall
33 be designed, to reduce the expenditures
34 authorized by the appropriations herein in
35 compliance with the following guidelines:
36 (1) reductions shall be made in compliance
37 with applicable federal law, including the
38 provisions of the Patient Protection and
39 Affordable Care Act, Public Law No. 111-
40 148, and the Health Care and Education
41 Reconciliation Act of 2010, Public Law No.
42 111-152 (collectively "Affordable Care
43 Act") and any subsequent amendments there-

44 to or regulations promulgated thereunder;
45 (2) reductions shall be made in a manner
46 that complies with the state medicaid plan
47 approved by the federal centers for medi-
48 care and medicaid services, provided,
49 however, that the commissioner of health
50 is authorized to submit any state plan
51 amendment or seek other federal approval,
52 including waiver authority, to implement

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1 the provisions of the medicaid savings
2 allocation plan that meets the other
3 criteria set forth herein; (3) reductions
4 shall be made in a manner that maximizes
5 federal financial participation, to the
6 extent practicable, including any federal
7 financial participation that is available
8 or is reasonably expected to become avail-
9 able, in the discretion of the commission-
10 er, under the Affordable Care Act; (4)
11 reductions shall be made uniformly among
12 categories of services and geographic
13 regions of the state, to the extent prac-
14 ticable, and shall be made uniformly with-
15 in a category of service, to the extent
16 practicable, except where the commissioner
17 determines that there are sufficient
18 grounds for non-uniformity, including but
19 not limited to: the extent to which
20 specific categories of services contrib-
21 uted to department of health medicaid
22 state funds spending in excess of the
23 limits specified herein; the need to main-
24 tain safety net services in underserved
25 communities; or the potential benefits of
26 pursuing innovative payment models contem-
27 plated by the Affordable Care Act, in
28 which case such grounds shall be set forth
29 in the medicaid savings allocation plan;
30 and (5) reductions shall be made in a
31 manner that does not unnecessarily create
32 administrative burdens to medicaid appli-
33 cants and recipients or providers.

34 The commissioner shall seek the input of the
35 legislature, as well as organizations
36 representing health care providers,
37 consumers, businesses, workers, health
38 insurers, and others with relevant exper-
39 tise, in developing such medicaid savings
40 allocation plan, to the extent that all or
41 part of such plan, in the discretion of

42 the commissioner, is likely to have a
43 material impact on the overall medicaid
44 program, particular categories of service
45 or particular geographic regions of the
46 state.

47 (a) The commissioner shall post the medicaid
48 savings allocation plan on the department
49 of health's website and shall provide
50 written copies of such plan to the chairs
51 of the senate finance and the assembly
52 ways and means committees at least 30 days

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1 before the date on which implementation is
2 expected to begin.

3 (b) The commissioner may revise the medicaid
4 savings allocation plan subsequent to the
5 provisions of notice and prior to imple-
6 mentation but needs to provide a new
7 notice pursuant to subparagraph (i) of
8 this paragraph only if the commissioner
9 determines, in his or her discretion, that
10 such revisions materially alter the plan.

11 Notwithstanding the provisions of paragraphs
12 (a) and (b) of this subdivision, the
13 commissioner need not seek the input
14 described in paragraph (a) of this subdivi-
15 sion or provide notice pursuant to para-
16 graph (b) of this subdivision if, in the
17 discretion of the commissioner, expedited
18 development and implementation of a medi-
19 caid savings allocation plan is necessary
20 due to a public health emergency.

21 For purposes of this section, a public
22 health emergency is defined as: (i) a
23 disaster, natural or otherwise, that
24 significantly increases the immediate need
25 for health care personnel in an area of
26 the state; (ii) an event or condition that
27 creates a widespread risk of exposure to a
28 serious communicable disease, or the
29 potential for such widespread risk of
30 exposure; or (iii) any other event or
31 condition determined by the commissioner
32 to constitute an imminent threat to public
33 health.

34 Nothing in this paragraph shall be deemed to
35 prevent all or part of such medicaid
36 savings allocation plan from taking effect
37 retroactively to the extent permitted by
38 the federal centers for medicare and medi-
39 caid services.

40 In accordance with the medicaid savings
41 allocation plan, the commissioner of the
42 department of health shall reduce depart-
43 ment of health state funds medicaid spend-
44 ing by the amount of the projected over-
45 spending through, actions including, but
46 not limited to modifying or suspending
47 reimbursement methods, including but not
48 limited to all fees, premium levels and
49 rates of payment, notwithstanding any
50 provision of law that sets a specific
51 amount or methodology for any such
52 payments or rates of payment; modifying or

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1 discontinuing medicaid program benefits;
2 seeking all necessary federal approvals,
3 including, but not limited to waivers,
4 waiver amendments; and suspending time
5 frames for notice, approval or certifi-
6 cation of rate requirements, notwith-
7 standing any provision of law, rule or
8 regulation to the contrary, including but
9 not limited to sections 2807 and 3614 of
10 the public health law, section 18 of chap-
11 ter 2 of the laws of 1988, and 18 NYCRR
12 505.14(h).

13 The department of health shall prepare a
14 monthly report that sets forth: (a) known
15 and projected department of health medi-
16 caid expenditures as described in subdivi-
17 sion (1) of this section, and factors that
18 could result in medicaid disbursements for
19 the relevant state fiscal year to exceed
20 the projected department of health state
21 funds disbursements in the enacted budget
22 financial plan pursuant to subdivision 3
23 of section 23 of the state finance law,
24 including spending increases or decreases
25 due to: enrollment fluctuations, rate
26 changes, utilization changes, MRT invest-
27 ments, and shift of beneficiaries to
28 managed care; and variations in offline
29 medicaid payments; and (b) the actions
30 taken to implement any medicaid savings
31 allocation plan implemented pursuant to
32 subdivision (4) of this section, including
33 information concerning the impact of such
34 actions on each category of service and
35 each geographic region of the state. Each
36 such monthly report shall be provided to
37 the chairs of the senate finance and the

38 assembly ways and means committees and
39 shall be posted on the department of
40 health's website in a timely manner.
41 The money hereby appropriated is to be
42 available for payment of aid heretofore
43 accrued or hereafter accrued to munici-
44 palities, and to providers of medical
45 services pursuant to section 367-b of the
46 social services law, and for payment of
47 state aid to municipalities and to provid-
48 ers of family care where payment systems
49 through the fiscal intermediaries are not
50 operational, and shall be available to the
51 department net of disallowances, refunds,
52 reimbursements, and credits.

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1 Notwithstanding any inconsistent provision
2 of law to the contrary, funds may be used
3 by the department for outside legal
4 assistance on issues involving the federal
5 government, the conduct of preadmission
6 screening and annual resident reviews
7 required by the state's medicaid program,
8 computer matching with insurance carriers
9 to insure that medicaid is the payer of
10 last resort and activities related to the
11 management of the pharmacy benefit avail-
12 able under the medicaid program.

13 Notwithstanding any inconsistent provision
14 of law, in lieu of payments authorized by
15 the social services law, or payments of
16 federal funds otherwise due to the local
17 social services districts for programs
18 provided under the federal social security
19 act or the federal food stamp act, funds
20 herein appropriated, in amounts certified
21 by the state commissioner of temporary and
22 disability assistance or the state commis-
23 sioner of health as due from local social
24 services districts each month as their
25 share of payments made pursuant to section
26 367-b of the social services law may be
27 set aside by the state comptroller in an
28 interest-bearing account in order to
29 ensure the orderly and prompt payment of
30 providers under section 367-b of the
31 social services law pursuant to an esti-
32 mate provided by the commissioner of
33 health of each local social services
34 district's share of payments made pursuant
35 to section 367-b of the social services

36 law.
37 Notwithstanding any inconsistent provision
38 of law, funding made available by these
39 appropriations shall support direct salary
40 costs and related fringe benefits within
41 the medical assistance program associated
42 with any minimum wage increase that takes
43 effect during the timeframe of these
44 appropriations, pursuant to section 652 of
45 the labor law. Each eligible organization
46 in receipt of funding made available by
47 these appropriations may be required to
48 submit written certification, in such form
49 and at such time the commissioner may
50 prescribe, attesting to the total amount
51 of funds used by the eligible organiza-
52 tion, how such funding will be or was used

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1 for purposes eligible under these appro-
2 priations and any other reporting deemed
3 necessary by the commissioner. The amounts
4 appropriated herein may include advances
5 to organizations authorized to receive
6 such funds to accomplish this purpose.
7 Notwithstanding any other provision of law,
8 the money hereby appropriated may be
9 increased or decreased by interchange,
10 with any appropriation of the department
11 of health and the office of medicaid
12 inspector general and may be increased or
13 decreased by transfer or suballocation
14 between these appropriated amounts and
15 appropriations of the department of health
16 state purpose account, the office of
17 mental health, office for people with
18 developmental disabilities, the office of
19 alcoholism and substance abuse services,
20 the department of family assistance office
21 of temporary and disability assistance,
22 the department of corrections and communi-
23 ty supervision, the office of information
24 technology services, the state university
25 of New York, the state office for the
26 aging, and office of children and family
27 services, the office of medicaid inspector
28 general, and the state office for the
29 aging with the approval of the director of
30 the budget, who shall file such approval
31 with the department of audit and control
32 and copies thereof with the chairman of
33 the senate finance committee and the

34 chairman of the assembly ways and means
35 committee.

36 Notwithstanding any inconsistent provision
37 of law to the contrary, the moneys hereby
38 appropriated may be used for payments to
39 the centers for medicaid and medicare
40 services for obligations incurred related
41 to the pharmaceutical costs of dually
42 eligible medicare/medicaid beneficiaries
43 participating in the medicare drug benefit
44 authorized by P.L. 108-173.

45 Notwithstanding any inconsistent provision
46 of law, the moneys hereby appropriated
47 shall not be used for any existing rates,
48 fees, fee schedule, or procedures which
49 may affect the cost of care and services
50 provided by personal care providers, case
51 managers, health maintenance organiza-
52 tions, out of state medical facilities

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1 which provide care and services to resi-
2 dents of the state, providers of transpor-
3 tation services, that are altered,
4 amended, adjusted or otherwise changed by
5 a local social services district unless
6 previously approved by the department of
7 health and the director of the budget.

8 Notwithstanding any inconsistent provision
9 of law to the contrary, funds shall be
10 made available to the commissioner of the
11 office of mental health or the commission-
12 er of the office of alcoholism and
13 substance abuse services, in consultation
14 with the commissioner of health and
15 approved by the director of the budget,
16 and consistent with appropriations made
17 therefor, to implement allocation plans
18 developed by each such commissioner which
19 shall describe mental health or substance
20 use disorder services that should be
21 developed to meet service needs resulting
22 from the reduction of inpatient behavioral
23 health services provided under the medi-
24 caid program, by programs licensed pursu-
25 ant to article 31 or 32 of the mental
26 hygiene law. Such programs may include
27 programs that are licensed pursuant to
28 both article 31 of the mental hygiene law
29 and article 28 of the public health law,
30 or certified under both article 32 of the
31 mental hygiene law and article 28 of the

32 public health law.
33 Notwithstanding any inconsistent provision
34 of law, the moneys hereby appropriated may
35 be available for payments associated with
36 the resolution by settlement agreement or
37 judgment of rate appeals and/or litigation
38 where the department of health is a party.
39 For services and expenses of the medical
40 assistance program including hospital
41 inpatient services and general hospitals
42 that are safety-net providers that evince
43 severe financial distress, pursuant to
44 criteria determined by the commissioner,
45 shall be eligible for awards for amounts
46 appropriated herein, to enable such
47 providers to maintain operations and vital
48 services while establishing long term
49 solutions to achieve sustainable health
50 services.
51 Notwithstanding any inconsistent provision
52 of law to the contrary, a portion of this

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1 appropriation is available to make
2 disproportionate share hospital payments
3 to eligible hospitals operated by the
4 state university of New York, provided
5 further the eligible hospitals provide
6 sufficient financial information to evalu-
7 ate the need to support current and future
8 payments.
9 Notwithstanding any provision of law to the
10 contrary, the portion of this appropri-
11 ation covering fiscal year 2018-19 shall
12 supersede and replace any duplicative (i)
13 reappropriation for this item covering
14 fiscal year 2018-19, and (ii) appropri-
15 ation for this item covering fiscal year
16 2018-19 set forth in chapter 53 of the
17 laws of 2017 (26947) 1,536,151,000

Appendix IV
2018 Title XIX State Plan
Fourth 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 institutional services to comply with enacted statutory provisions. The following changes are proposed:

Institutional Services

Effective for days of service on or after October 1, 2018, The Department of Health will adjust inpatient psychiatric per diem rates of reimbursement for Art 28 exempt psychiatric hospitals and Article 28 exempt hospital distinct units by increasing the case mix neutral psychiatric statewide per diem base price by 5.22 percent. This State Plan Amendment is necessary to adequately reimburse hospitals for providing these services and better meet the community's mental health needs.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative is \$30,000,000. Funds for this increase are contained in the State budget beginning in state fiscal year 2018/19.

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. In addition, approved SPA's beginning in 2011 are also available for viewing on this website.

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

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 long term care related to temporary rate adjustments to providers that are undergoing closure, merger, consolidation, acquisition or restructuring themselves or other health care providers. These payments are authorized by Section 2826 of the New York Public Health Law.

The temporary rate adjustments have been reviewed and approved for the following two nursing homes with aggregate payment amounts totaling up to \$2,946,962 for the period October 1, 2018 through March 31, 2019, \$2,921,962 for the period April 1, 2019 through March 31, 2020 and \$347,500 for the period April 1, 2020 through March 31, 2021. The approved providers along with their individual estimated aggregate amounts include:

1. Concord Nursing Home, Inc., up to \$2,011,962 for SFY 18/19 and \$2,011,962 for SFY 19/20;
2. Baptist Health Nursing and Rehabilitation Center, Inc., up to \$935,000 for SFY 18/19, \$910,000 for SFY 19/20, and \$347,500 for SFY 20/21;

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

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

Livingston County Water and Sewer Authority

The Livingston County Water & Sewer Authority is soliciting proposals from qualified administrative service agencies and/or financial organizations relating to administration and/or funding of an "eligible" Internal Revenue Code (IRC) Section 457 deferred compensation plan under the New York Codes, Rules and Regulations and the Model Plan and an IRC Section 401(a) matching deferred compensation plan.

The Livingston County Water and Sewer Authority deferred compensation plan and matching deferred compensation plan are start-up plans that will initially cover a maximum of eleven employees.

A copy of the proposal questionnaire is available on-line at: <http://www.co.livingston.state.ny.us/lcwsa.htm>

All proposals must be received no later than Friday, October 19, 2018 at 4:00 pm.

PUBLIC NOTICE

Department of State
F-2018-0442

Date of Issuance – September 26, 2018

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program. The applicant's consistency certification and accompanying public information and data are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York. Electronic copies of the submission can also be downloaded at: <http://www.dos.ny.gov/opd/programs/pdfs/Consistency/F-2018-0442ForPN.pdf>

Nancy Stocker is proposing to add a row or armor stone lakeward of approximately 280 linear feet of existing gabion baskets and concrete blocks. The work is proposed at the applicant's property at 7957 Muson Road in the Town of Sodus, Wayne County.

The stated purpose of the proposal is to stop and minimize erosion of the property from high waters.

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by

filing their comments, in writing, no later than 4:30 p.m., 15 days from the date of publication of this notice or October 11, 2018.

Comments should be addressed to: Consistency Review Unit, Department of State, Office of Planning and Development, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6000, Fax (518) 473-2464. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State
F-2018-0890 (DA)

Date of Issuance – September 26, 2018

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activities comply with and will be conducted in a manner consistent to the maximum extent practicable with the federally approved New York State Coastal Management Program (NYSCMP). The federal agency's consistency determination and accompanying public information and data are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

In F-2018-0890 (DA), the applicant, U.S. National Park Service (NPS) proposes, through a Cooperative Management Agreement and long-term lease, to authorize the development and operation of a new unit of the State Parks system – Penn and Fountain State Park – by the New York State Office of Parks, Recreation, and Historic Preservation (NYS OPRHP) at the Gateway National Recreation Area, Jamaica Bay Unit, Brooklyn, New York. Penn and Fountain are located adjacent to each other on the north shore of Jamaica Bay.

The proposed new State park location is the site of the former Pennsylvania and Fountain Avenue landfills and including fill areas which were historically tidal marsh. Landfill operations ended in 1980 and 1983 at Penn and Fountain, respectively. Site remediation has been accomplished to establish native grasslands and a system of trails. Planned site improvements in association with establishment of the State park will allow for the provision of public access to 407 acres of open space. The purpose of the project is to create new public park space, allowing public access to this area for opportunities such as hiking, wildlife viewing, fishing, kayaking, bicycling, picnicking, and other recreational uses. The rehabilitated former landfill areas will continue to be monitored annually, per environmental consent order, for groundwater quality and migration of landfill gases.

The project site is located immediately upland of a State-designated Significant Coastal Fish and Wildlife Habitat (SCFWH) –Jamaica Bay – which is protected as biologically productive and valuable habitat area for an abundance of fish and wildlife species. Several streams which cross the project area are hydrologically connected to the Jamaica Bay. More information regarding this designation and the specific habitat values may be found at: <https://www.dos.ny.gov/opd/programs/consistency/scfwhabitats.html>

https://www.dos.ny.gov/opd/programs/consistency/Habitats/nyc/Jamaica_Bay.pdf

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 15 days from the date of publication of this notice or October 11, 2018.

Comments should be addressed to: Department of State, Office of Planning and Development and Community Infrastructure, Consistency Review Unit, One Commerce Plaza, Suite 1010, 99 Washington Ave., Albany, NY 12231, (518) 474-6000, Fax (518) 473-2464. Comments can also be submitted electronically via e-mail to: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

Appendix V
2018 Title XIX State Plan
Fourth Quarter Amendment
Responses to Standard Funding Questions

**APPENDIX V
HOSPITAL SERVICES
State Plan Amendment #18-0066**

CMS Standard Funding Questions (NIRT Standard Funding Questions)

The following questions are being asked and should be answered in relation to all payments made to all providers under Attachment 4.19-A 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 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 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: Payments made to service providers under the provisions of this SPA are funded through a budget appropriation received by the State agency that oversees medical assistance (Medicaid), which is the Department of Health. The source of the appropriation is the Medicaid General Fund Local Assistance Account, which is part of the Global Cap. The Global Cap is funded by General Fund and HCRA resources. There have been on 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. 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: Based on guidance from CMS, the State and CMS will engage in discussions to develop a strategic plan to complete the inpatient UPL demonstration for 2018 and submit it as soon as practicable.

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: The rate methodology included in the approved State Plan for institutional services is prospective payment. We are unaware of any requirement under current federal law or regulation that limits individual provider payments to their actual costs.

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.