

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-26-12  
Baltimore, Maryland 21244-1850



**Center for Medicaid, CHIP, and Survey & Certification**

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**JUN 1 5 2011**

Jason Helgerson  
Deputy Commissioner  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, New York 12237

RE: TN 11-41

Dear Mr. Helgerson:

We have reviewed the proposed amendment to Attachment 4.19-D of your Medicaid State plan submitted under transmittal number (TN) 11-41. This amendment provides for a one time supplemental payment to nursing facilities that have experienced reduction in Medicaid rates resulting directly from prior rate changes relating to partial rebasing and Medicaid case-mix adjustments.

We conducted our review of your submittal according to the statutory requirements at sections 1902(a)(2) 1902(a)(13), 1902(a)(30), and 1903(a) of the Social Security Act and the regulations at 42 CFR 447 Subpart C. New York State plan amendment 11-41 is approved effective May 1, 2011. We have enclosed the HCFA-179 and the approved plan pages.

If you have any questions, please contact Tom Brady at 518-396-3810 or Rob Weaver at 410-786-5914.


Sincerely,

  
Cindy Mann  
Director, CMCS

Enclosures

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b>		1. TRANSMITTAL NUMBER: <b>11-41</b>	2. STATE <b>New York</b>
<b>FOR: HEALTH CARE FINANCING ADMINISTRATION</b>		3. PROGRAM IDENTIFICATION: <b>TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)</b>	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE <b>May 1, 2011</b>	
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: <b>Section 1902(a) of the Social Security Act, and 42 CFR 447</b>		7. FEDERAL BUDGET IMPACT: a. FFY 10/1/10 – 9/30/11 <b>\$157,330,080</b> b. FFY 10/1/11 – 9/30/12 <b>\$0</b>	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: <b>Attachment 4.19-A: Pages 50(i), 50(j)</b>		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT ( <i>If Applicable</i> ):	
10. SUBJECT OF AMENDMENT: <b>Nursing Home Alternative Rebasing (FMAP = 56.88% 4/1/11-6/30/11; 50% 7/1/11 forward)</b>			
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: <b>New York State Department of Health Corning Tower Empire State Plaza Albany, New York 12237</b>	
13. TYPED NAME: <b>Jason A. Helgerson</b>			
14. TITLE: <b>Medicaid Director &amp; Deputy Commissioner Department of Health</b>			
15. DATE SUBMITTED: <b>June 1, 2011</b>			

**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED:	18. DATE APPROVED: <b>06-15-11</b>
PLAN APPROVED – ONE COPY ATTACHED	
19. EFFECTIVE DATE OF APPROVED MATERIAL: <b>MAY - 1 2011</b>	20. SIGNATURE OF REGIONAL OFFICIAL: 
21. TYPED NAME: <b>William Lasowski</b>	22. TITLE: <b>Deputy Director, CMCS</b>
23. REMARKS:	

**New York  
50(i)**

**Attachment 4.19-D  
(04/11)**

**Supplemental payments**

For the period May 1, 2011 through May 31, 2011, supplemental payments in the form of rate add-ons, in the amount of \$221.3 million, will be made to eligible residential health care facilities which the Commissioner has determined have experienced a net reduction in their rate for the period April 1, 2009 through March 31, 2011 as a result of the 2002 rebasing methodology, Medicaid-only case mix methodology, and the application of proportional adjustments required to be made by the application of the residential health care facility cap. In determining the net reduction, the impact of case mix adjustments applicable to July 2010 and Medicaid rate adjustments for appeals and patient review instrument (PRI) case mix updates processed for payment after October 19, 2010 will be disregarded by the Commissioner. The following facilities are eligible for such supplemental payments:

- a) Facilities which were eligible for Financially Disadvantaged distributions for the 2009 period; non-public facilities whose total operating losses equal or exceed five percent of total operating revenue and whose Medicaid utilization equals or exceeds seventy percent (based on either their 2009 cost report or their most recently available cost report); or facilities or distinct units of facilities providing services primarily to children under the age of twenty-one, will receive a supplemental payment that is equal to 100 percent of the net reduction determined above.
- b) Facilities other than eligible facilities described in paragraph (a) above will receive supplemental payments equal to 50 percent of their net reduction.
- c) Facilities described in paragraph (b) above, which after the application of the rate adjustments described in paragraph (b) remain subject to a net reduction in their inpatient Medicaid revenue that is in excess of two percent (as measured with regard to the non-capital components of facility inpatient rates in effect on March 31, 2009 computed prior to the application of trend factor adjustments attributable to the 2008 and 2009 calendar years) will have their payments further adjusted such that the net reduction does not exceed two percent.

TN #11-41

Approval Date JUN 1 5 2011

Supersedes TN NEW

Effective Date MAY - 1 2011

**New York  
50(j)**

**Attachment 4.19-D  
(04/11)**

- d) Facilities as described in paragraph (c) above which have experienced a net reduction in their inpatient rates of more than \$6 million over the period April 1, 2009 through March 31, 2011 as a result of the application of proportional adjustments required to be made by the application of the residential health care facility cap will have their payments further adjusted so that their net reduction is reduced to zero.

Additional rate adjustments, in the form of rate add-ons, will be made to the eligible facilities described above for the period May 1, 2011 through May 31, 2011 in an aggregate amount equal to 25% of the payments described above (or 25% of \$221.3 million which equals \$55.3 million). The payments will be distributed to eligible facilities in the same proportion as the total \$221.3 million of distributions made to each eligible facility.

The supplemental payments described above will not be subject to subsequent adjustment or reconciliation and will be disregarded for purposes of calculating the limitations on Medicaid rates required by the application of the residential health care facility cap.

**TN #11-41** \_\_\_\_\_

**Approval Date** JUN 15 2011

**Supersedes TN** NEW

**Effective Date** MAY - 1 2011

**OS Notification**

**State/Title/Plan Number:** NY-11-41

**Type of Action:** SPA Approval

**Required Date for State Notification:** September 1, 2011  
(However, the State has requested approval by mid-June)

**Fiscal Impact:**

FY 2011	\$ 157,330,080 FFP
FY 2012	\$ - 0 - FFP

**Number of Services Provided by Enhanced Coverage, Benefits or Retained Enrollment:** 0

**Number of Potential Newly Eligible People:** 0

**Eligibility Simplification:** No

**Provider Payment Increase:** Yes

**Delivery System Innovation:** No

**Number of People Losing Medicaid Eligibility:** 0

**Reduces Benefits:** No

**Detail:**

Effective May 1, 2011, this SPA provides for a one-time round of supplemental payments that will be paid to nursing homes that experienced a net reduction in their payments rates due to partial rebasing and the switch to Medicaid only case mix adjustments. Under the approved plan, New York several years ago began setting payment rates based on 2002 cost report information. However, New York never fully implemented the 2002 rebasing because it was too expensive and instead set rates based on a portion of 2002 costs. The supplemental payments proposed in the current plan amendment are intended to make up some of the shortfalls experienced by nursing homes that have been disadvantaged by the State's decision to not fully rebase.

State payments are compliant with the Upper Payment Limit. With respect to funding, the payments are funded through existing appropriations. The State had to fund this amendment through a combination of new cost saving measures (SPA 11-52 and 11-60) to free up State money - as well as through an increase of assessment revenue.

**Other Considerations:**

New York is currently being sued by the industry over the adequacy of payment rates resulting from the State's failure to fully implement rebasing approved in 06-36. This plan amendment, as well as recently approved 09-50, will help fill in the gap between where rates are and where they would have been had the State fully rebased payment rates.

The State has identified this SPA as its highest priority SPA under the Medicaid Redesign Team Initiatives. However, we do not recommend the Secretary contact the governor.

The Regional office has reviewed this state plan amendment in conjunction with the Recovery Act and, based on the available information provided by the State regarding 1) maintenance of effort; 2) local match; 3) prompt pay; 4) rainy day funds, and 5) eligible expenditures, the Regional Office believes that the State is not in violation of the Recovery Act requirements noted above.

This SPA does not impact any I/T/U providers.