

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

Jason A. Helgeson
State Medicaid Director
Deputy Commissioner
Office of Health Insurance Programs
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1466
Albany, NY 12237

SEP 13 2011

RE: TN 11-052

Dear Mr. Helgeson:

We have reviewed the proposed amendment to Attachment 4.19-D of your Medicaid State plan submitted under transmittal number (TN) 11-052. Effective May 1, 2011, this amendment proposes to implement a payment reduction equal to the 2010 Financially Disadvantaged Payment and eliminate the 2011 Financially Disadvantaged Payment to qualifying residential health care facilities.

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. This is to inform you that New York 11-052 is approved effective May 1, 2011. The HCFA-179 and the approved plan pages are enclosed.

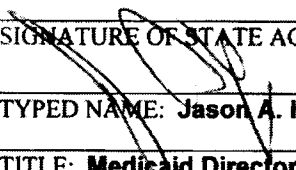

If you have any questions, please contact Tom Brady at 518-396-3810 or Rob Weaver at 410-786-5914.

Sincerely,

A handwritten signature in black ink that reads "Cindy Mann". The signature is written in a cursive, flowing style.

Cindy Mann
Director
Center for Medicaid, CHIP, and Survey & Certification

Enclosures

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION		1. TRANSMITTAL NUMBER: 11-52	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 May 1, 2011	
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: Section 1902(a) of the Social Security Act, and 42 CFR 447		7. FEDERAL BUDGET IMPACT: a. FFY 5/1/11 – 9/30/11 \$0 b. FFY 10/1/11 – 9/30/12 (\$30,000,000)	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.19-D: Page 47(aa), 47(aa)(1)		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (<i>If Applicable</i>): Attachment 4.19-D: Page 47(aa), 47(aa)(1)	
10. SUBJECT OF AMENDMENT: Financially Distressed Nursing Homes FMAP of 56.88% for 5/1/11-6/30/11 and 50% from 7/1/11 forward			
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 Corning Tower Empire State Plaza Albany, New York 12237	
13. TYPED NAME: Jason A. Helgerson			
14. TITLE: Medicaid Director & Deputy Commissioner Department of Health			
15. DATE SUBMITTED: June 30, 2011			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED:		18. DATE APPROVED: SEP 13 2011	
PLAN APPROVED – ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: MAY - 1 2011		20. SIGNATURE OF REGIONAL OFFICIAL: 	
21. TYPED NAME: Penny Thompson		22. TITLE: Deputy Director, CMCS	
23. REMARKS:			

Rate Adjustment for Financially Disadvantaged RHCs

- (a) The Commissioner of Health shall adjust medical assistance rates of payment for services provided on and after October 1, 2004 through December 31, 2004 and annually thereafter for services provided on and after January 1, 2005 through April 30, 2011, and on and after May 1, 2012 to include a rate adjustment to assist qualifying Residential Health Care Facilities (RHCs) pursuant to this section, provided that public RHCs shall not be eligible for rate adjustments pursuant to this subdivision for rate periods on and after April 1, 2009.

Facilities that receive a rate adjustment for the period May 1, 2010 through April 30, 2011, will have their rates reduced for the rate period December 1, 2011 through December 31, 2011, by an amount equal to the payment generated by the May 1, 2010 through April 30, 2011, rate adjustment.

- (b) Eligibility for such rate adjustments shall be determined on the basis of each RHC's operating margin over the most recent three-year period for which financial data are available from the RHC-4 cost report or the institutional cost report. For purposes of the adjustments made for the period October 1, 2004 through December 31, 2004, financial information for the calendar years 2000 through 2002 shall be utilized. For each subsequent rate year, the financial data for the three-year period ending two years prior to the applicable rate year shall be utilized for this purpose.
- (c) Each facility's operating margin for the three-year period shall be calculated by subtracting total operating expenses for the three-year period from total operating revenues for the three-year period, and dividing the result by the total operating revenues for the three-year period, with the result expressed as a percentage. For hospital-based RHC's, for which an operating margin cannot be calculated on the basis of the submitted cost reports, the sponsoring hospital's overall three-year operating margin, as reported in the institutional cost report, shall be utilized for this purpose. All facilities with negative operating margins calculated in this way over the three-year period shall be arrayed into quartiles based on the magnitude of the operating margin. Any facility with a positive operating margin for the most recent three-year period, a negative operating margin that places the facility in the quartile of facilities with the smallest negative operating margins, a positive total margin in the most recent year of the three-year period or an average Medicaid utilization percentage of 50% or less during the most recent year of the three-year period shall be disqualified from receiving an adjustment pursuant to this section, provided that for rate periods on and after April 1, 2009, such disqualification:
- i. shall not be applied solely on the basis of a facility's having a positive total margin in the most recent year of such three-year period;

TN #11-52

Approval Date SEP 13 2011

Supersedes TN #09-29

Effective Date MAY - 1 2011

**New York
47(aa)(1)**

**Attachment 4.19-D
(6/11)**

- ii. shall be extended to those facilities in the quartile of facilities with the second smallest negative operating margins; and
 - iii. shall also be extended to those facilities with an average Medicaid utilization percentage of less than 70% during the most recent year of the three-year period.
- (d) For each facility remaining after the exclusions made pursuant to paragraph (c) of this section, the Commissioner of Health shall calculate the average annual operating loss for the three-year period by subtracting total operating expenses for the three-year period from total operating revenues for the three-year period, and dividing the result by three provided, that for periods on and after April 1, 2009, the amount of such average annual operating loss shall be reduced by an amount equal to the amount received through per diem add-on amounts received in the 2007 and 2008 rate periods. For this purpose, for hospital-based RHCFS for which the average annual operating loss cannot be calculated on the basis of submitted cost reports, the sponsoring hospital's overall average annual operating loss for the three-year period shall be apportioned to the RHCFS based on the proportion the RHCFS's total revenues for the period bears to the total revenues reported by the sponsoring hospital, and such apportioned average annual operating loss shall then be reduced by an amount equal to the amount received through per diem add-on amounts received in the 2007 and 2008 rate periods.
- (e) For periods prior to April 1, 2009, each such facility's qualifying operating loss shall be determined by multiplying the facility's average annual operating loss for the three-year period as calculated pursuant to paragraph (d) of this section by the applicable percentage shown in the tables below for the quartile in which the facility's negative operating margin for the three-year period is assigned.

- i. For a facility located in a county with a total population of 200,000 or more as determined by the 2000 U.S. Census:

First Quartile (lowest operating margins):	30 percent
Second Quartile	15 percent
Third Quartile	7.5 percent

- ii. For a facility located in a county with a total population of fewer than 200,000 as determined by the 2000 U.S. Census:

First Quartile (lowest operating margins):	35 percent
Second Quartile	20 percent
Third Quartile	12.5 percent

TN #11-52 **Approval Date** SEP 13 2011

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OS Notification

State/Title/Plan Number: NY-11-052
Type of Action: SPA Approval
Required Date for State Notification: September 28, 2011
Fiscal Impact: FFY 2011 \$ - 0 - FFP
FFY 2012 (\$30,000,000) 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: No

Delivery System Innovation: No

Number of People Losing Medicaid Eligibility: 0

Reduces Benefits: No

Detail: Effective 5/1/2011, this amendment will suspend for one year, supplemental payments to financially distressed (FD) facilities and will impose a rate reduction on services furnished by FD facilities during December 2011.

The State is proposing these temporary measures because under an earlier SPA (TN 11-41) the State created a one-time new supplemental payment program and under that authority the State made supplemental payments to FD facilities as well as to other private facilities with FD facilities receiving higher payments. At the time, NY was facing a lawsuit over rates, and when the State created the new supplemental payment authority to address provider concerns—the FD facilities agreed to be paid under that authority. This amendment assures that FD facilities will not be paid twice under the State plan and was understood when SPA 11-41 was approved this year.

There are no access or UPL issues for this SPA, since there is no net reduction in payments after factoring in the impact of NY SPA 11-41.

Standard funding question responses were adequate. Funding for the financially distressed nursing home payments suspended by this SPA are from the Health Care Reform Act Resources Fund, which includes provider taxes deemed acceptable by the Balanced Budget Act of 1997.

Other Considerations: This SPA is one of New York's 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 information provided by the State regarding 1) maintenance of effort (MOE); 2) local match; 3) prompt pay; 4) rainy day funds; and 5) eligible expenditures, 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.

CMS Contacts: Rob Weaver, NIRT 410-786-5914 / Tom Brady, NIRT 518-396-3810 x109