NEW YORK STATE OF OPPORTUNITY. | Department of Health

**ANDREW M. CUOMO**
Governor

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

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

MAR 3 1 2017

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

RE: SPA #17-0047
Non-Institutional Services

Dear Mr. Melendez:

The State requests approval of the enclosed amendment #17-0047 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective January 1, 2017 (Appendix I). This amendment is being submitted based on revisions to Section 1903(i)(21) through Section 5008 of the 21st Century Cures Act. A summary of the plan amendment is provided in Appendix II.

The State of New York reimburses these services using rates that are consistent with, and promote efficiency, economy, and quality of care. These rates are sufficient to enlist enough providers so that care and services are available, at least to the extent that such care and services are available to the general population in the geographic area as required by §1902(a)(30) of the Social Security Act and 42 CFR §447.204.

Copies of pertinent sections of enacted Federal Legislation are enclosed for your information (Appendix III).

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

Sincerely,

Jason A. Helgerson
Medicaid Director
Office of Health Insurance Programs

Enclosures

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-0193

| **TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL**<br><br>**FOR: HEALTH CARE FINANCING ADMINISTRATION** | 1. TRANSMITTAL NUMBER: **17-0049** | 2. STATE<br>**New York** |
|---|---|---|
| | 3. PROGRAM IDENTIFICATION: **TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)** | |
| TO: REGIONAL ADMINISTRATOR<br>HEALTH CARE FINANCING ADMINISTRATION<br>DEPARTMENT OF HEALTH AND HUMAN SERVICES | 4. PROPOSED EFFECTIVE DATE<br>**January 1, 2017** | |

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:<br>**Section 1905(r)(5) of the Social Security Act and 42 CFR 447** | 7. FEDERAL BUDGET IMPACT: **(in thousands)**<br>**a. FFY 01/01/17-09/30/17 $ 0**<br>**b. FFY 10/01/17-09/30/18 $ 0** |
|---|---|
| 8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:<br><br>**Attachment 3.1-A Supplement: 2(c)**<br>**Attachment 3.1-B Supplement: 2(c)** | 9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*:<br><br>**Attachment 3.1-A Supplement: 2(c)**<br>**Attachment 3.1-B Supplement: 2(c)** |

10. SUBJECT OF AMENDMENT:
**Excluded Drug Coverage**
**(FMAP = 50%)**

11. 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:

| 12. SIGNATURE OF STATE AGENCY OFFICIAL: | 16. RETURN TO:<br>**New York State Department of Health**<br>**Bureau of Federal Relations & Provider Assessments**<br>**99 Washington Ave – One Commerce Plaza**<br>**Suite 1432**<br>**Albany, NY 12210** |
|---|---|
| 13. TYPED NAME: **Jason A. Helgerson** | |
| 14. TITLE: **Medicaid Director**<br>**Department of Health** | |
| 15. DATE SUBMITTED: MAR 3 1 2017 | |

**FOR REGIONAL OFFICE USE ONLY**

| 17. DATE RECEIVED: | 18. DATE APPROVED: |
|---|---|
| PLAN APPROVED – ONE COPY ATTACHED | |
| 19. EFFECTIVE DATE OF APPROVED MATERIAL: | 20. SIGNATURE OF REGIONAL OFFICIAL: |
| 21. TYPED NAME: | 22. TITLE: |

23. REMARKS:

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

**New York**
**2(c)**

6. Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.

7. The Medicaid agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit –Part D.

☒ **The following excluded drugs are covered:**

- ☐ (a) agents when used for anorexia, weight loss, weight gain
- ☐ (b) agents when used to promote fertility
- [☐ (c) agents when used for cosmetic purposes or hair growth]
- ☒ ([d] c) agents when used for the symptomatic relief cough and colds: Some - benzonatate only
- ☒ ([e] d) prescription vitamins and mineral products, except prenatal vitamins and fluoride: Some - select B Vitamins (niacin, pyridoxine, thiamine, cyanocobalamin); Folic Acid; Vitamin K; Vitamin D (ergocalciferol, cholecalciferol); Iron (including polysaccharide iron complex); Iodine
- ☒ ([f] e) nonprescription drugs: Some - select allergy, asthma and sinus products; analgesics; cough and cold preparations; digestive products; insulin; feminine products; topical products; smoking cessation products, minerals and vitamin combinations
- ☐ ([g] f) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee

[12b. Prior approval is required for all dentures.

12c. Prior approval is required for prosthetic and orthotic devices over a dollar amount established by the State Department of Health and identified for providers in the MMIS DME Provider Manual.

Prior approval is required for artificial eyes as specified in the MMIS Ophthalmic Provider Manual.

Program also includes coverage of orthotic appliances including hearing aids. All hearing aids require prior approval.

12d. Prior approval is required for certain special lenses and unlisted eye services as specified for providers in the MMIS Ophthalmic Provider Manual.

13a. Diagnostic Services (see 13.d Rehabilitative Services – Early Intervention).

13b. Screening Services (see 13.d Rehabilitative Services – Early Intervention).

13c. Preventive Services (see 13.d Rehabilitative Services – Early Intervention).

13d. Rehabilitative Services

(1) Directly Observed Therapy (DOT) - Clients must be assessed as medically appropriate for DOT based upon the client's risk of non adherence to a medication regimen necessary to cure an active, infectious, potentially fatal disease process and to prevent the development and spread of an infectious, potentially fatal disease which may not respond to conventional therapies.]

**New York**
**2(c)**

6. Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B.

7. The Medicaid agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit–Part D.

☒ **The following excluded drugs are covered:**

- ☐ (a) agents when used for anorexia, weight loss, weight gain
- ☐ (b) agents when used to promote fertility
- [☐ (c) agents when used for cosmetic purposes or hair growth]
- ☒ ([d] c) agents when used for the symptomatic relief cough and colds: Some - benzonatate only
- ☒ ([e] d) prescription vitamins and mineral products, except prenatal vitamins and fluoride: Some - select B Vitamins (niacin, pyridoxine, thiamine, cyanocobalamin); Folic Acid; Vitamin K; Vitamin D (ergocalciferol, cholecalciferol); Iron (including polysaccharide iron complex); Iodine
- ☒ ([f] e) nonprescription drugs: Some - select allergy, asthma and sinus products; analgesics; cough and cold preparations; digestive products; insulin; feminine products; topical products; smoking cessation products, minerals and vitamin combinations
- ☐ ([g] f) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee

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13d. Rehabilitative Services]

# Appendix II
# 2017 Title XIX State Plan
# First Quarter Amendment
# Summary

**SUMMARY**
**SPA #17-0047**

Effective January 1, 2017, Section 5008 of the 21st Century Cures Act (Cures Act) amended Section 1903(i)(21) of the Social Security Act (the Act) to prohibit FFP for agents when used for cosmetic purposes or hair growth, except where medically necessary. Based on this amendment to the Act, States were instructed by CMS to submit a SPA to remove agents when used for cosmetic purposes or hair growth from the list of drugs a State can exclude from coverage or restrict. If the language appears on the state plan a state cannot just uncheck the box, the language within the state plan needs to be removed, and must also revise the assigned numbering and/or lettering on the plan page(s).

Currently, NYS Medicaid does not provide coverage for this category of excludable drugs; therefore, this technical change will not have a fiscal impact on the NYS Medicaid population.

# Appendix III
# 2017 Title XIX State Plan
# First Quarter Amendment
# Authorizing Provisions

H. R. 34

# One Hundred Fourteenth Congress of the United States of America

## AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the fourth day of January, two thousand and sixteen*

# An Act

To accelerate the discovery, development, and delivery of 21st century cures, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "21st Century Cures Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

solely on the basis of its failure to meet such an additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

**SEC. 5007. FAIRNESS IN MEDICAID SUPPLEMENTAL NEEDS TRUSTS.**

(a) IN GENERAL.—Section 1917(d)(4)(A) of the Social Security Act (42 U.S.C. 1396p(d)(4)(A)) is amended by inserting "the individual," after "for the benefit of such individual by".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to trusts established on or after the date of the enactment of this Act.

**SEC. 5008. ELIMINATING FEDERAL FINANCIAL PARTICIPATION WITH RESPECT TO EXPENDITURES UNDER MEDICAID FOR AGENTS USED FOR COSMETIC PURPOSES OR HAIR GROWTH.**

(a) IN GENERAL.—Section 1903(i)(21) of the Social Security Act (42 U.S.C. 1396b(i)(21)) is amended by inserting "section 1927(d)(2)(C) (relating to drugs when used for cosmetic purposes or hair growth), except where medically necessary, and" after "drugs described in".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to calendar quarters beginning on or after the date of the enactment of this Act.

**SEC. 5009. AMENDMENT TO THE PREVENTION AND PUBLIC HEALTH FUND.**

Section 4002(b) of the Patient Protection and Affordable Care Act (42 U.S.C. 300u–11(b)) is amended—

(1) in paragraph (3), by striking "$1,250,000,000" and inserting "$900,000,000";

(2) in paragraph (4), by striking "$1,500,000,000" and inserting "$1,000,000,000"; and

(3) by striking paragraph (5) and inserting the following:

"(5) for fiscal year 2022, $1,500,000,000;

"(6) for fiscal year 2023, $1,000,000,000;

"(7) for fiscal year 2024, $1,700,000,000; and

"(8) for fiscal year 2025 and each fiscal year thereafter, $2,000,000,000.".

**SEC. 5010. STRATEGIC PETROLEUM RESERVE DRAWDOWN.**

(a) DRAWDOWN AND SALE.—

(1) IN GENERAL.—Notwithstanding section 161 of the Energy Policy and Conservation Act (42 U.S.C. 6241), except as provided in subsections (b) and (c), the Secretary of Energy shall drawdown and sell from the Strategic Petroleum Reserve—

(A) 10,000,000 barrels of crude oil during fiscal year 2017;

(B) 9,000,000 barrels of crude oil during fiscal year 2018; and

(C) 6,000,000 barrels of crude oil during fiscal year 2019.