



Department of Health

ANDREW M. CUOMO
Governor

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

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

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

DEC 18 2017

RE: SPA #17-0069
Non-Institutional Services

Dear Mr. Melendez:

The State requests approval of the enclosed amendment #17-0069 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective October 1, 2017 (Appendix I). This amendment is being submitted based upon 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.

Copies of pertinent sections of enacted State statute are 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 March 29, 2017 and clarified on May 10, 2017, is also enclosed for your information (Appendix IV). In addition, responses to the five standard funding questions and standard access questions are also enclosed (Appendix V and VI) respectively.

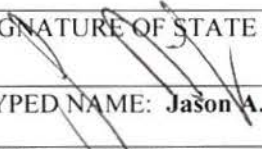
If you have any questions regarding this State Plan Amendment submission, please do not hesitate to contact John E. Ulberg, Jr., Medicaid Chief Financial Officer, Division of Finance and Rate Setting, Office of Health Insurance Programs at (518) 474-6350.

Sincerely,



Jason A. Helgeson
Medicaid Director
Office of Health Insurance Programs

Enclosures

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION		1. TRANSMITTAL NUMBER: 17-0069	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 October 1, 2017	
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: § 1902(a) of the Social Security Act, and 42 CFR 447		7. FEDERAL BUDGET IMPACT: (<i>in thousands</i>) a. FFY 10/01/17-09/30/17 \$ 10,000.00 b. FFY 10/01/17-09/30/18 \$ 0.00	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.19-B: 1(r)		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (<i>If Applicable</i>): Attachment 4.19-B: 1(r)	
10. SUBJECT OF AMENDMENT: Critical Access Hospitals – Outpatient (FMAP = 50%)			
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 Division of Finance & Rate Setting 99 Washington Ave – One Commerce Plaza Suite 1432 Albany, NY 12210	
13. TYPED NAME: Jason A. Helgerson			
14. TITLE: Medicaid Director Department of Health			
15. DATE SUBMITTED: DEC 18 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
Fourth Quarter Amendment
Amended SPA Pages

**New York
1(r)
[RESERVED]**

Hospital-Based Outpatient Services – Critical Access Hospitals (CAHs):

Rural hospitals will qualify for additional outpatient reimbursement as critical access hospitals for the period October 1, 2017 through March 31, 2018, only if such hospitals are designated as critical access hospitals in accordance with the provisions of Title XVIII (Medicare) of the federal Social Security Act. The gross Medicaid expenditure amount for the period October 1, 2017 through March 31, 2018 is \$20,000,000.

The distribution method for the period October 1, 2017 through March 31, 2018 is based upon a minimum rate adjustment of \$400,000 per hospital, with the remaining funds being proportionally distributed based upon each hospital's share of the total Medicaid Outpatient visits, as reported in their 2015 Institutional Cost Report.

Eligible providers, the amount of the rate adjustment, and the duration of the adjustment will be listed in the table which follows. The adjustment for the effective period will be paid quarterly with the amount of each quarterly payment being made in equal installments. The quarterly payment made under this section will be an add-on to services payments made under this Attachment to such facilities during the quarter.

The following rate adjustments have been approved for the following providers in the amounts and for the effective periods listed:

Hospital-Based Outpatient Services:

<u>Provider Name</u>	<u>Gross Medicaid Rate Adjustment</u>	<u>Rate Period Effective</u>
<u>Carthage Area Hospital</u>	<u>\$2,574,839</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Catskill Regional Medical Center – Hermann Division</u>	<u>\$524,464</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Clifton-Fine Hospital</u>	<u>\$597,381</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Community Memorial Hospital</u>	<u>\$1,634,972</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Cuba Memorial Hospital</u>	<u>\$680,929</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Delaware Valley Hospital</u>	<u>\$1,036,816</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Elizabethtown Community Hospital</u>	<u>\$962,825</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Ellenville Regional Hospital</u>	<u>\$1,124,553</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Gouverneur Hospital, Inc.</u>	<u>\$1,171,589</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Lewis County General Hospital</u>	<u>\$2,239,786</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Little Falls Hospital</u>	<u>\$1,305,718</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Margaretville Memorial Hospital</u>	<u>\$525,323</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Moses-Ludington Hospital</u>	<u>\$622,295</u>	<u>10/01/2017 – 03/31/2018</u>
<u>O'Connor Hospital</u>	<u>\$682,218</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Orleans Community Health</u>	<u>\$708,099</u>	<u>10/01/2017 – 03/31/2018</u>
<u>River Hospital</u>	<u>\$1,178,462</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Schuyler Hospital</u>	<u>\$1,436,517</u>	<u>10/01/2017 – 03/31/2018</u>
<u>Soldiers & Sailors Memorial Hospital</u>	<u>\$993,216</u>	<u>10/01/2017 – 03/31/2018</u>

TN #17-0069 _____

Approval Date _____

Supersedes TN #13-0002 _____

Effective Date _____

Appendix II
2017 Title XIX State Plan
Fourth Quarter Amendment
Summary

SUMMARY
SPA #17-0069

This State Plan Amendment proposes to increase the payments to Critical Access Hospitals for outpatient services for the period October 1, 2017 through March 31, 2018.

Appendix III
2017 Title XIX State Plan
Fourth Quarter Amendment
Authorizing Provisions

SPA 17-0069

Senate Bill S.2003-D / Assembly Bill A.3003-D
2017-2018 State Budget

533

12553-13-7

DEPARTMENT OF HEALTH

AID TO LOCALITIES 2017-18

1 attributed to the care of uninsured
2 patients; and provides care to uninsured
3 patients in its emergency room, hospital
4 based clinics and community based clinics,
5 including the provision of important
6 community services, such as dental care
7 and prenatal care 20,000,000
8 For payments under the medical assistance
9 program to critical access hospitals
10 pursuant to criteria determined by the
11 commissioner, shall be eligible for awards
12 for amounts appropriated herein 20,000,000

Appendix IV
2017 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 Civil Service

PURSUANT to the Open Meetings Law, the New York State Civil Service Commission hereby gives public notice of the following:

Please take notice that the regular monthly meeting of the State Civil Service Commission for April 2017 will be conducted on April 11 and April 12 commencing at 10:00 a.m. This meeting will be conducted at NYS Media Services Center, Suite 146, South Concourse, Empire State Plaza, Albany, NY with live coverage available at <https://www.cs.ny.gov/commission/>.

For further information, contact: Office of Commission Operations, Department of Civil Service, Empire State Plaza, Agency Bldg. 1, Albany, NY 12239. (518) 473-6598

PUBLIC NOTICE Division of Criminal Justice Services Commission on Forensic Science

Pursuant to Public Officers Law section 104, the Division of Criminal Justice Services gives notice of a meeting of the New York State Commission on Forensic Science to be held on:

Date: April 12, 2017
Time: 9:00 a.m.-1:00 p.m.
Place: Division of Criminal Justice Services
Alfred E. Smith Office Bldg.
CrimeStat Rm. 118
80 S. Swan St.
Albany, NY
Video Conference with:
Empire State Development Corporation
(ESDC)

633 3rd Ave.
37th Fl./Conference Rm.
New York, NY

*Identification and sign-in is required at this location. For further information, or if you need a reasonable accommodation to attend this meeting, contact: Catherine White, Division of Criminal Justice Services, Office of Forensic Services, 80 S. Swan St., Albany, NY 12210, (518) 485-5052

PUBLIC NOTICE Division of Criminal Justice Services DNA Subcommittee

Pursuant to Public Officers Law section 104, the Division of Criminal Justice Services gives notice of a meeting of the DNA Subcommittee to be held on:

Date: March 27, 2017
Time: 8:30 a.m.-1:00 p.m.
Place: Empire State Development Corporation
(ESDC)
633 3rd Ave.
37th Fl. Board Rm.
New York, NY

Identification and sign-in are required at this location. For further information, or if you need a reasonable accommodation to attend this meeting, contact: Catherine White, Division of Criminal Justice Services, Office of Forensic Services, 80 S. Swan St., Albany, NY, (518) 485-5052

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, non-institutional, long term care, and prescription drug services to comply with proposed statutory provisions. The following changes are proposed:

All Services

- Effective on and after April 1, 2017, no greater than zero trend factors attributable to services through March 31, 2020 pursuant to the provisions of Public Health Law § 2807-c(10)(c) to rates of payment for hospital inpatient and outpatient services, inpatient and adult day health care outpatient services provided by residential health care facilities pursuant to Article 28 of the Public Health Law, except for residential health care facilities or units of such facilities providing services primarily to children under 21 year of age, certified home health agencies, AIDS home care programs, and for personal care services pursuant to section 365-a of the Social Services Law, including personal care services provided in those local social services districts, including New York City, whose rates of payment for services is

established by such social services districts pursuant to a rate-setting exemption granted by the Department, and assisted living program services.

The annual decrease in gross Medicaid expenditures for state fiscal year 2017/2018 is (\$208.8) million.

Institutional Services

- For the state fiscal year beginning April 1, 2017 through March 31, 2018, continues specialty hospital adjustments for hospital inpatient services provided on and after April 1, 2012, to public general hospitals, other than those operated by the State of New York or the State University of New York, located in a city with a population of over one million and receiving reimbursement of up to \$1.08 billion annually based on criteria and methodology set by the Commissioner of Health, which the Commissioner may periodically set through a memorandum of understanding with the New York City Health and Hospitals Corporation. Payments to eligible public general hospitals may be added to rates of payment or made as aggregate payments.

- Extends current provisions for services on and after April 1, 2017 through March 30, 2020, the reimbursable operating cost component for general hospital inpatient rates will be established with the 2006 final trend factor equal to the final Consumer Price Index (CPI) for all urban consumers less 0.25%.

The estimated annual net decrease in gross Medicaid expenditures attributable to these cost containment initiatives contained in the budget for state fiscal year 2017/2018 is (\$114.5) million.

- Effective April 1, 2017, continues the supplemental upper payment limit payments made to general hospitals, other than major public general hospitals under institutional services of \$339 million annually.

- Capital related costs of a general hospital excluding 44% of the major movable costs and excluding staff housing costs will continue effective April 1, 2017 through March 31, 2020.

The estimated gross annual decrease in Medicaid expenditures for state fiscal year 2017/2018 for this initiative is (\$48.4) million.

- Budgeted capital inpatient costs of a general hospital applicable to the rate year will be decreased to reflect the percentage amount by which the budget for the base year two years prior to the rate year for capital related inpatient expenses of the hospital exceeded actual expenses will continue effective April 1, 2017 through March 31, 2020.

The estimated gross annual decrease in Medicaid expenditures for state fiscal year 2017/2018 for this initiative is (\$15.9) million.

Long Term Care Services

- For state fiscal year beginning April 1, 2017, continues additional payments to non-state government operated public residential health care facilities, including public residential health care facilities located in Nassau, Westchester, and Erie counties, but excluding public residential health care facilities operated by a town or city within a county, in aggregate amounts of up to \$500 million. The amount allocated to each eligible public RHCf will be in accordance with the previously approved methodology, provided, however that patient days shall be utilized for such computation reflecting actual reported data for 2014 and each representative succeeding year as applicable. Payments to eligible RHCf's may be added to rates of payment or made as aggregate payments.

- The quality incentive program for non-specialty nursing homes will continue for the 2017 rate year to recognize improvement in performance as an element in the program and provide for other minor modifications.

There is no additional estimated annual change to gross Medicaid expenditures attributable to this initiative for state fiscal year 2017/2018.

- This proposal eliminates the reimbursement to Nursing Homes for bed hold days through the repeal of PHL § 2808(25).

The estimated annual net decrease in gross Medicaid expenditures attributable to these cost containment initiatives contained in the budget for state fiscal year 2017/2018 is (\$22) million.

- Continues, effective for periods on and after April 1, 2017, the

total reimbursable state assessment on each residential health care facility's gross receipts received from all patient care services and other operating income on a cash basis for inpatient or health-related services, including adult day service, but excluding gross receipts attributable to payments received pursuant to Title XVIII of the federal Social Security Act (Medicare), at six percent. The extent to which a facility is reimbursed for the additional cost of the assessment is dependent upon Medicaid volume of services.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2017/2018 is \$513 million.

- The following is notice of the continuation of the Advanced Training Program (ATI). First introduced in State fiscal year 2015/2016, ATI is a training program aimed at teaching staff to detect early changes in a resident's physical, mental, or functional status that could lead to hospitalization. Clinical findings show early detection of patient decline by front line workers, couple with clinical care models aimed at fostering consistent and continuous care between care givers and patients results in better care outcomes.

Training programs and their curricula from the previous ATI program may be used by facilities, new training programs will be submitted for Department review. In addition to offering a training program, eligible facilities must also have direct care staff retention above the statewide median. Hospital-based facilities and those receiving VAP funds will not be eligible to participate.

The estimated net aggregate cost contained in the budget for the continuation of the ATI program for 2017/2018 is \$46 million.

- The rates of payment for RHCf's shall not reflect trend factor projections or adjustments for the period April 1, 1996 through March 31, 1997 and continues the provision effective on and after April 1, 2017 through March 31, 2020.

The estimated annual net aggregate decrease in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2017/2018 is (\$12,749,000) million.

- Extends current provisions to services on and after April 1, 2017, the reimbursable operating cost component for RHCf's rates will be established with the final 2006 trend factor equal to the final Consumer Price Index (CPI) for all urban consumers less 0.25%.

The estimated annual net decrease in gross Medicaid expenditures attributable to these cost containment initiatives contained in the budget for state fiscal year 2017/2018 is (\$15,355,637) million.

Non-Institutional Services

- For state fiscal year beginning April 1, 2017 through March 31, 2018, continues hospital outpatient payment adjustments that increase the operating cost components of rates of payment for hospital outpatient and emergency departments on and after April 1, 2011, for public general hospitals other than those operated by the State of New York or the State University of New York, which are located in a city with a population of over one million. The amount to be paid will be up to \$287 million annually based on criteria and methodology set by the Commissioner of Health, which the Commissioner may periodically set through a memorandum of understanding with the New York City Health and Hospitals Corporation. Payments may be added to rates of payment or made as aggregate payments.

- For the state fiscal year beginning April 1, 2017 through March 31, 2018, continues upon the election of the social services district in which an eligible diagnostic and treatment center (DTC) is physically located, up to \$12.6 million in additional annual Medicaid payments may be paid to public DTCs operated by the New York City Health and Hospitals Corporation. Such payments will be based on each DTC's proportionate share of the sum of all clinic visits for all facilities eligible for an adjustment for the base year two years prior to the rate year. The proportionate share payments may be added to rates of payment or made as aggregate payments to eligible DTCs.

- For the state fiscal year beginning April 1, 2017 through March 31, 2018, continues up to \$5.4 million in additional annual Medicaid payments may be paid to county operated free-standing clinics, not including facilities operated by the New York City Health and Hospitals Corporation, for services provided by such DTC and those

- 2-14197 Commercial and Residential Real Estate Agents and Brokers and Property Management Services Policies covering the liability of real estate agents and brokers and property managers who are engaged in large commercial and residential real estate projects. The policies would include, but are not limited to, liability coverage for acts arising out of the brokerage of sales and lease of real estate, property management, construction management and consulting, general consulting, franchising, joint ventures, mortgage brokering, appraisals, auction, referrals, business brokerage activities and the development of owned commercial and residential real estate.
- 2-22002 [Automobile] Motorsports Racing Liability Liability coverage for owners or lessors of motorsports racing venues (e.g. race tracks for oval track events, drag races, monster truck rallies, motocross, motorcycle, boat or snowmobile racing, and other types of motorized vehicle competitive events).
- 2-22003 [Auto] Motorsports Racing and [Automobile Race Track] Motorsports Liability Coverage for claims of spectators, participants or other third parties in connection with the operation of [an automobile race track or drag strip] motorsports venues, or the staging or conduct of [an automobile race] motorsports events or participation therein by teams and individuals.
- 2-02038 Television Broadcast Interruption [Breakdown-Closed Circuits] Covers the reduction in gross admission fees caused by interruption by breakdown, failure, malfunctioning or any disorder of equipment lines and appurtenances thereto, which prevents presentation of the audio or showing of [the] a telecast.

For further information you may contact: Hoda Nairooz by email at hoda.nairooz@dfs.ny.gov, by mail at Department of Financial Services, Property Bureau, One State St., New York, NY 10004, or by calling (212) 480-5595

PUBLIC NOTICE

Department of Health

The New York State Department of Health (DOH) is required by the provisions of the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act to provide for public review and comment on the Department's beach monitoring and notification plan. The BEACH Act (Section 406(b) of the Clean Water Act) enacted a federal Environmental Protection Agency grant program available to states, such as New York, with coastal recreational waters. Coastal recreational waters include the Great Lakes and marine coastal waters that are designated for swimming, bathing, surfing, or similar water contact activities. The Act is not applicable to inland waters or waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea.

The beach monitoring and public notification plan also includes information on the beach evaluation and classification process, including a list of waters to be monitored and beach ranking. Also included in this plan, is the sampling design and monitoring plan, including sampling location and sampling frequency. Lastly, the plan contains information on procedures for public notification and risk communication, including methods to notify the public of a swimming advisory or beach closure.

Any interested parties and/or agencies desiring to review and/or comment on the beach monitoring and notification plan for coastal recreational waters may do so by writing to: Timothy M. Shay, Assistant Bureau Director, Department of Health, Center for Environmental Health, Bureau of Community Environmental Health and Food Protection, Empire State Plaza, Corning Tower Bldg., Rm. 1395, Albany, NY 12237, Fax: (518) 402-7609

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, non-institutional, long term care, and prescription drug services to comply with enacted statutory provisions. The following changes are proposed:

All Services

- Payments to Critical Access Hospitals based on criteria as determined by the Commissioner of Health.

The estimated annual increase in gross Medicaid expenditures for this initiative is \$20 million.

Institutional Services

- Payments to hospitals that meet the criteria as an enhanced safety net hospital. The criteria are as follows: In any of the previous three calendar years, the hospital has had not less than fifty percent of the patients it treats receive Medicaid or be medically uninsured; not less than forty percent of its inpatient discharges are covered by Medicaid; twenty-five percent or less of its discharged patients are commercially insured; not less than three percent of the services are attributed to the care of uninsured patients; it provides care to uninsured patients in its emergency room, hospital based clinics and community based clinics, including the provision of important community services such as dental care and prenatal care.

The estimated annual increase in gross Medicaid expenditures for this initiative is \$20 million.

Long Term Care Services

- The Enacted Budget limits reimbursement to Nursing Homes for bed hold days to therapeutic leaves of absence.

The estimated annual net decrease in gross Medicaid expenditures attributable to this cost containment initiative contained in the budget for state fiscal year 2017/2018 is (\$20) million.

Non-Institutional Services

- The initiative previously noticed regarding the elimination of supplemental medical assistance payments of up to \$6 million annually made to providers of emergency medical transportation was not included in the Enacted Budget for state fiscal year 2017/2018.

Prescription Drugs:

- The initiative previously noticed regarding the co-pay for over-the-counter (OTC) non-prescription drug/items increased from \$0.50 to \$1.00 was eliminated from the budget for state fiscal year 2017/2018.

- Effective April 1, 2017, to mitigate high drug costs, the Department will establish a Medicaid prescription drug cap as a separate component of the Medicaid global cap with year to year spending targets. Drug expenditures will be reviewed quarterly. If it is determined that expenditures will exceed annual growth limitation, the Commissioner may identify and refer drugs to the Drug Utilization Review Board (DURB) for a recommended target supplemental rebate. The Department shall notify affected manufacturers prior to referring drug(s) to DURB, and attempt to reach a rebate agreement.

When determining whether to recommend a drug to the DURB for a target supplemental rate, the department shall consider the actual cost of a drug to the state, including current rebate amounts, taking into consideration whether the drug manufacturer provides significant discounts relative to other covered drugs. When considering whether to recommend a target supplemental rate for a drug, the DURB shall consider the actual cost of the drug to the Medicaid program including state and federal rebates, and may consider:

- o Impact on spending target, capitation rates and affordability and value to the program;
- o Significant and unjustified price increases;
- o Whether the drug may be priced disproportionately to its therapeutic benefits.

If a target rebate is recommended by the DURB, and the department is unable to negotiate a rebate of at least 75% of the target rebate

Appendix V
2017 Title XIX State Plan
Fourth Quarter Amendment
Responses to Standard Funding Questions

**NON-INSTITUTIONAL SERVICES
State Plan Amendment #17-0069**

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 A-87 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 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 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 add-on services payments made to those providers listed to be paid quarterly during each period in equal installments.

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: The State and CMS are having continued discussions to resolve any issues with the prior year's UPL, which the 2017 UPL is contingent upon.

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 State Plan for institutional services is a prospective payment. We are unaware of any requirement under current federal law or regulation that limits individual provider's 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 11-06, 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.

Appendix VI
2017 Title XIX State Plan
Fourth Quarter Amendment
Responses to Standard Access Questions

**APPENDIX VI
NON-INSTITUTIONAL SERVICES
State Plan Amendment # 17-0069**

CMS Standard Access Questions

The following questions have been asked by CMS and are answered by the State in relation to all payments made to all providers under Attachment 4.19-B of the state plan.

- 1. Specifically, how did the State determine that the Medicaid provider payments that will result from the change in this amendment are sufficient to comply with the requirements of 1902(a)(30)?**

Response: First, Hospitals are required to meet licensure and certification requirements to ensure providers are qualified to deliver services to Medicaid patients. These requirements as well as other methods and procedures the state has in place to assure efficiency, economy and quality of care are not impacted in any way by the amendment. Second, all licensed hospitals currently participate in the New York State's Medicaid program and are located all across the state so that Medicaid recipients in any geographic area have access to services that are available to the general population in those communities. This amendment seeks to periodically update the weights to accurately pay providers for the service they performed.

- 2. How does the State intend to monitor the impact of the new rates and implement a remedy should rates be insufficient to guarantee required access levels?**

Response: The State has various ways to ensure that access levels in the Medicaid program are retained and is currently not aware of any access issues. The State monitors and considers requests in the context of access as they approve/deny changes in services. Finally, providers cannot discriminate based on source of payment.

For providers that are not subject to an approval process, the State will continue to monitor provider complaint hotlines to identify geographic areas of concern and/or service type needs. If Medicaid beneficiaries begin to encounter access issues, the Department would expect to see a marked increase in complaints. These complaints will be identified and analyzed in light of the changes proposed in this State Plan Amendment.

Finally, the State ensures that there is sufficient provider capacity for Medicaid Managed Care plans as part of its process to approve managed care rates and plans. Should sufficient access to services be compromised,

the State would be alerted and would take appropriate action to ensure retention of access to such services.

- 3. How were providers, advocates and beneficiaries engaged in the discussion around rate modifications? What were their concerns and how did the State address these concerns?**

Response: This change was enacted by the State Legislature as part of the negotiation of the 2017-18 Budget. The impact of this change was weighed in the context of the overall Budget in the State. The legislative process provides opportunities for all stakeholders to lobby their concerns, objections, or support for various legislative initiatives. In addition, NY published notice in the state register of the proposed policy and did not receive any comment.

- 4. What action(s) does the State plan to implement after the rate change takes place to counter any decrease to access if the rate decrease is found to prevent sufficient access to care?**

Response: Should any essential community provider experience Medicaid or other revenue issues that would prevent access to needed community services, per usual practice, the State would meet with them to explore the situation and discuss possible solutions, if necessary.

- 5. Is the State modifying anything else in the State Plan which will counterbalance any impact on access that may be caused by the decrease in rates (e.g. increasing scope of services that other provider types may provide or providing care in other settings)?**

Response: The State has undertaken a massive reform initiative to better align reimbursement with care. When fully implemented, the initiative will invest over \$600 million in the State's ambulatory care system (outpatient, ambulatory surgery, emergency department, clinic and physicians) to incentivize care in the most appropriate setting. The State has also increased its physician reimbursement schedule to resemble Medicare payments for similar services, thus ensuring continued access for Medicaid beneficiaries. While some of these initiatives are outside the scope of the State Plan, they represent some of the measures the State is taking to ensure quality care for the State's most vulnerable population.

Deyette, Regina L (HEALTH)

From: Sheridan, Mandy (HEALTH)
Sent: Wednesday, November 29, 2017 4:00 PM
To: Deyette, Regina L (HEALTH)
Subject: RE: DLA Comments: SPA 17-0069 (CAH - Outpatient)

That is why! Yes – that’s fine. I understand the issue with the “quarterly” language and as long as CMS doesn’t care that it will likely be a lump payment, I don’t mind the aspirational use of “quarterly.” Thanks. This is fine. Sorry for the delay.

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ATTORNEY WORK PRODUCT

Mandy Sheridan
Senior Attorney, Bureau of Health Insurance Programs
Division of Legal Affairs
518-486-1336 | Mandy.Sheridan@health.ny.gov

From: Deyette, Regina L (HEALTH)
Sent: Wednesday, November 29, 2017 3:46 PM
To: Sheridan, Mandy (HEALTH) <Mandy.Sheridan@health.ny.gov>
Subject: FW: DLA Comments: SPA 17-0069 (CAH - Outpatient)

Mandy,
Please see below.. as a followup to your last question... I think that is my fault. On the SFQs it had a reference to the Clinic UPL agreement.. which I didn’t change to OP... It didn’t hit me until I just read the response to your question.. am I right? Is that why you asked because of the SFQ question? I will change that response to refer to OP UPL. There is no issue with OP UPL

From: Grimm, Monique A (HEALTH)
Sent: Wednesday, November 29, 2017 3:31 PM
To: Levesque, Michelle M (HEALTH) <michelle.levesque@health.ny.gov>
Cc: Baggetta, Janet L (HEALTH) <janet.baggetta@health.ny.gov>; Deyette, Regina L (HEALTH) <Regina.Deyette@health.ny.gov>; LaVenía, Peter A (HEALTH) <Peter.LaVenía@health.ny.gov>
Subject: RE: DLA Comments: SPA 17-0069 (CAH - Outpatient)

See responses below and updated HCFA-179.

From: Levesque, Michelle M (HEALTH)
Sent: Wednesday, November 29, 2017 2:47 PM
To: Grimm, Monique A (HEALTH) <monique.grimm@health.ny.gov>
Cc: Baggetta, Janet L (HEALTH) <janet.baggetta@health.ny.gov>; Deyette, Regina L (HEALTH) <Regina.Deyette@health.ny.gov>; LaVenía, Peter A (HEALTH) <Peter.LaVenía@health.ny.gov>
Subject: DLA Comments: SPA 17-0069 (CAH - Outpatient)

Monique
Please see Mandy’s comments on 17-0069. Please respond and return back to the SPA Unit as soon as possible as this is a high priority. I have updated the page and attached.

Thanks.

Michelle Levesque

Division of Finance and Rate Setting

New York State Department of Health
Office of Health Insurance Programs
One Commerce Plaza
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518-486-7164
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From: Sheridan, Mandy (HEALTH)
Sent: Wednesday, November 29, 2017 2:35 PM
To: Deyette, Regina L (HEALTH) <Regina.Deyette@health.ny.gov>
Cc: Carr, Mary Frances F (HEALTH) <maryfrances.carr@health.ny.gov>
Subject: RE: SPA 17-0069 (CAH - Outpatient)

Hi Regina:

Nothing major on this, just a few things:

- In the HCFA-179, box 6 calls for federal statute/regs but we provide a state appropriation – does CMS care that we aren't providing a federal cite? **Response:** I updated the citation, but in looking at other SPA's it looks like this box sometimes has State statute.
- All text should be underlined in the SPA page (data in columns for Gross Medicaid Adjustment and Rate Period Effective are not underlined). **Response:** This has been completed.
- Why are we not using the full approp amount (\$20M)? Was \$10M already used in the first two quarters of the year? **Response:** The full approp for 2017/2018 was used (SFY amt: \$20M gross).
- When we state that the adjustment will be paid quarterly – does that mean quarterly in the period given (so every 1.5 months), or quarterly over a year – and if the latter, is that the current SFY, the current CY, or half this SFY and half next SFY? **Response:** I struggled with this wording a bit because the appropriation is for the period 4/1/17 – 3/31/18, but the SPA isn't being submitted until the October 2017. In a perfect world, the payments would have going out at the end of June 2017, Sept 2017, December 2017 and March 2018. But since the SPA was submitted late we only have 2 quarters left (according to the SFY) to make the payments (Dec 2017 & Mar 2018). By the time this gets approved (or if it gets approved), we will most likely be making a lump sum payment for the federal share. The full State share is being paid shortly.
- Do we expect to receive approval for the 2017 clinic UPL? **Response:** This SPA is not affected by the clinic UPL, only the Outpatient UPL (Hospitals). I'm not aware of any issues with the OPD UPL.

Thanks.

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ATTORNEY WORK PRODUCT

Mandy Sheridan
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From: Carr, Mary Frances F (HEALTH)
Sent: Tuesday, November 28, 2017 1:07 PM
To: Deyette, Regina L (HEALTH) <Regina.Deyette@health.ny.gov>; Sheridan, Mandy (HEALTH) <Mandy.Sheridan@health.ny.gov>
Cc: Cox, Ryan (BUDGET) <Ryan.Cox@budget.ny.gov>
Subject: RE: SPA 17-0069 (CAH - Outpatient)

Hi, Regina. FYI, Mandy is out of the office today. She'll be in touch when she's up to speed on this. Thanks.

Mary Frances Carr
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Bureau of Health Insurance Programs
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From: Deyette, Regina L (HEALTH)
Sent: Tuesday, November 28, 2017 12:56 PM
To: Sheridan, Mandy (HEALTH) <Mandy.Sheridan@health.ny.gov>
Cc: Cox, Ryan (BUDGET) <Ryan.Cox@budget.ny.gov>; Carr, Mary Frances F (HEALTH) <maryfrances.carr@health.ny.gov>
Subject: SPA 17-0069 (CAH - Outpatient)

Hi Mandy,
Attached for your review and approval, please find the final fourth quarter SPA. As discussed previously, please understand this SPA does require priority handling as it is quite a bit behind in processing. Thank you for all of your help.
Regina

Regina L. Deyette
Acting Medicaid State Plan Coordinator
Division of Finance and Rate Setting

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Deyette, Regina L (HEALTH)

From: Grimm, Monique A (HEALTH)
Sent: Tuesday, November 28, 2017 1:15 PM
To: Deyette, Regina L (HEALTH)
Cc: Baggetta, Janet L (HEALTH); LaVenía, Peter A (HEALTH); Levesque, Michelle M (HEALTH)
Subject: RE: SPA 17-0069 (CAH - OP)
Attachments: Original Submission (17-0069) (11-28-17).pdf

Hi Regina,

The attached SPA has my approval.

Thanks,

Monique Grimm

Principal Health Care Fiscal Analyst, Division of Finance and Rate Setting
Office of Health Insurance Programs

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From: Deyette, Regina L (HEALTH)
Sent: Tuesday, November 28, 2017 12:58 PM
To: Grimm, Monique A (HEALTH) <monique.grimm@health.ny.gov>
Cc: Baggetta, Janet L (HEALTH) <janet.baggetta@health.ny.gov>; LaVenía, Peter A (HEALTH) <Peter.LaVenía@health.ny.gov>; Levesque, Michelle M (HEALTH) <michelle.levesque@health.ny.gov>
Subject: SPA 17-0069 (CAH - OP)

Attached for your review and approval is the original submission for the above subject SPA. Please reply with your approval to move forward.

Thanks
Regina

Regina L. Deyette

Acting Medicaid State Plan Coordinator
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