NEW YORK STATE OF OPPORTUNITY. Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Acting Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 30, 2021

Todd McMillion
Director
Department of Health and Human Services
Centers for Medicare and Medicaid Services
233 North Michigan Ave, Suite 600
Chicago, IL 60601

RE: SPA #21-0055
Non-Institutional Services

Dear Mr. McMillion:

The State requests approval of the enclosed amendment #21-0055 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective October 1, 2021 (Appendix I). This amendment is being submitted based on the Federal stimulus funding under the American Rescue Act to aid providers in the recovery of the COVID emergency. 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.

A copy of pertinent sections of the Federal stimulus funding under the American Rescue Act to aid providers in the recovery of the COVID emergency is enclosed for your information (Appendix III). Copies of the public notice of this plan amendment, which were given in the New York State Register on September 15, 2021 and clarified on January 19, 2022, are also enclosed for your information (Appendix IV). In addition, responses to the five standard funding questions are also 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,

[redacted]

Brett R. Friedman
Acting Medicaid Director
Office of Health Insurance Programs

Enclosures

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB No. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES

1. TRANSMITTAL NUMBER: 21 — 0055

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, 2021

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 10/01/21-09/30/22 $ 16,875.35
b. FFY 10/01/22-09/30/23 $ 0.00

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
Attachment: 4.19 - B. Pages: 1(a)(i), 1(a)(ii)(b), 1(a)(iii)

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*
Attachment: 4.19 - B. Pages: 1(a)(i), 1(a)(ii)(b), 1(a)(iii)

10. SUBJECT OF AMENDMENT
CFTSS29i - Enhanced FMAP
(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
[redacted]

13. TYPED NAME
Brett R. Friedman

14. TITLE
Acting Medicaid Director, Department of Health

15. DATE SUBMITTED
December 30, 2021

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

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

Instructions on Back

Appendix I
2021 Title XIX State Plan
Fourth Quarter Amendment
Amended SPA Pages

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: New York

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – OTHER TYPES OF CARE

Non-Physician Licensed Behavioral Health Practitioner Services (EPSDT only)

Reimbursement for EPSDT NP-LBHP as outlined in Item 6.d(i). per Attachment 3.1-A, are paid based upon Medicaid rates established by the State of New York.

Except as otherwise noted in the State Plan, the State-developed rates are the same for both governmental and private providers. The provider agency's rates were set as of January 1, 2019 for Other Licensed Practitioner, Community Psychiatric Support and Treatment, and Psychosocial Rehabilitation Supports, and are effective for these services provided on or after that date. Provider agency's rates were set as of July 1, 2019 for Family Peer Support Services and are effective for these services provided on or after that date. Additionally, the agency's rates were set as of January 1, 2020 for Crisis Intervention and Youth Peer Supports and Training are effective for these services provided on or after that date.

Except as otherwise noted in the plan, state-developed fee schedule rates are the same for both governmental and private providers of Other Licensed Practitioner, Psychosocial Rehabilitation Supports, Family Peer Support Services, Crisis Intervention, Youth Peer Supports and Training. The agency's fee schedule rate was set as of 4/2/2020 and is effective for services provided on or after that date. The rates were updated for the period October 1, 2021 through September 30, 2022.

All rates are published on the Department of Health website:

Crisis Intervention Rates:

https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/children/child-family_rate_summary.htm

Family Peer Supports Services and Youth Peer Supports Rates:

https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/children/fpss_bh_kids_ffs_rates.htm

Other Licensed Practitioner, Community Psychiatric Support and Treatment, and Psychosocial Rehabilitation Supports Rates:

https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/children/bh_kids_ffs_rates.htm

New York
1(a)(ii)(b)

The Fee Schedule is as follows:

Provider Type	2/1 to 9/30/2021 EPSDT PRT/RRT Fee	10/1/2021 to 9/30/2022 EPSDT PRT/RRT Fee	10/1/2022 to 6/30/2023 [2022] EPSDT PRT/RRT Fee	2023 EPSDT PRT/RRT Fee	2024 EPSDT PRT/RRT Fee
ABH	$ 27.43	$ 34.29	$ 27.99	$ 28.57	$ 29.15
Diagnostic	$ 100.76	$ 125.95	$ 102.82	$ 104.93	$ 107.08
FBH	$ 12.36	$ 15.45	$ 12.62	$ 12.87	$ 13.14
GH	$ 27.43	$ 34.29	$ 27.99	$ 28.57	$ 29.15
GR	$ 45.23	$ 56.54	$ 46.16	$ 47.10	$ 48.07
Hard/Place	$ 78.37	$ 97.96	$ 79.97	$ 81.61	$ 83.29
Inst	$ 49.36	$ 61.70	$ 50.38	$ 51.41	$ 52.46
Maternity	$ 27.43	$ 34.29	$ 27.99	$ 28.57	$ 29.15
Medically Fragile	$ 54.20	$ 67.75	$ 55.31	$ 56.44	$ 57.60
Other NC	$ 39.72	$ 49.65	$ 40.53	$ 41.36	$ 42.21
Raise the Age	$ 78.37	$ 97.96	$ 79.97	$ 81.61	$ 83.29
SILP	$ 27.43	$ 34.29	$ 27.99	$ 28.57	$ 29.15
Special Needs	$ 39.72	$ 49.65	$ 40.53	$ 41.36	$ 42.21
Special Other	$ 78.37	$ 97.96	$ 79.97	$ 81.61	$ 83.29
Therapeutic	$ 34.73	$ 43.41	$ 35.44	$ 36.17	$ 36.91

Effective October 1, 2021 through September 30, 2022, the 2021 EPSDT PRT/RRT Fees will be twenty-five (25) percent higher. Agencies whose current rates are higher than the fee schedule, and who require a blended methodology to the Fee Schedule will follow the methodology below:

	February 2021 EPSDT PRT/RRT Blended Fee	July 2021 EPSDT PRT/RRT Blended Fee	2022 EPSDT PRT/RRT Blended Fee	2023 EPSDT PRT/RRT Blended Fee	2024 EPSDT PRT/RRT Blended Fee
Current Rate	100%	75%	50%	25%	0%
Future Rate	0%	25%	50%	75%	100%

Except as otherwise noted in the State Plan, the State-developed fee schedule is the same for both governmental and private providers. All years of rates, including current rates are published on the Department of Health website at:

https://www.health.ny.gov/facilities/long_term_care/reimbursement/cfc/

Draft Rates pending approval for the above schedule are published on the Department of Health website at:

https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/children/vol_foster_trans.htm

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: New York
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – OTHER TYPES OF CARE
Rehabilitative Services (EPSDT only)

Reimbursement for EPSDT Rehabilitative Services as outlined in item 13.d per Attachment 3.1-A, are paid based upon Medicaid rates established by the State of New York.
Except as otherwise noted in the State Plan, the State-developed rates are the same for both governmental and private providers. The provider agency's rates were set as of January 1, 2019 for Other Licensed Practitioner, Community Psychiatric Support and Treatment, and Psychosocial Rehabilitation Supports, and are effective for these services provided on or after that date. Provider agency's rates were set as of July 1, 2019 for Family Peer Support Services and are effective for these services provided on or after that date. Additionally, the agency's rates were set as of January 1, 2020 for Crisis Intervention and Youth Peer Supports and Training and are effective for these services provided on or after that date.

Except as otherwise noted in the plan, state-developed fee schedule rates are the same for both governmental and private providers of Other Licensed Practitioner, Psychosocial Rehabilitation Supports, Family Peer Support Services, Crisis Intervention, Youth Peer Supports and Training. The agency's fee schedule rate was set as of 4/2/2020 and is effective for services provided on or after that date. The rates were updated for the period October 1, 2021 through September 30, 2022.

All rates are published on the Department of Health website:
Crisis Intervention Rates:
https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/children/child-family_rate_summary.htm
Family Peer Supports Services and Youth Peer supports Rates:
https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/children/fpss_bh_kids_ffs_rates.htm
Other Licensed Practitioner, Community Psychiatric Support and Treatment, and Psychosocial Rehabilitation Supports Rates:
https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/children/bh_kids_ffs_rates.htm
The rate development methodology will primarily be composed of provider cost modeling, through New York provider compensation studies and cost data. Rates from similar State Medicaid programs may be considered, as well. The following list outlines the major components of the cost model to be used in rate development.

- Staffing assumptions and staff wages.
- Employee-related expenses — benefits, employer taxes (e.g., Federal Insurance Contributions Act (FICA), unemployment, and workers compensation).
- Program-related expenses (e.g., supplies).
- Provider overhead expenses.
- Program billable units.

The rates will be developed as the ratio of total annual modeled provider costs to the estimated annual billable units.

Appendix II
2021 Title XIX State Plan
Fourth Quarter Amendment
Summary

SUMMARY
SPA #21-0055

This State Plan Amendment proposes to revise the State Plan to enhance the State established rates for the period of October 1, 2021 to September 30, 2022, for Children and Family Treatment and Support Services (CFTSS) by an additional 14% based upon the Federal stimulus funding under the American Rescue Act to aid providers in the recovery of the COVID emergency. The following CFTSS will be affected: Other Licensed Practitioner, (OLP), Community Psychiatric Support and Treatment (CPST), Psychosocial Rehabilitation Supports (PSR), Crisis Intervention (CI), Youth Peer Supports and Training (YPS) and Family Peer Support Services (FPSS).

State established rates for Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) preventive residential treatment (PRT) services and rehabilitative residential treatment (RRT) will be enhanced by an additional twenty-five (25) percent for the period October 1, 2021 through September 30, 2022 to aid providers in the recovery of the COVID emergency.

Appendix III
2021 Title XIX State Plan
Fourth Quarter Amendment
Authorizing Provisions

SPA 21-0055

1) EC. 9817. <<NOTE: P.L. 117-2, Title IX, Subtitle J, § 9817, 135 Stat. 216-17 (March 11, 2021)>> ADDITIONAL SUPPORT FOR

MEDICAID HOME AND COMMUNITY-BASED SERVICES DURING THE COVID-19 EMERGENCY.

(a) Increased FMAP.--

(1) In general.--Notwithstanding section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) or section 1905(ff), in the case of a State that meets the HCBS program requirements under subsection (b), the Federal medical assistance percentage determined for the State under section 1905(b) of such Act (or, if applicable, under section 1905(ff)) and, if applicable, increased under subsection (y), (z), (aa), or (ii) of section 1905 of such Act (42 U.S.C. 1396d), section 1915(k) of such Act (42 U.S.C. 1396n(k)), or section 6008(a) of the Families First Coronavirus Response Act (Public Law 116-127), shall be increased by 10 percentage points with respect to expenditures of the State under the State Medicaid program for home and community-based services (as defined in paragraph (2)(B)) that are provided during the HCBS program improvement period (as defined in paragraph (2)(A)). In no case may the application of the previous sentence result in the Federal medical assistance percentage determined for a State being more than 95 percent with respect to such expenditures. Any payment <<NOTE: Territories.>> made to Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa for expenditures on medical assistance that are subject to the Federal medical assistance percentage increase specified under the first sentence of this paragraph shall not be taken into account for purposes of applying payment limits under subsections (f) and (g) of section 1108 of the Social Security Act (42 U.S.C. 1308).

(2) Definitions.--In this section:

(A) <<NOTE: Time period.>> HCBS program improvement period.--The term ``HCBS program improvement period'' means, with respect to a State, the period--

(i) beginning on April 1, 2021; and

(ii) ending on March 31, 2022.

(B) Home and community-based services.--The term ``home and community-based services'' means any of the following:

[[Page 135 STAT. 217]]

(i) Home health care services authorized under paragraph (7) of section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)).

(ii) Personal care services authorized under paragraph (24) of such section.

(iii) PACE services authorized under paragraph (26) of such section.

(iv) Home and community-based services

authorized under subsections (b), (c), (i), (j), and (k) of section 1915 of such Act (42 U.S.C. 1396n), such services authorized under a waiver under section 1115 of such Act (42 U.S.C. 1315), and such services through coverage authorized under section 1937 of such Act (42 U.S.C. 1396u-7).

(v) Case management services authorized under section 1905(a)(19) of the Social Security Act (42 U.S.C. 1396d(a)(19)) and section 1915(g) of such Act (42 U.S.C. 1396n(g)).

(vi) Rehabilitative services, including those related to behavioral health, described in section 1905(a)(13) of such Act (42 U.S.C. 1396d(a)(13)).

(vii) Such other services specified by the Secretary of Health and Human Services.

(C) Eligible individual.--The term ``eligible individual'' means an individual who is eligible for and enrolled for medical assistance under a State Medicaid program and includes an individual who becomes eligible for medical assistance under a State Medicaid program when removed from a waiting list.

(D) Medicaid program.--The term ``Medicaid program'' means, with respect to a State, the State program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver or demonstration under such title or under section 1115 of such Act (42 U.S.C. 1315) relating to such title).

(E) State.--The term ``State'' has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(b) State Requirements for FMAP Increase.--As conditions for receipt of the increase under subsection (a) to the Federal medical assistance percentage determined for a State, the State shall meet each of the following requirements (referred to in subsection (a) as the HCBS program requirements):

(1) <<NOTE: Effective date.>> Supplement, not supplant.--The State shall use the Federal funds attributable to the increase under subsection (a) to supplement, and not supplant, the level of State funds expended for home and community-based services for eligible individuals through programs in effect as of April 1, 2021.

(2) Required implementation of certain activities.--The State shall implement, or supplement the implementation of, one or more activities to enhance, expand, or strengthen home and community-based services under the State Medicaid program.

SPA 21-0055

The American Rescue Plan Act (ARPA) was signed into law on March 11, 2021 Section 9817 of ARPA provides a 10 percent increase in Federal Medical Assistance Percentage (FMAP) to state Medicaid programs from October 1, 2021 to September 30, 2022 to supplement existing state expenditures on home and community-based services (HCBS). As detailed in State Medicaid Direct Letter #21-003, issued by the Centers for Medicare & Medicaid Services (CMS) on May 13, 2021 (the SMDL), CMS affords states the ability to invest or reinvest these funds in a variety of ways that expand and enhance investments in Medicaid-covered HCBS, address COVID-related needs, and build HCBS capacity. While these enhanced funds are generated until April 1, 2022, states may expend these funds any time before March 31, 2024.

Support the Transition to Article 29-I Health Facility Core Limited Health Related Services

Background: New York Medicaid-covered children and youth in the care of Voluntary Foster Care Agencies (VFCAs) or placed in foster homes certified by LDSS are in the process of being enrolled in MMC Plans on July 1, 2021, including Mainstream MMC plans and HIV Special Needs Plans (HIV-SNPs), unless they are otherwise excluded or exempt from mandatory MMC. As a result of the pandemic, the transition date has been significantly impacted.

Access to comprehensive, high quality health care is essential to children and youth placed in foster care. Children and youth in the foster care system have higher rates of birth defects, developmental delays, mental/behavioral health needs, and physical disabilities than children and youth from similar socio-economic backgrounds outside of the foster care system. Children and youth in foster care have a high prevalence of medical and developmental problems and utilize inpatient and outpatient mental health services at a rate 15 – 20 times higher than the general pediatric Medicaid population. The impact of the trauma these children/youth experience is profound. For this reason, it is essential that there be immediate access to services upon a child or youth's placement in foster care, and no interruption in the provision of ongoing services as a result of this transition.

All Licensed Article 29-I Health Facilities are required to provide, or make available through a contract arrangement, all Core Limited Health-Related Services. The five Core Limited Health-Related Services play a vital role in assuring all necessary services are provided in the specified time frames; children, parents and caregivers are involved in the planning and support of treatment, as applicable; information is shared appropriately among professionals involved in the child's care; and all health-related information and documentation results in a comprehensive, person-centered treatment plan. Core Limited Health-Related Services are reimbursed with a Medicaid residual per diem rate paid to 29-I Health Facilities on a per child, per day basis to cover the costs of these services. The services include: Skill Building (provided by Licensed Behavioral Health Practitioners (LBHPs) as described in Article 29-I VFCA Health

Facilities License Guidelines and any subsequent updates); Nursing Services; Medicaid Treatment Planning and Discharge Planning; Clinical Consultation and Supervision Services; and VFCA Medicaid Managed Care Liaison and Administrator services.

The per diem rates established for these services were established prior to the pandemic and do not take into account the significant impact of the pandemic on children in the care of the 29-I Health Facilities, or the additional administrative burden on the providers of the delays in the transition of this population and the 29-I services into managed care.

Proposal:

Eligible Providers: Article 29-I Health Facilities

Description: Implement a rate adjustment of 25 percent, retroactive to October 1, 2021 until September 30, 2022 for Article 29-I Health Facility Core Limited Health Related Services Per Diem Rates. This temporary increase would assist providers to build capacity to meet the increasing needs of children.

CFTSS Rate Adjustments

Background: Since 2019, Medicaid has applied a rate adjustment on CFTSS rates based on the articulated need of providers for implementation funding and to develop capacity to meet the needs of children, youth, and families. CFTSS providers previously had an enhanced rate that reduced gradually to meet the base rate.

Providers and stakeholders are reporting capacity concerns, resulting in access issues and waitlists for CFTSS. Additionally, more children and youth are presenting for behavioral health services, including CFTSS, due to the impact of COVID-19. These clinical Medicaid services are the entry point to assist children, youth and families in early intervention and prevent the need for institutional levels of care.

Proposal:

Eligible Providers: CFTSS providers

Description: Apply the 14% rate adjustment to CFTSS rates, including "off-site" rates, retroactive to October 1, 2021 until September 30, 2022.

Appendix IV
2021 Title XIX State Plan
Fourth Quarter Amendment
Public Notice

For publication in the January 19th edition of the New York State Register

Public Notice
NYS 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 non-institutional services to comply with enacted federal statutory provisions of Section 9817 of the American Rescue Plan Act of 2021 (ARPA).

Non-Institutional Services

The following is a clarification to the September 15, 2021 noticed provision to enhance (increase) state established reimbursement rates.

With clarification, State established rates will be enhanced for state-plan approved Children and Family Treatment and Support Services (CFTSS) through September 30, 2022.

With clarification, State established rates for Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) preventive residential treatment (PRT) services and rehabilitative residential treatment (RRT) will be enhanced through September 30, 2022.

The estimated annual net aggregate increase in gross Medicaid expenditures as a result of the proposed amendments for both CFTSS and EPSDT PRT and RRT services is $33,750,706.

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. Individuals without

For publication in the
January 19th edition of the
New York State Register

Internet access may view the State Plan Amendments at any local (county) social services district.

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:

New York State Department of Health
Division of Finance and Rate Setting
99 Washington Ave – One Commerce Plaza
Suite 1432
Albany, New York 12210
spa_inquiries@health.ny.gov

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 non-institutional services to comply with enacted federal statutory provisions of Section 9817 of the American Rescue Plan Act of 2021 (ARP) which, subject to approval of the state's initial spending plan and narrative (Spending Plan) by the Centers for Medicare and Medicaid Services (CMS), provides a ten percent increase in Federal Medical Assistance Percentage (FMAP) to state Medicaid programs from April 1, 2021 to March 31, 2022 to supplement existing state expenditures on home and community-based services (HCBS).The following changes are proposed:

Non-Institutional Services

Contingent upon CMS approval of the Spending Plan submitted by the state, effective on or after October 1, 2021, this notice proposes to enhance (increase) state established reimbursement rates as follows:

State established rates will be enhanced for state-plan approved Children and Family Treatment and Support Services (CFTSS) by an additional 14 percent for the period October 1, 2021 through March 31, 2022 based to aid providers in the recovery of the COVID emergency. The following CFTSS will be enhanced: Other Licensed Practitioners (OLP), Community Psychiatric Supports and Treatment (CPST), Psychosocial Rehabilitation (PSR), Youth Peer Support (YPS), Crisis Intervention (CI) and Family Peer Support Services (FPSS).

State established rates for Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) preventive residential treatment (PRT) services and rehabilitative residential treatment (RRT) will be enhanced by an additional twenty-five (25) percent for the period October 1, 2021 through March 31, 2022 to aid providers in the recovery of the COVID emergency.

The estimated annual net aggregate increase in gross Medicaid expenditures as a result of the proposed amendments for both CFTSS and EPSDT PRT and RRT services is $15,400,000.

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. Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

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
Commissioner's Determination on Indoor Masking Pursuant to 10 NYCRR 2.60

Pursuant to 10 NYCRR 2.60, I hereby issue the following determination, which includes findings of necessity, to support the face masking/covering requirements set forth below:

Findings of necessity:

The Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the Delta COVID-19 variant, which is approximately twice as transmissible as the SARS-CoV-2 strain. Since early July, cases have risen 10-fold, and 95 percent of sequenced recent positives in New York State were the Delta variant.

Certain settings and areas (e.g., healthcare, schools, and public places located in CDC-identified areas of substantial or high community transmission) pose increased challenges and urgency for controlling the spread of this disease because of the vulnerable populations served, the disproportionate percentage of individuals (e.g.,

children) who are not yet eligible for the COVID-19 vaccination, and/or the substantial to high levels of community transmission.

The above findings demonstrate the necessity for the implementation of layered prevention strategies, which includes face coverings/masks. COVID-19 spreads through respiratory droplets, and several studies have shown that appropriate face coverings/masks reduce the spray of droplets when worn correctly, fully covering one's nose and mouth. Additionally, as noted by the CDC, multiple real-world studies have shown a substantial decrease in SARS-CoV-2 transmission, including:

• Mask use during an outbreak aboard the USS Theodore Roosevelt, a close, congregate environment, was associated with 70% decrease in risk of infection.

• A study from Thailand documented that those who reported mask use during high-risk exposures experienced a more than 70% reduced risk of acquiring the disease compared to those who did not report such mask use during high-risk exposures.

• A study in China demonstrated that mask use by both the index patient and family contacts before symptom onset reduced secondary transmission within households by 79%.

Further, as also reported by the CDC, research supports that there are no significant health effects or changes in oxygen or carbon dioxide levels from mask wear.

Accordingly, based on the foregoing findings of necessity, I hereby issue the following masking requirements:

Face Covering/Masking Requirements[1]

1. Healthcare settings:

a. Personnel: After careful review and consideration of CDC recommendations for face masks in healthcare settings regulated by the Department, I hereby adopt such recommendations, imposing them as requirements, where applicable. Accordingly, all personnel, regardless of vaccination status, in a healthcare setting (i.e., facilities or entities regulated under Articles 28, 36 and 40 of the Public Health Law) shall wear an appropriate face mask in accordance with applicable CDC exceptions, until this determination is modified or rescinded.

b. Visitors to Healthcare Facilities: After careful review and consideration of CDC recommendations, all visitors over age two and able to medically tolerate a face covering/mask shall be required to wear a face covering/mask in health care facilities, regardless of vaccination status, subject to applicable CDC exceptions, and until this determination is modified or rescinded.

2. Adult care facilities (ACFs) regulated by the Department:

a. Personnel: After careful review and consideration of the core principles for infection control to protect the health and safety of both fully vaccinated and unvaccinated residents, all ACF personnel, regardless of vaccination status, shall wear an appropriate face mask if providing direct medical care and at a minimum, a cloth face covering by other staff in such settings, in accordance with any applicable CDC exceptions, until this determination is modified or rescinded.

b. Visitors: After careful review and consideration of CDC recommendations, unvaccinated visitors, who are over age two and able to medically tolerate a face covering/mask shall be required to wear a face covering/mask in such setting, subject to CDC exceptions, and until this determination is modified or rescinded.

3. P-12 school settings:

a. After careful review and consideration of CDC recommendations for face coverings/masks in school settings, I hereby adopt such recommendations, imposing them as requirements, where applicable, until this determination is modified or rescinded[2]. Accordingly, universal masking of teachers, staff, students, and visitors to P-12 schools over age two and able to medically tolerate a face covering/mask and regardless of vaccination status, is required until this determination is modified or rescinded. Such requirement is subject to applicable CDC-recommended exceptions.

4. Correctional facilities and detention centers:

a. Incarcerated/Detained Persons and Staff: After careful review and consideration of CDC recommendations for face coverings/masks, all incarcerated/detained Persons and staff shall wear an appropriate face covering/mask when social distancing cannot be maintained, and in accordance with applicable CDC exceptions (e.g., eating and sleeping),until this determination is modified or rescinded.

b. Visitors: After careful review and consideration of CDC recommendations for face coverings/masks in correctional facilities and detention centers, all visitors over age two and able to medically tolerate a face covering/mask shall wear an appropriate face covering/mask in accordance with applicable CDC exceptions, until this determination is modified or rescinded. Correctional facilities and detention centers may impose their own policies for private visitation.

5. Homeless Shelters (including overnight emergency shelters, day shelters, and meal service providers):

a. After careful review and consideration of CDC recommendations, all clients, visitors, staff, and volunteers over age two and able to medically tolerate a face covering/mask shall wear an appropriate face mask/covering regardless of vaccination status, when social distancing cannot be maintained and in accordance with applicable CDC exceptions (e.g., eating and sleeping), until this determination is modified or rescinded.

6. Public Transportation Conveyances and at Transportation Hubs

a. After careful review and consideration of CDC recommendations for face coverings/masks on public transportation conveyances and at transportation hubs, all persons, over age two and able to medically tolerate a face covering/mask, regardless of vaccination status, shall wear an appropriate face covering/mask while in indoor areas of conveyances or while indoors at transportation hubs, in accordance with applicable CDC exceptions, until this determination is modified or rescinded.

Updates to the above referenced CDC recommendations will not necessarily require issuance of a revised or modified determination. However, such CDC recommendations will be continuously monitored by the Department, and updated determinations issued, as appropriate.

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[1] Nothing in this determination shall be interpreted as inconsistent with the Americans with Disabilities Act (ADA), workplace safety guidelines, or applicable federal regulations.

[2] Guidance from American Academy of Pediatrics was also reviewed when making face covering/masking determinations in school settings, which is consistent with the above referenced CDC recommendations.

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 services to comply with Section 2826 of New York Public Health Law. The following changes are proposed:

Long Term Care Services

Temporary rate adjustments have been approved for services related to providers that are undergoing closure, merger, consolidation, acquisition or restructuring themselves or other health care providers. The temporary rate adjustment has been reviewed and approved for United Helpers Canton Nursing Home, Inc. with aggregate payment amounts totaling up to $11,781,222 for the period September 16, 2021 through March 31, 2022 and $792,070 for the period April 1, 2022 through March 31, 2023.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2021/2022 is $11,781,222 and $792,070 for state fiscal year 2022/2023.

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. Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

For the New York City district, copies will be available at the following places:

Appendix V
2021 Title XIX State Plan
Fourth Quarter Amendment
Responses to Standard Funding Questions

NON-INSTITUTIONAL SERVICES
State Plan Amendment #21-0055

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 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 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 general 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 not supplemental or enhanced payments.

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 services we are proposing are for EPSDT only; they are not hospital or clinic services and not calculated for the UPL. This question does not apply.

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: There are various state agencies that perform audits each year to determine the appropriateness of Medicaid payments. In the event that inappropriate payments are determined, recoupments would be initiated, and the Federal share would be returned to CMS within the associated quarterly expenditure report.

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.