



Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

September 30, 2022

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 #22-0081
Non-Institutional Services

Dear Mr. McMillion:

The State requests approval of the enclosed amendment #22-0081 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective July 1, 2022 (Appendix I). This amendment is being submitted based on 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 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 enacted legislation is 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 June 29, 2022, is also enclosed for your information (Appendix IV). In addition, responses to the five standard funding questions is 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,



Amir Bassiri
Medicaid Director
Office of Health Insurance Programs

Enclosures

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER _____	2. STATE _____
3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT XIX XXI	
4. PROPOSED EFFECTIVE DATE	
5. FEDERAL STATUTE/REGULATION CITATION	6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars) a. FFY _____ \$ _____ b. FFY _____ \$ _____
7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT	8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)


TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

9. SUBJECT OF AMENDMENT

10. 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:

11. SIGNATURE OF STATE AGENCY OFFICIAL 	15. RETURN TO
12. TYPED NAME	
13. TITLE	
14. DATE SUBMITTED September 30, 2022	

FOR CMS USE ONLY	
16. DATE RECEIVED	17. DATE APPROVED

PLAN APPROVED - ONE COPY ATTACHED	
18. EFFECTIVE DATE OF APPROVED MATERIAL	19. SIGNATURE OF APPROVING OFFICIAL
20. TYPED NAME OF APPROVING OFFICIAL	21. TITLE OF APPROVING OFFICIAL

22. REMARKS

SPA 22-0081
Attachment A
Annotated Pages

Annotated Page: 2(p)(i)

Appendix I
2022 Title XIX State Plan
Third Quarter Amendment
Amended SPA Pages

New York
2(g)(2)

1905(a)(9) Clinic Services

APG Reimbursement Methodology – Freestanding Clinics

The following links direct users to the various definitions and factors that comprise the APG reimbursement methodology, which can also be found in aggregate on the APG website at http://www.health.ny.gov/health_care/medicaid/rates/apg/index.htm. In addition, prior period information associated with these links is available upon request to the Department of Health.

Contact Information:

http://www.health.ny.gov/health_care/medicaid/rates/apg/index.htm Click on "Contacts."

3M APG Crosswalk*:

http://www.health.ny.gov/health_care/medicaid/rates/apg/index.htm Click on "3M Versions and Crosswalks," then on "3M APG Crosswalk" toward bottom of page, and finally on "Accept" at bottom of page.

APG Alternative Payment Fee Schedule; updated as of ~~01/01/11~~ 07/01/22:

http://www.health.ny.gov/health_care/medicaid/rates/methodology/index.htm Click on "Alternative Payment Fee Schedule."

APG Consolidation Logic; logic is from version ~~3.17.22.1 and 3.17.22.2~~ 3.17.22.3 and 3.17.22.4, updated as of ~~01/01/22 and 04/01/22~~ 07/01/22 and 10/01/22:

http://www.health.ny.gov/health_care/medicaid/rates/bundling/ Click on "2022"

APG 3M Definitions Manual; version 3.17 updated as of and ~~01/01/22 and 04/01/22~~ 07/01/22 and 10/01/22:

http://www.health.ny.gov/health_care/medicaid/rates/methodology/index.htm Click on "3M Versions and Crosswalk."

APG Investments by Rate Period; updated as of 07/01/10:

http://www.health.ny.gov/health_care/medicaid/rates/methodology/index.htm Click on "Investments by Rate Period."

APG Relative Weights; updated as of ~~01/01/22~~ 07/01/22:

http://www.health.ny.gov/health_care/medicaid/rates/methodology/index.htm Click on "Weights, Proc Weights, and APG Fee Schedule Amounts."

Associated Ancillaries; updated as of 01/01/20:

http://www.health.ny.gov/health_care/medicaid/rates/apg/index.htm Click on "Ancillary Policy."

*Older 3M APG crosswalk versions available upon request.

TN _____ #22-0081
Supersedes TN _____ #22-0009

Approval Date _____
Effective Date July 1, 2022

New York
2(p)(i)

1905(a)(9) Clinic Services

Effective for dates of service on and after September 1, 2009, payments to freestanding clinics for the following services will be based on fees or rates established by the Department of Health: (1) wheelchair evaluations, (2) eyeglass dispensing, and (3) individual psychotherapy services provided by licensed social workers to persons under the age of 21, and to persons requiring such services as a result of or related to pregnancy or giving birth, and (4) individual psychotherapy services provided by licensed social workers at freestanding clinics that provided, billed for, and received payment for these services between January 1, 2007 through December 31, 2007. Except as otherwise noted in the plan, state-developed fee schedule rates are the same for both governmental and private providers. A link to the APG alternative rates for all periods is available in the APG Reimbursement Methodology – Freestanding Clinics section.

Effective for dates of service on and after July 1, 2022, Medicaid will reimburse freestanding clinics for services provided by Licensed Mental Health Counselors (LMHCs), operating within their scope of practice pursuant to Title 8, Article 163, Section 8403 of the New York State Education Law and Section 52.32, Subpart 79-9, of the Regulations of the Commissioner of Education, and for services rendered by LMHC limited permit holders operating under the supervision of an LMHC. Reimbursement for LMHCs and LMHC limited permit holders will be based on rates established by the Department of Health. Except as otherwise noted in the plan, state-developed rates are the same for both governmental and private providers. Reimbursement for LMHC services will be done via rate codes, which are published by the Department on the “Alternative Payment Fee Schedule” and are effective for services provided on or after July 1, 2022. The rates are published on the Department of Health website at the following link:

https://www.health.ny.gov/health_care/medicaid/rates/methodology/alt_payment_fee.htm

Effective for dates of service on and after July 1, 2022, Medicaid will reimburse freestanding clinics for services provided by Licensed Marriage and Family Therapists (LMFTs), operating within their scope of practice pursuant to Title 8, Article 163, Section 8403 of the New York State Education Law and Section 52.33, Subpart 79-10, of the Regulations of the Commissioner of Education, and for services rendered by LMFT limited permit holders operating under the supervision of an LMFT. Reimbursement for LMFTs and LMFT limited permit holders will be based on rates established by the Department of Health. Except as otherwise noted in the plan, state-developed rates are the same for both governmental and private providers. Reimbursement for LMFT services will be done via rate codes, which are published by the Department on the “Alternative Payment Fee Schedule”, and are effective for services provided on or after July 1, 2022. The rates are published on the Department of Health website at the following link:

https://www.health.ny.gov/health_care/medicaid/rates/methodology/alt_payment_fee.htm

VII. Rates for services provided in freestanding clinic and ambulatory surgery center facilities located outside of New York State will be as follows:

- APG rates in effect for similar services for providers located in the downstate region of New York State will apply to services provided by out-of-state providers located in the New Jersey counties of Sussex, Passaic, Bergen, Hudson, Essex, Union, Middlesex and Monmouth; in the Pennsylvania county of Pike; and in the Connecticut counties of Fairfield and Litchfield;

TN #22-0081

Approval Date _____

Supersedes TN #15-0013

Effective Date July 1, 2022

New York
2(p)(i.a)

1905(a)(9) Clinic Services

- and rates in effect for similar services for providers located in the upstate region of New York State will apply to all other out-of-state providers.
- In the event the Department determines that an out-of-state provider is providing services which are not available within New York State, the Department will negotiate payment rates and conditions with such a provider up to, but not in excess of, the provider's usual and customary charges. Prior approval by the Department will be required with regard to services provided by such providers.
- For the purpose of APG reimbursement to out-of-state providers, the downstate region of New York State will consist of the New York counties of Bronx, New York, Kings, Queens, Richmond, Nassau, Suffolk, Westchester, Rockland, Orange, Putnam and Dutchess, and the upstate region of New York State will consist of all other New York counties.

System updating

The following elements of the APG reimbursement system will be updated no less frequently than annually:

- the listing of reimbursable APGs and the relative weight assigned to each APG;
- the base rates;
- the applicable ICD-10-CM codes utilized in the APG software system;
- the applicable CPT-4/HCPCS codes utilized in the APG software system; and
- the APG software system.

TN #22-0081

Approval Date

Supersedes TN #NEW

Effective Date July 1, 2022

Appendix II
2022 Title XIX State Plan
Third Quarter Amendment
Summary

SUMMARY
SPA #22-0081

This State Plan Amendment proposes for freestanding clinic and ambulatory surgery center services to update the Ambulatory Patient Group (APG) methodology to reflect the recalculated weight and component updates that will become effective on or after July 1, 2022, and begin the Licensed Mental Health Counselors (LMHCs) services and Licensed Marriage and Family Therapists (LMFTs) services effective for dates of service on and after July 1, 2022.

Appendix III
2022 Title XIX State Plan
Third Quarter Amendment
Authorizing Provisions

SPA 22-0081

PHL §2807(2-a)(e):

(e) (i) notwithstanding any inconsistent provisions of this subdivision, the commissioner shall promulgate regulations establishing, subject to the approval of the state director of the budget, methodologies for determining rates of payment for the services described in this subdivision. Such regulations shall reflect utilization of the ambulatory patient group (APG) methodology, in which patients are grouped based on their diagnosis, the intensity of the services provided and the medical procedures performed, and with each APG assigned a weight reflecting the projected utilization of resources. Such regulations shall provide for the development of one or more base rates and the multiplication of such base rates by the assigned weight for each APG to establish the appropriate payment level for each such APG. Such regulations may also utilize bundling, packaging and discounting mechanisms.

If the commissioner determines that the use of the APG methodology is not, or is not yet, appropriate or practical for specified services, the commissioner may utilize existing payment methodologies for such services or may promulgate regulations, and may promulgate emergency regulations, establishing alternative payment methodologies for such services.

(ii) Notwithstanding this subdivision and any other contrary provision of law, the commissioner may incorporate within the payment methodology described in subparagraph (i) of this paragraph payment for services provided by facilities pursuant to licensure under the mental hygiene law, provided, however, that such APG payment methodology may be phased into effect in accordance with a schedule or schedules as jointly determined by the commissioner, the commissioner of mental health, the commissioner of alcoholism and substance abuse services, and the commissioner of mental retardation and developmental disabilities.

(iii) Regulations issued pursuant to this paragraph may incorporate quality related measures limiting or excluding reimbursement related to potentially preventable conditions and complications; provided however, such quality related measures shall not include any preventable conditions and complications not identified for Medicare nonpayment or limited payment.

Regulation: 10 NYCRR 86-8.11: <https://regs.health.ny.gov/content/section-86-811-system-updating-and-incorporation-reference>

**Appendix IV
2022 Title XIX State Plan
Third 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.

NOTICE OF PUBLIC HEARING Department of State Committee on Open Government

Pursuant to Chapter 56 of the Laws of 2022, the Committee on Open Government hereby gives notice of a public hearing:

Time and Date: July 1, 2022 at 10:00 a.m.

Place: One Commerce Plaza, 99 Washington Avenue, Suite 1112, Albany, NY 12231 and will stream the hearing by WebEx using a link and credentials to be posted on the Committee website (www.opengovernment.ny.gov).

Purpose: To hear all interested parties and citizens regarding the adoption of proposed Resolution No. 1 of 2022, relating to the authorization of members of the Committee to attend meetings by videoconferencing under extraordinary circumstances.

Further information, including access to a copy of said proposed resolution is available at www.opengovernment.ny.gov or will be mailed upon request by calling (518) 474-2518. Written testimony may be mailed to "Committee on Open Government, 99 Washington Avenue, Suite 650, Albany, NY 12231" or e-mailed to coog@dos.ny.gov.

For further information, contact: Kristin O'Neill, One Commerce Plaza, 99 Washington Ave., Ste. 650, Albany, NY 12231, (518) 474-2551, kristin.oneill@dos.ny.gov

PUBLIC NOTICE Department of Agriculture and Markets

In the Matter of Resuming Activities under the Sour Cherry Marketing Order Pursuant to Sections 16-Y and 16-Z of Urban Development Corporation Act 174/68 and Section 202.13 of Title One of the Official Compilation of Codes, Rules and Regulations of the State of New York

NOTICE OF SUSPENSION REMOVAL

As provided in section 16-Y(3)(e) of the Urban Development Corporation Act 174/68 ("UDCA"), the Commissioner of the Department of Agriculture and Markets, pursuant to a delegation of authority issued by the president of Empire State Development ("ESD"), issued an order suspending the activities of the Sour Cherry Marketing Order for a period through the 2021-22 growing and marketing season.

The Commissioner of the Department of Agriculture and Markets, pursuant to that same delegation of authority, is authorized to lift such a suspension prior to the conclusion of such growing and marketing season and resume SCMO activities if, in consultation with the SCMO Advisory Committee, it is deemed appropriate.

FINDINGS AND ORDER

After consulting with the SCMO Advisory Committee, I hereby find that SCMO activities should be resumed prior to July 1st, 2022 to conduct marketing activities prior to the end of the previously ordered suspension period to permit the use of unspent SCMO funding for the benefit of New York's sour cherry industry.

BASED UPON THE FOREGOING, I, Richard A. Ball, duly delegated by the President of ESD to make the following determination pursuant to UDCA section 16-Y (3)(e), hereby lift the current suspension of the operation of the Sour Cherry Marketing Order.

Richard A. Ball, Commissioner

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 July 2022 will be conducted on July 20 and July 21 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. One, Albany, NY 12239, (518) 473-6598.

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 revise provisions of the Ambulatory Patient Group (APG) reimbursement methodology. The following changes are proposed:

Non-Institutional Services

Effective on or after July 1, 2022, the Ambulatory Patient Group (APG) reimbursement methodology is revised to include recalculated weight and component updates in order to maintain consistent reimbursement for APG payments. Also, rates of reimbursement are being established for Licensed Mental Health Counselors and Licensed Marriage and Family Therapists in hospital outpatient departments and freestanding clinics.

The estimated annual change to gross Medicaid expenditures as a result of this proposed amendment is \$3,603,802.

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

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 statutory provisions. The following changes are proposed:

Non-Institutional Services

Effective on or after July 1, 2022, the "Behavioral Health Utilization Controls" will be removed and the payment reduction for OPWDD Article 16 Clinics will no longer be applied.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2022/2023 is \$368,218.

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

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 statutory provisions. The following changes are proposed:

Non-Institutional Services

Effective for dates of service on or after July 1, 2022, the Department of Health will increase Comprehensive Psychiatric Emergency Program (CPEP) reimbursement including fees paid for full emergency visits, triage and referral visits and extended observation bed services. This investment will result in a full annual projected increase in gross Medicaid expenditures of \$20,000,000. This State Plan Amendment is necessary to adequately reimburse CPEP programs for providing these services and better meet the community's mental health needs.

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

Appendix V
2022 Title XIX State Plan
Third Quarter Amendment
Responses to Standard Funding Questions

NON-INSTITUTIONAL SERVICES
State Plan Amendment #22-0081

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.

- 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 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 receive and retain 100 percent of total Medicaid expenditures claimed by the State and the State does not require any provider to return any portion of such payments to the State, local government entities, or any other intermediary organization.

- 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 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 government 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: The Non-Federal share Medicaid provider payment (normal per diem) is funded by the following funds/funding sources through enacted appropriations authority to the Department of Health (DOH) for the New York State Medicaid program.

Payment Type	Non-Federal Share Funding	4/1/22 – 3/31/23	
		Non-Federal	Gross
Normal Per Diem	General Fund; Special Revenue Funds; County Contribution	\$184M	\$368M

1) **General Fund:** Revenue resources for the State's General Fund includes taxes (e.g., income, sales, etc.), and miscellaneous fees (including audit recoveries). Medicaid expenditures from the State's General Fund are authorized from Department of Health Medicaid.

- a. New York State Audit Recoveries: The Department of Health collaborates with the Office of the Medical Inspector General (OMIG) and the Office of the Attorney General (AG) in recovering improperly expended Medicaid funds. OMIG conducts and coordinates the investigation, detection, audit, and review of Medicaid providers and recipients to ensure they are complying with all applicable laws and regulation. OMIG recovers any improper payments through cash collections and voided claim recoveries. Cash collections are deposited into the State's General Fund to offset Medicaid costs.

In addition to cash collections, OMIG finds inappropriately billed claims within provider claims. To correct an error, OMIG and DOH process the current accurate claim, and reduce this claim by the inappropriate claim value to recoup the previous overclaim and decrease state spending.

1) Special Revenue Funds:

- a. Health Care Reform Act (HCRA) Resource Fund: as authorized in section 92-dd of New York State Finance Law and was established in 1996, pursuant to New York State Public Health Law 2807-j. HCRA resources include:

- Surcharge on net patient service revenues for specified provider types including Comprehensive Diagnostic and Treatment Centers, Ambulatory Surgery Centers.
 - The rate for commercial payors is 9.63 percent.
 - The rate for governmental payors, including Medicaid, is 7.04 percent.
 - Federal payors, including Medicare, are exempt from the surcharge.

NOTE: New York’s Health Care taxes are either broad based and uniform (as in all HFCAP assessments except for the Personal Care Provider Cash Assessment) or have a specific exemption known as the “D’Amato provision (Federal PHL section 105-33 4722 (c))” which allows the HCRA surcharges to exist in their current format. The single tax which has been determined by the State to be an impermissible provider tax is the HFCAP charge on Personal Care Providers. The State does not claim any Federal dollars for the surcharge collected in this manner in order to comply with all Federal provider tax rules.

2) Additional Resources for Non-Federal Share Funding:

County Contribution: In State Fiscal Year 2006, through enacted State legislation (Part C of Chapter 58 of the laws of 2005), New York State “capped” the amount localities contributed to the non-Federal share of providers claims. This was designed to relieve pressure on county property taxes and the NYC budget by limiting local contributions having New York State absorb all local program costs above this fixed statutory inflation rate (3% at the time).

However, in State Fiscal Year 2013 New York State provided additional relief to Localities by reducing local contributions annual growth from three percent to zero over a three-year period. Beginning in State Fiscal Year 2016, counties began paying a fixed cost in perpetuity as follows:

County	Annual Amount
New York City	\$4.882B
Suffolk	\$216M
Nassau	\$213M
Westchester	\$199M
Erie	\$185M
Rest of State (53 Counties)	\$979M
Total	\$6.835B

By eliminating the growth in localities Medicaid costs, the State has statutorily capped total Statewide County Medicaid expenditures at 2015 levels. All additional county Medicaid costs are funded by the State through State funding as described above. DOH provides annual letters to counties providing weekly contributions. Contributions are deposited directly into State escrow account and used to offset ‘total’ State share Medicaid funding.

NOTE: The Local Contribution is not tied to a specific claim or service category and instead is a capped amount based on 2015 county spending levels as stated above.

- 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 Medicaid payments under this State Plan Amendment are not supplemental 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. Under regulations at 42 CFR 447.272, States are prohibited from setting payment rates for Medicaid inpatient services that exceed a reasonable estimate of the amount that would be paid under Medicare payment principals.**

The clinic UPL demonstration utilizes cost-to-payment methodology to estimate the upper payment limit for each class of providers. The State is in the process of completing the 2022 clinic UPL as well as the Procedural Manual which describes the methodology for eligible providers and will be submitting both documents to CMS. The Medicaid payments under this State Plan Amendment will be included in the 2022 clinic UPL when it is submitted to CMS.

- 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: Providers do not receive payments that in the aggregate exceed their reasonable costs of providing services. If any providers received payments that in the aggregate exceeded their reasonable costs of providing services, the State would recoup the excess and return the Federal share of the excess to CMS on the 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 complies 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.