



# Department of Health

KATHY HOCHUL  
Governor

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

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

December 30, 2022

James G. Scott, Director  
Division of Program Operations  
Centers for Medicare & Medicaid Services  
601 E. 12th St., Room 355  
Kansas City, Missouri 64106

RE: SPA #22-0087  
Non-Institutional Services

Dear Mr. Scott:

The State requests approval of the enclosed amendment #22-0087 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective October 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 the 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 September 28, 2022, is also enclosed for your information (Appendix IV).

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

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

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 PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

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 December 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

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

New York  
5

**AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE SERVICES  
PROVIDED TO THE CATEGORICALLY NEEDY**

In addition to the limitations specified on pages 1 through 4 regarding services, the following limitations also apply to the noted services:

2a.; 2b.; 2c.; 2d.; 2j.;

Services will be provided in accordance with the utilization ~~threshold~~ review requirements described in departmental regulations, which are based on medical necessity and identified for providers in the MMIS Clinic Provider Manual. Such ~~threshold~~ review requirements are applicable to specific provider service types including medical clinics, dental clinics and mental health clinics certified under Article 28 of the Public Health Law and/or Article 31 of the Mental Hygiene Law. ~~The requirements mandate that providers obtain prior authorization based on medical necessity for the provision of services in excess of prescribed utilization thresholds per recipient per benefit year, unless the services provided were urgent or emergent in nature, or otherwise excluded.~~

~~3.~~ Laboratory Services

Services will be provided in accordance with the utilization ~~threshold~~ review requirements described in departmental regulations, which are based on medical necessity and identified for providers in the MMIS Laboratory Provider Manual. Such ~~threshold~~ review requirements are applicable to specific provider service types including laboratories. ~~The requirements mandate that providers obtain prior authorization based on medical necessity for the provision of services in excess of prescribed utilization thresholds per recipient per benefit year, unless the services provided were urgent or emergent in nature, or otherwise excluded.~~

~~5.~~ Physician Services

Services will be provided in accordance with the utilization ~~threshold~~ review requirements described in departmental regulations, which are based on medical necessity and identified for providers in the MMIS Physician Provider Manual. Such ~~threshold~~ review requirements are applicable to specific provider service types including physicians, for services furnished in the office or patient's home. ~~The requirements mandate that providers obtain prior authorization based on medical necessity for the provision of services in excess of prescribed utilization thresholds per recipient per benefit year, unless the services provided were urgent or emergent in nature, or otherwise excluded.~~

TN #22-0087

Approval Date \_\_\_\_\_

Supersedes TN #05-26

Effective Date October 1, 2022

New York  
5(a)

A utilization ~~threshold~~ review service is decremented each time a patient is seen by a physician including those times when the patient is seen by a physician and an electronic prescription/fiscal order is transmitted for medically necessary pharmaceuticals and select over the counter medications.

TN #22-0087

Approval Date \_\_\_\_\_

Supersedes TN #09-53

Effective Date October 1, 2022

New York  
6

Clinic Services

9.

Services will be provided in accordance with the utilization ~~threshold~~ review requirements described in departmental regulations which are based on medical necessity and identified for providers in the MMIS Clinic Provider Manual. Such ~~threshold~~ review requirements are applicable to specific provider service types including adult day health services, medical clinics, dental clinics and mental health clinics certified under Article 28 of the Public Health Law and/or Article 31 of the Mental Hygiene Law. ~~The requirements mandate that providers obtain prior authorization based on medical necessity for the provision of services in excess of prescribed utilization thresholds per recipients per benefit year, unless the services provided were urgent or emergent in nature, or otherwise excluded.~~

TN #22-0087

Supersedes TN #20-0066

Approval Date \_\_\_\_\_

Effective Date October 1, 2022

New York  
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TN #22-0087

Approval Date \_\_\_\_\_

Supersedes TN #20-0066

Effective Date October 1, 2022

**Appendix II**  
**2022 Title XIX State Plan**  
**Fourth Quarter Amendment**  
**Summary**

**SUMMARY**  
**SPA #22-0087**

This State Plan Amendment proposes to decrease the administrative burden on enrolled fee-for-service Medicaid members and providers but will continue to meet the federal regulatory requirements at 42 CFR Part 456, Subparts A and B. This will be accomplished through continued utilization monitoring in a post-payment review process, with referral to the Office of Health Insurance Program (OHIP) pre-payment Provider on Review Program, and to the Office of the Medicaid Inspector General (OMIG) where suspected fraud, waste or abuse are identified in the unnecessary or inappropriate use of care, services or supplies by members or providers. The monitoring of service utilization will move from a prospective to a retrospective function and remove the requirement for provider-submitted increase requests, thereby eliminating the current administrative burden to members and providers of requesting increases to benefit limits. This should also remove confusion caused for members and providers which should result in fewer complaints.

**Appendix III**  
**2022 Title XIX State Plan**  
**Fourth Quarter Amendment**  
**Authorizing Provisions**

**SPA 22-0087**

SECTION 365-G

Utilization review for certain care, services and supplies

Social Services (SOS) CHAPTER 55, ARTICLE 5, TITLE 11

§ 365-g. Utilization review for certain care, services and supplies.

1. The department may implement a system for utilization review, pursuant to this section, for persons eligible for benefits under this title, to evaluate the appropriateness and quality of medical assistance, and safeguard against unnecessary utilization of care and services, which shall include a post-payment review process to develop and review beneficiary utilization profiles, provider service profiles, and exceptions criteria to correct misutilization practices of beneficiaries and providers; and for referral to the office of Medicaid inspector general where suspected fraud, waste or abuse are identified in the unnecessary or inappropriate use of care, services or supplies furnished under this title.
  
2. The department may review utilization by provider service type, medical procedure and patient, in consultation with the state department of mental hygiene, other appropriate state agencies, and other stakeholders including provider and consumer representatives. In reviewing utilization, the department shall consider historical recipient utilization patterns, patient-specific diagnoses and burdens of illness, and the anticipated recipient needs in order to maintain good health. The system for utilization review shall not be used to determine a recipient's medical care, services or supplies under this section.
  
3. The utilization review established pursuant to this section shall not apply to developmental disabilities services provided in clinics certified under article twenty-eight of the public health law, or article twenty-two or article thirty-one of the mental hygiene law.
  
4. Utilization review established pursuant to this section shall not apply to services, even though such services might otherwise be subject to utilization review, when provided as follows:
  - (a) through a managed care program;
  - (b) subject to prior approval or prior authorization;
  - (c) as family planning services;
  - (d) as methadone maintenance services;

(e) on a fee-for-services basis to in-patients in general hospitals certified under article twenty-eight of the public health law or article thirty-one of the mental hygiene law and residential health care facilities, with the exception of podiatrists' services;

\*\* (f) for hemodialysis;

\*\* NB Effective until July 1, 2023

\*\* (f) for hemodialysis; or

\*\* NB Effective July 1, 2023

\*\* (g) through or by referral from a preferred primary care provider designated pursuant to subdivision twelve of section twenty-eight hundred seven of the public health law;

\*\* NB Effective until July 1, 2023

\*\* (g) through or by referral from a preferred primary care provider designated pursuant to subdivision twelve of section twenty-eight hundred seven of the public health law.

\*\* NB Effective July 1, 2023

\*\* (h) pursuant to a court order; or

\*\* NB Repealed July 1, 2023

\*\* (i) as a condition of eligibility for any other public program, including but not limited to public assistance.

\*\* NB Repealed July 1, 2023

5. The department shall consult with representatives of medical assistance providers, social services districts, voluntary organizations that represent or advocate on behalf of recipients, the managed care advisory council and other state agencies regarding the ongoing operation of a utilization review system.

6. On or before February first, nineteen hundred ninety-two, the commissioner shall submit to the governor, the temporary president of the senate and the speaker of the assembly a report detailing the implementation of the utilization threshold program and evaluating the results of establishing utilization thresholds. Such report shall include, but need not be limited to, a description of the program as implemented; the number of requests for increases in service above the threshold amounts by provider and type of service; the number of

extensions granted; the number of claims that were submitted for emergency care or urgent care above the threshold level; the number of recipients referred to managed care; an estimate of the fiscal savings to the medical assistance program as a result of the program; recommendations for medical condition that may be more appropriately served through managed care programs; and the costs of implementing the program.

**Appendix IV  
2022 Title XIX State Plan  
Fourth Quarter Amendment  
Public Notice**



*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 recently enacted statutory provisions in § 365-g of the Social Services Law with regards to certain prospective utilization thresholds.

The following changes are proposed:

**Non-Institutional Services**

Effective on or after October 1, 2022, this notice proposes to decrease an administrative burden on enrolled fee-for-service Medicaid members and providers by eliminating the requirement for provider submitted benefit increase requests for certain services. The current regulatory thresholds established pursuant to the statutory authority of § 365-g are physician and clinic services (excluding anesthesiology and psychiatric services, mental health clinic services; and article 28 ambulatory clinic services ordered to test, diagnose, or treat a member); laboratory services, and dental clinic services. This proposal does not affect drug utilization review. The Department will continue to meet the federal regulatory requirements at 42 CFR Part 456, Subparts A and B, through continued utilization monitoring, in a post-payment review process, with referral to the Department's pre-payment Provider on Review Program, and to the Office of the Medicaid Inspector General (OMIG) where suspected fraud, waste or abuse are identified in the unnecessary or inappropriate use of care, services or supplies by members or providers.

The estimated net aggregate decrease in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2022/2023 is (\$23,100).

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](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.

**Non-Institutional Services**

State established rates for state-plan approved Children and Family Treatment and Support Services (CFTSS) will continue the additional 25 percent enhancement initially authorized as a temporary increase under provisions of Section 9817 of the American Rescue Plan Act of 2021 (ARPA). Effective on or after October 1, 2022, the following CFTSS rate enhancements will continue under the state-plan: 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).

The estimated net aggregate increase in gross Medicaid expenditures as a result of the proposed amendments for CFTSS services is \$1,167,032.

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](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.

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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

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**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 1945 of the Social Security Act and other enacted statutory provisions. The following changes are proposed:

**Non-Institutional Services**

Effective on or after October 1, 2022, the proposed amendment adds an annual assessment fee to the Health Home program to ensure that any child eligible for Home and Community-Based Services (HCBS) under a waiver, demonstration, or State Plan authority will be