

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

June 30, 2011

Mr. Michael Melendez
Associate Regional Administrator
Department of Health & Human Services
Centers for Medicare & Medicaid Services
New York Regional Office
Division of Medicaid and Children's Health
26 Federal Plaza - Room 3800
New York, New York 10278

RE: SPA #11-02

Dear Mr. Melendez:

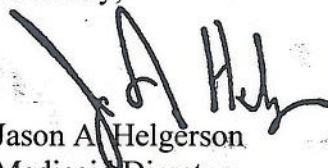
The State requests approval of the enclosed amendment #11-02 to the Title XIX (Medicaid) State Plan effective April 1, 2011 (Appendix I).

A summary of the plan amendment is provided in Appendix II. Copies of pertinent sections of proposed State statute are enclosed for your information (Appendix III).

In keeping with our continued agreement, this amendment is being sent to you prior to the end of the second quarter.

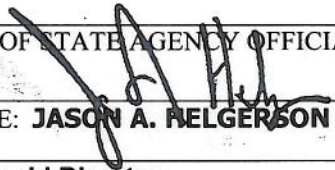
If you or your staff have any questions or need any assistance, please contact Karla Knuth, of my staff, at (518) 473-8822.

Sincerely,



Jason A. Helgerson
Medicaid Director
Deputy Commissioner
Office of Health Insurance Programs

Enclosures

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: Centers for Medicare & Medicaid Services		1. TRANSMITTAL NUMBER: 11-02	2. STATE New York
		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE April 1, 2011	
5. TYPE OF PLAN MATERIAL <i>(Check One)</i> : <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT <i>(Separate Transmittal for each amendment)</i>			
6. FEDERAL STATUTE/REGULATION CITATION: Section 1902(a)(10)(A)(i)(I) of the Social Security Act; 42 CFR 473(b)(3)(C); 42 CFR 435.222		7. FEDERAL BUDGET IMPACT: a. FFY 10/1/10 – 9/30/11 \$0 b. FFY 10/1/11 – 9/30/12 \$0	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 2.2-A Page 2 Attachment 2.2-A Page 13 Supplement 8A to Attachment 2.6-A Page 3 Supplement 8b to Attachment 2.6-A Page 6		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT <i>(If Applicable)</i> : Attachment 2.2-A Page 2 Attachment 2.2-A Page 13 Supplement 8A to Attachment 2.6-A Page 3 Supplement 8b to Attachment 2.6-A Page 6	
10. SUBJECT OF AMENDMENT: Kinship Guardianship Assistance			
11. GOVERNOR'S REVIEW <i>(Check One)</i> : <input checked="" type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> OTHER, AS SPECIFIED: <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL: 		16. RETURN TO: New York State Department of Health Corning Tower Empire State Plaza Albany, New York 12237	
13. TYPED NAME: JASON A. HELGESON			
14. TITLE: Medicaid Director Deputy Commissioner Office of Health Insurance Programs			
15. DATE SUBMITTED: June 30, 2011			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED:		18. DATE APPROVED:	
PLAN APPROVED – ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL:		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME:		22. TITLE:	
23. REMARKS:			

Appendix I
2011 Title XIX State Plan
First Quarter Amendment
Non-Institutional Services
Amended SPA Pages

Revision: CMS-PM-

ATTACHMENT 2.2-A

Page 2

OMB NO.:

State:

Agency* Citation(s) Groups Covered

A. Mandatory Coverage - Categorically Needy and Other Required Special Groups (Continued)

2. Deemed Recipients of AFDC.

1902(a)(10)(A)(i)(I)
of the Act

b.

c.

1902(a)(10)(A)
(i)(I) of the Act

d. An assistance unit deemed to be receiving AFDC for a period of four calendar months because the family becomes ineligible for AFDC as a result of collection or increased collection of support.

[1902(a) of the Act

e. Individuals deemed to be receiving AFDC who meet the requirements of section 473(b)(1) or (2) for whom an adoption assistance agreement is in effect or foster care maintenance payments are being made under title IV-E of the Act.]

42 CFR 435.115(e)
and 42 CFR 435.145
1902(a)(10)(A)(i)(I), 473(b)(1),
and 473(b)(3) of the Act

e. Title IV-E Subsidized Adoption, Foster Care, or Kinship Guardianship Assistance for Children. Individuals who meet the requirements of section 473(b) of the Act for whom an adoption assistance agreement is in effect or foster care maintenance or kinship guardianship assistance payments are made under title IV-E of the Act.

*Agency that determines eligibility for coverage.

TN#: 11-02

Approval Date: _____

Supersedes TN#: 91-76

Effective Date: 04-01-2011

State: New York

Agency*	Citation (s)	Groups Covered
B. Optional Groups Other Than the Medically Needy (Continued)		
42 CFR 435.222	<input checked="" type="checkbox"/> b.	Reasonable classifications of individuals described in (a) above, as follows:
	<input checked="" type="checkbox"/> (1)	Individuals for whom public agencies are assuming full or partial financial responsibility and who are:
		(a) In foster homes (and are under the age of ____).
		(b) In private institutions (and are under the age of ____).
		(c) In addition to the group under b. (1) (a) and (b), individuals placed in foster homes or private institutions by private, nonprofit agencies (and are under the age of ____).
	<input checked="" type="checkbox"/> (d)	<u>children under the age of 21 for whom guardianship assistance payments are made and individuals in the care and custody of the local social services district commissioner or who are in the care and custody of the Office of Children and Family services for the purpose of receiving foster care (and are under the age of 21).</u>
	_____ (2)	Individuals in adoptions subsidized in full or part by a public agency (who are under the age of ____).
	_____ (3)	Individuals in NFs (who are under the age of ____). NF services are provided under this plan.
	_____ (4)	In addition to the group under (b) (3), individuals in ICFs/[MR]DD (who are under the age of ____).

TN# 11-02 Approval Date: _____
 Supersedes TN#: 05-11 Effective Date: 04-01-2011

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: New York State Department of Health

**MORE LIBERAL METHODS OF TREATING INCOME
UNDER SECTION 1902 (r) (2) OF THE ACT**

Section 1902 (f) State Non-Section 1902(f)State

1. Disregard deemed income of parents in determining eligibility for pregnant women under 1902(a)(10)(A)(i)(IV) of the Act.
2. In determining eligibility for pregnant women and infants under age 1, as referenced under Section 1902(a)(10)(A)(ii)(IX), disregard the difference between 185% and 200% of the Federal Poverty Level by family size as revised annually in the Federal Register.
3. In determining eligibility for children under age 21 for whom kinship guardianship assistance payments are made on behalf of or who are in the care and custody of the local social services district commissioner or in the care and custody of the Commissioner of the Office of Children and Family Services, as authorized by Sections 1902(a)(10)(A)(ii)(I) and 1905(a)(i) of the Act and by 42 CFR 435.222(b)(1) and as described in Attachment 2.2-A, page 13, paragraph B(b)(1)(d), disregard all income.

TN#: 11-02

Approval Date: _____

Supersedes TN#: 08-45

Effective Date: 04-01-2011

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State: New York

**MORE LIBERAL METHODS OF TREATING – RESOURCES
UNDER SECTION 1902 (r) (2) OF THE ACT**

Section 1902 (f) State Non-Section 1902 (f) State

1. In determining eligibility for children under age 21 for whom kinship guardianship assistance payments are made on behalf of or who are in the care and custody of the local social services district commissioner or in the care and custody of the Commissioner of the Office of Children and Family Services, as authorized by Sections 1902(a)(10)(A)(ii)(I) and 1905(a)(i) of the Act and by 42 CFR_435.222(b)(1) and as described in Attachment 2.2-A, page 13, paragraph B(b)(1)(d), disregard all resources.

TN#: 11-02

Approval Date: _____

Supersedes TN#: 10-02

Effective Date: 04-01-2011

Appendix II
2011 Title XIX State Plan
First Quarter Amendment
Non-Institutional Services
Summary

Summary
SPA #11-02

This State Plan Amendment proposes to extend Medicaid coverage to Title IV-E and non IV-E children who have been discharged from foster care and who are receiving kinship guardianship assistance payments under the Kinship Guardianship Assistance Program (KinGap). KinGap provides monthly payments and other benefits to qualified relative guardians of foster children who have been discharged from foster care. KinGap provides safe permanent placements with relatives who receive financial and medical coverage for the continued care of a relative child.

Appendix III
2011 Title XIX State Plan
First Quarter Amendment
Non-Institutional Services
Authorizing Provisions

* TITLE 10

KINSHIP GUARDIANSHIP ASSISTANCE PROGRAM

Section 458-a. Definitions.

458-b. Kinship guardianship assistance payments.

458-c. Payments for non-recurring guardianship expenses.

458-d. Medical subsidy.

458-e. Independent living services.

458-f. Fair hearings.

* NB Effective April 1, 2011 or whenever notified by OCFS of the amendment to state title IV-E state plan, whichever is later

* § 458-a. Definitions. As used in this title:

1. "Child" shall mean a person under the age of twenty-one years whose custody, care and custody, or custody and guardianship have been committed to a social services official prior to such person's eighteenth birthday pursuant to section three hundred fifty-eight-a, three hundred eighty-four, three hundred eighty-four-a or three hundred eighty-four-b of this chapter or article three, seven or ten of the family court act.

2. "Applicable board rate" shall mean an amount equal to the monthly payment that has been made by a social services official, in accordance with section three hundred ninety-eight-a of this article and other provisions of this chapter, for the care and maintenance of the child, while such child was boarded out in the approved or certified foster family boarding home with the prospective relative guardian. Such rate shall reflect annual changes in room and board rates and clothing replacement allowances.

3. "Prospective relative guardian" shall mean a person or persons who is related to the child through blood, marriage, or adoption who has been caring for the child as a fully certified or approved foster parent for at least six consecutive months prior to applying for kinship guardianship assistance payments.

4. "Relative guardian" shall mean a person or persons who was appointed, as a guardian or permanent guardian for a child after entering into an agreement with a social services official for the receipt of payments and services in accordance with this title.

5. "Social services official" shall mean a county commissioner of social services, a city commissioner of social services, or an Indian tribe with which the office of children and family services has entered into an agreement to provide foster care services in accordance with subdivision two of section thirty-nine of this chapter.

* NB Effective April 1, 2011 or whenever notified by OCFS of the amendment to state title IV-E state plan, whichever is later

* § 458-b. Kinship guardianship assistance payments. 1. A child is eligible for kinship guardianship assistance payments under this title if the social services official determines the following:

(a) The child has been in foster care for at least six consecutive months in the home of the prospective relative guardian; and

(b) The child being returned home or adopted are not appropriate permanency options for the child; and

(c) The child demonstrates a strong attachment to the prospective relative guardian and the prospective relative guardian has a strong commitment to caring permanently for the child; and

(d) That age appropriate consultation has been held with the child, provided however with respect to a child who has attained fourteen years of age, that the child has been consulted regarding the kinship guardianship arrangement, and with respect to a child who has attained eighteen years of age, that the child has consented to the kinship guardianship arrangement.

(e) (i) If the child has been placed into foster care pursuant to article ten of the family court act, that both the fact finding hearing pursuant to section one thousand fifty-one of the family court act and the first permanency hearing pursuant to paragraph two of subdivision (a) of section one thousand eighty-nine of the family court act have been completed; or

(ii) for all the other children, that the first permanency hearing has been completed.

(f) The financial status of the prospective relative guardian shall not be considered in determining eligibility for kinship guardianship assistance payments.

2. (a) A prospective relative guardian who has been caring for an eligible foster child for at least six consecutive months and who intends to seek guardianship or permanent guardianship of the child may apply to the social services official who has custody, care and custody, or guardianship and custody of the child to receive kinship guardianship assistance payments, non-recurring guardianship payments, and other applicable services and payments available under this title on behalf of the child.

(b) Applications shall only be accepted prior to issuance of letters of guardianship of the child to the relative guardian pursuant to the provisions of the family court act or the surrogate's court procedure act.

(c) Notwithstanding any other provision of law to the contrary, a prospective relative guardian and any person over the age of eighteen living in the home of the prospective relative guardian who has not already been subject to a national and state criminal history record check pursuant to section three hundred seventy-eight-a of this article as part of the process of the prospective relative guardian becoming a certified or approved foster parent must complete such a record check in accordance with the procedures and standards set forth in such section prior to the social services official acting upon the application. The social services official must inquire of the office of children and family services whether each prospective relative guardian and each person over the age of eighteen living in the home of the prospective relative guardian has been or is currently the subject of an indicated report of child abuse or maltreatment on file with the statewide central register of child abuse and maltreatment and, if the prospective relative guardian or any other person over the age of eighteen residing in the home of the prospective relative guardian resided in another state in the five years preceding the application, request child abuse and maltreatment information maintained by the child abuse and maltreatment registry from the applicable child welfare agency in each such state of previous residence, if such a request has not been made as part of the process of the prospective relative guardian becoming a certified or approved foster parent.

3. If the social services official determines that the child is eligible for kinship guardianship assistance payments and it is in the best interests of the child for the relative to become the legal guardian of the child, the social services official shall enter into an agreement with the prospective relative guardian authorizing the

provision of kinship guardianship assistance payments, non-recurring guardianship payments, and other services and payments available under this title subject to the issuance by the court of letters of guardianship of the child to the prospective relative guardian and the child being finally discharged from foster care to such relative. In determining whether it is in the best interests of the child for the relative to become the relative guardian of the child, the social services official must determine and document that compelling reasons exist for determining that the return home of the child and the adoption of the child are not in the best interests of the child and are, therefore, not appropriate permanency options. A copy of the fully executed agreement must be provided by the social services official to the prospective relative guardian.

4. (a) Payments and eligibility for services under this title shall be made pursuant to a written agreement between the social services official and the prospective relative guardian.

(b) The written agreement shall specify, at a minimum: the amount of, and manner in which, each kinship guardianship assistance payment will be provided under the agreement; the manner in which the payments may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child; the additional services and assistance that the child and the relative guardian will be eligible for under the agreement, which shall be limited to the additional services and assistance set forth in this title; the procedures by which the relative guardian may apply for additional services, as needed; that the social services official will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed two thousand dollars in accordance with section four hundred fifty-eight-c of this title; and, that the agreement will remain in effect regardless of the state of residence of the relative guardian at any time.

(c) The agreement must be fully executed prior to the issuance of letters of guardianship of the child to the relative guardian in order for the child to be eligible for payments and services under this title.

5. Once the prospective relative guardian with whom a social services official has entered into an agreement under subdivision four of this section has been issued letters of guardianship for the child and the child has been finally discharged from foster care to such relative, a social services official shall make monthly kinship guardianship assistance payments for the care and maintenance of the child.

6. The amount of the monthly kinship guardianship assistance payment made pursuant to this section shall be determined pursuant to regulations of the office. The amount of the monthly payment shall not be less than seventy-five per centum of the applicable board rate nor more than one hundred per centum of such rate as determined by the social services district in accordance with the regulations of the office; provided, however, that the rate chosen by the social services district shall be equal to the rate used by the district for adoption subsidy payments under section four hundred fifty-three of this article. The social services official shall consider the financial status of the prospective relative guardian or relative guardian only for the purpose of determining the amount of the payments to be made.

7. (a) Kinship guardianship assistance payments shall be made to the relative guardian or guardians until the child's eighteenth birthday or, if the child had attained sixteen years of age before the agreement became effective, until the child attains twenty-one years of age

provided the child is: (i) completing secondary education or a program leading to an equivalent credential; (ii) enrolled in an institution which provides post-secondary or vocational education; (iii) employed for at least eighty hours per month; (iv) participating in a program or activity designed to promote, or remove barriers to, employment; or (v) incapable of any of such activities due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

(b) Notwithstanding paragraph (a) of this subdivision, no kinship guardianship assistance payments may be made pursuant to this title if the social services official determines that the relative guardian is no longer legally responsible for the support of the child, including if the status of the legal guardian is terminated or the child is no longer receiving any support from such guardian. In accordance with the regulations of the office, a relative guardian who has been receiving kinship guardianship assistance payments on behalf of a child under this title must keep the social services official informed, on an annual basis, of any circumstances that would make the relative guardian ineligible for such payments or eligible for payments in a different amount.

8. The placement of the child with the relative guardian and any kinship guardianship assistance payments made on behalf of the child under this section shall be considered never to have been made when determining the eligibility for adoption subsidy payments under title nine of this article of a child in such legal guardianship arrangement.

* NB Effective April 1, 2011 or whenever notified by OCFSS of the amendment to state title IV-E state plan, whichever is later

* § 458-c. Payments for non-recurring guardianship expenses. 1. A social services official shall make payments for non-recurring guardianship expenses incurred by or on behalf of the relatives who have been approved by the social services official to receive kinship guardianship assistance payments, when such expenses are incurred in connection with assuming the guardianship of a foster child. The agreement for the payment of non-recurring guardianship expenses must be reflected in the written agreement set forth in subdivision four of section four hundred fifty-eight-b of this title. In accordance with subdivision two of this section, the payments shall be made by the social services official either to the relative guardian or guardians directly or to an attorney on behalf of the relative guardian or guardians for the allowable amount of non-recurring guardianship expenses incurred in connection with obtaining such guardianship.

2. The amount of the payment made pursuant to this section shall not exceed two thousand dollars for each foster child for whom the relatives seek guardianship or permanent guardianship and shall be available only for those expenses that are determined to be eligible for reimbursement by the social services official in accordance with the regulations of the office of children and family services.

3. Payments for non-recurring guardianship expenses made by a social services official pursuant to this section shall be treated as administrative expenditures under title IV-E of the federal social security act and shall be reimbursed by the state accordingly.

4. As used in this section, non-recurring guardianship expenses shall mean reasonable and necessary fees, court costs, attorney fees, and other expenses which are directly related to obtaining legal

guardianship of an eligible child and which are not incurred in violation of federal law or the laws of this state or any other state.

* NB Effective April 1, 2011 or whenever notified by OCFS of the amendment to state title IV-E state plan, whichever is later

* § 458-d. Medical subsidy. 1. Any child with respect to whom federally reimbursable kinship guardianship assistance payments are made under this title is eligible for medical assistance under title XIX of the federal social security act.

2. In addition, a social services official shall make payments for the cost of care, services and supplies payable under the state's program of medical assistance for needy persons provided to any child for whom kinship guardianship assistance payments are being made under this title who is not eligible for medical assistance under subdivision one of this section and for whom the relative guardian is unable to obtain appropriate and affordable medical coverage through any other available means, regardless of whether the child otherwise qualifies for medical assistance for needy persons. Payments pursuant to this subdivision shall be made only with respect to the cost of care, services, and supplies which are not otherwise covered or subject to payment or reimbursement by insurance, medical assistance or other sources. Payments made pursuant to this subdivision shall only be made if the relative guardian applies to obtain such medical coverage for the child from all available sources, unless the social services official determines that the relative guardian has good cause for not applying for such coverage; which shall include that appropriate coverage is not available or affordable.

3. An application for payments under this section shall be made prior to the issuance of letters of guardianship for the child. An approval of an application for payments under this section shall not be subject to annual review by the social services official, and such approval shall remain in effect for as long as kinship guardianship assistance payments are being made under this title for the child. Applications for such payments shall be accepted prior to the issuance of letters of guardianship of the child, and approval thereof may be granted contingent upon such issuance.

* NB Effective April 1, 2011 or whenever notified by OCFS of the amendment to state title IV-E state plan, whichever is later

* § 458-e. Independent living services. In accordance with regulations of the office of children and family services, any child who leaves foster care for guardianship with a relative after attaining sixteen years of age for whom kinship guardianship assistance payments are being made under this title shall be eligible:

1. to receive those independent living services that are made available by the social services district to foster children pursuant to section 477 of the federal social security act; and

2. to apply for educational and training vouchers made available pursuant to such section, which will be awarded based on the priorities established by the office of children and family services and the amount of funds made available therefor.

* NB Effective April 1, 2011 or whenever notified by OCFS of the amendment to state title IV-E state plan, whichever is later

* § 458-f. Fair hearings. 1. Any person aggrieved by the decision of a social services official not to make a payment or payments pursuant to this title or to make such payment or payments in an inadequate or inappropriate amount or the failure of a social services official to determine an application under this title within thirty days after filing, may appeal to the office of children and family services, which shall review the case and give such person an opportunity for a fair hearing thereon and render its decision within thirty days. All decisions of the office of children and family services shall be binding upon the social services district involved and shall be complied with by the social services official thereof.

2. The only issues which may be raised in a fair hearing under this section are: (a) whether the social services official has improperly denied an application for payments under this title; (b) whether the social services official has improperly discontinued payments under this title; (c) whether the social services official has determined the amount of the payments made or to be made in violation of the provisions of this title or the regulations of the office of children and family services promulgated hereunder; or (d) whether the social services official has failed to determine an application under this title within thirty days.

3. The provisions of subdivisions two and four of section twenty-two of this chapter shall apply to fair hearings held and appeals taken pursuant to this section.

* NB Effective April 1, 2011 or whenever notified by OCFS of the amendment to state title IV-E state plan, whichever is later