



## Department of Health

**ANDREW M. CUOMO**  
Governor

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

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

June 28, 2019

Mr. Ricardo Holligan  
Acting Associate Regional Administrator  
Department of Health & Human Services  
Centers for Medicare & Medicaid Services  
New York Regional Office  
Division of Medicaid and Children's Health Operations  
26 Federal Plaza - Room 37-100 North  
New York, New York 10278

Re: SPA #19-0041  
Inpatient Hospital Services

Dear Mr. Holligan:

The State requests approval of the enclosed amendment #19-0041 to the Title XIX (Medicaid) State Plan for inpatient hospital services to be effective April 1, 2019 (Appendix I). This amendment is being submitted based upon enacted legislation. A summary of the proposed amendment is contained in Appendix II.

This amendment is submitted pursuant to §1902(a) of the Social Security Act (42 USC 1396a(a)) and Title 42 of the Code of Federal Regulations (CFR), Part 447, Subpart C.

Notice of the changes in the methods and standards for setting payment rates for general hospital inpatient services were given in the New York State Register on March 27, 2019.

A copy of pertinent sections of enacted legislation is enclosed for your information (Appendix III). In addition, responses to the five standard funding questions and the standard access questions are also enclosed (Appendix V and VI, respectively).

If you have any questions regarding this State Plan Amendment submission, please do not hesitate to contact Regina Deyette, Medicaid State Plan Coordinator, Division of Finance and Rate Setting, Office of Health Insurance Programs at (518) 473-3658.

Sincerely,

Donna Frescatore  
Medicaid Director  
Office of Health Insurance Programs

Enclosures  
cc: Mr. Tom Brady

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

1. TRANSMITTAL NUMBER  
1 9 — 0 0 4 1

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  
April 1, 2019

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(r)(5) of the Social Security Act, and 42 CFR 447


7. FEDERAL BUDGET IMPACT  
a. FFY 04/01/19 - 09/30/19 \$ (17,352.86)  
b. FFY 10/01/19 - 09/30/20 \$ (67,609.21)

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT  
  
Attachment: 4.19-A: Page 120(a)(i)

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (*If Applicable*)  
Attachment: 4.19-A:Page 120(a)(i)

10. SUBJECT OF AMENDMENT  
Cost Containment - IP  
(FMAP=50%)

11. GOVERNOR'S REVIEW (*Check One*)  
 GOVERNOR'S OFFICE REPORTED NO COMMENT       OTHER, AS SPECIFIED  
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED  
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL  


16. RETURN TO  
New York State Department of Health  
Division of Finance and Rate Setting  
99 Washington Ave – One Commerce Plaza  
Suite 1432  
Albany, NY 12210

13. TYPED NAME  
Donna Frescatore

14. TITLE  
Medicaid Director, Department of Health

15. DATE SUBMITTED  
June 28, 2019

**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**  
**2019 Title XIX State Plan**  
**Second Quarter Amendment**  
**Amended SPA Pages**

**New York  
120(a)(i)**

- 14. Effective for services provided on and after April 1, 2011, the applicable trend factor for the 2011 calendar year period will be no greater than zero.
- 15. Effective for services provided on and after January 1, 2012, the applicable trend factor for the 2012 calendar year period will be no greater than zero.
- 16. The applicable trend factor for the 2013 calendar year will be no greater than zero for services provided on and after January 1, 2013.
- 17. The applicable trend factor for the 2014 calendar year period will be no greater than zero for services provided on and after January 1, 2014.
- 18. The applicable trend factor for the 2015 calendar year period will be no greater than zero for services provided on and after January 1, 2015 through March 31, 2015 and April 23, 2015 through December 31, 2015.
- 19. The applicable trend factor for the 2016 calendar year period will be no greater than zero for services provided on and after January 1, 2016.
- 20. The applicable trend factor for the 2017 calendar year period will be no greater than zero for services provided on and after January 1, 2017 through March 31, 2017 and April 1, 2017 through December 31, 2017.
- 21. The applicable trend factor for the 2018 calendar year period will be no greater than zero for services provided on and after January 1, 2018.
- 22. The applicable trend factor for the 2019 calendar year period will be no greater than zero for services provided on and after January 1, 2019 through March 31, 2019[.]and April 1, 2019 through December 31, 2019.
- 23. The applicable trend factor for the 2020 calendar year period will be no greater than zero for services provided on and after January 1, 2020.
- 24. The applicable trend factor for the 2021 calendar year period will be no greater than zero for services provided on and after January 1, 2021 through March 31, 2021.

**TN**           #19-0041          

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

**Supersedes TN**           #17-0044          

**Effective Date** \_\_\_\_\_



**Appendix II**  
**2019 Title XIX State Plan**  
**Second Quarter Amendment**  
**Summary**

**SUMMARY**  
**SPA #19-0041**

This State Plan Amendment proposes to limit the trend factor to an amount no greater than zero for hospital inpatient services provided on and after April 1, 2019 through March 31, 2021.

**Appendix III**  
**2019 Title XIX State Plan**  
**Second Quarter Amendment**  
**Authorizing Provisions**

**Authorizing Provisions**  
**SPA #19-0041**

Part E Chapter 57 of the Laws of 2019

32 § 14. Section 4-a of part A of chapter 56 of the laws of 2013, amend-  
33 ing chapter 59 of the laws of 2011 amending the public health law and  
34 other laws relating to general hospital reimbursement for annual rates,  
35 as amended by section 5 of part T of chapter 57 of the laws of 2018, is  
36 amended to read as follows:

37 § 4-a. Notwithstanding paragraph (c) of subdivision 10 of section  
38 2807-c of the public health law, section 21 of chapter 1 of the laws of  
39 1999, or any other contrary provision of law, in determining rates of  
40 payments by state governmental agencies effective for services provided  
41 on and after January 1, 2017 through March 31, [~~2019~~] 2021, for inpa-  
42 tient and outpatient services provided by general hospitals, for inpa-  
43 tient services and adult day health care outpatient services provided by  
44 residential health care facilities pursuant to article 28 of the public  
45 health law, except for residential health care facilities or units of  
46 such facilities providing services primarily to children under twenty-  
47 one years of age, for home health care services provided pursuant to  
48 article 36 of the public health law by certified home health agencies,  
49 long term home health care programs and AIDS home care programs, and for  
50 personal care services provided pursuant to section 365-a of the social  
51 services law, the commissioner of health shall apply no greater than  
52 zero trend factors attributable to the 2017, 2018, [~~and~~] 2019, 2020, and  
53 2021 calendar years in accordance with paragraph (c) of subdivision 10  
54 of section 2807-c of the public health law, provided, however, that such  
55 no greater than zero trend factors attributable to such 2017, 2018,  
56 [~~and~~] 2019, 2020, and 2021 calendar years shall also be applied to rates

S. 1507--C

14

A. 2007--C

1 of payment provided on and after January 1, 2017 through March 31,  
2 [~~2019~~] 2021 for personal care services provided in those local social  
3 services districts, including New York city, whose rates of payment for  
4 such services are established by such local social services districts  
5 pursuant to a rate-setting exemption issued by the commissioner of  
6 health to such local social services districts in accordance with appli-  
7 cable regulations; and provided further, however, that for rates of  
8 payment for assisted living program services provided on and after Janu-  
9 ary 1, 2017 through March 31, [~~2019~~] 2021, such trend factors attribut-  
10 able to the 2017, 2018, [~~and~~] 2019, 2020, and 2021 calendar years shall  
11 be established at no greater than zero percent.

**Appendix IV**  
**2019 Title XIX State Plan**  
**Second Quarter Amendment**  
**Public Notice**



Bernard Fineson DDRO  
PO Box 280507  
Queens Village, NY 11428-0507

Metro NY DDRO/Bronx  
2400 Halsey St.  
Bronx, NY 10461

Brooklyn DDRO  
888 Fountain Ave.  
Bldg. 1, 2nd Floor  
Brooklyn, NY 11239

Metro NY DDRO/Manhattan  
25 Beaver St., 4th Floor  
New York, NY 10004

Staten Island DDRO  
1150 Forest Hill Rd.  
Bldg. 12, Suite A  
Staten Island, NY 10314-6316

Long Island DDRO  
415-A Oser Ave.  
Hauppauge, NY 11788

*For further information and to review and comment, please contact:  
Office for People With Developmental Disabilities, Division of  
Person-Centered Services, Waiver Unit, 44 Holland Ave., Albany, NY  
12229, Peoplefirstwaiver@opwdd.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, institutional and long-term care services to comply with proposed statutory provisions. The following changes are proposed:

#### All Services

Effective on or after April 1, 2019 through March 31, 2021 all non-exempt Medicaid payments, as referenced below, will be uniformly reduced. Such reductions will be applied only if an alternative method that achieves at least \$190.2 million in Medicaid state share savings annually is not implemented.

Exemptions from the uniform reduction are as follows:

- Any reductions that would violate federal law including, but not limited to, payments required pursuant to the federal Medicare program;
- Payments pursuant to the mental hygiene law;
- Payments the state is obligated to make pursuant to court orders or judgments;
- Payments for which the non-federal share does not reflect any state funding; and
- Payments where applying the reduction would result in a lower Federal Medical Assistance Percentage as determined by the Commissioner of Health and the Director of the Budget.

The estimated annual net aggregate decrease in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2019/2020 is (\$380.4 million).

Effective on and after April 1, 2019, no greater than zero trend factors attributable to services through March 31, 2024 pursuant to the provisions of Public Health Law § 2807-c(10)(c) to rates of payment for hospital inpatient and outpatient services, inpatient and adult day health care outpatient services provided by residential health care fa-

ilities pursuant to Article 28 of the Public Health Law, except for residential health care facilities or units of such facilities providing services primarily to children under 21 year of age, for certified home health agencies, long term home health care programs, AIDS home care programs, and for personal care services pursuant to section 365-a of the Social Services Law, including personal care services provided in those local social services districts, including New York City, whose rates of payment for services is established by such social services districts pursuant to a rate-setting exemption granted by the Department, and assisted living program services.

The estimated annual net aggregate decrease in gross Medicaid expenditures for state fiscal year 2019/2020 is (\$208.8 million).

#### Non-Institutional Services

Effective on or after April 1, 2019, the reimbursement rate for Early Intervention services furnished by licensed physical therapists (PTs), occupational therapists (OTs), and speech-language pathologists (SLPs) will increase by 5%. This increase would also apply to supplemental evaluations performed by licensed PTs, OTs and SLPs. These rates are being revised to address capacity issues that municipalities are facing statewide for these qualified professionals.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2019/20 is estimated to be \$7.2 million.

Effective on or after April 1, 2019, continues the supplemental upper payment limit payments made to general hospitals, other than major public general hospitals under non-institutional services of \$339 million annually.

For state fiscal year beginning April 1, 2019 through March 31, 2020, continues hospital outpatient payment adjustments that increase the operating cost components of rates of payment for hospital outpatient and emergency departments on and after April 1, 2011, for public general hospitals other than those operated by the State of New York or the State University of New York, which are located in a city with a population of over one million. The amount to be paid will be up to \$287 million annually based on criteria and methodology set by the Commissioner of Health, which the Commissioner may periodically set through a memorandum of understanding with the New York City Health and Hospitals Corporation. Such adjustments shall be paid by means of one or more estimated payments. Payments may be added to rates of payment or made as aggregate payments.

For state fiscal year beginning April 1, 2019 through March 31, 2020, continues upon the election of the social services district in which an eligible diagnostic and treatment center (DTC) is physically located, up to \$12.6 million in additional annual Medicaid payments may be paid to public DTCs operated by the New York City Health and Hospitals Corporation. Such payments will be based on each DTC's proportionate share of the sum of all clinic visits for all facilities eligible for an adjustment for the base year two years prior to the rate year. The proportionate share payments may be added to rates of payment or made as aggregate payments to eligible DTCs.

For state fiscal year beginning April 1, 2019 through March 31, 2020, continues up to \$5.4 million in additional annual Medicaid payments may be paid to county operated free-standing clinics, not including facilities operated by the New York City Health and Hospitals Corporation, for services provided by such DTC and those provided by a county operated freestanding mental health or substance abuse DTC. Distributions shall be based on each eligible facility's proportionate share of the sum of all DTC and clinic visits for all eligible facilities receiving payments for the base year two years prior to the rate year. The proportionate share payments may be added to rates of payment or made as aggregate payments to eligible facilities.

Capital related costs of a general hospital excluding 44% of the major movable costs and excluding staff housing costs will continue effective April 1, 2019 through March 31, 2024 and thereafter.

The estimated annual net aggregate decrease in gross Medicaid expenditures for state fiscal year 2019/2020 is (\$35.1 million).

Extends current provisions for services on April 1, 2019 through March 31, 2024 and thereafter, the reimbursable operating cost component for general hospital inpatient rates will be established with



the 2006 final trend factor equal to the final Consumer Price Index (CPI) for all urban consumers less 0.25%.

#### Institutional Services

Effective on or after April 1, 2019, annual indigent care pool distributions for certain providers will be reduced.

The estimated annual net aggregate decrease in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2019/2020 is (\$275.6 million).

Effective on or after April 1, 2019, continues the supplemental upper payment limit payments made to general hospitals, other than major public general hospitals under institutional services of \$339 million annually.

For state fiscal year beginning April 1, 2019 through March 31, 2020, continues specialty hospital adjustments for hospital inpatient services provided on and after April 1, 2012, to public general hospitals, other than those operated by the State of New York or the State University of New York, located in a city with a population of over one million and receiving reimbursement of up to \$1.08 billion annually based on criteria and methodology set by the Commissioner of Health, which the Commissioner may periodically set through a memorandum of understanding with the New York City Health and Hospitals Corporation. Such adjustments shall be paid by means of one or more estimated payments. Payments to eligible public general hospitals may be added to rates of payment or made as aggregate payments.

Additional medical assistance, known as, Intergovernmental Transfer (IGT) payments, for inpatient hospital services may be made to public general hospitals operated by the State of New York or the State University of New York, or by a county which shall not include a city with a population over one million, and those public general hospitals located in the counties of Westchester, Erie, or Nassau, up to one hundred percent (100%) of each such public hospital's medical assistance, and uninsured patient losses after all other medical assistance, including disproportionate share hospital (DSH) payments to such public general hospitals. Payments will be made by means of one or more estimated distributions initially based on the latest DSH audit results, which shall later be reconciled to such payment year's actual DSH audit uncompensated care costs. Payments may be added to rates of payment or made as aggregate payments. Such payments will continue April 1, 2019 through March 31, 2021.

There is no change in gross Medicaid expenditures for this update.

Extends current provisions for services on April 1, 2019 through March 31, 2024 and thereafter, the reimbursable operating cost component for general hospital inpatient rates will be established with the 2006 final trend factor equal to the final Consumer Price Index (CPI) for all urban consumers less 0.25%.

The estimated annual net aggregate decrease in gross Medicaid expenditures for state fiscal year 2019/2020 is (\$114.5 million).

Capital related costs of a general hospital excluding 44% of the major movable costs and excluding staff housing costs will continue effective April 1, 2019 through March 31, 2024 and thereafter.

The estimated annual net aggregate decrease in gross Medicaid expenditures for state fiscal year 2019/2020 is (\$48.4 million).

Budgeted capital inpatient costs of a general hospital applicable to the rate year will be decreased to reflect the percentage amount by which the budget for the base year two years prior to the rate year for capital related inpatient expenses of the hospital exceeded actual expenses will continue effective April 1, 2019 through March 31, 2024 and thereafter.

The estimated annual net aggregate decrease in gross Medicaid expenditures for state fiscal year 2019/2020 is (\$15.9 million).

Effective for dates of service on or after April 1, 2019, update the historical year Medicaid claims used in the general hospital acute rate statewide price development from 2014 to 2017.

There is no change in gross Medicaid expenditures for this update.

#### Long Term Care Services

Effective on or after April 1, 2019, continues additional payments to non-state government operated public residential health care facili-

ties, including public residential health care facilities located in Nassau, Westchester, and Erie counties, but excluding public residential health care facilities operated by a town or city within a county, in aggregate amounts of up to \$500 million. The amount allocated to each eligible public RHCF will be in accordance with the previously approved methodology, provided, however that patient days shall be utilized for such computation reflecting actual reported data for 2016 and each representative succeeding year as applicable. Payments to eligible RHCF's may be added to rates of payment or made as aggregate payments.

Effective on or after April 1, 2019 and thereafter, the appeals cap in PHL 2808(1)(a)(17)(b) is extended. The current appeals cap provision establishes an eighty-million-dollar annual budget for the processing of rate appeals or reimbursement for construction that has been approved by the commissioner.

There is no additional estimated annual change to gross Medicaid expenditures as a result of the extension.

Effective on or after April 1, 2019 and thereafter the provision that rates of payment for RHCFs shall not reflect trend factor projection or adjustments for the period April 1, 1996 through March 31, 1997 is extended.

The estimated annual net aggregate decrease in gross Medicaid expenditures attributable to this initiative is (\$12.7 million).

Effective on or after April 1, 2019 and thereafter this provision continues a 0.25 reduction in the statutory trend factors of 2006.

The estimated annual net aggregate decrease in gross Medicaid expenditures attributable to this initiative is (\$13.4 million).

Effective on or after April 1, 2019 nursing home reimbursement case mix collections which impact the direct price component of nursing home Medicaid reimbursement. The direct statewide price shall be adjusted by a Medicaid-only case mix and shall be updated for a Medicaid-only case mix in January and July of each year, using the case mix data applicable to the previous period.

The estimated annual net aggregate decrease in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2019-2020 is (\$191 million).

Effective for dates of service on or after April 1, 2019 and thereafter, Certified Home Health Agencies (CHHAs) payments will continue to be based on episodic payments, except for such services provided to children under 18 years of age.

There is no additional estimated annual change to gross Medicaid expenditures as a result of this extension.

Effective on or after April 1, 2019, The Consumer Directed Personal Assistance Program (CDPAP), a personal care service model, permits chronically ill and/or physically disabled individuals receiving home care under the medical assistance program greater flexibility and freedom of choice in obtaining such services. Reimbursement for CDPAP services has been based on a per hour billing methodology. This change will move the administrative reimbursement methodology for CDPAP to a per member per month basis and maintains an hourly/daily reimbursement for service delivery.

The estimated annual net aggregate decrease in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2019-2020 is (\$28.7 million).

Effective on or after April 1, 2019 and thereafter, current provisions for certified home health agency administrative and general costs reimbursement limits are extended.

There is no additional estimated annual change to gross Medicaid expenditures as a result of this extension.

Effective on or after April 1, 2019 and thereafter, the total reimbursable state assessment on each residential health care facility's gross receipts received from all patient care services and other operating income on a cash basis for inpatient or health-related services, including adult day service, but excluding gross receipts attributable to payments received pursuant to Title XVII of the federal Social Security Act (Medicare), at six percent.

The extent to which a facility is reimbursed for the additional cost of the assessment is dependent upon Medicaid volume of services.



# 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](http://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 Division of Criminal Justice Services Commission on Forensic Science

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

Date: June 7, 2019  
Time: 9:00 a.m.-1:00 p.m.  
Place: Empire State Development Corporation (ESDC)  
633 3rd Ave.  
37th Fl./Conference Rm.  
New York, NY  
\* Identification and sign-in required

Video Conference Site:  
Division of Criminal Justice Services  
Alfred E. Smith Office Bldg.  
CrimeStat Rm. 118  
80 S. Swan St.  
Albany, NY

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

## PUBLIC NOTICE Deferred Compensation Plan for Employees of Cortland County

The Deferred Compensation Plan for Employees of Cortland County is soliciting proposals from administrative service agencies relating to trust service, and administration and/or funding of a Deferred Compensation Plan for the employees of Cortland County. They must meet the requirements of section 457 of the Internal Revenue Code and Section 5 of the State Finance Law, including all rules and regulations issued pursuant thereto.

A copy of the proposal questionnaire may be obtained from: Cortland County Personnel/Civil Service, Pamela Abbott, Personnel Technician, 60 Central Ave., Cortland, NY 13045, (607) 753-5207, e-mail: [pabbott@cortland-co.org](mailto:pabbott@cortland-co.org)

All proposals must be received no later than 30 days from the date of publication in the New York State Register.

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

### All Services

The following is a clarification to the March 27, 2019 noticed provision which extended the zero trend factors attributable to services on or after April 1, 2019 to March 31, 2024. This notice clarifies that the provision was extended through March 31, 2021.

The estimated annual net aggregate decrease in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2019/2020 is (\$208.8 million).

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, e-mail: [spa\\_inquiries@health.ny.gov](mailto:spa_inquiries@health.ny.gov)

## PUBLIC NOTICE

Department of State  
F-2019-0116

Date of Issuance – May 29, 2019

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program.

In F-2019-0116 or the “Palagonia Dock”, the applicant Tiffany Palagonia, is proposing the construction of a new 4' x 15' open grate catwalk, a 3' x 12' ramp, and a 6' x 20' float-with two 8" piles, and two 8" mooring piles. This project is located at 182 Dune Road, Westhampton Beach on Moneybogue Bay.

The applicant's consistency certification and supporting information are available for review at: [http://www.dos.ny.gov/opd/programs/pdfs/Consistency/F-2019-0116\\_Palagonia\\_App.pdf](http://www.dos.ny.gov/opd/programs/pdfs/Consistency/F-2019-0116_Palagonia_App.pdf)

Original copies of public information and data submitted by the applicant are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice, or, June 28, 2019.

*Comments should be addressed to:* Consistency Review Unit, Department of State, Office of Planning, Development & Community Infrastructure, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6000, Fax (518) 473-2464. Electronic submissions can be made by e-mail at: [CR@dos.ny.gov](mailto:CR@dos.ny.gov)

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

## PUBLIC NOTICE

Department of State  
F-2019-0175

Date of Issuance – May 29, 2019

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program. The applicant's consistency certification and accompanying public information and data are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York and are available for review at: [http://www.dos.ny.gov/opd/programs/pdfs/Consistency/F-2019-0175\\_Application.pdf](http://www.dos.ny.gov/opd/programs/pdfs/Consistency/F-2019-0175_Application.pdf)

In F 2019 0175, PSEG Long Island is proposing the Circuit 9Z-807 Utility Pole Replacement Project. The proposed activity would replace

27 timber utility poles in tidal wetlands along the existing utility corridor on the eastern side of Napeague Meadow Road between Cranberry Hole Road and Montauk Highway, Town of East Hampton, Suffolk County. Total disturbance to tidal wetlands is estimated to be 675 square feet. All disturbed areas shall be backfilled with native soils and planted with native vegetation. The stated purpose of the activity is to upgrade the existing utility poles for increased protection of the electric distribution grid from high winds and storm events.

The proposed activity would be located within or has the potential to affect the following Special Management or Regulated Area(s):

- Town of East Hampton Local Waterfront Revitalization Program: [https://www.dos.ny.gov/opd/programs/WFRvitalization/LWRP\\_status.html](https://www.dos.ny.gov/opd/programs/WFRvitalization/LWRP_status.html)

- Napeague Harbor Significant Coastal Fish and Wildlife Habitat: <https://www.dos.ny.gov/opd/programs/consistency/scfwhabitats.html>

- Napeague Meadows Scenic Area of Statewide Significance: <https://www.dos.ny.gov/opd/programs/consistency/scenicass.html>

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 15 days from the date of publication of this notice, or, June 13, 2019.

*Comments should be addressed to:* Department of State, Office of Coastal, Local Government and Community Sustainability, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474 6000, Fax (518) 473 2464

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

## PUBLIC NOTICE

Department of State

The New York State Real Estate Board will hold an open board meeting on May 31, 2019, 10:30 a.m. at Department of State, 99 Washington Ave., Rm. 505, Albany; 123 William St., Rm. 231, New York City; and 276 Waring Rd., Rochester. The Board will hold a public hearing on general real estate issues immediately following the board meeting at the same locations.

*Should you require further information, please contact:* Adaiha Murdock at [Adaiha Murdock@dos.ny.gov](mailto:Adaiha.Murdock@dos.ny.gov) or (518) 408-4750

## PUBLIC NOTICE

Department of State

Uniform Code Variance / Appeal Petitions

Pursuant to 19 NYCRR Part 1205, the variance and appeal petitions below have been received by the Department of State. Unless otherwise indicated, they involve requests for relief from provisions of the New York State Uniform Fire Prevention and Building Code. Persons wishing to review any petitions, provide comments, or receive actual notices of any subsequent proceeding may contact Brian Tollisen or Neil Collier, Building Standards and Codes, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-4073 to make appropriate arrangements.

2019-0262 Matter of Brookhaven Expeditors, Andrew Malguarnera, 713 Main Street, Port Jefferson, NY 11777, for a variance concerning safety requirements, including the required ceiling height and height under a girder/soffit. Involved is an existing one family dwelling located at 22 Howell Street; Town of Brookhaven, NY 11772 County of Suffolk, State of New York.

2019-0267 Matter of Building Permits Plus, Jason Allen, 19 Stillwood Road, Brookhaven, NY 11719, for a variance concerning safety requirements, including the required height under a girder/soffit. Involved is an existing one family dwelling located at 98 Granny Road; Town of Brookhaven, NY 11738 County of Suffolk, State of New York.

2019-0268 Matter of Nassau Expeditors Inc., Scott Tirone, 75 Albertson Avenue, Albertson, NY 11507, for a variance concerning safety requirements, including the required height under a girder/soffit. Involved is an existing one family dwelling located at 13 North Drive;

**Appendix V**  
**2019 Title XIX State Plan**  
**Second Quarter Amendment**  
**Responses to Standard Funding Questions**



**APPENDIX V  
HOSPITAL SERVICES  
State Plan Amendment #19-0041**

**CMS Standard Funding Questions (NIRT Standard Funding Questions)**

**The following questions are being asked and should be answered in relation to all payments made to all providers under Attachment 4.19-A 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 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 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:** 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 saving from these initiatives help to fund the Global Cap.

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. 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.

**Response:** The state and CMS are working toward completion and approval of 2019 UPL.

**5. Does any governmental provider receive payments that in the aggregate (normal per diem, supplemental, enhanced, other) exceed their reasonable costs of providing services? If payments exceed the cost of services, do you recoup the excess and return the Federal share of the excess to CMS on the quarterly expenditure report?**

**Response:** The rate methodology included in the approved State Plan for institutional services is prospective payment. We are unaware of any requirement under current federal law or regulation that limits individual provider payments to their actual costs.

**ACA Assurances:**

**1. Maintenance of Effort (MOE).** Under section 1902(gg) of the Social Security Act (the Act), as amended by the Affordable Care Act, as a condition of receiving any Federal payments under the Medicaid program during the MOE period indicated below, the State shall not have in effect any eligibility standards, methodologies, or procedures in its Medicaid program which are more restrictive than such eligibility provisions as in effect in its Medicaid program on March 10, 2010.

**MOE Period.**

- **Begins on:** March 10, 2010, and
- **Ends on:** The date the Secretary of the Federal Department of Health and Human Services determines an Exchange established by a State under the provisions of section 1311 of the Affordable Care Act is fully operational.

**Response:** This SPA complies with the conditions of the MOE provision of section 1902(gg) of the Act for continued funding under the Medicaid program.

**2. Section 1905(y) and (z) of the Act provides for increased FMAs 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 FMA 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:** This 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.

**Appendix VI**  
**2019 Title XIX State Plan**  
**Second Quarter Amendment**  
**Responses to Standard Access Questions**



**APPENDIX VI  
INPATIENT SERVICES  
State Plan Amendment 19-0041**

**CMS Standard Access Questions**

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

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

**Response:** First, hospitals are required to meet licensure and certification requirements to ensure providers are qualified to deliver services to Medicaid patients. These requirements as well as other methods and procedures the state has that assures efficiency, economy and quality of care are not impacted in anyway by this amendment. Second, all licensed hospitals currently participate in the New York's Medicaid program and are located across the state so that Medicaid recipients in any geographic area have access to services that are available to the general population in those communities. Continuing the policy to maintain a trend factor no greater than zero is intended to hold rates constant, not reduce them. While this one element in the state's methods and procedures for setting payment rates will control costs, any savings attributed to it will be reinvested in Medicaid hospital payments under other provisions of the state's methodology resulting in overall hospital payments being set at the maximum permitted by the Federal Medicaid Upper Payment limit requirements.

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

**Response:** The State has various ways to ensure that access levels in the Medicaid program are retained and is currently not aware of any access issues, particularly since there is excess bed capacity for both hospitals and nursing homes. Additionally, hospital and nursing home providers must notify and receive approval from the Department's Office of Health Systems Management (OHSM) in order to discontinue services. This Office monitors and considers such requests in the context of access as they approve/deny changes in services. Finally, providers cannot discriminate based on source of payment.

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

will be identified and analyzed in light of the changes proposed in this State Plan Amendment.

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

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

**Response:** This change was enacted by the State Legislature as part of the negotiation of the 2019-20 Budget. The impact of this change was weighed in the context of the overall Budget in the State. The legislative process provides opportunities for all stakeholders to lobby their concerns, objections, or support for various legislative initiatives. In addition, NY published notice in the state register of the proposed policy and did not receive any comments.

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

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

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

**Response:** The State continues to implement Medicaid reform initiatives to better align reimbursement and to ensure access to quality of care in the appropriate setting. The Delivery System Reform Incentive Payment (DSRIP) program, whereby up to \$6.42 billion is reinvested in the Medicaid program over a five-year period, is still under implementation. Further, the New York State Budget continues to provide a Quality Pool for hospital inpatient services up to \$57.8M for SFY 2019/2020 which will be paid through the Medicaid Managed Care Health Plan rates. The Budget also provides for a \$132M investment in Enhanced Safety Net hospitals which will also be paid through the Medicaid Managed Care Health Plans. The State offers other programs to hospitals, such as the Vital Access Provider (VAP) program, to help sustain key health care services. While some of these initiatives are outside the scope of the State Plan, they represent some of the measures the State is taking to ensure quality care for the State's most vulnerable population.