



## Department of Health

KATHY HOCHUL  
Governor

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

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

June 30, 2022

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

Re: SPA #22-0039  
Inpatient Hospital Services

Dear Mr. McMillion:

The State requests approval of the enclosed amendment #22-0039 to the Title XIX (Medicaid) State Plan for inpatient hospital services to be effective April 1, 2022 (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 30, 2022. A copy of pertinent sections of enacted legislation is enclosed for your information (Appendix III). In addition, responses to the five standard funding questions are also enclosed (Appendix V).

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

Sincerely,

Amir Bassiri  
Acting 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 PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)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 June 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**  
**Second Quarter Amendment**  
**Amended SPA Pages**

**New York  
161**

**1905(a)(1) Inpatient Hospital Services**

**Additional Inpatient Governmental Hospital Payments**

For the period beginning state fiscal year April 1, [2021] 2022 and ending March 31, [2022] 2023, the State will provide a supplemental payment for all inpatient services provided by eligible government general hospitals located in a city with a population over one million and not operated by the State of New York or the State University of New York. The amount of the supplemental payment will be [~~\$0~~]\$400,000,000 and paid semi-annually in September and March. It will be distributed to hospitals proportionately using each hospital's proportionate share of total Medicaid days reported for the base year two years prior to the rate year. Such payments, aggregated with other medical assistance payments will not exceed 100% of a reasonable estimate of the amount that would be paid for such services under Medicare payment principles for non-state government owned or operated government general hospitals for the respective period.

**TN #22-0039**

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

**Supersedes TN #21-0033**

**Effective Date April 1, 2022**

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

**SUMMARY**  
**SPA #22-0039**

This State Plan Amendment proposes to extend supplemental payments made for inpatient hospital services in non-state public hospitals in cities with more than one million persons. These payments reflect adjustments to qualifying hospitals.

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

Chapter 57 of the Laws of 2015

§§ 18

§ 18. Notwithstanding any inconsistent provision of law or regulation to the contrary, and subject to the availability of federal financial participation pursuant to title XIX of the federal social security act, effective for the period April 1, 2012, through March 31, 2013, and state fiscal years thereafter, the department of health is authorized to pay a public hospital adjustment to public general hospitals, as defined in subdivision 10 of section 2801 of the public health law, other than those operated by the state of New York or the state university of New York, and located in a city with a population of over 1 million, of up to one billion eighty million dollars annually as medical assistance payments for inpatient services pursuant to title 11 of article 5 of the social services law for patients eligible for federal financial participation under title XIX of the federal social security act based on such criteria and methodologies as the commissioner may from time to time set through a memorandum of understanding with the New York city health and hospitals corporation, and such adjustments shall be paid by means of one or more estimated payments, with such estimated payments to be reconciled to the commissioner of health's final adjustment determinations after the disproportionate share hospital payment adjustment

caps have been calculated for such period under sections 1923(f) and (g) of the federal social security act. Such adjustment payment may be added to rates of payment or made as aggregate payments to eligible public general hospitals.



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

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2022/2023 is \$9.8 million.

Effective on or after April 1, 2022, the Medicaid fee-for-service Schedule will be adjusted to increase the reimbursement rate for midwifery services such that midwives will be reimbursed at 95% of the physician fee-for-service schedule.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this action contained in the budget for state fiscal year 2022/2023 is \$2.8 million.

Effective on or after April 1, 2022, this notice proposes to enhance (increase) state established reimbursement rates as follows:

Contingent upon approval of the Fiscal Year 2023 State Budget, established rates will be enhanced for the top twenty (20) state-plan approved orthotics and prosthetics (O & P) for Fee-for Service (FFS) and managed care members from the current Medicaid rate to 80% of the Medicare reimbursement rate.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023 is \$8 million.

#### Institutional Services

Effective on or after April 1, 2022, this proposal continues the supplemental upper payment limit payments made to general hospitals, other than major public general hospitals under institutional services of \$339 million annually.

There is no change to the annual gross Medicaid expenditures as a result of this proposed amendment.

For state fiscal year beginning April 1, 2022 through March 31, 2023, this proposal continues 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.

There is no change to the annual gross Medicaid expenditures as a result of this proposed amendment.

For state fiscal year beginning April 1, 2022, through March 31, 2023, this proposal continues supplemental payments to State government owned hospitals. These payments will not exceed the upper payment limit for inpatient services provided by state government-owned hospitals when aggregated with other Medicaid payments.

There is no change to the annual gross Medicaid expenditures as a result of this proposed amendment.

Effective on or after April 1, 2022, this proposal would extend the requirement to rebase and update the Service Intensity Weights (SIWs) for the acute Diagnostic Related Group (DRG) hospital rates no less frequently than every four years from July 1, 2022, to on or after January 1, 2024. It also revises the requirement for the base year used for rebasing. The new base year may be more than four years prior to the first applicable rate period that utilizes such new base year.

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

Effective on or after April 1, 2022, 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, 2022, through March 31, 2025.

There is no change to the annual gross Medicaid expenditures as a result of this proposed amendment.

Effective on and after April 1, 2022, through March 31, 2024, this notice provides for funding to distressed hospitals.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$200 million.

Effective for days of service on or after April 1, 2022, The Department of Health will adjust inpatient psychiatric fee-for-service per diem rates of reimbursement for distinct exempt units specializing in inpatient psychiatric services, in Article 28 hospitals, by increasing the case mix neutral psychiatric statewide per diem base price to produce a full annual net aggregate increase in gross Medicaid expenditures of \$55 million. This State Plan Amendment is necessary to more adequately reimburse hospitals for providing these services and to better meet the community's mental health needs.

#### Long Term Care Services

Effective on or after April 1, 2022, this proposal continues additional payments to non-state government operated public residential health care facilities, 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. Payments to eligible RHCf's may be added to rates of payment or made as aggregate payments.

There is no change to the annual gross Medicaid expenditures as a result of this proposed amendment.

Effective on and after April 1, 2022, this notice provides for \$30 million annually in temporary rate adjustments to long term care providers that are undergoing closure, merger, consolidation, acquisition or restructuring themselves or other health care providers. These payments are authorized by current State statutory and regulatory provisions. The temporary rate adjustments will be reviewed and approved by the CINERGY Collaborative.

There is no change to the annual gross Medicaid expenditures as a result of this proposed amendment.

Effective on and after April 1, 2022, through March 31, 2024, this notice provides for temporary rate adjustments to long term care providers that are undergoing closure, merger, consolidation, acquisition or restructuring themselves or other health care providers. These payments are authorized by current State statutory and regulatory provisions.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$200 million.

#### Eligibility

Effective January 1, 2023, the Medicaid program will eliminate the resource test for aged, blind and disabled applicants and recipients and raise the income eligibility level to 138% of the federal poverty level for aged, blind, disabled and other medically needy applicants and recipients.

The estimated net aggregate increase in gross Medicaid expenditures as a result of the proposed amendment for State Fiscal Year 2023 is \$10 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). In addition, approved SPA's beginning in 2011 are also available for viewing on this website.

Copies of the proposed State Plan Amendments will be on file in

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

**INSTITUTIONAL SERVICES**  
**State Plan Amendment #22-0039**

**CMS Standard Funding Questions**

The following questions are being asked and should be answered in relation to all payments made to all providers reimbursed pursuant to a methodology described in Attachment 4.19-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 receive and retain the total Medicaid expenditures claimed by the State and the State does not require any provider to return any portion of such payments to the State, local government entities, or any other intermediary organization.

- 2. Section 1902(a)(2) provides that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan. Please describe how the state share of each type of Medicaid payment (normal per diem, supplemental, enhanced, other) is funded. Please describe whether the state share is from appropriations from the legislature to the Medicaid agency, through intergovernmental transfer agreements (IGTs), certified public expenditures (CPEs), provider taxes, or any other mechanism used by the state to provide state share. Note that, if the appropriation is not to the Medicaid agency, the source of the state share would necessarily be derived through either an IGT or CPE. In this case, please identify the agency to which the funds are appropriated. Please provide an estimate of total expenditure and State share amounts for each type of Medicaid payment. If any of the non-federal share is being provided using IGTs or CPEs, please fully describe the matching arrangement including when the state agency receives the transferred amounts from the local government entity transferring the funds. If CPEs are used, please describe the methodology used by the state to verify that the total expenditures being certified are eligible for Federal matching funds in accordance with 42 CFR**

**433.51(b).** For any payment funded by CPEs or IGTs, please provide the following:

- (i) a complete list of the names of entities transferring or certifying funds;
- (ii) the operational nature of the entity (state, county, city, other);
- (iii) the total amounts transferred or certified by each entity;
- (iv) clarify whether the certifying or transferring entity has general taxing authority; and,
- (v) whether the certifying or transferring entity received appropriations (identify level of appropriations).

**Response:** The Non-Federal share Medicaid provider payment is funded by an IGT transferred from the counties.

		<b>4/1/22 – 3/31/23</b>	
<b>Payment Type</b>	<b>Non-Federal Share Funding</b>	<b>Non-Federal</b>	<b>Gross</b>
Supplemental	IGT	\$200,000,000	\$400,000,000

**IGT Funding:** New York requests the transfer of the IGT amounts prior to the release of payments to the providers. Please note that counties have taxing authority and the State does not provide appropriations to the counties for IGTs. Distribution by provider in the table below will be completed upon approval of the UPL calculation.

<b>Provider</b>	<b>County Transferring IGT Funds</b>	<b>4/1/22-3/31/23 IGT Amount</b>
Jacobi Medical Center	New York City	
Lincoln Medical & Mental Health Center	New York City	
North Central Bronx Hospital	New York City	
Coney Island Hospital	New York City	
Kings County Hospital Center	New York City	
Woodhull Medical & Mental Health Center	New York City	
Bellevue Hospital Center	New York City	
Harlem Hospital Center	New York City	
Metropolitan Hospital Center	New York City	
Henry J Carter Spec Hospital	New York City	
City Hospital Center at Elmhurst	New York City	
Queens Hospital Center	New York City	
<b>Total</b>		<b>\$400,000,000</b>

**3. Section 1902(a)(30) requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) provides for Federal financial participation to States for expenditures for services under an approved State plan. If supplemental or enhanced payments are made, please provide the total amount for each type of supplemental or enhanced payment made to each provider type.**

**Response:** The Medicaid payments authorized under this State Plan Amendment are supplemental payments and total \$400 million for State Fiscal Year 2022-23. Please note that the dollar amount currently listed in the plan page is a placeholder and will be updated once the calculation is completed.

- 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 inpatient UPL demonstration utilizes cost-to-payment and payment-to-payment methodologies to estimate the upper payment limit for each class of providers. The State is in the process of completing the 2022 inpatient UPL as well as the Procedural Manual which describes the methodology for eligible providers and will be submitting both documents to CMS.

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

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

**ACA Assurances:**

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

**MOE Period.**

- **Begins on: March 10, 2010, and**
- **Ends on: The date the Secretary of the Federal Department of Health and Human Services determines an Exchange established by a State**

**under the provisions of section 1311 of the Affordable Care Act is fully operational.**

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

- 2. Section 1905(y) and (z) of the Act provides for increased FMAPs for expenditures made on or after January 1, 2014 for individuals determined eligible under section 1902(a)(10)(A)(i)(VIII) of the Act. Under section 1905(cc) of the Act, the increased FMAP under sections 1905(y) and (z) would not be available for States that require local political subdivisions to contribute amounts toward the non-Federal share of the State's expenditures at a greater percentage than would have been required on December 31, 2009.**

**Prior to January 1, 2014 States may potentially require contributions by local political subdivisions toward the non-Federal share of the States' expenditures at percentages greater than were required on December 31, 2009. However, because of the provisions of section 1905(cc) of the Act, it is important to determine and document/flag any SPAs/State plans which have such greater percentages prior to the January 1, 2014 date in order to anticipate potential violations and/or appropriate corrective actions by the States and the Federal government.**

**Response:** This SPA would [ ] / would not [✓] violate these provisions, if they remained in effect on or after January 1, 2014.

- 3. Please indicate whether the State is currently in conformance with the requirements of section 1902(a)(37) of the Act regarding prompt payment of claims.**

**Response:** The State complies with the requirements of section 1902(a)(37) of the Act regarding prompt payment of claims.

**Tribal Assurance:**

**Section 1902(a)(73) of the Social Security Act the Act requires a State in which one or more Indian Health Programs or Urban Indian Organizations furnish health care services to establish a process for the State Medicaid agency to seek advice on a regular ongoing basis from designees of Indian health programs whether operated by the Indian Health Service HIS Tribes or Tribal organizations under the Indian Self Determination and Education Assistance Act ISDEAA or Urban Indian Organizations under the Indian Health Care Improvement Act.**

**IHCIA Section 2107(e)(I) of the Act was also amended to apply these requirements to the Children's Health Insurance Program CHIP.**

**Consultation is required concerning Medicaid and CHIP matters having a direct impact on Indian health programs and Urban Indian organizations.**

- a) Please describe the process the State uses to seek advice on a regular ongoing basis from federally recognized tribes Indian Health Programs and Urban Indian Organizations on matters related to Medicaid and CHIP programs and for consultation on State Plan Amendments waiver proposals waiver extensions waiver amendments waiver renewals and proposals for demonstration projects prior to submission to CMS.**
- b) Please include information about the frequency inclusiveness and process for seeking such advice.**
- c) Please describe the consultation process that occurred specifically for the development and submission of this State Plan Amendment when it occurred and who was involved.**

**Response:** Tribal consultation was performed in accordance with the State's tribal consultation policy as approved in SPA 17-0065, and documentation of such is included with this submission. To date, no feedback has been received from any tribal representative in response to the proposed change in this SPA.