



# Department of Health

KATHY HOCHUL  
Governor

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

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

September 7, 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 #22-0071  
Inpatient Hospital Services

Dear Mr. McMillion:

The State requests approval of the enclosed amendment #22-0071 to the Title XIX (Medicaid) State Plan for inpatient hospital services to be effective July 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  
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 PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)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 September 7, 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**  
**Third Quarter Amendment**  
**Amended SPA Pages**

New York  
A(1)(e)

**1905(a)(30) Other Medical Care**

**Health Care and Mental Hygiene Worker Bonuses**

- 1. Effective July 1, 2022, through September 30, 2024, the Department of Health is providing additional supplemental payments, known as the "health care and mental hygiene bonuses," to qualified Medicaid enrolled providers that are defined as Employers in accordance with Social Services Law §367-w for payment of recruitment and retention bonuses to eligible employees. Employees eligible for the bonus payment must have worked:
  - a. As front-line health care and mental hygiene practitioners, technicians, assistants or aides and other health care support workers that work under an eligible title listed in or determined in accordance with Social Services Law §367-w(2)(a);
  - b. For a qualified employer as defined in Social Services Law §367-w;
  - c. During the identified vesting period(s) for at least an average of 20 hours per week;
  - d. In a position that received an annualized salary, excluding bonuses and overtime, of one hundred twenty-five thousand dollars or less;
  - e. For a consecutive six-month period between October 1, 2021, and March 31, 2024, in accordance with a schedule issued by the Department of Health; and
  - f. Are not suspended or excluded from the medical assistance program during the vesting period and at the time an employer submits a claim.

Employees eligible pursuant to the above will receive a bonus for no more than two vesting periods per employer; and the total amount of bonus payments paid to any single qualified employee will not exceed \$3,000.00. Employers will receive an amount to cover the bonus payment obligation in accordance with 367-w and to account for employer liabilities to pay Federal Insurance Contributions Act (FICA), Social Security, and Medicare Tax in an amount equal to 7.65 percent of the bonus payment obligation.

TN #22-0071

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

Supersedes TN #NEW

Effective Date July 1, 2022

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

**SUMMARY**  
**SPA #22-0071**

This State Plan Amendment proposes to provide worker bonuses to New York State's health care and mental hygiene workers effective on or after July 1, 2022.

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

Chapter 56 of the Laws of 2022, Part ZZ:

PART ZZ

23 Section 1. The social services law is amended by adding a new section  
24 367-w to read as follows:

25 § 367-w. Health care and mental hygiene worker bonuses. 1. Purpose  
26 and intent. New York's essential front line health care and mental  
27 hygiene workers have seen us through a once-in-a-century public health  
28 crisis and turned our state into a model for battling and beating  
29 COVID-19. To attract talented people into the profession at a time of  
30 such significant strain while also retaining those who have been working  
31 so tirelessly these past two years, we must recognize the efforts of our  
32 health care and mental hygiene workforce and reward them financially for  
33 their service.

34 To do that, the commissioner of health is hereby directed to seek  
35 federal approvals as applicable, and, subject to federal financial  
36 participation, to support with federal and state funding bonuses to be  
37 made available during the state fiscal year of 2023 to recruit, retain,  
38 and reward health care and mental hygiene workers.

39 2. Definitions. As used in this section, the term:

40 (a) "Employee" means certain front line health care and mental hygiene  
41 practitioners, technicians, assistants and aides that provide hands on  
42 health or care services to individuals, without regard to whether the  
43 person works full-time, part-time, on a salaried, hourly, or temporary  
44 basis, or as an independent contractor, that received an annualized base  
45 salary of one hundred twenty-five thousand dollars or less, to include:

46 (i) Physician assistants, dental hygienists, dental assistants,  
47 psychiatric aides, pharmacists, pharmacy technicians, physical thera-  
48 pists, physical therapy assistants, physical therapy aides, occupational  
49 therapists, occupational therapy assistants, occupational therapy aides,  
50 speech-language pathologists, respiratory therapists, exercise physiolo-  
51 gists, recreational therapists, all other therapists, orthotists,  
52 prosthetists, clinical laboratory technologists and technicians, diag-  
53 nostic medical sonographers, nuclear medicine technologists, radiologic  
54 technologists, magnetic resonance imaging technologists, ophthalmic  
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1 medical technicians, radiation therapists, dietetic technicians, cardio-  
2 vascular technologists and technicians, certified first responders,  
3 emergency medical technicians, advanced emergency medical technicians,  
4 paramedics, surgical technologists, all other health technologists and  
5 technicians, orderlies, medical assistants, phlebotomists, all other  
6 health care support workers, nurse anesthetists, nurse midwives, nurse  
7 practitioners, registered nurses, nursing assistants, and licensed prac-  
8 tical and licensed vocational nurses;

9 (ii) to the extent not already included in subparagraph (i) of this  
10 paragraph, staff who perform functions as described in the consolidated  
11 fiscal report (CFR) manual with respect to the following title codes:

- 12 Mental Hygiene Worker;
- 13 Residence/Site Worker;
- 14 Counselor (OMH);
- 15 Manager (OMH);
- 16 Senior Counselor (OMH);
- 17 Supervisor (OMH);
- 18 Developmental Disabilities Specialist QIDP - Direct Care (OPWDD);



19 Certified Recovery Peer Advocate;  
20 Peer Professional - Non-CRPA (OASAS Only);  
21 Job Coach/Employment Specialist (OMH and OPWDD);  
22 Peer Specialist (OMH);  
23 Counselor - Alcoholism and Substance Abuse (CASAC);  
24 Counseling Aide/Assistant - Alcoholism and Substance Abuse;  
25 Other Direct Care Staff;  
26 Case Manager;  
27 Counselor - Rehabilitation;  
28 Developmental Disabilities Specialist/Habilitation Specialist QIDP -  
29 Clinical (OPWDD);  
30 Emergency Medical Technician;  
31 Intensive Case Manager (OMH);  
32 Intensive Case Manager/Coordinator (OMH);  
33 Nurse - Licensed Practical;  
34 Nurse - Registered;  
35 Psychologist (Licensed);  
36 Psychologist (Master's Level)/Behavioral Specialist;  
37 Psychology Worker/Other Behavioral Worker;  
38 Social Worker - Licensed (LMSW, LCSW);  
39 Social Worker - Master's Level (MSW);  
40 Licensed Mental Health Counselor (OASAS, OMH, OCFS);  
41 Licensed Psychoanalyst (OMH);  
42 Therapist - Recreation;  
43 Therapist - Activity/Creative Arts;  
44 Therapist - Occupational;  
45 Dietician/Nutritionist;  
46 Therapy Assistant/Activity Assistant;  
47 Nurse's Aide/Medical Aide;  
48 Behavior Intervention Specialist 1 (OPWDD);  
49 Behavior Intervention Specialist 2 (OPWDD);  
50 Clinical Coordinator;  
51 Intake/Screening;  
52 Pharmacist;  
53 Marriage and Family Counselor/Therapist;  
54 Residential Treatment Facility (RTF) Transition Coordinator (OMH);  
55 Crisis Prevention Specialist (OMH);  
56 Early Recognition Specialist (OMH);

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1 Other Clinical Staff/Assistants;  
2 Nurse Practitioner/Nursing Supervisor;  
3 Therapist - Physical;  
4 Therapist - Speech;  
5 Program or Site Director; and  
6 Assistant Program or Assistant Site Director; and  
7 (iii) such titles as determined by the commissioner, or relevant agen-  
8 cy commissioner as applicable, and approved by the director of the budg-  
9 et.

10 (b) "Employer" means a provider enrolled in the medical assistance  
11 program under this title that employs at least one employee and that  
12 bills for services under the state plan or a home and community based  
13 services waiver authorized pursuant to subdivision (c) of section nine-  
14 teen hundred fifteen of the federal social security act, or that has a  
15 provider agreement to bill for services provided or arranged through a  
16 managed care provider under section three hundred sixty-four-j of this  
17 title or a managed long term care plan under section forty-four hundred  
18 three-f of the public health law, to include:

19 (i) providers and facilities licensed, certified or otherwise author-  
20 ized under articles twenty-eight, thirty, thirty-six or forty of the  
21 public health law, articles sixteen, thirty-one, thirty-two or thirty-  
22 six of the mental hygiene law, article seven of this chapter, fiscal  
23 intermediaries under section three hundred sixty-five-f of this title,  
24 pharmacies registered under section six thousand eight hundred eight of  
25 the education law, or school based health centers;

26 (ii) programs that participate in the medical assistance program and  
27 are funded by the office of mental health, the office of addiction  
28 services and supports, or the office for people with developmental disa-  
29 bilities; and

30 (iii) other provider types determined by the commissioner and approved  
31 by the director of the budget;

32 (iv) provided, however, that unless the provider is subject to a  
33 certificate of need process as a condition of state licensure or  
34 approval, such provider shall not be an employer under this section  
35 unless at least twenty percent of the provider's patients or persons  
36 served are eligible for services under this title and title XIX of the  
37 federal social security act.

38 (c) Notwithstanding the definition of employer in paragraph (b) of  
39 this subdivision, and without regard to the availability of federal  
40 financial participation, "employer" shall also include an institution of  
41 higher education, a public or nonpublic school, a charter school, an  
42 approved preschool program for students with disabilities, a school  
43 district or boards of cooperative educational services, programs funded  
44 by the office of mental health, programs funded by the office of  
45 addiction services and supports, programs funded by the office for  
46 people with developmental disabilities, programs funded by the office  
47 for the aging, a health district as defined in section two of the public  
48 health law, or a municipal corporation, where such program or entity  
49 employs at least one employee. Such employers shall be required to  
50 enroll in the system designated by the commissioner, or relevant agency  
51 commissioners, in consultation with the director of the budget, for the  
52 purpose of claiming bonus payments under this section. Such system or  
53 process for claiming bonus payments may be different from the system and  
54 process used under subdivision three of this section.

55 (d) "Vesting period" shall mean a series of six-month periods between  
56 the dates of October first, two thousand twenty-one and March thirty-  
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1 first, two thousand twenty-four for which employees that are continuous-  
2 ly employed by an employer during such six-month periods, in accordance  
3 with a schedule issued by the commissioner or relevant agency commis-  
4 sioner as applicable, may become eligible for a bonus pursuant to subdivi-  
5 sion four of this section.

6 (e) "Base salary" shall mean, for the purposes of this section, the  
7 employee's gross wages with the employer during the vesting period,  
8 excluding any bonuses or overtime pay.

9 (f) "Municipal corporation" means a county outside the city of New  
10 York, a city, including the city of New York, a town, a village, or a  
11 school district.

12 3. Tracking and submission of claims for bonuses. (a) The commission-  
13 er, in consultation with the commissioner of labor and the Medicaid  
14 inspector general, and subject to any necessary approvals by the federal  
15 centers for Medicare and Medicaid services, shall develop such forms and  
16 procedures as may be needed to identify the number of hours employees  
17 worked and to provide reimbursement to employers for the purposes of  
18 funding employee bonuses in accordance with hours worked during the

19 vesting period.

20 (b) Using the forms and processes developed by the commissioner under  
21 this subdivision, employers shall, for a period of time specified by the  
22 commissioner:

23 (i) track the number of hours that employees work during the vesting  
24 period and, as applicable, the number of patients served by the employer  
25 who are eligible for services under this title; and

26 (ii) submit claims for reimbursement of employee bonus payments. In  
27 filling out the information required to submit such claims, employers  
28 shall use information obtained from tracking required pursuant to para-  
29 graph (a) of this subdivision and provide such other information as may  
30 be prescribed by the commissioner. In determining an employee's annual-  
31 ized base salary, the employer shall use information based on payroll  
32 records.

33 (c) Employers shall be responsible for determining whether an employee  
34 is eligible under this section and shall maintain and make available  
35 upon request all records, data and information the employer relied upon  
36 in making the determination that an employee was eligible, in accordance  
37 with paragraph (d) of this subdivision.

38 (d) Employers shall maintain contemporaneous records for all tracking  
39 and claims related information and documents required to substantiate  
40 claims submitted under this section for a period of no less than six  
41 years. Employers shall furnish such records and information, upon  
42 request, to the commissioner, the Medicaid inspector general, the  
43 commissioner of labor, the secretary of the United States Department of  
44 Health and Human Services, and the deputy attorney general for Medicaid  
45 fraud control.

46 4. Payment of worker bonuses. (a) Upon issuance of a vesting schedule  
47 by the commissioner, or relevant agency commissioner as applicable,  
48 employers shall be required to pay bonuses to employees pursuant to such  
49 schedule based on the number of hours worked during the vesting period.  
50 The schedule shall provide for total payments not to exceed three thou-  
51 sand dollars per employee in accordance with the following:

52 (i) employees who have worked an average of at least twenty but less  
53 than thirty hours per week over the course of a vesting period would  
54 receive a five hundred dollar bonus for the vesting period;

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1 (ii) employees who have worked an average of at least thirty but less  
2 than thirty-five hours per week over the course of a vesting period  
3 would receive a one thousand dollar bonus for such vesting period;

4 (iii) employees who have worked an average of at least thirty-five  
5 hours per week over the course of a vesting period would receive a one  
6 thousand five hundred dollar bonus for such vesting period.

7 (iv) full-time employees who are exempt from overtime compensation as  
8 established in the labor commissioner's minimum wage orders or otherwise  
9 provided by New York state law or regulation over the course of a vest-  
10 ing period would receive a one thousand five hundred dollar bonus for  
11 such vesting period.

12 (b) Notwithstanding paragraph (a) of this subdivision, the commission-  
13 er may through regulation specify an alternative number of vesting peri-  
14 ods, provided that total payments do not exceed three thousand dollars  
15 per employee.

16 (c) Employees shall be eligible for bonuses for no more than two vest-  
17 ing periods per employer, in an amount equal to but not greater than  
18 three thousand dollars per employee across all employers.

19 (d) Upon completion of a vesting period with an employer, an employee  
20 shall be entitled to receive the bonus and the employer shall be

21 required to pay the bonus no later than the date specified under this  
22 subdivision, provided however that prior to such date the employee does  
23 not terminate, through action or inaction, the employment relationship  
24 with the employer, in accordance with any employment agreement, includ-  
25 ing a collectively bargained agreement, if any, between the employee and  
26 employer.

27 (e) Any bonus due and payable to an employee under this section shall  
28 be made by the employer no later than thirty days after the bonus is  
29 paid to the employer.

30 (f) an employer shall be required to submit a claim for a bonus to the  
31 department no later than thirty days after an employee's eligibility for  
32 a bonus vests, in accordance with and upon issuance of the schedule  
33 issued by the commissioner or relevant agency commissioner.

34 (g) No portion of any dollars received from claims under subparagraph  
35 (ii) of paragraph (b) of subdivision three of this section for employee  
36 bonuses shall be returned to any person other than the employee to whom  
37 the bonus is due or used to reduce the total compensation an employer is  
38 obligated to pay to an employee under section thirty-six hundred four-  
39 teen-c of the public health law, section six hundred fifty-two of the  
40 labor law, or any other provisions of law or regulations, or pursuant to  
41 any collectively bargained agreement.

42 (h) No portion of any bonus available pursuant to this subdivision  
43 shall be payable to a person who has been suspended or excluded under  
44 the medical assistance program during the vesting period and at the time  
45 an employer submits a claim under this section.

46 (i) The use of any accruals or other leave, including but not limited  
47 to sick, vacation, or time used under the family medical leave act,  
48 shall be credited towards and included in the calculation of the average  
49 number of hours worked per week over the course of the vesting period.

50 5. Audits, investigations and reviews. (a) The Medicaid inspector  
51 general shall, in coordination with the commissioner, conduct audits,  
52 investigations and reviews of employers required to submit claims under  
53 this section. Such claims, inappropriately paid, under this section  
54 shall constitute overpayments as that term is defined under the regu-  
55 lations governing the medical assistance program. The Medicaid inspector  
56 general may recover such overpayments to employers as it would an over-  
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1 payment under the medical assistance program, impose sanctions up to and  
2 including exclusion from the medical assistance program, impose penal-  
3 ties, and take any other action authorized by law where:

4 (i) an employer claims a bonus not due to an employee or a bonus  
5 amount in excess of the correct bonus amount due to an employee;

6 (ii) an employer claims, receives and fails to pay any part of the  
7 bonus due to a designated employee;

8 (iii) an employer fails to claim a bonus due to an employee.

9 (b) Any employer identified in paragraph (a) of this subdivision who  
10 fails to identify, claim and pay any bonus for more than ten percent of  
11 its employees eligible for the bonus shall also be subject to additional  
12 penalties under subdivision four of section one hundred forty-five-b of  
13 this article.

14 (c) Any employer who fails to pay any part of the bonus payment to a  
15 designated employee shall remain liable to pay such bonus to that  
16 employee, regardless of any recovery, sanction or penalty the Medicaid  
17 inspector general may impose.

18 (d) In all instances recovery of inappropriate bonus payments shall be  
19 recovered from the employer. The employer shall not have the right to  
20 recover any inappropriately paid bonus from the employee.

21 (e) Where the Medicaid inspector general sanctions an employer for  
22 violations under this section, they may also sanction any affiliates as  
23 defined under the regulations governing the medical assistance program.

24 6. Rules and regulations. The commissioner, in consultation with the  
25 Medicaid inspector general as it relates to subdivision five of this  
26 section, may promulgate rules, to implement this section pursuant to  
27 emergency regulation; provided, however, that this provision shall not  
28 be construed as requiring the commissioner to issue regulations to  
29 implement this section.

30 § 2. Subparagraphs (iv) and (v) of paragraph (a) of subdivision 4 of  
31 section 145-b of the social services law, as amended by section 1 of  
32 part QQ of chapter 56 of the laws of 2020, are amended to read as  
33 follows:

34 (iv) such person arranges or contracts, by employment, agreement, or  
35 otherwise, with an individual or entity that the person knows or should  
36 know is suspended or excluded from the medical assistance program at the  
37 time such arrangement or contract regarding activities related to the  
38 medical assistance program is made~~[-]~~;

39 (v) such person had an obligation to identify, claim, and pay a bonus  
40 under subdivision three of section three hundred sixty-seven-w of this  
41 article and such person failed to identify, claim and pay such bonus.

42 (vi) For purposes of this paragraph, "person" as used in subparagraph  
43 (i) of this paragraph does not include recipients of the medical assist-  
44 ance program; and "person" as used in subparagraphs (ii) ~~[-]~~, (iii) and  
45 (iv) of this paragraph, is as defined in paragraph (e) of subdivision  
46 ~~(6)~~ six of section three hundred sixty-three-d of this ~~chapter~~ arti-  
47 cle; and "person" as used in subparagraph (v) of this paragraph includes  
48 employers as defined in section three hundred sixty-seven-w of this  
49 article.

50 § 3. Paragraph (c) of subdivision 4 of section 145-b of the social  
51 services law is amended by adding a new subparagraph (iii) to read as  
52 follows:

53 (iii) For subparagraph (v) of paragraph (a) of this subdivision, a  
54 monetary penalty shall be imposed for conduct described in subparagraphs  
55 (i), (ii) and (iii) of paragraph (a) of subdivision five of section  
56 three hundred sixty-seven-w of this article and shall not exceed one  
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1 thousand dollars per failure to identify, claim and pay a bonus for each  
2 employee.

3 § 4. Health care and mental hygiene worker bonuses for state employ-  
4 ees. 1. An employee who is employed by a state operated facility, an  
5 institutional or direct-care setting operated by the executive branch of  
6 the State of New York or a public hospital operated by the state univer-  
7 sity of New York and who is deemed substantially equivalent to the defi-  
8 nition of employee pursuant to paragraph (a) of subdivision 2 of section  
9 367-w of the social services law as determined by the commissioner of  
10 health, in consultation with the chancellor of the state university of  
11 New York, the commissioner of the department of civil service, the  
12 director of the office of employee relations, and the commissioners of  
13 other state agencies, as applicable, and approved by the director of the  
14 budget, shall be eligible for the health care and mental hygiene worker  
15 bonus. Notwithstanding the definition of base salary pursuant to para-  
16 graph (e) of subdivision 2 of section 367-w, such bonus shall only be  
17 paid to employees that receive an annualized base salary of one hundred  
18 twenty-five thousand dollars or less.

19 2. Employees shall be eligible for health care and mental hygiene  
20 worker bonuses in an amount up to but not exceeding three thousand

21 dollars per employee. The payment of bonuses shall be paid based on the  
22 total number of hours worked during two vesting periods based on the  
23 employee's start date with the employer. No employee's first vesting  
24 period may begin later than March thirty-first, two thousand twenty-  
25 three, and in total both vesting periods may not exceed one year in  
26 duration. For each vesting period, payments shall be in accordance with  
27 the following:

28 (a) employees who have worked an average of at least twenty but less  
29 than thirty hours per week over the course of a vesting period shall  
30 receive a five hundred dollar bonus for the vesting period;

31 (b) employees who have worked an average of at least thirty but less  
32 than thirty-seven and one half hours per week over the course of a vest-  
33 ing period shall receive a one thousand dollar bonus for such vesting  
34 period; and

35 (c) employees who have worked an average of at least thirty-seven and  
36 one half hours per week over the course of a vesting period shall  
37 receive a one thousand five hundred dollar bonus for such vesting peri-  
38 od.

39 § 5. An employee under this act shall be limited to a bonus of three  
40 thousand dollars per employee without regard to which section or  
41 sections such employee may be eligible or whether the employee is eligi-  
42 ble to receive a bonus from more than one employer.

43 § 6. Notwithstanding any provision of law to the contrary, any bonus  
44 payment paid pursuant to this act, to the extent includible in gross  
45 income for federal income tax purposes, shall not be subject to state or  
46 local income tax.

47 § 7. Bonuses under this act shall not be considered income for  
48 purposes of public benefits or other public assistance.

49 § 8. Paragraph (a) of subdivision 8 of section 131-a of the social  
50 services law is amended by adding a new subparagraph (x) to read as  
51 follows:

52 **(x) all of the income of a head of household or any person in the**  
53 **household, who is receiving such aid or for whom an application for such**  
54 **aid has been made, which is derived from the health care and mental**  
55 **hygiene worker bonuses under section three hundred sixty-seven-w of this**  
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1 **article or under the chapter of the laws of two thousand twenty-two**  
2 **which added this subparagraph.**

3 § 9. The department of health shall request any necessary waiver or  
4 waivers from the centers for medicare and medicaid services to ensure  
5 that the payments required by this act shall not be included in the  
6 calculation of federal disproportionate share payments as determined by  
7 42 CFR § 412.106, or in the calculation of the upper payment limit as  
8 determined by 42 CFR § 447.272 and 42 CFR § 447.321, for any applicable  
9 employer types that receive disproportionate share payments, upper  
10 payment limit supplemental payments, or similar supplemental payments  
11 where the centers for medicare and medicaid services has a waiver or  
12 similar process for the exclusion of the payments required by this act  
13 from such calculations.

14 § 10. This act shall take effect immediately.

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

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

## All Services

Effective on or after April 1, 2022, the Department of Health will adjust rates statewide to reflect a 5.4% percent Cost of Living Adjustment for the following Office of Mental Health (OMH), Office of Addiction Services and Supports (OASAS), and Office for People With Developmental Disabilities (OPWDD) State Plan Services: OMH Outpatient Services, OMH Clinic Services, OMH Rehabilitative Services, Children Family Treatment Support Services, Health Home Plus, Residential Treatment Facilities for Children and Youth, OASAS outpatient addiction services, OASAS freestanding (non-hospital) inpatient rehabilitation services, OASAS freestanding inpatient detox services, OASAS addiction treatment centers, OASAS Part 820 residential services, OASAS residential rehabilitation services for youth, Intermediate Care Facility (ICF/IDD), Day Treatment, Article 16 Clinic services, Specialty Hospital, Health Home Services Provided by Care Coordination Organizations, Independent Practitioner Services for Individual with Developmental Disabilities (IPSIDD), and OPWDD Crisis Services.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to the April 1, 2022, 5.4% percent Cost of Living Adjustment contained in the budget for State Fiscal Year 2023 is \$109.9 million.

Effective on or after April 1, 2022, Health care and mental hygiene worker bonuses will be provided to New York's essential front line health care and mental hygiene workers. These bonuses are intended to attract talented people into the profession and retain people who have been working during the COVID-19 Pandemic by rewarding them financially for their service.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$1.85 billion.

Effective for dates of service on or after April 1, 2022, through March 31, 2024, all Medicaid rate-based claims will receive a 1% operating increase. Payments exempted from this increase, are as follows:

- Payments not subject to federal financial participation;
- Payments that would violate federal law including, but not limited to, hospital disproportionate share payments that would be in excess of federal statutory caps;
- Payments made by other state agencies including, but not limited to, those made pursuant to articles 16, 31 and 32 of the mental hygiene laws;
- 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
- At the discretion of the Commissioner of Health and the Director of the Budget, payments with regard to which it is determined that application of increases pursuant to this section would result, by operation of federal law, in a lower federal medical assistance percentage applicable to such payments.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$165 million.

Effective for dates of service on or after April 1, 2022, the 1.5% uniform reduction for all non-exempt Department of Health state funds Medicaid payments will be restored.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$280 million.

## Non-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 non-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 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.

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 payment of up to \$5.4 million in additional annual Medicaid payments 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.

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

Effective April 1, 2022, and each state fiscal year thereafter, this amendment proposes to revise the final payment component of the calculation to account for claim runout. The current authority to make supplemental payments for services provided by physicians, nurse practitioners and physician assistants will continue.

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

Effective on or after April 1, 2022, payments in quarter-hour units for the following harm reduction services for people who actively use drugs provided at New York State Commissioner of Health waived comprehensive harm reduction programs (community-based organizations) will be revised. The intention is to combat the opioid overdose crisis and reduce health care costs for people who use drugs. Harm reduction services improve population health and have been shown to reduce health care costs by preventing disease transmission (HIV, HBV, and HCV), injection site infections, emergency department and inpatient care from drug overdose, injury, and death. Comprehensive harm reduction programs are effective at engaging high-risk populations and serving as a bridge for entry into drug treatment and other health and social services.

Regional monthly rates will be established for New York City and the rest of the state and are based on the expected direct service costs in each region. Billable activities encompass those components of harm reduction attributable to direct client service, such as brief assessment and treatment planning, harm reduction counseling, linkage and navigation, medication management and treatment adherence counseling, psychoeducation support groups. Direct and indirect costs are budgeted as part of the rate. No funds shall be used to carry out the purchase or distribution of sterile needles or syringes for the hypodermic injection of any illegal drug.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$34.6 million.



Effective on or after April 1, 2022, this notice proposes to establish Medical Assistance coverage and rates of payment for crisis intervention services to stabilize and treat mental health and substance use disorder conditions, provided by mobile crisis teams and residential crisis settings for adults, as well as crisis stabilization centers for adults and children.

More specifically, crisis intervention services provided by multidisciplinary mobile crisis teams in accordance with Section 9813 of the American Rescue Plan Act provide an array of crisis intervention services, including telephonic triage for both adults and children, mobile crisis response, and mobile or telephonic follow-up services, in a variety of settings in the community.

Crisis intervention services provided in crisis stabilization centers will provide urgently needed immediate evaluation, treatment, and support services, including coordination with other mental health and substance use services, for children and adults experiencing or at risk of a mental health or substance use disorder crisis.

Crisis intervention services will also be provided in residential crisis settings, which are short-term, voluntary, non-IMD, sub-acute settings, and address a spectrum of acuity levels in which an individual may present in a mental health or substance use disorder crisis. Services stabilize crisis symptoms and restore functionality to enable transition back to the community and to prevent or reduce future psychiatric crises.

The estimated annual net aggregate increase in gross Medicaid expenditures related to this State Plan Amendment for State Fiscal Year 2023 is \$16M and for State Fiscal Year 2024 is \$44.5 million.

Effective on or after April 1, 2022, and for each State Fiscal Year thereafter, the State proposes to revise the method of distributing the funding for the Clinic Safety Net (CSN) distribution for comprehensive diagnostic and treatment centers that are other than Federally Qualified Health Centers (referred to as the non-FQHC CSN distribution).

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

Effective on or after April 1, 2022, the State proposes to enter into outcomes-based contract arrangements with drug manufacturers for drugs provided to Medicaid beneficiaries through supplemental rebate agreements.

The estimated annual net aggregate decrease in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is (\$5 million).

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

Contingent upon CMS approval of the Spending Plan submitted by the state, established rates will be enhanced for state-plan approved private duty nursing (PDN) services for members 23 years of age and older by an additional 30 percent for the medically fragile training and experience and 45 percent for the private duty nursing directory starting April 1, 2022.

The estimated annual net aggregate increase in gross Medicaid expenditures as a result of the proposed amendments for PDN services for State Fiscal Year 2023 is \$38.9 million.

Effective on or after April 1, 2022, pursuant to the Centers for Medicare and Medicaid Services, Medicaid coverage must include routine patient costs for items and services furnished in connection with participation by beneficiaries in qualifying clinical trials. The Department will submit a State Plan Amendment for Medicaid to formalize federal approval of existing coverage in accordance with the requirements. Routine patient costs and qualifying clinical trials are defined in Section 1905(a)30 and Section 1905(gg) of the Social Security Act (the Act), respectively. This includes clinical trials in any clinical phase of development that is conducted in relation to the prevention, detection, or treatment of any serious or life-threatening disease or condition and is described in any of clauses (i)-(iii) of section 1905(gg) of the Act. Routine patient costs do not include any investigational item or service that is the subject of the qualifying clinical trial and is not otherwise covered outside of the clinical trial under the state plan, waiver, or demonstration project.

There is no estimated annual change to gross Medicaid expenditures as a result of this proposed amendment, since these benefits are already covered under long-standing NYS Medicaid policy.

Effective on or after April 1, 2022, pursuant to the Centers for Medicare and Medicaid Services, Alternative Benefit Plans (ABP) coverage must include routine patient costs for items and services furnished in connection with participation by beneficiaries in qualifying clinical trials. The Department will submit a State Plan Amendment for ABP to formalize federal approval of existing coverage in accordance with the requirements. Routine patient costs and qualifying clinical trials are defined in Section 1905(a)30 and Section 1905(gg) of the Social Security Act (the Act), respectively. This includes clinical trials in any clinical phase of development that is conducted in relation to the prevention, detection, or treatment of any serious or life-threatening disease or condition and is described in any of clauses (i)-(iii) of section 1905(gg) of the Act. Routine patient costs do not include any investigational item or service that is the subject of the qualifying clinical trial and is not otherwise covered outside of the clinical trial under the state plan, waiver, or demonstration project.

There is no estimated annual change to gross Medicaid expenditures as a result of this proposed amendment, since these benefits are already covered under long-standing NYS Medicaid policy.

Effective April 1, 2022, the Medicaid Program is proposing to incentivize ABA provider enrollment and participation by increasing Medicaid reimbursement amounts, aligning fees with those paid by the Child Health Plus program. "Applied behavior analysis" or "ABA" is the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior. ABA services are provided to individuals who have a diagnosis of autism spectrum or related disorder. As of August 1, 2021, Medicaid began accepting enrollment of Licensed Behavior Analysts as independent practitioners to provide ABA to Medicaid members under age 21 with a diagnosis of Autism Spectrum Disorder or Rhetts's Syndrome. However, Medicaid Managed Care Plans (MMC) and ABA providers indicated that the Medicaid reimbursement rate is below rates paid by CHP and commercial plans. Subsequently, very few ABA providers have been willing to enroll as Medicaid managed care and/or fee-for-service providers.

The estimated annual net aggregate increase in gross Medicaid expenditures as a result of the proposed amendment for State Fiscal Year 2023 is \$73.2 million.

Effective on or after April 1, 2022, this proposal to amend the State Plan to align with Subdivision 2 of section 365-a of the social services law, that authorizes clinical social workers, licensed pursuant to Article 154 of the Education law, to bill Medicaid directly for their services within their scope of practice, effective April 1, 2022.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$24.2 million.

Effective on or after April 1, 2022, this proposal to amend the State Plan to align with Subdivision 2 of section 365-a of the social services law, that authorizes licensed mental health counselors and marriage and family therapists, licensed pursuant to Article 163 of the Education law, to bill Medicaid directly for their services within their scope of practice, effective April 1, 2022.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$4.2 million.

Effective on or after July 1, 2022, Medicaid reimbursement rates for non-facility physician services will be updated to 70% of current Medicare rates. This update will apply to Evaluation & Management (E&M) and Medicine procedure codes. Most Medicaid physician reimbursement rates have not been updated since 2009 and New York Medicaid is currently reimbursing physicians, on average, at 45% of Medicare for E&M codes and 58% of Medicare for Medicine codes. Updating the Medicaid physician fee schedule is intended to increase the use of primary care and preventative services and reduced utilization of costlier downstream care.

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

each local (county) social services district and available for public review.

For the New York City district, copies will be available at the following places:  
 New York County  
 250 Church Street  
 New York, New York 10018

Queens County, Queens Center  
 3220 Northern Boulevard  
 Long Island City, New York 11101

Kings County, Fulton Center  
 114 Willoughby Street  
 Brooklyn, New York 11201

Bronx County, Tremont Center  
 1916 Monterey Avenue  
 Bronx, New York 10457

Richmond County, Richmond Center  
 95 Central Avenue, St. George  
 Staten Island, New York 10301

*For further information and to review and comment, please contact:*  
 Department of Health, Division of Finance and Rate Setting, 99  
 Washington Ave., One Commerce Plaza, Suite 1432, Albany, NY  
 12210, spa\_inquiries@health.ny.gov

**PUBLIC NOTICE**

Department of State  
 Notice of Review of Request for  
 Brownfield Opportunity Area  
 Conformance Determination  
 Project: Alvista Rise  
 Location: 147-25 94th Avenue  
 Jamaica Brownfield Opportunity Area  
 City of New York, Queens County

In accordance with General Municipal Law, Article 18 - C, Section 970-r, the Secretary of State designated the Jamaica Brownfield Opportunity Area, in the Bronx, on April 15, 2015. The designation of the Jamaica Brownfield Opportunity Area was supported by a Nomination or a comprehensive planning tool that identifies strategies to revitalize the area which is affected by one or more known or suspected brownfield sites.

Pursuant to New York State Tax Law, Article 1, Section 21, the eligible taxpayer(s) of a project site located in a designated Brownfield Opportunity Area may apply for an increase in the allowable tangible property tax credit component of the brownfield redevelopment tax credit if the Secretary of State determines that the project conforms to the goals and priorities established in the Nomination for a designated Brownfield Opportunity Area.

On October 5, 2021, J2 Owner LLC submitted a request for the Secretary of State to determine whether the project Alvista Rise, located at 147-25 94th Avenue, Queens, NY, which will be located within the designated Jamaica Brownfield Opportunity Area, conform to the goals and priorities identified in the Nomination that was prepared for the designated Jamaica Brownfield Opportunity Area.

The public is permitted and encouraged to review and provide comments on the request for conformance. For this purpose, the full application for a conformance determination is available online at: [https://dos.ny.gov/system/files/documents/2022/03/application\\_147-25\\_94th-avenue\\_jamaica.pdf](https://dos.ny.gov/system/files/documents/2022/03/application_147-25_94th-avenue_jamaica.pdf)

*Comments must be submitted no later than April 30th, 2022, either by mail to:* Kevin Garrett, Department of State, Office of Planning and Development, 123 William St., #20-163, New York, NY 10038, or by email to: kevin.garrett@dos.ny.gov

**PUBLIC NOTICE**

Department of State  
 Notice of Review of Request for  
 Brownfield Opportunity Area  
 Conformance Determination  
 Project: The Arches  
 Location: Port Morris Harlem Riverfront  
 Brownfield Opportunity Area  
 City of New York, Bronx County

In accordance with General Municipal Law, Article 18 - C, Section 970-r, the Secretary of State designated the Port Morris Harlem Riverfront Brownfield Opportunity Area, in the Bronx, on April 9, 2015. The designation of the Port Morris Harlem Riverfront Brownfield Opportunity Area was supported by a Nomination or a comprehensive planning tool that identifies strategies to revitalize the area which is affected by one or more known or suspected brownfield sites.

Pursuant to New York State Tax Law, Article 1, Section 21, the eligible taxpayer(s) of a project site located in a designated Brownfield Opportunity Area may apply for an increase in the allowable tangible property tax credit component of the brownfield redevelopment tax credit if the Secretary of State determines that the project conforms to the goals and priorities established in the Nomination for a designated Brownfield Opportunity Area.

On July 30, 2021, Deegan 135 Realty LLC submitted a request for the Secretary of State to determine whether The Arches Project, which will be located within the designated Port Morris Harlem Riverfront Brownfield Opportunity Area, conform to the goals and priorities identified in the Nomination that was prepared for the designated Port Morris Harlem Riverfront Brownfield Opportunity Area.

The public is permitted and encouraged to review and provide comments on the request for conformance. For this purpose, the full application for a conformance determination is available online at: <https://dos.ny.gov/system/files/documents/2022/03/2021-07-30-final-boa-conformance-application-with-attachments-for-deegan-135-realty-llc.pdf>

*Comments must be submitted no later than March 30th, 2022, either by mail to:* Kevin Garrett, Department of State, Office of Planning and Development, 123 William St., #20-163, New York, NY 10038, or by email to: kevin.garrett@dos.ny.gov

**PUBLIC NOTICE**

Department of State  
 F-2022-0058, F-2022-0130 through F-2022-0140  
 Date of Issuance – March 30, 2022

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 (CZMA) of 1972, as amended.

The applicant has certified that the proposed activities comply with and will be conducted in a manner consistent with the federally approved New York State Coastal Management Program (NYSCMP). 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.

In F-2022-0058, F-2022-0130, F-2022-0131, F-2022-0132, F-2022-0133, F-2022-0134, F-2022-0135, F-2022-0136, F-2022-0137, F-2022-0138, F-2022-0139, and F-2022-0140, the consultant, Andrew Baird at First Coastal Corp., is proposing a living shoreline along twelve contiguous properties. The shoreline design will contain the following parts: a 12' wide emergent rock sill ranging from 40' to 65' long consisting of approx. 110 cubic yards of stone per property to be placed 58 feet seaward of the rock core dune; 94 cubic yards of clean sand fill landward of rock sill per property; 750 square feet of spartina planting 12" O.C. per property; a rock-core dune of 45 cubic yards of toe stone and fill stone per property for 6 of the homes; additional 18"

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

**INSTITUTIONAL SERVICES**  
**State Plan Amendment #22-0071**

**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 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 a combination of the following funds/funding sources through enacted appropriations authority to the Department of Health (DOH) for the New York State Medicaid program.

Payment Type	Non-Federal Share Funding	4/1/22 – 3/31/23	
		Non-Federal	Gross
Supplemental	General Fund; Special Revenue Funds	\$249,480,000	\$498,959,000

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

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

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

**2) Special Revenue Funds:**

- a. Health Care Reform Act (HCRA) Resource Fund: as authorized in section 92-dd of New York State Finance Law and was established in 1996, pursuant to New York State Public Health Law 2807-j. HCRA resources include health care related surcharges, assessments on hospital revenues, and a "covered

lives" assessment paid by insurance carriers pursuant to chapter 820 of the laws of 2021.

- b. Health Facility Cash Assessment Program (HFCAP) Fund: HFCAP requires New York State designated providers to pay an assessment on cash operating receipts on a monthly basis. The assessment includes Article 28 Residential Health Care Facilities, Article 28 General Hospitals, Article 36 Long Term Home Health Care Programs, Article 36 Certified Home Health Agencies and Personal Care Providers that possess a Title XIX (i.e. Medicaid) contract with a Local Social Services District for the delivery of personal care services pursuant to Section 367-i of the New York State Social Services Law.

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

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

**Response:** The Medicaid payments under this State Plan Amendment are supplemental payments and total \$498,959,000 in State Fiscal Year 2022-23.

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 Medicaid payments authorized under this State Plan Amendment do not impact the UPL demonstrations.

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.