

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-26-12  
Baltimore, Maryland 21244-1850



**Center for Medicaid and CHIP Services**

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**DEC 19 2012**

Jason A. Helgerson  
State Medicaid Director  
Deputy Commissioner  
Office of Health Insurance Programs  
New York State Department of Health  
Corning Tower (OCP - 1211)  
Albany, New York 12237

RE: TN 12-24

Dear Mr. Helgerson:

We have reviewed the proposed amendment to Attachment 4.19-D of your Medicaid State plan submitted under transmittal number (TN) 12-24. Effective July 1, 2012, this amendment will reduce Medicaid payments for certain reserve bed days and effective January 1, 2013 will implement a reduction in NF per diem rates.

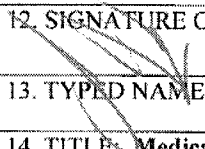
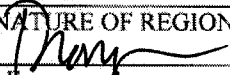
We conducted our review of your submittal according to the statutory requirements at sections 1902(a)(2), 1902(a)(13), 1902(a)(30), and 1903(a) of the Social Security Act and the regulations at 42 CFR 447 Subpart C. This is to inform you that New York 12-24 is approved effective July 1, 2012 and I have enclosed the HCFA-179 and the approved plan pages.

If you have any questions, please contact Tom Brady at 518-396-3810 or Rob Weaver at 410-786-5914.

Sincerely,

A handwritten signature in black ink, which appears to read "Cindy Mann". The signature is written in a cursive, flowing style.

Cindy Mann  
Director  
Center for Medicaid, CHIP Services

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b>		1. TRANSMITTAL NUMBER: 12-24	2. STATE New York
FOR: HEALTH CARE FINANCING ADMINISTRATION		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE July 1, 2012	
5. TYPE OF PLAN MATERIAL (Check One): <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)			
6. FEDERAL STATUTE/REGULATION CITATION: Section 1902(a) of the Social Security Act, and 42 CFR 447		7. FEDERAL BUDGET IMPACT: a. FFY 07/01/12 – 09/30/12 (\$ 4,800,000) b. FFY 10/01/12 – 09/30/13 (\$28,400,000)	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.19-C: Page 1 4.19D 110(d)(23)		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Attachment 4.19-C: Page 1	
10. SUBJECT OF AMENDMENT: Nursing Home Bedhold Revisions (effective 7/1/12) & Per Diem Adjustment (effective 12/1/12) (FMAP = 50%)			
11. GOVERNOR'S REVIEW (Check One): <input checked="" type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> OTHER, AS SPECIFIED: <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL: 		16. RETURN TO: New York State Department of Health Bureau of HCRA Oper & Financial Analysis 99 Washington Ave – One Commerce Plaza Suite 810 Albany, NY 12210	
13. TYPED NAME: Jason A. Helgerson			
14. TITLE: Medicaid Director Department of Health			
15. DATE SUBMITTED: September 28, 2012			
<b>FOR REGIONAL OFFICE USE ONLY</b>			
17. DATE RECEIVED:		18. DATE APPROVED: DEC 19 2012	
<b>PLAN APPROVED – ONE COPY ATTACHED</b>			
19. EFFECTIVE DATE OF APPROVED MATERIAL:		20. SIGNATURE OF REGIONAL OFFICIAL: 	
21. TYPED NAME: Penny Thompson		22. TITLE: Deputy Director, CMCS	
23. REMARKS:			

New York  
110(d)(23)

Per Diem Reduction to all qualified facilities.

- (a) Qualified facilities are residential health care facilities other than those facilities or units within facilities that provide extensive nursing, medical, psychological and counseling support services solely to children.
- (b) Effective January 1, 2013, all qualified residential health care facilities will be subject to a per diem adjustment that is calculated to reduce Medicaid payments by \$24 million for the period January 1, 2013 through March 31, 2013.

Effective April 1, 2013, all qualified residential health care facilities will be subject to a per diem adjustment that is calculated to reduce Medicaid payments by \$19 million for each state fiscal year beginning April 1, 2013.

- (c) An interim diem adjustment for each facility will be calculated as follows:
  - (1) For each such facility, facility Medicaid revenues, calculated by multiplying each facility's promulgated rate in effect for such period by reported Medicaid days as reported in a facility's most recently available cost report, will be divided by total Medicaid revenues of all qualified facilities. The result will be multiplied by the amount of savings identified above for each such fiscal year, and divided by each facility's most recently reported Medicaid days.
  - (2) Following the close of each fiscal year, the interim per diem adjustment effective January 1, 2013 through March 31, 2013, and April 1, 2013 through March 31, 2014 and in each state fiscal year thereafter will be reconciled using actual Medicaid claims data to determine the actual combined savings from the per diem adjustment and from the reduction in the payment for reserve bed days for hospitalizations from 95% to 50% of the Medicaid rate for such fiscal year. To the extent that such interim savings is greater than or less than \$40 million, the per diem adjustment for each eligible provider in effect during such prior fiscal year will be adjusted proportionately such that \$40 million in savings is achieved.

TN # 12-24

Supersedes TN NEW

Approval Date DEC 19 2012

Effective Date JUL -1 2012

**New York  
Page 1**

**PAYMENT FOR RESERVED BEDS IN MEDICAL INSTITUTIONS**

**LIMITATIONS**

**A. RESERVED BEDS DURING LEAVES OF ABSENCE** (Defined to mean overnight absences including visits with relatives/friends, or leaves to participate in medically acceptable therapeutic or rehabilitative plans of care).

When patient's/resident's plan of care provides for leaves of absence:

**General Hospital Patients**

Eligibility restricted to patients receiving care in certified psychiatric or rehabilitation units, without consideration of any vacancy rate. A psychiatric patient must be institutionalized for 15 days during a current spell of illness; a rehabilitation patient must be institutionalized for 30 days. Leaves must be for therapeutic reasons only and carry a general limitation of no more than 18 days in any 12 month period, and 2 days per any single absence. Broader special limits are possible physicians can justify them, subject to prior approval.

**Nursing Facility (NF) Patients**

A reserved bed day is a day for which a governmental agency pays a residential health care facility to reserve a bed for a person eligible for medical assistance while he or she is temporarily hospitalized or on leave of absence from the facility.

All recipients eligible after 30 days in the facility, subject to a facility vacancy rate, on the first day of the patient's/resident's absence of no more than 5%. General limitations of no more than 18 days in any 12 month period with broader special limits possible when physicians can justify them, subject to prior approval.

Effective July [19, 2010] 1, 2012, for reserved bed days provided on behalf of persons 21 years of age or older:

- (i) payments for reserved bed days related to hospitalization will be made at [95%] 50% of the Medicaid rate, and payments for reserved bed days related to non-hospitalization leaves of absence will be made at 95% of the Medicaid rate otherwise payable to the facility for services provided [on behalf of ] to such person;
- (ii) payment to a facility for reserved bed days provided [on behalf of] for such person for [temporary] hospitalizations and therapeutic leave that is consistent with a plan of care ordered by the patient's treating health care professional may not exceed 14 days in any 12-month period; and
- (iii) payment to a facility for reserved bed days provided [on behalf of such person for non-hospitalization leaves of absence] for patients on leave for purposes other than hospitalization or eligible therapeutic leave may not exceed 10 days in any 12-month period.

In computing reserved bed days, the day of discharge from the residential health care facility shall be counted, but not day of readmission.

For each state fiscal year in which the reserved bed day provision does not realize \$40,000,000 in gross savings, effective December 1, 2012, a per diem adjustment will be applied for all nursing homes, other than those providing services primarily to children under the age of twenty-one, sufficient to increase the gross savings to \$40,000,000 for that state fiscal year.

**TN # 12-24** \_\_\_\_\_

**Approval Date** DEC 19 2012

**Supersedes TN #10-22-A** \_\_\_\_\_

**Effective Date** JUL -1 2012

**OS Notification****State/Title/Plan Number:** NY-12-24**Type of Action:** SPA Approval**Required Date for State Notification:** Dec 27, 2012**Fiscal Impact:** FY 2012 (\$ 4.8 million) FFP  
FY 2013 (\$28.4 million) FFP**Number of Services Provided by Enhanced Coverage, Benefits or Retained Enrollment:** 0**Number of Potential Newly Eligible People:** 0**Eligibility Simplification:** No**Provider Payment Increase:** No**Delivery System Innovation:** No**Number of People Losing Medicaid Eligibility:** 0**Reduces Benefits:** No**Detail:**

This amendment implements two cost saving measures enacted by the New York State Legislature. Effective July 1, 2012, it reduces the rate for nursing facility (NF) reserve bed days when the absences are due to hospitalizations. The State currently pays 95% of the regular per diem rate and this amendment will reduce the rate to 50% for hospital absences. NY will continue to pay at the 95% level for other absences. Effective January 1, 2013, the amendment will reduce regular NF per diem rates to achieve \$24 million in savings. In the following State fiscal year, the per diem adjustment will be reset to obtain savings of \$19 million.

The State provided satisfactory responses to the standard funding questions. The funding for this SPA is from General Appropriations. CMS reviewed NY's NF UPL demonstration for 2011 and found it to be acceptable. Since this amendment reduces payments, we didn't require NY to update it for this SPA.

NY satisfactorily answered CMS' beneficiary access questions. NY indicated it will continue to comply with 1902(a)(30) of the Act. Currently of the 635 nursing homes in NY, only 3 do not participate in the program. Before a NF can withdraw or reduce their participation from NY Medicaid, they must give the state notice and NY has not received any notice from any provider. The State also maintains hotlines for both providers and recipients and so far the State has not received any complaints. NY also indicated that the State currently has an excess of bed supply.

NY requires NFs to report their bed supply on a weekly basis and went on to explain various other processes they use to monitor access.

As part of the Nursing Facility Compare, NY reports on the quality measures used in the 5 Star Quality Rating System. This information shows that NF quality of care in NY is generally at or above national averages on the selected measures.

**Other Considerations:**

This amendment has not generated significant outside interest. We do not recommend the Secretary contact the governor.

Affordable Care Act Impact – NY assured CMS that:

1. 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. The State does not 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.
3. This State is not a Disaster-Recovery FMAP Adjustment State as defined in ACA
4. This SPA complies with the requirements of section 1902(a)(37) of the Act regarding prompt payment of claims.

No Tribal providers are impacted by this amendment.

**CMS Contact:**

**Rob Weaver/Tom Brady, NIRT 518-396-3810 x109**