

**DEPARTMENT OF HEALTH & HUMAN SERVICES**

Centers for Medicare & Medicaid Services  
Center for Medicaid & CHIP Services  
233 North Michigan Ave., Suite 600  
Chicago, Illinois 60601



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**Financial Management Group**

March 17, 2021

Donna Frescatore  
Medicaid Director  
New York State Department of Health  
One Commerce Plaza, Suite 1211  
Albany, NY 12210

RE: TN 20-0060

Dear Ms. Frescatore:

We have reviewed the proposed New York State Plan Amendment (SPA) to Attachment 4.19-B transmittal number 20-0060, which was submitted to the Centers for Medicare & Medicaid Services (CMS) on December 30, 2020. New York State Department of Health will increase the fees for private duty nursing (PDN) services.

Based upon the information provided by the State, we have approved the amendment with an effective date of October 1, 2020. We are enclosing the approved CMS-179 and a copy of the new state plan pages.

If you have any additional questions or need further assistance, please contact Tamara Sampson at 214-767-6431 or [Tamara.Sampson@cms.hhs.gov](mailto:Tamara.Sampson@cms.hhs.gov).

Sincerely,

A solid black rectangular box redacting the signature of Todd McMillion.

Todd McMillion  
Director  
Division of Reimbursement Review

Enclosures

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

1. TRANSMITTAL NUMBER

2 0 — 0 0 6 0

2. STATE

New York

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)  
TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR  
CENTERS FOR MEDICARE & MEDICAID SERVICES  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

October 01, 2020

5. TYPE OF PLAN MATERIAL (*Check One*)

NEW STATE PLAN

AMENDMENT TO BE CONSIDERED AS NEW PLAN

AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (*Separate transmittal for each amendment*)

6. FEDERAL STATUTE/REGULATION CITATION  
§ 1902(a) of the Social Security Act and 42 CFR 447

7. FEDERAL BUDGET IMPACT  
a. FFY 10/01/20-09/30/21 \$ \$25,650.00  
b. FFY 10/01/21-09/30/22 \$ \$27,628.00

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Attachment 4.10-B Pages: 4(a)(i)(3), 5, 5(a)  
Attachment 4.19-B Pages: 1(a), 4(a)(i)(3), 5, 5(a)

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (*If Applicable*)

Attachment 4.10-B Pages: 4(a)(i)(3), 5, 5(a)  
Attachment 4.19-B Pages: 1(a), 4(a)(i)(3), 5, 5(a)

10. SUBJECT OF AMENDMENT

Private Duty Nursing  
(FMAP=50%)

11. 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

12. SIGNATURE OF STATE AGENCY OFFICIAL

[Redacted Signature]

13. TYPED NAME

Donna Frescatore

14. TITLE

Medicaid Director, Department of Health

15. DATE SUBMITTED

December 30, 2020

16. RETURN TO

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

**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED

December 30, 2020

18. DATE APPROVED

3/17/2021

**PLAN APPROVED - ONE COPY ATTACHED**

19. EFFECTIVE DATE OF APPROVED MATERIAL

October 1, 2020

20. SIGNATURE OF REGIONAL OFFICIAL

[Redacted Signature]

21. TYPED NAME

Todd McMillion

22. TITLE

Director, FMG Division of Reimbursement Review

23. REMARKS

Corrections to page impacted page numbers in Block 8 and Block 9, as agreed to with state.

## New York 1(a)

### **Dental Services (including dentures)**

Payments are limited to the lower of the usual and customary charge to the public or the fee schedule developed by the Department of Health and approved by the Division of the Budget.

### **Podiatrists**

Fee schedule developed by the Department of Health and approved by the Division of the Budget.

### **Optometrists**

Fee schedule developed by the Department of Health and approved by the Division of the Budget.

### **Chiropractor's Services**

Fee schedule developed by the Department of Health and approved by the Division of the Budget.

### **Nurse Midwives**

Fee schedule developed by the Department of Health and approved by the Division of the Budget.

Effective September 1, 2012, reimbursement will be provided to nurse midwives for breastfeeding health education and counseling services. Nurse midwives must be currently registered and licensed by the State in accordance with 42 CFR 440.60(a) and also International Board Certified Lactation Consultants (IBCLC). Date of implementation will occur on the first day of the month following 30 days after Federal approval of this provision of the State Plan.

### **Nurse Practitioners**

Fee schedule developed by the Department of Health and approved by the Division of the Budget.

Effective September 1, 2012, reimbursement will be provided to nurse practitioners for breastfeeding health education and counseling services. Nurse practitioners must be currently registered and licensed by the State in accordance with 42 CFR 440.60(a) and also International Board Certified Lactation Consultants (IBCLC). Date of implementation will occur on the first day of the month following 30 days after Federal approval of this provision of the State Plan.

### **Other Practitioner Services**

### **Clinical Psychologists**

Fee schedule developed by the Department of Health and approved by the Division of the Budget.

### **Outpatient Hospital Services/Emergency Room Services**

For those facilities certified under Article 28 of the State Public Health Law: The Department of Health promulgates prospective, all inclusive rates based upon reported historical costs. Allowable operating costs per visit are held to legislatively established ceiling limitations. Reported historical operating costs on a per visit basis, which are below or limited by ceilings, are deemed reimbursable and trended forward to the current rate period to adjust for inflation. Non-operating costs (such as capital costs) are not subject to the legislatively established ceiling and are added to the product of reimbursable operating costs times the roll factor.

### **Private Duty Nursing Services**

Except as otherwise noted in the plan, state-developed fee schedule rates are the same for both governmental and private providers of private duty nursing services. The agency's fee schedule rate was set as of October 1, 2020 and is effective for services provided on or after that date. All rates are published on [https://health.ny.gov/health\\_care/medicaid/redesign/pdn\\_children/providers/regional\\_fees.htm](https://health.ny.gov/health_care/medicaid/redesign/pdn_children/providers/regional_fees.htm)

**TN #20-0060**

**Supersedes TN #12-0016**

**Approval Date** March 17, 2021

**Effective Date** **October 1, 2020**

New York  
4(a)(i)(3)

**Personal Emergency Response Services**

Reimbursement for Personal Emergency Response Services (PERS) will be provided under the auspices of SDSS through contractual arrangements between the LDSS and the provider. Locally negotiated rates must include the costs for renting or leasing PERS equipment, the installation, maintenance, and the removal of PERS equipment from the clients home. A second rate must also be negotiated by the local district for a monthly monitoring service charge. These two rates must not exceed the local prevailing rate or the SDSS established cap.

For the period April 1, 1995 through March 31, 1996, the Department of Social Services in consultation with the Department of Health [shall] will establish a state share medical assistance cost savings target for each certified home health agency, which is to be achieved as a result of the agency's development and implementation of personal emergency response services and shared aide efficiency initiatives. The aggregate of such state share targets [shall] will not exceed fifteen million five hundred thousand dollars.

**Services Provided To Medically Fragile Children**

For purposes of this section, for the period beginning October 1, 2020 and thereafter, a medically fragile child [shall] will mean a child, up to twenty-[one] three years of age, who is at risk of hospitalization or institutionalization for reasons that include but are not limited to the following: children who are technologically-dependent for life or health-sustaining functions; require complex medication regimen or medical interventions to maintain or improve their health status; or are in need of ongoing assessment or intervention to prevent serious deterioration of their health status or medical complications that place their life, health or development at risk. These children are capable of being cared for at home if provided with appropriate home care services including but not limited to continuous nursing services.

For the period beginning January 1, 2007 and thereafter, rates of payment for continuous nursing services for medically fragile children provided by a certified home health agency, or by registered nurses or licensed practical nurses who are independent providers, [shall] will be established to ensure the availability of such services, and [shall] will be established at a rate that is thirty percent higher than the provider's current rate for private duty nursing services. A certified home health agency that receives such rates for continuous nursing services for medically fragile children [shall] will use such enhanced rates to increase payments to registered nurses and licensed practical nurses who provide these services. All government and non-government owned or operated providers are eligible for this adjustment pursuant to the same uniformly applied methodology.

For the period beginning October 1, 2020, providers who enroll in the medically fragile children private duty nursing provider directory will receive an enhanced rate of fifteen percent effective October 1, 2020; thirty percent effective April 1, 2021; and forty-five percent effective April 1, 2022.

TN #20-0060 Approval Date March 17, 2021  
Supersedes TN #10-0025 Effective Date October 1, 2020

New York  
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**Nonprescription Drugs**

Reimbursement is the lowest of:

- (1) the usual and customary price charged to the general public;
- (2) the price established by the Commissioner of Health as shown on the NYS List of Medicaid Reimbursable Drugs for that generic category and strength in the package size nearest to that ordered; and,
- (3) Acquisition cost plus dispensing fee.

**Private Duty Nursing**

[Fees determined by local districts and reviewed by the Department of Social Services.]  
For the period beginning October 1, 2020 and thereafter, fees determined by the Commissioner of Health with the approval of the Director of the Budget.

The Commissioner of Health [shall] will adjust rates of payment for services provided by private duty nursing providers for the purpose of enhancing the provision, accessibility, quality, and/or efficiency of home care services. These rate adjustments [shall] will be for the purposes of assisting such providers, located in social services districts that do not include a city with a population of over one million persons, in meeting the cost of;

- (i) Increased use of technology in the delivery of services, including clinical and administrative management information systems;
- (ii) Specialty training of direct service personnel in dementia care, pediatric care, and/or the care of other conditions or populations with complex needs;
- (iii) Increased auto and travel expenses associated with rising fuel prices, including the increased cost of providing services in remote areas;
- (iv) Providing enhanced access to care for high need populations.

## New York 5(a)

The Commissioner [shall] will increase the rates of payment for all eligible providers in an amount up to an aggregate of \$16,000,000 annually for the periods June 1, 2006 through March 31, 2007, April 1, 2007 through March 31, 2008, and April 1, 2008 through March 31, 2009.

Rates will be adjusted in the form of a uniform percentage add-on as calculated by the Department, based upon the proportion of total allocated dollars, to the total Medicaid expenditures for covered home care services provided in local social services districts that do not include a city with a population over one million. All government and non-government owned or operated providers are eligible for this adjustment pursuant to the same uniformly applied methodology.

### Services Provided to Medically Fragile Children

For purposes of this section, for the period beginning October 1, 2020 and thereafter, a medically fragile child [shall] will mean a child, up to twenty-[one] three years of age, who is at risk of hospitalization or institutionalization for reasons that include but are not limited to the following: children who are technologically-dependent for life or health-sustaining functions; require complex medication regimen or medical interventions to maintain or improve their health status; or are in need of ongoing assessment or intervention to prevent serious deterioration of their health status or medical complications that place their life, health or development at risk. These children are capable of being cared for at home if provided with appropriate home care services including but not limited to continuous nursing services.

For the period January 1, 2007 [through December 31, 2010] and thereafter, rates of payment for continuous nursing services for medically fragile children [shall] will be established to ensure the availability of such services or programs, and [shall] will be established at a rate that is thirty percent higher than the provider's current rate for private duty nursing services. Providers that receive such rates for continuous nursing services for medically fragile children must use these enhanced rates to increase payments to registered nurses or licensed practical nurses who provide these services to medically fragile children. All government and non-government owned or operated providers are eligible for this adjustment pursuant to the same uniformly applied methodology.

For the period beginning October 1, 2020, providers who enroll in the medically fragile children private duty nursing provider directory will receive an enhanced rate as indicated in the chart below:

<b><u>2020 rate = 10/1/20 base rate + 15 percent</u></b>
<b><u>2021 rate = 2021 base rate + 30 percent</u></b>
<b><u>2022 rate = 2022 base rate + 45 percent</u></b>

### Nursing Services (Limited)

The Commissioner of Health, subject to the approval of the Director of the Budget, establishes reimbursement rates for certain nursing services provided to eligible residents by a certified operator of an adult home or enriched housing program that has been issued a limited license by the Department. A limited license may be issued to the certified operator of an adult home or enriched housing program and allows such operator to directly provide certain

TN #20-0060

Approval Date March 17, 2021

Supersedes TN #08-0028 Effective Date October 1, 2020