



# Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Acting Commissioner

**MEGAN E. BALDWIN**  
Acting Executive Deputy Commissioner

March 30, 2023

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 #23-0020  
Non-Institutional Services

Dear Mr. McMillion:

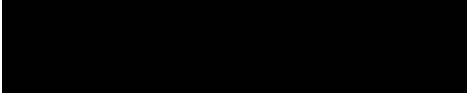
The State requests approval of the enclosed amendment #23-0020 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective January 1, 2023 (Appendix I). This amendment is being submitted based on enacted legislation. A summary of the plan amendment is provided in Appendix II.

The State of New York reimburses these services through the use of rates that are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area as required by § 1902(a)(30) of the Social Security Act and 42 CFR § 447.204.

A copy of pertinent sections of enacted legislation is enclosed for your information (Appendix III). Copies of the public notice of this plan amendment, which were given in the New York State Register on January 25, 2023, and subsequently clarified on March 1, 2023, are also enclosed for your information (Appendix IV). 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 3 — 0 0 2 0

2. STATE

N Y

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

February 1, 2023

5. FEDERAL STATUTE/REGULATION CITATION

§ 1905(a)(22) Home and Community Care

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)

a. FFY 02/01/23-09/30/23 \$ 3,000,000  
b. FFY 10/01/23-09/30/24 \$ 0

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Attachment 4.19-B: Pages 2(b.1.1), 7(b)(iii)(1)

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 PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

NEW

9. SUBJECT OF AMENDMENT

ARPA HCBS Supplemental ADH Medical Model Payment

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

[Redacted Signature]

12. TYPED NAME

Amir Bassiri

13. TITLE

Medicaid Director

14. DATE SUBMITTED

March 30, 2023

15. 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 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**  
**2023 Title XIX State Plan**  
**First Quarter Amendment**  
**Amended SPA Pages**

**New York  
2(b.1.1)**

**1905(a)(22) Home and Community Care**

Effective February 1, 2023, the State will distribute \$6 million to eligible Adult Day and AIDS Adult Day Health Centers in State Fiscal Year 2023 through a one-time supplemental payment. These funds have been made available through the American Rescue Act Plan Section 9817 as described in the New York State Spending Plan for Implementation of American Rescue Plan Act of 2021, Support for Adult Day Health Centers (ADHCs) and Social Adult Day Centers (SADCs) Reopening Initiative. The purpose of this supplemental payment is to support sites impacted by the COVID-19 pandemic. New York State will distribute these funds based on site spot capacity through a one-time lump sum payment on or before September 30, 2023.

Sites will be able to use these funds to support the following: workforce, transportation, effective person-centered care management strategies, community integration and emergency preparedness. Funding may not be used to supplant the level of State funds expended for Home and Community-Based Services (HCBS) for eligible individuals through programs in effect as of April 1, 2021.

To be eligible, sites must hold a valid operating certificate and be actively working toward or confirm their compliance to the HCBS Settings Rule and programmatic regulations as stated in the HCBS Final Rule Statewide Transition Plan. Sites must also submit an attestation of their intended use of funds and confirm funding will not be used for capital investments.

Excluded sites:

- o Sites which are closed.
  - o Closed sites include those which do not have staff per NYCRR Part 425 - Adult Day Health Care and are not or are not planning to provide Adult Day Health Services under the Medical Model.
  - o Open sites are defined as those with the appropriate staff and are either actively providing services or have planned open date confirmed August 1, 2023.
- o Sites which do not have a valid Operating Certificate
- o Sites which do not provide HCBS through the medical model of Adult Day Care Services.
- o Sites which only provide the social model of Adult Day Care Services.
- o Sites which do not submit an accepted attestation of their intended use of funds.
- o Sites which do not confirm funds will not be used for capital investments.

TN #23-0020

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

Supersedes TN #NEW

Effective Date February 1, 2023

**New York  
7(b)(iii)(1)**

**1905(a)(22) Home and Community Care**

Effective February 1, 2023, the State will distribute \$6 million to eligible Adult Day and AIDS Adult Day Health Centers in State Fiscal Year 2023 through a one-time supplemental payment. These funds have been made available through the American Rescue Act Plan Section 9817 as described in the New York State Spending Plan for Implementation of American Rescue Plan Act of 2021, Support for Adult Day Health Centers (ADHCs) and Social Adult Day Centers (SADCs) Reopening Initiative. The purpose of this supplemental payment is to support sites impacted by the COVID-19 pandemic. New York State will distribute these funds based on site spot capacity through a one-time lump sum payment on or before September 30, 2023.

Sites will be able to use these funds to support the following: workforce, transportation, effective person-centered care management strategies, community integration and emergency preparedness. Funding may not be used to supplant the level of State funds expended for Home and Community-Based Services (HCBS) for eligible individuals through programs in effect as of April 1, 2021.

To be eligible, sites must hold a valid operating certificate and be actively working toward or confirm their compliance to the HCBS Settings Rule and programmatic regulations as stated in the HCBS Final Rule Statewide Transition Plan. Sites must also submit an attestation of their intended use of funds and confirm funding will not be used for capital investments.

Excluded sites:

- o Sites which are closed.
  - o Closed sites include those which do not have staff per NYCRR Part 425 - Adult Day Health Care and are not or are not planning to provide Adult Day Health Services under the Medical Model.
  - o Open sites are defined as those with the appropriate staff and are either actively providing services or have planned open date confirmed August 1, 2023.
- o Sites which do not have a valid Operating Certificate
- o Sites which do not provide HCBS through the medical model of Adult Day Care Services.
- o Sites which only provide the social model of Adult Day Care Services.
- o Sites which do not submit an accepted attestation of their intended use of funds.
- o Sites which do not confirm funds will not be used for capital investments.

TN #23-0020

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

Supersedes TN #NEW

Effective Date February 1, 2023

**Appendix II**  
**2023 Title XIX State Plan**  
**First Quarter Amendment**  
**Summary**

**SUMMARY**  
**SPA #23-0020**

This State Plan Amendment proposes to provide a total of \$6 million in supplemental payments to support Adult Day Health Care and AIDS Adult Day Health Care program sites impacted by the COVID-19 pandemic. New York State will distribute these funds based on site spot capacity through a one-time lump sum payment on or before September 30, 2023.

**Appendix III**  
**2023 Title XIX State Plan**  
**First Quarter Amendment**  
**Authorizing Provisions**



**SPA 23-0020**

SEC. 9817. <> ADDITIONAL SUPPORT FOR  
MEDICAID HOME AND COMMUNITY-BASED  
SERVICES DURING THE COVID-19 EMERGENCY.

(a) Increased FMAP.--

(1) In general.--Notwithstanding section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) or section 1905(ff), in the case of a State that meets the HCBS program requirements under subsection (b), the Federal medical assistance percentage determined for the State under section 1905(b) of such Act (or, if applicable, under section 1905(ff)) and, if applicable, increased under subsection (y), (z), (aa), or (ii) of section 1905 of such Act (42 U.S.C. 1396d), section 1915(k) of such Act (42 U.S.C. 1396n(k)), or section 6008(a) of the Families First Coronavirus Response Act (Public Law 116-127), shall be increased by 10 percentage points with respect to expenditures of the State under the State Medicaid program for home and community-based services (as defined in paragraph (2)(B)) that are provided during the HCBS program improvement period (as defined in paragraph (2)(A)). In no case may the application of the previous sentence result in the Federal medical assistance percentage determined for a State being more than 95 percent with respect to such expenditures. Any payment <> made to Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa for expenditures on medical assistance that are subject to the Federal medical assistance percentage increase specified under the first sentence of this paragraph shall not be taken into account for purposes of applying payment limits under subsections (f) and (g) of section 1108 of the Social Security Act (42 U.S.C. 1308).

(2) Definitions.--In this section:

(A) <> HCBS program improvement period.--The term ``HCBS program improvement period'' means, with respect to a State, the period--

- (i) beginning on April 1, 2021; and
- (ii) ending on March 31, 2022.

(B) Home and community-based services.--The term ``home and community-based services'' means any of the following:

[[Page 135 STAT. 217]]

(i) Home health care services authorized under paragraph (7) of section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)).

(ii) Personal care services authorized under paragraph (24) of such section.

(iii) PACE services authorized under paragraph (26) of such section.

(iv) Home and community-based services authorized under subsections (b), (c), (i), (j), and (k) of section 1915 of such Act (42 U.S.C. 1396n), such services authorized under a waiver under section 1115 of such Act (42 U.S.C. 1315), and such services through coverage authorized under section 1937 of such Act (42 U.S.C. 1396u-7).

(v) Case management services authorized under

section 1905(a)(19) of the Social Security Act (42 U.S.C. 1396d(a)(19)) and section 1915(g) of such Act (42 U.S.C. 1396n(g)).

(vi) Rehabilitative services, including those related to behavioral health, described in section 1905(a)(13) of such Act (42 U.S.C. 1396d(a)(13)).

(vii) Such other services specified by the Secretary of Health and Human Services.

(C) Eligible individual.--The term ``eligible individual'' means an individual who is eligible for and enrolled for medical assistance under a State Medicaid program and includes an individual who becomes eligible for medical assistance under a State Medicaid program when removed from a waiting list.

(D) Medicaid program.--The term ``Medicaid program'' means, with respect to a State, the State program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver or demonstration under such title or under section 1115 of such Act (42 U.S.C. 1315) relating to such title).

(E) State.--The term ``State'' has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(b) State Requirements for FMAP Increase.--As conditions for receipt of the increase under subsection (a) to the Federal medical assistance percentage determined for a State, the State shall meet each of the following requirements (referred to in subsection (a) as the HCBS program requirements):

(1) <> Supplement, not supplant.--

The State shall use the Federal funds attributable to the increase under subsection (a) to supplement, and not supplant, the level of State funds expended for home and community-based services for eligible individuals through programs in effect as of April 1, 2021.

(2) Required implementation of certain activities.--The State shall implement, or supplement the implementation of, one or more activities to enhance, expand, or strengthen home and community-based services under the State Medicaid program.

**Appendix IV  
2023 Title XIX State Plan  
First Quarter Amendment  
Public Notice**

# MISCELLANEOUS NOTICES/HEARINGS

## Notice of Abandoned Property Received by the State Comptroller

Pursuant to provisions of the Abandoned Property Law and related laws, the Office of the State Comptroller receives unclaimed monies and other property deemed abandoned. A list of the names and last known addresses of the entitled owners of this abandoned property is maintained by the office in accordance with Section 1401 of the Abandoned Property Law. Interested parties may inquire if they appear on the Abandoned Property Listing by contacting the Office of Unclaimed Funds, Monday through Friday from 8:00 a.m. to 4:30 p.m., at:

1-800-221-9311  
or visit our web site at:  
[www.osc.state.ny.us](http://www.osc.state.ny.us)

Claims for abandoned property must be filed with the New York State Comptroller's Office of Unclaimed Funds as provided in Section 1406 of the Abandoned Property Law. For further information contact: Office of the State Comptroller, Office of Unclaimed Funds, 110 State St., Albany, NY 12236.

## PUBLIC NOTICE

Division of Criminal Justice Services  
Commission on Forensic Science

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

Date: March 10, 2023  
Time: 9:00 a.m. - 1:00 p.m.  
Conference Sites:

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

Empire State Development Corporation  
(ESDC)  
633 3rd Ave.  
37th Fl./Conference Rm.  
New York, NY

\*Identification and sign-in required

Web Streaming information: The webcast information for this meeting will be posted on the Division of Criminal Justice website under the Newsroom, Open Meeting/ Webcasts.

<https://www.criminaljustice.ny.gov/pio/openmeetings.htm>

## PUBLIC NOTICE

Office of General Services

Pursuant to Section 33 of the Public Lands Law, the Office of General Services hereby gives notice to the following:

Notice is hereby given that the New York State Department of Transportation has determined that:

Address: Nepperhan Avenue, Yonkers, NY 10703  
Surplus Property Case No.: 08-III-8192  
Project Identification Number (PIN): 8076.00.223  
Proceeding Number: None  
Project: Nepperhan Avenue Arterial  
City of Yonkers, Westchester County  
Map 383, Parcel 386

a.072 + acre lot, is surplus and no longer useful or necessary for state program purposes and has abandoned the property to the Commissioner of General Services for sale or other disposition as Unappropriated State land.

*For further information, please contact:* Frank Pallante, Esq., Office of General Services, Legal Services, 36th Fl., Corning Tower, Empire State Plaza, Albany, NY 12242, (518) 474-8831, (518) 473-4973 fax

## PUBLIC NOTICE

Department of Health

Pursuant to 42 CFR Section 447.205, the Department of Health hereby gives public notice of the following:

The Department of Health proposes to amend the Title XIX (Medicaid) State Plan for non-institutional services to comply with New York State's American Rescue Act Home and Community Based Service Spending Plan. The following changes are proposed:

### Non-Institutional Services

The following is a clarification to the January 25, 2023, noticed provision to provide supplemental payments to Adult Day Health Centers and AIDS Adult Day Health Centers as described in the approved New York State American Rescue Act Home and Community Based Service Spending Plan under the Support for Adult Day Health Centers (ADHCs) and Social Adult Day Centers (SADCs) Reopening Initiative. With clarification, this revises the category to "Non-Institutional Services". There is no change to the previously noticed fiscals.

The public is invited to review and comment on this proposed State Plan Amendment, a copy of which will be available for public review on the Department's website at [http://www.health.ny.gov/regulations/state\\_plans/status](http://www.health.ny.gov/regulations/state_plans/status). Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

For the New York City district, copies will be available at the following places:

New York County  
250 Church Street  
New York, New York 10018

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

Kings County, Fulton Center

114 Willoughby Street  
Brooklyn, New York 11201

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

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

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

## PUBLIC NOTICE

### Department of Health Essential Plan Expansion

In compliance with 31 CFR 33.112 and 45 CFR 155.1312, notice is hereby provided that the New York State Department of Health (the State) intends to submit a Section 1332 State Innovation Waiver to the Centers for Medicare & Medicaid Services (CMS) in the Department of Health and Human Services (HHS) and the Department of Treasury (Treasury) for the expansion of the Essential Plan. This notice serves to open the 30-day public comment period on February 9, 2023, which closes on March 11, 2023.

#### Waiver Summary and Objectives

The State is requesting approval of the 1332 Waiver to expand Essential Plan coverage beyond the current eligible populations to include residents with incomes up to 250% of the FPL. Through this expansion of Essential Plan coverage, the State seeks to reduce the uninsured population in New York by increasing access to high quality, affordable health insurance for low- and moderate-income individuals.

Currently, the Essential Plan is federally designated as a Basic Health Program (BHP) under Section 1331 of the Affordable Care Act (ACA). The Essential Plan provides enrollees with comprehensive coverage with no premiums, no deductibles, and low-cost sharing. Essential Plan eligibility is currently limited to individuals who would have been eligible for state-only Medicaid prior to 2016 and individuals with incomes above the Medicaid ceiling and up to 200% of the FPL, ages 19 – 64, who would otherwise be eligible to purchase Qualified Health Plans (QHPs) and receive premium tax credits (PTCs) on the Exchange (NY State of Health).

Under the Waiver, the State is requesting to establish an identical Essential Plan program for currently eligible populations under Section 1332 Waiver authority, instead of Section 1331 of the ACA, with expanded eligibility to the new population. The Essential Plan under Section 1332 Waiver authority would continue to include coverage of all Essential Health Benefits (EHBs). The State is also requesting continued use of the BHP Trust Fund for the population traditionally eligible for the BHP under Section 1331 of the ACA.

#### Why is the Waiver Needed?

The State is not legally able to expand eligibility of the Essential Plan to new consumers under Section 1331 of the ACA. The Waiver is required to grant the State the federal authority necessary to expand Essential Plan coverage under Section 1332. To carry out its waiver plan, New York proposes to waive section 36B of the Internal Revenue Code, which creates the ACA's premium tax credit, as permitted under section 1332(a)(2) and will waive any other provisions the Departments deem necessary to implement this waiver plan. Waiving this provision is integral to the waiver plan and to eligibility for pass-through funding.

#### Waiver Impact

The change in federal authority for the Essential Plan from Section 1331 to Section 1332 will not have administrative or operational impacts for current Essential Plan consumers. All consumers enrolled in the Essential Plan with incomes up to 200% of FPL will continue to

have no premiums, no deductibles, and current maximum out-of-pocket contribution levels. New consumers under the Waiver with incomes between 200% and 250% of the FPL will have \$15 monthly premiums, no deductibles, and low out-of-pocket costs. These premium and cost sharing requirements are lower than the cost sharing available in the QHP marketplace. Additionally, eligibility and enrollment processes for current Essential Plan consumers will not change under the waiver. Consumers will continue to apply for and enroll in the Essential Plan and QHPs through the NY State of Health. New consumers in the Essential Plan will experience the same eligibility and enrollment processes that current consumers with incomes up to 200% of the FPL currently experience.

New York's 1332 Waiver is expected to generate substantial savings for the State and federal governments, while expanding coverage to additional of New Yorkers. The State is requesting that the BHP funding and the savings from foregone premium tax credits be passed through to the State to continue to fund the Essential Plan for the duration of the Waiver. The State projects that the federal pass-through will fully fund the expansion of the Essential Plan to the new eligibility group with no additional funding required from the State for the duration of the Waiver. The State is requesting continued access to the current Essential Plan Trust Fund balance under the Waiver, which will not increase the federal deficit, but will enhance benefits and lower costs for traditionally BHP eligible individuals.

The 1332 Waiver is projected to meet the four ACA Section 1332 guardrails of scope of coverage, affordability, comprehensiveness of coverage, and federal deficit neutrality.

#### Essential Plan Expansion 1332 Waiver Submission and Review of Public Comments

A draft of the waiver is available for review on the Department of Health's website at: <https://info.nystateofhealth.ny.gov/1332>. For individuals with limited online access and/or who require special accommodation, please call (518) 486-9102 to access paper copies.

The State will accept written comments through March 11, 2023. *Individuals wishing to provide written comments may submit them online here: or by mail at:* State of Health, 1332 Waiver Application, Empire State Plaza, Corning Tower, Rm. 2580, Albany, NY 12237

All comments must be submitted electronically or postmarked by March 11, 2023.

The State will consider all comments received and include a summary of the comments in the final 1332 Waiver Application submitted to the Departments.

## PUBLIC NOTICE

Department of State  
F-2022-0913  
Date of Issuance – March 1, 2023

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-2022-0913, the applicant, Frank Melville Memorial Foundation, is proposing to hydraulically dredge both freshwater ponds, approx. 4' deep in South Pond and 2' deep in North Pond, to remove approx. 14,000 cubic yards total. Spoils to be dewatered on site in nearby upland area and then disposed of in the permitted site. This project is located at Old Field Road, Town of Brookhaven, Suffolk County, North and South Mill Ponds.

The applicant's consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/>

14. Project Sponsor: Springwood, LLC. Project Facility: Bridgewater Golf Club, York Township, York County, Pa. Application for renewal of consumptive use of up to 0.099 mgd (30-day average) (Docket No. 20080307).

15. Project Sponsor and Facility: SWN Production Company, LLC (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20180307).

16. Project Sponsor and Facility: Wise Foods, Inc., Berwick Borough, Columbia County, Pa. Application for renewal of groundwater withdrawal of up to 0.860 mgd (30-day average) from Well PW-1 (Docket No. 19920502).

17. Project Sponsor: Wynding Brook Inc. Project Facility: Wynding Brook Golf Club, Turbot Township, Northumberland County, Pa. Application for renewal of consumptive use of up to 0.099 mgd (30-day average) (Docket No. 20080304).

Project Scheduled for Action Involving a Diversion:

18. Project Sponsor: Helix Ironwood, LLC. Project Facility: Ironwood Generating Station, South Lebanon Township, Lebanon County, Pa. Application for renewal of approval of an out-of-basin diversion of up to 4.500 mgd (peak day) (Docket No. 19980502).

Commission-Initiated Project Approval Modification

19. Project Sponsor: Knouse Foods Cooperative, Inc. Project Facility: Peach Glen Plant, Tyrone and Huntington Townships, Adams County, and Dickinson Township, Cumberland County, Pa. Conforming the grandfathered amount with the forthcoming determination for groundwater withdrawals (30-day averages) of up to 0.327 mgd combined from Wells 2, 4, 5, 7, 8, 9, 10, and 13, and up to 0.046 mgd from Well 13 (Docket No. 20040912).

Opportunity to Appear and Comment:

Interested parties may call into the hearing to offer comments to the Commission on any business listed above required to be the subject of a public hearing. Given the nature of the meeting, the Commission strongly encourages those members of the public wishing to provide oral comments to pre-register with the Commission by e-mailing Jason Oyler at [joyler@srbc.net](mailto:joyler@srbc.net) prior to the hearing date. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Access to the hearing via telephone will begin at 6:15 p.m. Guidelines for the public hearing are posted on the Commission's website, [www.srbc.net](http://www.srbc.net), prior to the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be the subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110-1788, or submitted electronically through <https://www.srbc.net/regulatory/public-comment/>. Comments mailed or electronically submitted must be received by the Commission on or before February 13, 2023, to be considered.

Authority: Pub. L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: January 6, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission

## PUBLIC NOTICE

### Department of Civil Service

PURSUANT to the Open Meetings Law, the New York State Civil Service Commission hereby gives public notice of the following:

Please take notice that the regular monthly meeting of the State Civil Service Commission for February 2023 will be conducted on February 8 and February 9 commencing at 10:00 a.m. This meeting will be conducted at NYS Media Services Center, Suite 146, South Concourse, Empire State Plaza, Albany, NY with live coverage available at <https://www.es.ny.gov/commission/>.

*For further information, contact:* Office of Commission Operations, Department of Civil Service, Empire State Plaza, Agency Bldg. One, Albany, NY 12239, (518) 473-6598

## PUBLIC NOTICE

### Division of Criminal Justice Services DNA Subcommittee

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

Date: February 3, 2023

Time: 9:00 a.m. - 11:00 a.m.

Primary Conference Site:

Empire State Development Corporation  
(ESDC)

633 3rd Ave.

37th Fl./Conference Rm.

New York, NY

*\*Identification and sign-in required*

Secondary/Video Conference Sites:

- 107 College Place, Life Sciences Bldg. 120, Syracuse, NY

- Shapiro Bldg., Rm. 5044, 70 Francis St., Boston, MA

Web Streaming information: The webcast information for this meeting will be posted on the Division of Criminal Justice website under the Newsroom, Open Meeting/Webcasts.

<https://www.criminaljustice.ny.gov/pio/openmeetings.htm>

*\*Identification and sign-in is required at this location. For further information, or if you need a reasonable accommodation to attend this meeting, contact: [forensiclabs@dcjs.ny.gov](mailto:forensiclabs@dcjs.ny.gov), Division of Criminal Justice Services, Office of Forensic Services, 80 Swan St., Albany, NY 12210, (518) 457-1901*

## 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 Long Term Care Adult Day Health services to comply with New York State's American Rescue Act Home and Community Based Service Spending Plan. The following changes are proposed:

#### Long Term Care Services

Effective on or after February 1, 2023, the Department of Health will provide supplemental payments to Adult Day Health Centers and AIDS Adult Day Health Centers as described in the approved New York State American Rescue Act Home and Community Based Service Spending Plan under the Support for Adult Day Health Centers (ADHCs) and Social Adult Day Centers (SADCs) Reopening Initiative. Adult Day Health Centers and AIDS Adult Day Health Centers providing Home and Community Based services to Medicaid beneficiaries will be eligible for the American Rescue Act Section 9817 Home and Community Based Service Supplemental Payment after completing an attestation of fund use and sustainability. These payments will not be available for facilities which do not provide the medical model of services at Adult Day Health Centers and AIDS Adult Day Health Centers and those that do not complete an attestation. Facilities which only provide the social model of Adult Day Health are not eligible for this payment.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget is \$1,500,000 for state fiscal year 2022/2023 and \$4,500,000 for State fiscal year 2023/2024.

The public is invited to review and comment on this proposed State Plan Amendment, a copy of which will be available for public review on the Department's website at [http://www.health.ny.gov/regulations/state\\_plans/status](http://www.health.ny.gov/regulations/state_plans/status). Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

For the New York City district, copies will be available at the following places:

New York County  
250 Church Street  
New York, New York 10018

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

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

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

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

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

**PUBLIC NOTICE**

Department of Health

Heightened Scrutiny Evidence Packets

In compliance with 42 CFR § 441.301(c)(5)(v), NYS DOH, Office of Aging and Long Term Care, Bureau of Quality Assurance and Surveillance Adult Day Healthcare Program (ADHCP) is pleased to announce that it will conduct a public comment period, to allow members of the public to provide comments on its Home and Community-Based Services (HCBS) Final Rule related Heightened Scrutiny evidence packet(s), developed by NYS DOH, Office of Aging and Long Term Care, Bureau of Quality Assurance and Surveillance - ADHCP and New York State entities that oversee HCBS. This is being done to maintain federal match funding for home and community-based service setting(s) that NYS DOH, Office of Aging and Long-Term Care, Bureau of Quality Assurance and Surveillance - ADHCP has determined can or will overcome the institutional (i.e., non-eligible for HCBS funding) presumption by Department of Health and Human Services (DHHS), on or before March 17, 2023. ADHCP is a non-residential setting and there are 115 ADHCPs statewide. All programs were temporarily closed due to the pandemic. To date, 49 Programs have reopened. Heightened Scrutiny is requested for 49 ADHCPs that self-reported having at least one registrant that receives Medicaid-funded home and community-based services in their setting that is located within the nursing home or in the grounds of a public institution. Interviews, record reviews and observations were conducted through virtual tours at each of the facilities from 2021-2022 to assess for Rule compliance and the need for remediation.

This notice further serves to open the 30-day public comment period that will close on February 24, 2023. In addition to this 30-day comment period where the public will be afforded the opportunity to provide written comments, the Bureau of Quality Assurance and Surveillance will receive written comments by contacting via email: ADHCP.HCBS@health.ny.gov and/or by mail: Bureau of Quality Assurance and Surveillance - ADHCP, Division of Nursing Homes and ICF/IID Surveillance, New York State Department of Health - 875 Central Avenue Albany, NY 12206.

Heightened Scrutiny Overview

In accordance with federal rules set forth by the Centers for Medicare & Medicaid Services (CMS), the New York State Department of Health for Adult Day Health Care Program (ADHCP) is

required to publish for public comment a list of Heightened Scrutiny settings that deliver Home and Community-Based Services (HCBS).

Strategies to Identify Settings

Heightened Scrutiny is a review of certain settings that, according to CMS, are presumed to be institutional in nature but do, in fact, demonstrate qualities of home and community-based settings. The ADHCP, which is a non-residential setting, conducted a series of program self-assessments based on “CMS Exploratory Questions to Assist States in the Assessment of Non-Residential Settings” against the standards of the HCBS Final Rule. NYS DOH assessed all reopened programs (post pandemic) for HCBS compliance through Self-Assessment Surveys, record reviews, virtual site reviews including interviews of staff, reviewing pictures of the buildings and signage to the program, checking program addresses for accuracy and google maps images of locations.

Strategies to Review Settings

NYS DOH worked with the providers of settings requiring a Heightened Scrutiny review to achieve HCBS compliance or to develop a plan to achieve HCBS compliance. Reviews conducted by DOH included but were not limited to record reviews, registrant/staff interviews, and observations made during virtual tour of all reopened programs. Each standard of the HCBS Final rule was analyzed, discussed with the facility management and staff. Programs that needed remediation were identified. General guidance and training were provided to program staff to meet compliance. Policies and procedures and any remediation completed by the program to meet compliance were filed within the program’s file for reference.

Heightened Scrutiny Categories and Summary

CMS has identified three categories/prongs of settings that are presumed to have qualities of an institution. The categories are described below as well as the number of settings in each category that have been identified by OPWDD as requiring a Heightened Scrutiny review.

Heightened Scrutiny Prong	Number of sites
Prong 1 - Settings in this category are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	30
Prong 2 - Settings in this category are located in a building located on the grounds of, or immediately adjacent to, a public institution.	6
Prong 3 - Settings in this category may have the effect of isolating individuals from the broader community.	13

Process for Applying CMS Feedback on Specific Settings

Heightened Scrutiny summaries, including public comment and supporting evidence, may later be selected for review by CMS as a part of a random sample. NYS DOH will use any feedback from the CMS random sample review to inform whether it is applicable to similarly situated settings and additional review and/or if remediation of settings not included in the CMS review sample is necessary.

Numbered List of Settings

The following is a list of all reopened ADHCPs identified and categorized as requiring Heightened Scrutiny, including the ADHCP’s prong. A summary of how each setting has or will overcome the presumption that it is an institution, and the state’s plan for oversight of remediation to ensure compliance with the settings criteria by the end of the transition period may be viewed on the NYS DOH ADHCP - Heightened Scrutiny Evidence Packets website at: [https://health.ny.gov/facilities/nursing/public\\_notice/heightened\\_scrutiny/](https://health.ny.gov/facilities/nursing/public_notice/heightened_scrutiny/)

#Facility Name Prong

- 1 ADHCP #1 3
- 2 ADHCP #2 1
- 3 ADHCP #3 2
- 4 ADHCP #4 2
- 5 ADHCP #5 3
- 6 ADHCP #6 2

**Appendix V**  
**2023 Title XIX State Plan**  
**First Quarter Amendment**  
**Responses to Standard Funding Questions**



**NON-INSTITUTIONAL SERVICES  
State Plan Amendment #23-0020**

**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-B 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 100 percent of 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	\$0.75M	\$1.5M

A. **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.

- 1) 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.

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

**Response:** The Medicaid payments authorized under this State Plan Amendment are supplemental payments and total \$1.5 million for State Fiscal Year 2022-23.

	Private	State Government	Non-State Government	4/1/22-3/31/23 Total
Supplemental	\$0M	\$0.75	\$0.75M	\$1.5M

4. For clinic or outpatient hospital services 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.