



Refer to DMCH: SJ

Region II
Federal Building
26 Federal Plaza
New York, N.Y. 10278

May 11, 2011

Jason A. Helgerson
Deputy Commissioner
New York State Department of Health
Corning Tower, Empire State Plaza
Albany, New York 12237

Dear Commissioner Helgerson:

This is to notify you that New York State Plan Amendment (SPA) #08-27 has been approved for adoption into the State Medicaid Plan with an effective date of April 1, 2008. The SPA concerns the rates of payment for personal care service agencies; specifically, it provides for additional funding to agencies for the purpose of improving recruitment and retention of non-supervisory workers, or workers with direct patient care responsibility. Funding will be for providers in programs that furnish services in local social services districts that include a city with a population of over one million persons, and also those districts which do not include a city with a population of over one million persons.

This SPA approval consists of 4 Pages. As New York has requested, we are approving the following Attachment 4.19B Pages which were submitted with the State's April 14, 2011 electronic submission to the CMS SPA Mailbox: Attachment 4.19-B-Page 6(a), Page 6(a)(i), Page 6(a)(i)(1) and Page 6(a)(i)(2). These Pages replace the Attachment 4.19-B-Page 6(a)(i), and Page 6(a)(i)(A), which were provided with the State's original June 23, 2008 SPA submission.

This amendment satisfies all of the statutory requirements at sections 1902(a)(13) and (a)(30) of the Social Security Act, and the implementing regulations at 42 CFR 447.250 and 447.272. Enclosed are copies of SPA #08-27 and the HCFA-179 form, as approved. If you have any questions or wish to discuss this SPA further, please contact Ricardo Holligan or Shing Jew of this office. Mr. Holligan may be reached at (212) 616-2424, and Mr. Jew's telephone number is (212) 616-2426.

Sincerely,

/s/

Michael Melendez
Associate Regional Administrator
Division of Medicaid and Children's Health

Enclosure: SPA #08-27
HCFA-179 Form

CC: JUlberg
PMossman
KKnuth
SGaskins
RWeaver
LTavener
MSchervish
JFrandsen
GCritelli
MSamuel
SJew



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New York, N.Y. 10278

May 11, 2011

Jason A. Helgerson
State Medicaid Director
Deputy Commissioner
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, New York 12237

Dear Commissioner Helgerson:

This letter is being sent as a companion to the Centers for Medicare & Medicaid Services (CMS) approval of New York State Plan Amendment (SPA) 08-27, which was submitted to provide supplemental payments to personal care service agencies, for the purpose of improving recruitment and retention of non-supervisory workers or workers with direct patient care responsibility. During our review of the SPA, CMS performed a program analysis of the corresponding services and a reimbursement analysis related to the services impacted by the provisions of 08-27. This analysis revealed coverage issues that will require additional information and revisions to the State Plan through a corrective action plan.

Section 1902 of the Social Security Act (the Act) requires that State have a State plan for medical assistance that meets certain federal requirements that set out a framework for the State program. Implementing regulations at 42 CFR 430.10 require that the State plan be a comprehensive written statement containing all information necessary for CMS to determine whether the plan can be approved as a basis for Federal Financial participation (FFP) in the State program. In addition, section 1902(a)(30)(A) of the Act requires that States have methods and procedures in place to assure that payments to providers are consistent with efficiency, economy, and quality of care. To be comprehensive, payment methodologies should be understandable, clear and unambiguous. In addition, because the plan is the basis for FFP, it is important that the plan language provide an auditable basis to determine whether payment is appropriate.

In order to comply with the above mentioned statutory and regulatory provisions, the State must amend its approved State plan to include information to comprehensively describe the services and the payment rates and methodologies for those services. To this end, CMS welcomes the opportunity to work with you and your staff to discuss options for resolving the concerns outlined below.

The following corresponding coverage issues have been identified for 08-27.

1. New York should clarify how the nutritional and environmental support functions meet the definition for personal care services in 42 CFR 440.167 as supplemented by State Medicaid Manual, section 4480.
2. The SPA references two levels of personal care services in the 4.19-B pages but does not include a coverage description for these levels. It is difficult to determine whether the State is operating its personal care program as required by 1905(a). Please provide descriptions of each level of service including which services listed on the coverage pages constitute Levels I and II. The lack of coverage detail regarding these levels also makes it difficult to determine if this service is provided consistently with comparability requirements. 42 CFR 440.240 indicates that services must be equal in amount, duration and scope.
3. Are there any differences between a shared aide and an individual aide, or do they have the same responsibilities? Please include minimum provider qualifications in the plan.
4. The 4.19-B Page 6(a)(i)(2) references two distinct personal care service programs, adult home and enriched housing. The programs are not defined in the 3.1a and 3.1b pages. The State should provide descriptions, definitions, qualifications and whether each program provides level I and II services.

The first 3 issues above have already been included in the companion letter that was issued to New York as part of the processing action for New York SPA 10-38; they are repeated here to indicate they also are germane to SPA 08-27, and the State should provide respond to them as part of their response to the 10-38 companion letter. The last issue is new and specifically is for SPA 08-27 and should be addressed by the State at this time.

Within 90 days of the date of this letter, the State is required to submit one or more State plan amendments that resolve the issues, or a corrective action plan to resolve the issues, whichever is appropriate. During the 90-day period, CMS is happy to provide any technical assistance that the State may require to comply with the requirements of this letter. State plans that are not in compliance with the requirements outlined above are grounds for initiating a formal compliance process.

If you have any questions or wish to discuss this SPA further, please contact Ricardo Holligan or Shing Jew of this office. Mr. Holligan may be reached at (212) 616-2424, and Mr. Jew's telephone number is (212) 616-2426.

Sincerely,

/s/

Michael J. Melendez
Associate Regional Administrator
Division of Medicaid and Children's Health

CC: JUlberg
PMossman
KKnuth
SGaskins
RWeaver
LTavener
MSchervish
JFrandsen
GCritelli
MSamuel
SJew

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION		1. TRANSMITTAL NUMBER: 08-27	2. STATE New York
		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 April 1, 2008	
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 447.204		7. FEDERAL BUDGET IMPACT: a. FFY 04/01/08-09/30/08 \$ 92,125,000 b. FFY 10/01/08-09/30/09 \$220,491,975	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.19-B: Pages 6(a), 6(a)(i), 6(a)(i)(1), 6(a)(i)(2) ** SEE REMARKS		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Attachment 4.19-B: Pages 6(a), 6(a)(i) & 6(a)(i)(1)	
10. SUBJECT OF AMENDMENT: New York City & Non-New York City Personal Care Recruitment & Retention FMAP = 50% for 4/1/08-9/30/08; 58.78% for 10/1/08 - 3/31/09; 60.19% for 4/1/09 - 6/30/09; 61.59% for 7/1/09 - 9/30/09			
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 Corning Tower Empire State Plaza Albany, New York 12237	
13. TYPED NAME: Jason A. Helgerson			
14. TITLE: Medicaid Director & Deputy Commissioner Department of Health			
15. DATE SUBMITTED: April 14, 2011			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED:		18. DATE APPROVED: MAY 11 2011	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: APR 01 2008		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME: Michael Melendez		22. TITLE: Associate Regional Administrator Division of Medicaid and State Operations	
23. REMARKS: Attachment 4.19B Pages were submitted via State's April 14, 2011 electronic submission to the CMS SPA Mailbox: Attachment 4.19-B-Page 6(a), Page 6(a)(i), Page 6(a)(i)(1) and Page 6(a)(i)(2). These Pages replace the Attachment 4.19-B-Page 6(a)(i), and Page 6(a)(i)(A), which were provided with the State's original June 23, 2008 SPA submission.			

New York
6(a)(i)

OFFICIAL

**Attachment 4.19-B
(4/08)**

For programs providing services in local social services districts which do not include a city with a population of over one million persons, adjustments to Medicaid rates of payment will be calculated by allocating the total dollars available for the applicable rate period to each individual provider proportionally based on each personal care service provider's total annual hours of personal care service provided to recipients of medical assistance to the total annual hours for all providers in this category. The allocated dollars will be included as a reimbursable cost add-on to the Medicaid rates of payment based on the Medicaid utilization data reported in each provider's annual cost report for the period two year[']s prior to the rate year.

Adjustments to Medicaid rates of payment will, in aggregate, not exceed the following amounts for the following periods.

For programs providing services in local social service districts which include a city with a population of more than one million persons:

- For the period April 1, 2002 through December 31, 2002, one hundred ten million dollars.
- For the period January 1, 2003 through December 31, 2003, one hundred eighty five million dollars.
- For the period January 1, 2004 through December 31, 2004, two hundred sixty million dollars.
- For the period January 1, 2005 through December 31, 2006, three hundred forty million dollars annually.
- For the period January 1, 2007 through December 31, 2007, three hundred forty million dollars.
- For the period January 1, 2008 through [March] December 31, 2008, [eighty-five] three hundred forty million dollars.
- For the period January 1, 2009 through December 31, 2009, three hundred forty million dollars.
- For the period January 1, 2010 through December 31, 2010, three hundred forty million dollars.
- For the period January 1, 2011 through March 31, 2011, eighty-five million dollars.

TN #08-27 _____

Approval Date MAY 11 2011

Supersedes TN #07-31 _____

Effective Date APR 01 2008

For programs providing services in local social service districts which do not include a city with a population of over one million persons:

For the period April 1, 2002 through December 31, 2002, seven million dollars.

For the period January 1, 2003 through December 31, 2003, fourteen million dollars.

For the period January 1, 2004 through December 31, 2004, twenty-one million dollars.

For the period January 1, 2005 through December 31, 2006, twenty-seven million dollars annually; for the period August 17, 2006 through December 31, 2006, an additional aggregate amount of four million dollars.

For the period January 1, 2007 through June 30, 2007, thirteen million five hundred thousand dollars.

For the period July 1, 2007 through March 31, 2008, twenty-six million two hundred fifty thousand dollars.

For the period April 1, 2008 through March 31, 2009, twenty-eight million five hundred thousand dollars.

For the period April 1, 2009 through March 31, 2010, twenty-eight million five hundred thousand dollars.

For the period April 1, 2010 through March 31, 2011, twenty-eight million five hundred thousand dollars.

Revisions to rates made for such recruitment and retention costs shall not be subject to subsequent adjustment or reconciliation.

The final rate is payment-in-full for all personal care services provided during the applicable rate year, subject to any revisions made in accordance with rate revision or audit procedures.

[For personal care services provided by or under arrangements with individual providers, payment is made directly to the individual provider at a rate approved by the Department and the Director of the Budget.]

For personal care services provided directly by social services district staff, payment is made according to a salary schedule established by the social services district. Except as otherwise noted in the plan, state-developed fee schedule rates are the same for both governmental and private providers. The agency's fee schedule rate was set as of January 1, 2009 and is effective for services provided on or after that date. All rates are published on the New York State Department of Health website at:

www.health.ny.gov/facilities/long_term_care/reimbursement/#-cr1

[For personal care services provided in family care home certified or operated by the Office of Mental Health (OMH), payment is made in accordance with a fee schedule developed by OMH and approved by the Department and the Director of the Budget.] The Office of Mental Health (OMH) established the rate of payment to family care providers approved to provide personal care services to family care residents. The agency's fee schedule rate was set as of April 1, 2008 and is published at www.omh.ny.gov.

TN #08-27 _____

Approval Date MAY 11 2011

Supersedes TN #06-60 _____

Effective Date APR 01 2008

OFFICIAL

Personal Care Services (limited)

The Commissioner of Health, subject to the approval of the Director of the Budget, establishes reimbursement rates for certain personal care 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 personal care and nursing services to residents of the adult home or enriched housing program governed by the terms of the limited license. The personal care services for which reimbursement shall be provided are Level II personal care services, including related nursing supervision, as authorized by the Commissioner, provided however, that the services provided are not personal care services that must otherwise be provided to residents of adult homes or enriched housing programs and, provided further, that reimbursement for Level II personal care services shall not include reimbursement for Level I nutritional and environmental support functions. Regional quarter hour rates are established utilizing weighted average Level II personal care rates for the respective regions for direct care and training, capital, and criminal checks, plus no more than fifteen percent of such rates for administrative expenses.

TN #08-27

Approval Date MAY 11 2011

Supersedes TN NEW

Effective Date APR 01 2008