



Department of Health and Human Services  
Centers for Medicare & Medicaid Services  
Region II  
26 Federal Plaza Rm. 37-100  
New York, N.Y. 10278

September 22, 2010

Donna Frescatore, Deputy Commissioner  
Medicaid Director  
Office of Health Insurance Programs  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, New York 12237

Dear Ms. Frescatore:

CMS has completed its review of New York's State Plan Amendment (SPA) 10-14, "Estate Recovery for Medicare Savings Programs." This SPA was submitted in order to comply with the provisions of section 115 of the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008. Based on our review and the changes made by the State during the review, SPA 10-14 is approved, with an effective date of April 1, 2010.

The pages originally submitted by the State were replaced by the revised pages submitted via e-mail on August 17, 2010. In addition, by means of an e-mail dated August 19, 2010, the State agreed to a pen-and-ink change to the CMS-179 form. The pen-and-ink change adds to the text in item 10 of the CMS-179 so that it now reads: **Estate Recovery for Medicare Savings Program: Exemption of Medicare cost-sharing benefits paid under MSP for estate recovery. Exemption only extends to benefits with dates of service on or after January 1, 2010 for qualified dual eligibles age 55 and over.**

Copies of the approved State Plan pages and the signed CMS-179 form are enclosed.

If you have any questions, please contact Patricia Ryan of my staff at 212-616-2436.

Sincerely,

/s/

Sue Kelly  
Associate Regional Administrator  
Division of Medicaid and Children's Health

Enclosures



TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL	1. TRANSMITTAL NUMBER:  10-14	2. STATE  New York
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
FOR: HEALTH CARE FINANCING ADMINISTRATION	4. PROPOSED EFFECTIVE DATE  April 1, 2010	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES	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: 1917(b)(1) of the Social Security Act	7. FEDERAL BUDGET IMPACT: a. FFY 04/01/10-09/30/10 \$0 b. FFY 10/01/10-09/30/11 \$0 c. FFY 10/01/11-09/30/12 \$0 d. FFY 10/01/12-09/30/13 \$ 540,000
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:  Page 53a, Page 53a-1      ** SEE REMARKS	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable):  Page 53a

10. SUBJECT OF AMENDMENT:  
Estate Recovery for Medicare Savings Program (MSP) - Exemption of Medicare cost-sharing benefits paid under MSP for estate recovery. Exemption only extends to benefits with dates of service on or after January 1, 2010 for qualified beneficiaries age 55 and over.

11. GOVERNOR'S REVIEW (Check One):  
 GOVERNOR'S OFFICE REPORTED NO COMMENT       OTHER, AS SPECIFIED:  
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED  
 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: Donna Frescatore	
14. TITLE: Deputy Commissioner Department of Health	
15. DATE SUBMITTED: June 30, 2010	

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:	18. DATE APPROVED: SEP 22 2010
--------------------	-----------------------------------

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL: APR 01 2010	20. SIGNATURE OF REGIONAL OFFICIAL:
---	-------------------------------------

21. TYPED NAME: Sue Kelly	22. TITLE: Associate Regional Administrator Division of Medicaid and State Operations
------------------------------	---

23. REMARKS:  
Originally submitted pages were replaced by State e-mail of 8/17/2010.

**OFFICIAL****STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT**State/Territory: New York(b) Adjustments or Recoveries

The State complies with the requirement of section 1917 (b) of the Act and regulations at 42 CFR 433.36 (h) - (i).

Adjustments or recoveries for Medicaid claims correctly paid are as follows:

- (1) For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate or upon sale of the property subject to a lien imposed because of medical assistance paid on behalf of the individual for services provided in a nursing facility, ICF/MR, or other medical institution.

Adjustments or recoveries are made for all other medical assistance paid on behalf of the individual.

- (2)  The State determines "permanent institutional status" of individuals under the age of 55 other than those with respect to whom it imposes liens on real property under §1917 (a) (1) (B) (even if it does not impose those liens).

- (3) For any individual who received medical assistance at age 55 or older, adjustments or recoveries of payments are made from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services.

In addition to adjustment or recovery of payments for services listed above, payments are adjusted or recovered for other services under the State plan as listed below:  
Payment for all services are recovered for individuals age 55 and over, except for Medicare cost sharing as specified in section 4.17 (b) (3) - continued).

**OFFICIAL**Revision: HCFA-PM-95-3 (MB)  
May 1995

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: New York

4.17 (b) Adjustments or Recoveries

(3) (Continued)

## Limitations on Estate Recovery - Medicare Cost Sharing:

(i) Medical assistance for Medicare cost sharing is protected from estate recovery for the following categories of dual eligibles: QMB, SLMB, QI, QDWI, QMB+, SLMB+. This protection extends to medical assistance for four Medicare cost sharing benefits: (Part A and B premiums, deductibles, coinsurance, co-payments) with dates of service on or after January 1, 2010. The date of service for deductibles, coinsurance, and co-payments is the date the request for payment is received by the State Medicaid Agency. The date of service for premiums is the date the State Medicaid Agency paid the premium.

(ii) In addition to being a qualified dual eligible the individual must also be age 55 or over. The above protection from estate recovery for Medicare cost sharing benefits (premiums, deductibles, coinsurance, co-payments) applies to approved mandatory (i.e., nursing facility, home and community-based services, and related prescription drugs and hospital services) as well as optional Medicaid services identified in the State plan, which are applicable to the categories of duals referenced above.

TN No.: 10-14  
Supersedes  
TN No.: NewApproval Date: SEP 22 2010 Effective Date: April 1, 2010