



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

June 30, 2022

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 #22-0007
Long Term Care Facility Services

Dear Mr. McMillion:

The State requests approval of the enclosed amendment #22-0007 to the Title XIX (Medicaid) State Plan for long term care facility services to be effective April 1, 2022 (Appendix I). This amendment is being submitted based on enacted legislation. A summary of the proposed amendment is provided in Appendix II.

This amendment is submitted pursuant to §1902(a) of the Social Security Act (42 USC 1396a(a)) and Title 42 of the Code of Federal Regulations, Part 447, Subpart C, (42 CFR §447).

A copy of the pertinent section of enacted legislation is enclosed for your information (Appendix III). Copies of the public notice of this proposed amendment, which were given in the New York State Register on December 29, 2021, and subsequently clarified on May 11, 2022, 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
Acting 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. STATE

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

5. FEDERAL STATUTE/REGULATION CITATION

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY _____ \$ _____
b. FFY _____ \$ _____

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

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 PAGE NUMBER OF THE SUPERSEDED PLAN SECTION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

9. SUBJECT OF AMENDMENT

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

15. RETURN TO

12. TYPED NAME

13. TITLE

14. DATE SUBMITTED June 30, 2022

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
2022 Title XIX State Plan
Second Quarter Amendment
Amended SPA Pages

New York
110(d)(32)

1905(a)(4)(A) Nursing Facility Services

Minimum Staffing Requirements for Nursing Homes

Effective for rate years on or after April 1, 2022, the State will distribute \$187 million annually in equal quarterly installments in each state fiscal year beginning April 1, 2022 to Qualified facilities for the purposes of meeting the following minimum staffing requirements.

1. Hours Per Resident Day Staffing Requirements

Nursing homes must provide a minimum of 3.5 staffing hours per resident per day ("HPRD"), made up by no less than 1.1 hours of licensed nurse care per resident per day and 2.2 hours of certified nurse aide care per resident per day.

- a. "Licensed nurse" shall mean a registered professional nurse or licensed practical nurse.
- b. "Certified nurse aide" shall mean any person included in the nursing home nurse aide registry.
- c. "Staffing hours" shall mean the hours reported by a nursing home to the Federal Centers for Medicare and Medicaid Services through the payroll-based journal for long-term care facilities.

2. Minimum Direct Resident Care Spending

Nursing homes will be required to spend a minimum of 40 percent of revenue on resident-facing staffing, provided that 15 percent of costs associated with resident-facing staffing contracted out by a facility for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides who have completed certification and training approved by the department will be deducted from the calculation of the amount spent on resident-facing staffing.

- a. "Revenue" shall mean the total operating revenue from or on behalf of residents of the residential health care facility, government payers, or third-party payers, to pay for a resident's occupancy of the residential health care facility, resident care, and the operation of the residential health care facility as reported in the residential health care facility cost reports submitted to the department; provided, however, that revenue shall exclude the average increase in the capital portion of the Medicaid reimbursement rate from the prior three years.
- b. "Resident-facing staffing" shall include all staffing expenses in the ancillary and program services categories of the residential health care cost reports.
- c. "Cost Report" shall mean the annual financial and statistical report submitted to the department which includes the residential health care facility's revenues, expenses, assets, liabilities, and statistical information.

TN #22-0007 _____ **Approval Date** _____

Supersedes TN New _____ **Effective Date** April 1, 2022

New York
110(d)(32.1)

1905(a)(4)(A) Nursing Facility Services

3. Supplemental Payment to Qualified Facilities

Qualified facilities exclude continuing care retirement communities that are authorized by the Department to primarily care for medically fragile children or young adults, people with HIV/AIDS, persons requiring behavioral intervention, or persons requiring neurodegenerative services. A facility shall be considered to primarily care for such specialized populations if at least 51 percent of certified beds are designated for persons with such specialty health care needs.

Qualified facilities are those that need to expend more to meet the minimum hours per resident per day ("HPRD"), as described in section 1 above, than to meet the requirement of spending 40 percent of operating revenue on resident-facing staffing, as described in section 2 above.

- a. The facility's spending required to meet the minimum HPRD is determined by calculating the additional spending needed to meet the HPRD requirements for licensed nurses, certified nurse aides, and total staffing.
 - i. Calculate the quarterly HPRD: Divide the average daily hours worked by the relevant staff over the course of a quarter by the average daily resident census during that same quarter using the federal Centers for Medicare and Medicaid Services payroll based journal.
 - ii. Determine the marginal annual cost of compliance: If the calculated HPRD is lower than the required HPRD, subtract it from the required HPRD and multiply this value by the average hourly wage (using Bureau of Labor Statistics ("BLS") wage data) inflated by 40% for benefits cost and by 365 days.
 - iii. Calculate total cost of compliance: Add the marginal cost of compliance for all three HPRD required levels together to determine the additional spending required to meet the minimum nursing staff requirements.
- b. The facility's percentage of revenue spent on resident-facing staffing is calculated by dividing a facility's resident-facing staffing expense by the facility's total revenue. If the resulting value is less than 40 percent, then the marginal cost of compliance is calculated by subtracting the resulting value from 40 percent and multiplying by total revenue. If the resulting value is more than 40 percent, the marginal cost of compliance is zero.

TN #22-0007 _____ **Approval Date** _____

Supersedes TN New _____ **Effective Date** April 1, 2022

New York
110(d)(32.2)

1905(a)(4)(A) Nursing Facility Services

3. Supplemental Payment to Qualified Facilities (continued)

- c. The data used in the calculations of sections 3a. and 3b. above is as follows:

	<u>State Cost Report</u>	<u>CMS Payroll Based Journal</u>	<u>BLS Wage data</u>
<u>January 1 - December 31, 2022</u>	<u>2020</u>	<u>2020, Q4</u>	<u>2020</u>
<u>January 1 - December 31, 2023</u>	<u>2021</u>	<u>2021, Q4</u>	<u>2021</u>
<u>January 1 - December 31, 2024</u>	<u>2022</u>	<u>2022, Q4</u>	<u>2022</u>

- d. Subtract the marginal cost of compliance for the 40 percent spending on resident-facing staffing, as calculated in section (3)(b), from the marginal cost of compliance for the minimum HPRD, as calculated in section (3)(a). This is the Excess Cost of Compliance. If the Excess Cost of Compliance is greater than zero, then the facility is a Qualified Facility and eligible to receive the supplemental payment. The supplemental payment for each Qualified Facility will be calculated as follows:
- i. Divide the Qualified Facility's Excess Cost of Compliance by the total Excess Cost of Compliance for all Qualified Facilities.
 - ii. Multiply the value by the total funding available for Qualified Facilities.

TN #22-0007 _____ Approval Date _____

Supersedes TN New _____ Effective Date April 1, 2022

Appendix II
2022 Title XIX State Plan
Second Quarter Amendment
Summary

SUMMARY
SPA #22-0007

This State Plan Amendment proposes a supplemental payment, which will allow eligible nursing homes to increase resident facing staffing services provided by registered nurses, licensed practical nurses, and certified nursing assistants sufficient to attain the highest practicable physical, mental, and psychological well-being of each resident of such facilities.

Appendix III
2022 Title XIX State Plan
Second Quarter Amendment
Authorizing Provisions

SPA 22-0007

Aid to Localities Appropriation Bill, 2022-23

For services and expenses for nursing homes to increase resident facing staffing services provided by registered nurses, licensed practical nurses and certified nursing assistants sufficient to attain the highest practicable physical, mental and psychological well-being of each resident of such facilities as further specified in a chapter of the laws of 2021. Provided however, that nursing homes which spend less than 70 percent of revenues on direct resident care or less than 40 percent of revenues on resident-facing-staffing shall not be eligible for monies authorized herein. Provided further however, that no monies shall be available for expenditure from this appropriation unless submitted in a plan by the commissioner of the department of health and approved by the director of the budget (59025) 187,000,000

Nursing Home Reform Authorizing Provisions

§ 2895-b. Nursing home staffing levels. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Certified nurse aide" means any person included in the nursing home nurse aide registry pursuant to section twenty-eight hundred three-j of this chapter.

(b) "Licensed nurse" means a registered professional nurse or licensed practical nurse licensed pursuant to article one hundred thirty-nine of the education law.

(c) "Staffing hours" means the hours reported by a nursing home to the federal Centers for Medicare and Medicaid Services through the payroll based journal for long-term care facilities.

(d) "Nurse aides" means any person who is included in the nurse aide hour component of the payroll based journal for long-term care facilities but has not yet been certified as a certified nurse aide.

2. Staffing standards. (a) The commissioner shall, by regulation, establish staffing standards for nursing home minimum staffing levels to meet applicable standards of service and care and to provide services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident of the facility. Compliance shall be determined quarterly by comparing the daily average of the number of hours provided per resident, per day, using the federal Centers for Medicare and Medicaid Services payroll based journal and the facility's average daily census on a daily basis.

(b) The commissioner shall establish, by regulation, civil penalties for facilities out of compliance with minimum staffing levels. Such regulations shall include a range of penalties to account for mitigating factors which shall include:

(i) extraordinary circumstances facing the facility, including, but not limited to, whether the facility has suffered through a natural disaster or other catastrophic event, an officially declared national emergency, or state or municipal emergency declared pursuant to article two-B of the executive law, which has been initially declared subsequent to the effective date of this section, or other such conditions or unforeseen circumstances as determined by the commissioner;

(ii) the frequency and nature of non-compliance; and

(iii) the existence of an acute labor supply shortage within a particular region. When determining if there is an acute labor supply shortage within a specific region in a specific quarter, or a shorter period of time as determined by the commissioner, the commissioner shall take into consideration the following factors: regional labor supply of available certified nurse aides, licensed practical nurses and registered nurses; regional pay rates for the relevant titles as determined by the federal department of labor, bureau of labor statistics; and evidence that the facility attempted to procure

sufficient staffing.

(c) At least thirty days before any action is taken by the commissioner under paragraph (b) of this subdivision, the commissioner shall post the assessed penalties, and any mitigating factors that were considered in assessing the penalty on the department's website.

(d) In determining whether a nursing home has violated its obligations under this section, it shall not be a defense that such nursing home was unable to secure sufficient staff if the lack of staffing was foreseeable and could be prudently planned for, or involved routine staffing needs that arose due to typical staffing patterns, typical levels of absenteeism, or time off typically approved by the employer for vacation, holidays, sick leave, and personal leave.

(e) A civil penalty shall not be imposed under this section until after April first, two thousand twenty-two;

(f) Every nursing home shall:

(i) comply with the staffing standards under this section; and

(ii) employ sufficient staffing levels to meet applicable standards of service and care and to provide service and care and to provide services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident of the facility.

(g) Staffing standards established under this subdivision shall, at a minimum, be the staffing standards established under subdivision three of this section.

(h) The minimum staffing standard includes the hours which are required to be reported by a nursing home to the federal Centers for Medicare and Medicaid Services through the payroll based journal for long-term care for certified nursing assistants and licensed nurses. In determining compliance with the staffing standards under this subdivision, an individual shall not be counted while performing administrative services as defined in the payroll based journal for long-term care facilities.

3. Statutory standard. (a) Beginning January first, two thousand twenty-two every nursing home shall maintain daily average staffing hours equal to 3.5 hours of care per resident per day by a certified nurse aide, a licensed nurse or a nurse aide; provided that out of such 3.5 hours, no less than 2.2 hours of care per resident per day shall be provided by a certified nurse aide or a nurse aide, and no less than 1.1 hours of care per resident per day shall be provided by a licensed nurse.

(b) Beginning January first, two thousand twenty-three and thereafter every nursing home shall maintain daily average staffing hours equal to 3.5 hours of care per resident per day by a certified nurse aide or a licensed nurse; provided that out of such 3.5 hours, no less than 2.2 hours of care per resident per day shall be provided by a certified

nurse aide, and no less than 1.1 hours of care per resident per day shall be provided by a licensed nurse.

4. Public disclosure of staffing levels. (a) A nursing home shall post information regarding nurse staffing that the facility is required to make available to the public under section twenty-eight hundred five-t of this chapter. Information under this paragraph shall be displayed in a form approved by the department and be posted in a manner which is visible and accessible to residents, their families and the staff, as required by the commissioner.

(b) A nursing home shall post a summary of this section, provided by the department, in proximity to each posting required by paragraph (a) of this subdivision.

§ 2828. Residential health care facilities; minimum direct resident care spending. 1. (a) Notwithstanding any law to the contrary, the department shall promulgate regulations governing the disposition of revenue in excess of expenses for residential health care facilities consistent with this section. Beginning on and after January first, two thousand twenty-two, every residential health care facility shall spend a minimum of seventy percent of revenue on direct resident care, and forty percent of revenue shall be spent on resident-facing staffing, provided that amounts spent on resident-facing staffing shall be included as a part of amounts spent on direct resident care.

(b) Fifteen percent of costs associated with resident-facing staffing contracted out by a facility for services provided by registered professional nurses or licensed practical nurses licensed pursuant to article one hundred thirty-nine of the education law or certified nurse aides who have completed certification and training approved by the department shall be deducted from the calculation of the amount spent on resident-facing staffing and direct resident care.

(c) Such regulations shall further include at a minimum that any residential health care facility for which total operating revenue exceeds total operating and non-operating expenses by more than five percent of total operating and non-operating expenses or that fails to spend the minimum amount necessary to comply with the minimum spending standards for resident-facing staffing or direct resident care, calculated on an annual basis, shall remit such excess revenue, or the difference between the minimum spending requirement and the actual amount of spending on resident-facing staffing or direct care staffing, as the case may be, to the state, with such excess revenue which shall be payable, in a manner to be determined by such regulations, by November first in the year following the year in which the expenses are incurred. The department shall collect such payments by methods including, but not limited to, bringing suit in a court of competent jurisdiction on its own behalf after giving notice of such suit to the attorney general, deductions or offsets from payments made pursuant to the Medicaid program, and shall deposit such recouped funds into the nursing home quality pool, as set forth in paragraph d of subdivision two-c of section two thousand eight hundred eight of this article. Provided further that such payments of excess revenue shall be in addition to and shall not affect a residential health care facility's obligations to make any other payments required by state or federal law into the nursing home quality pool, including but not limited to medicaid rate reductions required pursuant to paragraph g of subdivision two-c of section two thousand eight hundred eight of this article and department regulations promulgated pursuant thereto. The commissioner or their designees shall have authority to audit the residential health care facilities' reports for compliance in accordance with this section.

2. For the purposes of this section the following terms shall have the

following meanings:

(a) "Revenue" shall mean the total operating revenue from or on behalf of residents of the residential health care facility, government payers, or third-party payers, to pay for a resident's occupancy of the residential health care facility, resident care, and the operation of the residential health care facility as reported in the residential health care facility cost reports submitted to the department; provided, however, that revenue shall exclude the average increase in the capital portion of the Medicaid reimbursement rate from the prior three years.

(b) "Expenses" shall include all operating and non-operating expenses, before extraordinary gains, reported in cost reports submitted pursuant to section twenty-eight hundred five-e of this article, except as

expressly excluded by regulations and/or this section. Such exclusions shall include, but not be limited to, any related party transaction or compensation to the extent that the value of such transaction is greater than fair market value, and the payment of compensation for employees who are not actively engaged in or providing services at the facility.

(c) "Direct resident care" includes the following cost centers in the residential health care facility cost report: (i) Nonrevenue Support Services - Plant Operation & Maintenance, Laundry and Linen, Housekeeping, Patient Food Service, Nursing Administration, Activities Program, Nonphysician Education, Medical Education, Medical Director's Office, Housing, Social Service, Transportation; (ii) Ancillary Services - Laboratory Services, Electrocardiology, Electroencephalography, Radiology, Inhalation Therapy, Podiatry, Dental, Psychiatric, Physical Therapy, Occupational Therapy, Speech/Hearing Therapy, Pharmacy, Central Services Supply, Medical Staff Services provided by licensed or certified professionals including and without limitation Registered Nurses, Licensed Practical Nurses, and Certified Nursing Assistant; and (iii) Program Services - Residential Health Care Facility, Pediatric, Traumatic Brain Injury (TBI), Autoimmune Deficiency Syndrome (AIDS), Long Term Ventilator, Respite, Behavioral Intervention, Neurodegenerative, Adult Care Facility, Intermediate Care Facilities, Independent Living, Outpatient Clinics, Adult Day Health Care, Home Health Care, Meals on Wheels, Barber & Beauty Shop, and Other similar program services that directly address the physical conditions of residents. Direct resident care does not include, at a minimum and without limitation, administrative costs (other than nurse administration), capital costs, debt service, taxes (other than sales taxes or payroll taxes), capital depreciation, rent and leases, and fiscal services.

(d) "Resident-facing staffing" shall include all staffing expenses in the ancillary and program services categories on exhibit h of the residential health care reports as in effect on February fifteenth, two

thousand twenty-one.

(e) "Cost Report" shall mean the annual financial and statistical report submitted to the department pursuant to sections two thousand eight hundred five-e and two thousand eight hundred eight-b of this article, and regulations promulgated pursuant thereto, which includes the residential health care facility's revenues, expenses, assets, liabilities and statistical information.

3. For the purposes of this section, residential health care facilities shall not include (a) facilities that are authorized by the department to primarily care for medically fragile children, people with HIV/AIDS, persons requiring behavioral intervention, persons requiring neurodegenerative services, and other specialized populations that the commissioner deems appropriate to exclude; and (b) continuing care retirement communities licensed pursuant to article forty-six or forty six-a of this chapter.

4. The commissioner may waive the requirements of this section on a case-by-case basis with respect to a nursing home that demonstrates to the commissioner's satisfaction that it experienced unexpected or exceptional circumstances that prevented compliance. The commissioner may also exclude from revenues and expenses, on a case-by-case basis, extraordinary revenues and capital expenses, incurred due to a natural disaster or other circumstances set forth by the commissioner in regulation. At least thirty days before any action by the commissioner under this subdivision, the commissioner shall transmit the proposed action to the state office of the long-term care ombudsman and the

chairs of the senate and assembly health committees, and post it on the department's website.

5. The commissioner shall issue regulations, seek amendments to the state plan for medical assistance, seek waivers from the federal Centers for Medicare and Medicaid Services, and take such other actions as reasonably necessary to implement this section.

6. The commissioner shall, if necessary, update reporting forms completed by residential health care facilities under section twenty-eight hundred five-e of this article to include information to ensure all items referred to in this section and organize such information consistent with the terms of this section.

Appendix IV
2022 Title XIX State Plan
Second 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

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

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 all services to comply with enacted statutory provisions. The following changes are proposed:

Long Term Care Services

The following is a clarification to the December 29, 2021 noticed provision to implement a rate adjustment for residential health care facilities meeting the requirements set forth in section 2828 of the Public Health Law and implementing regulations. Effective on or after April 1, 2022, this rate adjustment will support increases in resident-facing staffing services provided by registered nurses, licensed practical nurses, certified nurse aides, and nurse aides in accordance with standards set forth in section 2895-b of the Public Health Law and implementing regulations, which shall be sufficient to attain the highest practicable physical, mental, and psychological well-being of the residents of such residential health care facilities.

With clarification, the annual net aggregate increase in gross Medicaid expenditures, contained in the SFY 2023 Budget, will be \$187 million.

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. 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 State
F-2022-0070

Date of Issuance – May 11, 2022

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 of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program. The applicant's consistency certification and accompanying public information and data are available for inspection on the New York State Department of State's website at <https://dos.ny.gov/system/files/documents/2022/05/f-2022-0070.pdf>.

In F-2022-0070, or the "Somekh – Quogue Residential Project", the applicant – Edward & Elizabeth Somekh – proposes the construction of four foot wide by sixty-eight foot open grate catwalk from the existing stonewall. The catwalk will lead to a seasonal three foot by fifteen foot ramp and a seasonal six foot by twenty foot float. The construction of an one hundred eighty-five linear feet of one foot wide by four foot high stone wall is proposed above the Mean High Water Mark as a pool code stone retaining wall. Existing sandbags will be replaced with twelve inch to three foot rip rap boulders above the Mean High Water Mark at the eastern portion of the property. Approximately twenty cubic yards of material above Mean High Water will be cut and approximately three hundred cubic yards of fill will be placed landward of the proposed wall.

The purpose of the proposed project is for "safe recreational mooring, dock reconstruction and shoreline stabilization". The project will occur at 17 Bay Road, in the Village of Quogue, Suffolk County on the Stone Creek.

Any interested parties and/or agencies desiring to express their views concerning the above proposed activities may do so by filing

their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice, or, June 10, 2021.

Comments should be addressed to: Consistency Review Unit, Department of State, Planning, Development and Community Infrastructure, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6000, Fax (518) 473-2464. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State
F-2022-0259

Date of Issuance – May 11, 2022

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-2022-0259, Dana Didriksen is proposing to construct a 4' x 130' fixed angled pier, with a removable ships ladder at the waterward end of the pier. The pier is to have railings and water/electric utilities. The project is located on Fishers Island Sound at 6180 Clay Point Road, Fishers Island, NY 11963.

The applicant's consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2022/05/f-2022-0259didriksen.pdf> or at <https://dos.ny.gov/public-notices>

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice or June 10, 2022.

Comments should be addressed to: Department of State, Office of Planning and Development and Community Infrastructure, Consistency Review Unit, One Commerce Plaza, Suite 1010, 99 Washington Ave., Albany, NY 12231, (518) 474-6000. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State
F-2022-0274

Date of Issuance – May 11, 2022

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-2022-0274, the applicant, Elias Dagher, is proposing to remove an existing wooden platform, walkway, and steps, and install new fixed timber dock consisting of a 4' x 74' fixed open-grate decking timber catwalk, (2) 4' x 6' steps perpendicular to pier, and a 3' x 14'

hinged ramp leading to a 6' x 20' "T"-shaped float secured by (2) 8" - diameter pilings. This project is located at 90 Oak Avenue, Town of Southold, Suffolk County, Goose Creek.

The applicant's consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2022/05/f-2022-0274app.pdf> or at <https://dos.ny.gov/public-notices>.

The proposed activity would be located within or has the potential to affect the following Special Management or Regulated Area(s):

- Town of Southold Local Waterfront Revitalization Program: <https://dos.ny.gov/location/town-southold-local-waterfront-revitalization-program>

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice or June 10, 2022.

Comments should be addressed to: Department of State, Office of Planning and Development and Community Infrastructure, Consistency Review Unit, One Commerce Plaza, Suite 1010, 99 Washington Ave., Albany, NY 12231, (518) 474-6000. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State
F-2022-0282

Date of Issuance – May 11, 2022

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-2022-0282, United Group, proposes the construction of a new mixed-use development comprising residential, commercial, and community facility space, along with a shorefront public walkway with new trees, sidewalks, and benches. The existing deteriorated pile-supported platforms, and debris along the shoreline will be removed, and a new riprap revetment will be constructed. The project site is located on the Flushing Creek at 131-35 Roosevelt Avenue, Flushing, NY, 11354.

The applicant's consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2022/05/f-2022-0282rooseveltavenue.pdf> or at <https://dos.ny.gov/public-notices>

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice or June 10, 2022.

Comments should be addressed to: Department of State, Office of Planning and Development and Community Infrastructure, Consistency Review Unit, One Commerce Plaza, Suite 1010, 99 Washington Ave., Albany, NY 12231, (518) 474-6000. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

The Department of Health proposes to amend the Title XIX (Medicaid) State Plan for non-institutional services to comply with enacted statutory provisions. The following changes are proposed:

Non-Institutional Services

Effective on or after January 1, 2022, the Department of Health will adjust the reimbursement rate for Ambulatory Services in Facilities Certified Under Article 16 of the Mental Health Law Clinic Day Treatment program to remove the providers that no longer offer the service and update the reimbursements for the remaining providers based on more current cost data.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2022 is \$300,000.

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. 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

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 services to comply with sections 2803, 2895-b, and 2828 of the Public Health Law. The following changes are proposed:

Long Term Care Services

Effective on or after January 1, 2022, the Department of Health will adjust rates for residential health care facilities meeting the requirements set forth in section 2828 of the Public Health Law and implementing regulations. This rate adjustment will support increases in resident-facing staffing services provided by registered nurses, licensed practical nurses, certified nurse aides, and nurse aides in accordance with standards set forth in section 2895-b of the Public Health Law and implementing regulations, which shall be sufficient to attain the highest practicable physical, mental, and psychological well-being of the residents of such residential health care facilities.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to the residential health care facility rate

adjustment is \$128 million as appropriated in the budget for state fiscal year 2021/2022.

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. 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

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 institutional services to comply with enacted statutory provisions. The following changes are proposed:

Institutional Services

Effective on or after December 31, 2021, the Department of Health will adjust Residential Treatment Facility (RTF) rates for providers to consider increased labor costs resulting from increases in the New York State minimum wage in the Remainder of State region.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2021/2022 is \$16,000.

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. 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

Appendix V
2022 Title XIX State Plan
Second Quarter Amendment
Responses to Standard Funding Questions

LONG-TERM SERVICES
State Plan Amendment #22-0007

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-D 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 payments, a complete listing of providers that return a portion of their payments, 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 do receive and retain the 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 through 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 governmental 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.

		4/1/22 – 3/31/23	
Payment Type	Non-Federal Share Funding	Non-Federal	Gross
Supplemental	General Fund; Special Revenue Funds	\$93,500,000	\$187,000,000

1) **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.

- a. 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.

2) Special Revenue Funds:

- a. Health Care Reform Act (HCRA) Resource Fund: as authorized in section 92-dd of New York State Finance Law and was established in 1996, pursuant to New York State Public Health Law 2807-j. HCRA resources include health care related surcharges, assessments on hospital revenues, and a "covered lives" assessment paid by insurance carriers pursuant to chapter 820 of the laws of 2021.
- b. Health Facility Cash Assessment Program (HFCAP) Fund: HFCAP requires New York State designated providers to pay an assessment on cash

operating receipts on a monthly basis. The assessment includes Article 28 Residential Health Care Facilities, Article 28 General Hospitals, Article 36 Long Term Home Health Care Programs, Article 36 Certified Home Health Agencies and Personal Care Providers that possess a Title XIX (i.e. Medicaid) contract with a Local Social Services District for the delivery of personal care services pursuant to Section 367-i of the New York State Social Services Law.

NOTE: New York's Health Care taxes are either broad based and uniform (as in all HFCAP assessments except for the Personal Care Provider Cash Assessment) or have a specific exemption known as the "D'Amato provision (Federal PHL section 105-33 4722 (c))" which allows the HCRA surcharges to exist in their current format. The single tax which has been determined by the State to be an impermissible provider tax is the HFCAP charge on Personal Care Providers. The State does not claim any Federal dollars for the surcharge collected in this manner in order to comply with all Federal provider tax rules.

- 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 \$187 million for State Fiscal Year 2022-23.

- 4. 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 nursing home UPL calculation is a payment-to-payment calculation for state government and private facilities. Non-state Governmental facilities undergo a payment-to-cost calculation. The State is in the process of completing the 2022 nursing home UPL as well as the Procedural Manual which describes the methodology for eligible providers and will be submitting both documents to CMS.

- 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.