DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

**Center for Medicaid and CHIP Services**

OCT 28 2011

Jason A. Helgerson
State Medicaid Director
Deputy Commissioner
Office of Health Insurance Programs
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1466
Albany, NY 12237

RE: TN 10-33-B

Dear Mr. Helgerson:

We have reviewed the proposed amendment to Attachment 4.19-A of your Medicaid State plan submitted under transmittal number (TN) 10-33-B. Effective July 1, 2011, this amendment proposes to revise certain payment provisions for inpatient services and remove obsolete plan provisions.

We conducted our review of your submittal according to the statutory requirements at sections 1902(a)(2) 1902(a)(13), 1902(a)(30), 1903(a) and 1923 of the Social Security Act and the regulations at 42 CFR 447 Subpart C. This is to inform you that New York 10-33-B is approved effective July 1, 2011.I have enclosed the HCFA-179 and the approved plan pages.

If you have any questions, please contact Tom Brady at 518-396-3810 or Rob Weaver at 410-786-5914.

Sincerely,

[redacted]

Cindy Mann
Director, CMCS

Enclosures

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-0193

| TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL<br><br>FOR: HEALTH CARE FINANCING ADMINISTRATION | 1. TRANSMITTAL NUMBER:<br>**10-33-B** | 2. STATE<br>**New York** |
|---|---|---|
| | 3. PROGRAM IDENTIFICATION: **TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)** | |
| TO: REGIONAL ADMINISTRATOR<br>HEALTH CARE FINANCING ADMINISTRATION<br>DEPARTMENT OF HEALTH AND HUMAN SERVICES | 4. PROPOSED EFFECTIVE DATE<br>**July 1, 2011** | |

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:<br>**Section 1902(a) of the Social Security Act, and 42 CFR 447** | 7. FEDERAL BUDGET IMPACT:<br>a. FFY **10/20/10-09/30/11 $0**<br>b. FFY **10/01/11-09/30/12 $0** |
|---|---|
| 8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:<br>**Attachment 4.19-A: Pages 106, 121, 125, 130, 139**<br>**Part VI – Pages 1, 2**<br>**Attachment 4.19-A, Part I, Contents** | 9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*:<br>**Attachment 4.19-A: Pages 106, 121, 125, 130, 139**<br>**Part VI – Pages 1, 2**<br>**Attachment 4.19-A, Part I, Contents** |

10. SUBJECT OF AMENDMENT:
**Inpatient Reform Cleanup**
**(FMAP = 50% based on effective date)**

11. GOVERNOR'S REVIEW *(Check One)*:
☒ GOVERNOR'S OFFICE REPORTED NO COMMENT
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL
☐ OTHER, AS SPECIFIED:

| [redacted] | 16. RETURN TO:<br>**New York State Department of Health**<br>**Corning Tower**<br>**Empire State Plaza**<br>**Albany, New York 12237** |
|---|---|
| 13. TYPED NAME: **Jason A. Helgerson** | |
| 14. TITLE: **Medicaid Director & Deputy Commissioner Department of Health** | |
| 15. DATE SUBMITTED:<br>August 10 2011 | |

**FOR REGIONAL OFFICE USE ONLY**

| 17. DATE RECEIVED: | 18. DATE APPROVED: OCT 28 2011 |
|---|---|
| PLAN APPROVED – ONE COPY ATTACHED | |
| 19. EFFECTIVE DATE OF APPROVED MATERIAL: JUL - 1 2011 | 20. SIGNATURE OF REGIONAL OFFICIAL: [redacted] |
| 21. TYPED NAME: Penny Thompson | 22. TITLE: Deputy Director, CMCS |

23. REMARKS:

FORM HCFA-179 (07-92)

# [SUBPART 86-1]
# MEDICAL FACILITIES
## Contents

(Statutory authority: Public Health Law, 2803, 2807, 2807-a, 2807-c, 2808-c, 3612; L 1983, ch. 758, 7)

**New York**
**Contents**

**Attachment 4.19-A**
**Part I**

**Hospital Inpatient Reimbursement – Effective December 1, 2009**



OCT 28 2011

**TN #** 10-33-B **Approval Date** _____

**Supersedes TN** 88-6 **Effective Date** JUL - 1 2011

**Reserved**

[Methods and Standards for Establishing Payment Rates

Out of State Services

I. Inpatient Hospital Care

New York reimburses out of state hospitals at the facility's Medicaid rate established by the State in which the institution is located; or when no such rate exists, at the lowest of the following charges:

1. the Medicare rate set for the hospital; or
2. the hospital's customary charge for public beneficiaries; or
3. the maximum New York State Title XIX rate for similar inpatient care.

Reimbursement for those days where recipients are awaiting placement to an alternate level of care (ALC) while they are inpatients at out of state hospitals will be at the facility's approved Medicaid ALC rate.

II. Additional Disproportionate Share Payment

The State's methodology used to take into account the situation of disproportionate share hospitals also includes additional payments to meet the needs of those facilities which serve a large number of Medicaid eligible, low income and uninsured patients, including those eligible for Home Relief, who other providers view as financially undesirable. These payments are available to hospitals on behalf of certain low-income persons who are described below.

These additional payment adjustments are made either by the Department or through an intermediary to disproportionate share hospitals which have provided services to persons determined to be low-income by reason of their having met the income and resource standards for the State's Home Relief program. These persons must have demonstrated to a local social services district or the Department that their household income and resources do not exceed the income and resources standard established by the Department, which standards vary by household size and take into account the household's regularly recurring monthly needs, shelter, fuel for heating, home energy needs, supplemental home energy needs and other relevant factors affecting household needs.]

OCT 28 2011

**Reserved**

[Each hospital, or an intermediary making a payment to a hospital, will determine which patients qualify as low-income persons eligible for additional payments by a verifiable process subject to the above eligibility conditions. Each hospital must maintain documentation of the patient's eligibility for additional payments and must document the amounts claimed for additional payments. The supporting documentation must include written verification from a local social services district or the Department attesting to the person's eligibility for Home Relief. Such supporting documentation may be in the form of a photocopy of the person's current valid official benefits card or a copy of an eligibility verification confirmation received from the Department's Electronic Medicaid Eligibility Verification System (EMEVS), which system includes information with respect to persons eligible for Home Relief and additional payments, or other verifiable documentation acceptable to the Department which establishes that the person has met the income and resource standards for Home Relief on the date the services were provided.

A "disproportionate share hospital" for purposes of receiving additional disproportionate share payments under this provision is any hospital which furnishes medical or remedial care to a qualified low-income person without expectation of payment from the person due to the patient's inability to pay as documented by his or her having met the income and resource standards for Home Relief benefits as set forth above, and meets the requirements of State Plan Amendment 9426. In addition, a "disproportionate share hospital" (except hospitals serving an in-patient population predominantly comprised of persons under 18 years of age and hospitals which did not offer non-emergency obstetrical care on or before December 21, 1987) must have at least two obstetricians with staff privileges who have agreed to provide obstetrical care and services to Medicaid-eligible patients on a non-emergency basis.

The amount of this disproportionate share adjustment will vary by hospital and reflect the dollar amount of payments either from the State directly, or through an intermediary, to the hospital for services provided to low income patients. For each hospital such adjustments shall be paid in the normal Medicaid payment process, or intermediary payment process, and according to established rates or fees, for fee-for-service program services or by the intermediary for its services. To receive payment of this adjustment each hospital must submit a claim in the form and manner specified by this Department, or the intermediary, as appropriate.]

**Statewide base price.**

1. For periods on and after December 1, 2009, a statewide average cost per discharge shall be established in accordance with the following:

   a. Reimbursable Medicaid acute operating costs, excluding costs related to graduate medical education, alternate level of care, exempt units, patient transfers, high-cost outliers, and non-comparables, derived from the base period in paragraph (3);
   b. Adjust subparagraph (a) for case mix and wage neutrality factors derived from the base period in paragraph (3);
   c. Divide subparagraph (b) by Medicaid inpatient discharges from the base period in paragraph (3); and
   d. Adjust subparagraph (c) for inflation between the base period and the rate period in accordance with trend factors determined pursuant to applicable provisions of this Attachment.

2. An adjustment will be made to the statewide average cost per discharge, calculated in accordance with subparagraph (1) of this section, to establish a "statewide base price" that generates the same level of total Medicaid payments for the reimbursement of operating costs as total Medicaid payments made for the reimbursement of operating costs during calendar year 2008 subsequent to the exclusion of prior period adjustments and the following reductions:

   a. One hundred fifty-four million five hundred thousand dollars; and
   b. Two hundred twenty-five million dollars.

   No further reconciliation adjustment to the statewide base price to account for changes in volume or case mix will be implemented.

3. For periods on and after December 1, 2009, the "base period" shall be the 2005 calendar year except as noted in subparagraph (a) below and "operating costs" shall be those reported by each facility to the Department prior to July 1, 2009.

   a. For those hospitals operated by the New York City Health and Hospitals Corporation, the base period shall be for the period ended June 30, 2005, and for those hospitals operated by New York State, excluding the hospitals operated by the State University of New York, the base period shall be the 12-month period ended March 31, 2006.

   b. Discharges to be used for direct graduate medical education and non-comparable adjustments in accordance with the Definitions section should be 2007[.],provided, however, that discharges for non-comparables adjustments shall not include those patients that are transferred to a facility or unit that is exempt from the case-based system, except when the patient is a newborn transferred to an exempt hospital for neonatal services and thus classified as a transfer patient pursuant to this Section.

OCT 28 201

**Capital expense reimbursement.**

1. The allowable costs of fixed capital, including but not limited to depreciation, rentals, [and] interest on capital debt, [or, for hospitals financed pursuant to Article 28-B of the Public Health Law, amortization in lieu of depreciation, and interest and other approved expenses associated with both fixed capital and major movable equipment] and major movable equipment shall be reimbursed based on budgeted data and shall be reconciled to total actual expense for the rate year and shall be determined and computed in accordance with the provisions of [paragraphs (7) and (8) of] this section.

2. General hospitals shall submit a budgeted schedule of anticipated inpatient capital-related expenses for the forthcoming year to the Commissioner at least 120 days prior to the beginning of the rate year.

3. The following principles shall apply to budgets for inpatient capital-related expenses:

   a. The basis for determining capital-related inpatient expenses shall be the lesser of actual cost or the final amount specifically approved for construction of the capital asset.

   b. Any capital-related inpatient expense generated by a capital expenditure which requires or required approval pursuant to the Hospitals section of the Public Health Law, must have received such approval for the capital-related expense to be included in the rate calculation.

OCT 28 2011

TN #10-33-B
Supersedes TN 09-34

Approval Date
Effective Date JUL - 1 2011

7. Interest.

a. Necessary interest on both current and capital indebtedness is an allowable cost for all medical facilities.

b. To be considered as an allowable cost, interest shall be incurred to satisfy a financial need, [and] be at a rate not in excess of what a prudent borrower would have had to pay in the money market at the time the loan was made, and exclude costs and fees incurred as a result of an interest rate swap agreement. Also, the interest shall be paid to a lender not related through control, ownership, affiliation or personal relationship to the borrower, except in instances where the prior approval of the Commissioner has been obtained. Financial need for capital indebtedness relating to a specific project shall exist when all available restricted funds designated for capital acquisition of that type have been considered for equity purposes.

c. Interest expense shall be reduced by investment income with the exception of income from funded depreciation, qualified pension funds, trusteed malpractice insurance funds, or in instances where income from gifts or grants is restricted by donors. Interest on funds borrowed from a donor restricted fund or funded depreciation is an allowable expense. Investment income shall be defined as the aggregate net amount realized from dividends, interest, rental income, interest earned on temporary investment of withholding taxes, as well as all gains and losses. If the aggregate net amount realized is a loss, the loss shall not be allowable. Rate year investment income shall reduce rate year interest expense allowed for reimbursement as follows:

i. for all medical facilities, investment income shall first be used to reduce operating interest expense for that year;

ii. any remaining amount of investment income, after application of paragraph (i), shall be used to reduce capital interest expense reimbursed that year for medical facilities; and

**Attachment 4.19-A**
**(07/11)**

**Reimbursable Assessment for Statewide Planning and Research Cooperative System (SPARCS).**

The Commissioner will inform each such hospital of its actual fee to support the statewide planning and research cooperative system and each hospital will submit such fee on a quarterly basis to be received by the Commissioner no later than the 15th of February, May, August and November of each year. Failure to submit such fees in accordance with this schedule will result in a [one]two-percent reduction in the affected hospital's rate beginning on the first day following the due date and continuing until the last day of the calendar month in which said fees are submitted.

**Out-of-state providers.**

1. For discharges occurring on and after December 1, 2009, rates of payment for inpatient hospital services provided by out-of-state providers in accordance with the prior approval requirements shall be as follows:

   a. the weighted average of inpatient rates, including a teaching adjustment where applicable, in effect for similar services for hospitals located in the downstate region of New York State shall apply with regard to services provided by out-of-state providers located in the New Jersey counties of Sussex, Passaic, Bergin, Hudson, Essex, Union, Middlesex and Monmouth, in the Pennsylvania county of Pike, and in the Connecticut counties of Fairfield and Litchfield; [and]

   b. the weighted average of inpatient rates, including a teaching adjustment where applicable, in effect for similar services for hospitals located in the upstate region of New York State shall apply with regard to all other out-of-state providers[.];

   c. high cost outlier rates of payment shall be calculated in accordance with the Outlier and Transfer Cases Rates of Payment section of this Attachment, with the exception of the wage equalization factor (WEF) being based upon the weighted average of the upstate or downstate region; and

   d. the weighted average of the capital component of the inpatient rates in effect for similar services for hospitals located in New York State shall apply with regard to services provided by out-of-state providers.

2. Notwithstanding any inconsistent provision of this Section, in the event the Department determines that an out-of-state provider is providing services that are not available within New York State, the Department may negotiate payment rates and conditions with such provider; provided however, such payments shall not exceed the provider's usual and customary charges for such services.

3. For purposes of this Section, the downstate region of New York State shall consist of the New York counties of Bronx, New York, Kings, Queens, Richmond, Nassau, Suffolk, Westchester, Rockland, Orange, Putnam and Dutchess, and the upstate region of New York State shall consist of all other New York counties.