



DEPARTMENT OF HEALTH & HUMAN SERVICES



RE: DMCH: BPW

Region II
Federal Building
26 Federal Plaza
New York, NY 10278

August 17, 2011

Jason A. Helgersen
State Medicaid Director
Deputy Commissioner
Office of Health Insurance Programs
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1466
Albany, New York 12237

Re: New York **SPA #11-53**

Dear Commissioner Helgersen:

This is to notify you that New York State Plan Amendment (SPA) #11-53 has been approved for adoption into the State Medicaid Plan with an effective date of April 1, 2011. SPA #11-53 eliminates the separate payment rates for nursing services provided to patients diagnosed with Acquired Immune Deficiency Syndrome.

This SPA approval consists of one Attachment 4.19-B Page submitted with the State's June 15, 2011 electronic submission to the CMS SPA Mailbox; namely, Attachment 4.19-B, Page 4(a).

This amendment satisfies all of the statutory requirements at sections 1902(a)(13) and 1902(a)(30) of the Social Security Act and the implementing regulations at 42 C.F.R. 447.250 and 42 C.F.R. 447.272. Enclosed are copies of SPA #11-53 and the HCFA-179 form, as approved. Also enclosed is a letter containing coverage issues identified by CMS staff. In response to the State's request, CMS has agreed to permit the State to address these issues in the context of responding to the SPA #10-38 companion letter issues and welcomes the opportunity to work with you and your staff in resolving these issues.

If you have any questions or wish to discuss this SPA further, please contact Shing Jew or Barbara Waugh of this office. Mr. Jew may be reached at (212) 616-2426 and Ms. Waugh at (212) 616-2366

Sincerely,

/s/

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

Enclosures: SPA #11-53
HCFA-179 Form
Companion letter to SPA#11-53

cc: J. Ulberg
G. Critelli
S. Fuentes
J. Guhl
S. Jew
K. Knuth
D. Mathurin
P. Mossman
M. Schervish
B. Waugh



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Corning Tower, Room 1466
Albany, New York 12237

Re: **NY SPA #11-53**

Dear Commissioner Helgeson:

This letter is being sent in conjunction with the Centers for Medicare & Medicaid Services (CMS) approval of New York State Plan Amendment (SPA) #11-53, which amendment eliminates the separate payment rates for nursing services provided to patients diagnosed with Acquired Immune Deficiency Syndrome.

In reviewing SPA #11-53, CMS staff performed a program analysis of the corresponding services and a reimbursement analysis related to the services impacted by the provisions of SPA #11-53. These analyses revealed coverage issues, set out below, which the State needs to address through a State plan amendment in order to meet the requirements of Section 1902 of the Social Security Act.

In response to the State's request, CMS has agreed that the State may respond to these issues in the context of responding to the SPA 10-38 companion letter issues. To this end, CMS welcomes the opportunity to work with you and your staff and to provide any technical assistance to resolve the issues below.

Coverage Issues for SPA #11-53:

1. Please describe an "AIDS home care program" and a "long term home health care program" and indicate whether either of these programs are part of a hospital, nursing facility or Intermediate Care Facility.
2. Please confirm that the "telehealth services" is simply a different service delivery mode for part-time/intermittent nursing services and not a cluster of services separate and apart from part-time/intermittent nursing services under the home health services benefit. If this articulation is correct, please reflect this understanding in the description of "telehealth

services”. Also, if there are limitations on the amount, duration or scope of part-time/intermittent nursing services, please explain whether “telehealth services” count in the calculation of any limitation on amount or duration. For example, if the visits by a nurse are limited to 12 in a year, would a single “telehealth services” encounter be considered a “visit”?

3. We are enclosing a copy of the CMS (formerly HCFA) September 4, 1998 guidance regarding the circumstances under which a State may use a list to determine coverage of medical equipment to be sure that the State is aware of it. In keeping with that guidance, please explain whether the State has a process by which beneficiaries may request medical equipment, supplies and appliances not on the State’s approved list and, if so, whether the process includes notice of the right to a fair hearing if the request is denied.
4. If the State allows assistants or aides, such as Physical Therapy Assistants, to furnish therapies, please add each type of provider to the State plan along with a brief description of how each is required to work “under the direction of” the qualified therapist.
5. Does the State require that each Physical Therapist be a graduate of a program of physical therapy approved by the Commission on Accreditation in Physical Therapy Education (CAPTE)? If not, please explain whether the State permits a graduate of an unaccredited institution to be licensed and, if so, the process by which the State determines whether the applicant’s education is comparable to one received at a CAPTE-accredited institution.

If you have any questions or wish to discuss this SPA further, please contact Shing Jew or Barbara Waugh of this office. Mr. Jew may be reached at (212) 616-2426 and Ms. Waugh at (212) 616-2366.

Sincerely,

/s/

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

Enclosure

cc: J. Ulberg
G. Critelli
S. Fuentes
J. Guhl
R. Holligan
S. Jew
K. Knuth
D. Mathurin
P. Mossman
M. Schervish
B. Waugh

OFFICIAL

**New York
Page 4(d)**

**Attachment 4.19-B
(04/11)**

[Type of Service Method of Reimbursement]

Prescribed Drugs

Reimbursement is the lower of: 1) the upper limit if established by the Federal Government for specific multiple source drugs, plus a dispensing fee, or 2) the billing pharmacy's usual and customary price charged to the general public, or 3) the state maximum acquisition cost (SMAC) plus dispensing fee, or 4) the Estimated Acquisition Cost (EAC) established by State Department of Health, plus dispensing fee. (a) For sole source drugs and [or] multi-source brand name drugs, the EAC is defined as average wholesale price (AWP) less [sixteen and twenty-five one hundredths] seventeen percent or the wholesale acquisition cost of a prescription drug based on package size dispensed from, as reported by the prescription drug pricing service used by the department, minus zero and forty-one hundredths percent. (b) For multi-source generic drugs, the EAC is defined as the lower of AWP less twenty-five percent, or the maximum acquisition cost. [(c) For specialized HIV pharmacies, the EAC is defined as AWP of the drug less twelve percent.] The dispensing fee for generic [prescription drugs will be \$4.50 per prescription] and [for] brand name prescription drugs will be \$3.50. [However, for brand name prescription drugs, when the net cost of the brand name drug, after consideration of all rebates is less than the cost of the generic equivalent, the dispensing fee shall be \$4.50 per prescription. The State Department of Health's prescription drug pricing service will determine whether a prescription drug is generic or brand name.]

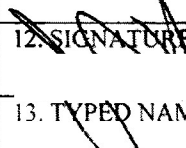

A SMAC may be established for any drug, including brand name multi-source drugs, for which two or more A-rated therapeutically equivalent, multi-source drugs where a significant cost difference exists. The drugs used for the SMAC price calculation formula will be active (non-obsolete) drugs eligible for rebates under the Federal Medicaid Drug Rebate Program authorized by Section 1927 of the Social Security Act and which are available in sufficient quantities in the marketplace. The source of comparable drug prices will be nationally recognized comprehensive data files maintained by a vendor under contract with the State. While the final SMAC pricing methodology is proprietary, multiple drug pricing resources are utilized to determine the preliminary acquisition cost for generic drugs. These resources include pharmacy providers, wholesalers, drug file vendors such as First Data Bank, and pharmaceutical manufacturers. The preliminary acquisition cost for each product is maintained in a SMAC pricing file database. Products are then sorted into drug groups by GSN (Generic Code Number Sequence Number) which denotes the same generic name, strength, and dosage form. The vendor will apply the proprietary formula to the estimated acquisition costs in each GSN giving due consideration to the lower cost products. Multipliers are used to increase the applicable lowest price by a percentage. The resulting price becomes the SMAC price which is then applied to all drug products in that specific GSN. The SMAC file is updated monthly. New York's SMAC list is available from a vendor under contract with the Department.

TN **#11-61**

Approval Date **AUG 09 2011**

Supersedes TN **#09-52**

Effective Date **APR 01 2011**

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION		1. TRANSMITTAL NUMBER: #11-61	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, 2011	
5. TYPE OF PLAN MATERIAL (<i>Check One</i>): <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 (<i>Separate Transmittal for each amendment</i>)			
6. FEDERAL STATUTE/REGULATION CITATION: Section 1902(a) of the Social Security Act & NYS Social Services Law §367-a(9)(b)(ii) & §367-a(9)(d)(i)		7. FEDERAL BUDGET IMPACT: a. FFY 04/01/11-09/30/11 (\$16.14) million b. FFY 10/01/11-09/30/12 (\$22.65) million	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.19-B: Page 4(d) ** SEE REMARKS		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (<i>If Applicable</i>): Attachment 4.19-B: Page 4(d)	
10. SUBJECT OF AMENDMENT: Reduce Pharmacy Reimbursement and Dispensing Fees (FMAP = 56.88% 4/1/11-6/30/11; 50% 7/1/11 forward)			
11. GOVERNOR'S REVIEW (<i>Check One</i>): <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: June 9, 2011			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED:		18. DATE APPROVED: AUG 09 2011	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: APR 01 2011		20. SIGNATURE OF REGIONAL OFFICIAL: 	
21. TYPED NAME: Ricardo Holligan		22. TITLE: Division of Medicaid and State Operations	
23. REMARKS: Originally submitted page have been replaced by revised page submitted via State's email of July 28, 2011.			