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State/Territory Name: **New York**

State Plan Amendment (SPA) #: **13-27**

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) Additional Companion letter
- 3) CMS 179 Form/Summary Form (with 179-like data)
- 4) Superseding Pages Notice
- 5) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
New York Regional Office
26 Federal Plaza, Room 37-100
New York, NY 10278



DIVISION OF MEDICAID AND CHILDREN'S HEALTH OPERATIONS

February 4, 2015

Jason Helgeson
Medicaid Director, Deputy Commissioner
Office of Health Insurance Programs
New York State Department of Health
Corning Tower (OCP) - 1211)
Albany, New York 12237

Dear Commissioner Helgeson:

New York submitted State Plan (SPA) 13-27 which was received by CMS on December 30, 2013. The SPA is being submitted based on section 2301 of the Affordable Care Act and in accordance with Department regulations. The State of New York reimburses these services through the use of rates that are consistent with and promote efficiency, economy and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area as required by §1902(a) (30) of the Social Security Act and 42 CFR §447.204.

Please note the approval date of this SPA is February 4, 2015 with an effective date of October 1, 2013. Copies of the approved State Plan pages and the signed CMS - 179 as well as the Companion Letter are enclosed.

Should you have any questions or concerns please contact Vennetta Harrison at 212-616-2214.

Sincerely,


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

Enclosures

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
New York Regional Office
26 Federal Plaza, Room 37-100
New York, NY 10278



DIVISION OF MEDICAID AND CHILDREN'S HEALTH OPERATIONS

February 4, 2015

Jason Helgerson
Medicaid Director, Deputy Commissioner
Office of Health Insurance Programs
New York State Department of Health
Corning Tower (OCP - 1211)
Albany, New York 12237

Dear Commissioner Helgerson:

This letter is being sent as a companion to the Centers for Medicare & Medicaid Services CMS approval of New York State Plan Amendment (SPA) 13-27, which added the coverage of mandatory Medicaid Birthing Center Services to the New York Medicaid program. During our review of the SPA, CMS performed an analysis of the corresponding reimbursement provisions it impacted and requested the State to explain its reimbursement approach for these services. After completing our review, we have determined New York has not fully satisfied the reimbursement requirements applicable to this added Medicaid benefit category, and will need to provide additional information and revisions to the State Plan through a corrective action plan.

Section 1902 of the Social Security Act (the Act) requires that each State wishing to participate in the Medicaid program to have a State plan approved for medical assistance that meets certain federal requirements. Section 1902(a)(10) requires a State's Medicaid program to include at a minimum certain health care services including free standing birth centers and other ambulatory services offered by the center that are otherwise available under the State plan. This benefit is provided at section 1905(a)(28) of the Act and is further defined at section 1905(l)(3) of the Act. As defined, the service definition makes a distinction between services furnished at the center by health care professionals and the birth center itself. Section 1905(l)(3)(C) of the Act explicitly recognizes this distinction and requires States to make separate payments to the health care professional providing services at the center and to the center for the use of the facility.

After reviewing the State's explanation of its Ambulatory Patient Care (APG) payment methodology, we do not think it meets the separate payment requirement at section 1905(l)(3) of the Act. In short, the APG system, as we understand it, provides a single payment to the birth center that encompasses both the professional and facility, rather than separate and direct payment to each type of provider. The single payment that results from the State's approach is contrary to the separate payment requirement in section 1905(l)(3)(C) of the Act.

We are therefore requesting the state, within 90 days of the date of this letter to submit a plan amendment that will directly address reimbursement for these services. We would like to meet with the State in advance and collectively discuss possible approaches to resolving this issue and provide any technical assistance the State may need to help the State modify its reimbursement

approach to bring it into compliance with section 1905(l)(3) of the Act. State plans that are not in compliance with the requirements outlined above are grounds for initiating a formal compliance process.

If you have any questions or wish to discuss this SPA further, please contact Robert Weaver at 410-786-5914.

Sincerely,

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

CC: R Weaver
R Holligan
K Knuth

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL		1. TRANSMITTAL NUMBER: 13-27	2. STATE New York
OR: HEALTH CARE FINANCING ADMINISTRATION		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 October 1, 2013	
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)			
FEDERAL STATUTE/REGULATION CITATION: Section 2301 of the Affordable Care Act		7. FEDERAL BUDGET IMPACT: a. FFY 10/01/13-09/30/14 \$0 b. FFY 10/01/14-09/30/15 \$0	
PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 3.1-A: Page 11(a) Attachment 3.1-B: Page 11(a)		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable):	
10. SUBJECT OF AMENDMENT: Reopening Birth Centers FMAP = 50%			
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:			
2. SIGNATURE OF STATE AGENCY OFFICIAL:		16. RETURN TO: New York State Department of Health Bureau of Federal Relations & Provider Assessments 99 Washington Ave - One Commerce Plaza Suite 1430 Albany, NY 12210	
3. TYPED NAME: Jason A. Helgerson			
4. TITLE: Medicaid Director Department of Health			
5. DATE SUBMITTED: December 30, 2013			
FOR REGIONAL OFFICE USE ONLY			
7. DATE RECEIVED:		18. DATE APPROVED: FEB 04 2015	
PLAN APPROVED - ONE COPY ATTACHED			
9. EFFECTIVE DATE OF APPROVED MATERIAL: OCT 01 2013		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME: MICHAEL MELENDEZ		22. TITLE: ASSOCIATE REGIONAL ADMINISTRATOR DIVISION OF MEDICAID & CHILDREN'S HEALTH OPERATIONS	
23. REMARKS:			

Appendix I
2013 Title XIX State Plan
Third Quarter Amendment
Non-Institutional Services
Amended SPA Pages

OFFICIAL

Attachment 3.1-A

New York
11(a)

**AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES
PROVIDED TO THE CATEGORICALLY NEEDY**

28. (i) Licensed or Otherwise State-Approved Freestanding Birth Centers

☒ Provided: ☒ No limitations ☐ With limitations ☐ None licensed or approved

Please describe any limitations:

28. (ii) Licensed or Otherwise State-Recognized covered professionals providing services in the Freestanding Birth Center

☒ Provided: ☒ No limitations ☐ With limitations (please describe below)
☐ Not Applicable (there are no licensed or State approved Freestanding Birth Centers)

Please describe any limitations:

Please check all that apply:

- ☒ (a) Practitioners furnishing mandatory services described in another benefit category and otherwise covered under the State plan (i.e., physicians and certified nurse midwives).
- ☐ (b) Other licensed practitioners furnishing prenatal, labor and delivery, or postpartum care in a freestanding birth center within the scope of practice under State law whose services are otherwise covered under 42 CFR 440.60 (e.g., lay midwives, certified professional midwives (CPMs), and any other type of licensed midwife). *
- ☐ (c) Other health care professionals licensed or otherwise recognized by the State to provide these birth attendant services (e.g., doulas, lactation consultant, etc.).*

*For (b) and (c) above, please list and identify below each type of professional who will be providing birth center services:

TN #13-27

Approval Date FEB 04 2015

Supersedes TN NEW

Effective Date OCT 01 2013

New

OFFICIAL

Attachment 3.1- B

New York
11(a)

**AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES
PROVIDED TO THE MEDICALLY NEEDY**

28. (i) Licensed or Otherwise State-Approved Freestanding Birth Centers

☒ Provided: ☒ No limitations ☐ With limitations ☐ None licensed or approved

Please describe any limitations:

**28. (ii) Licensed or Otherwise State-Recognized covered professionals providing services
in the Freestanding Birth Center**

☒ Provided: ☒ No limitations ☐ With limitations (please describe below)
☐ Not Applicable (there are no licensed or State approved Freestanding Birth Centers)

Please describe any limitations:

Please check all that apply:

☒ (a) Practitioners furnishing mandatory services described in another benefit category and
otherwise covered under the State plan (i.e., physicians and certified nurse midwives).

☐ (b) Other licensed practitioners furnishing prenatal, labor and delivery, or postpartum care
in a freestanding birth center within the scope of practice under State law whose
services are otherwise covered under 42 CFR 440.60 (e.g., lay midwives, certified
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☐ (c) Other health care professionals licensed or otherwise recognized by the State to
provide these birth attendant services (e.g., doulas, lactation consultant, etc.).*

*For (b) and (c) above, please list and identify below each type of professional who will be
providing birth center services:

TN #13-27

Approval Date FEB 04 2015

Supersedes TN NEW

Effective Date OCT 01 2013

NEW