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State/Territory Name: New York

State Plan Amendment (SPA) #: 17-0012

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS 179 Form
- 3) 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

DMCHO: JH:SPA-NY-17-0012-Approval

December 11, 2017

Jason A. Helgerson
State Medicaid Director
Deputy Commissioner
Office of Health Insurance Programs
NYS Department of Health
Corning Tower (OCP-1211)
Albany, NY 12237

Dear Commissioner Helgerson:

On November 18, 2016, the Centers for Medicare and Medicaid Services (CMS) received New York State Plan Amendment (SPA), transmittal number 17-0012, which proposes to revise the Article 28 Clinic Ambulatory Patient Group (APG) reimbursement methodology to increase rates of payment due to a minimum wage increase effective January 1, 2017.

Enclosed is a copy of the HCFA-179 form as well as the approved pages for incorporation into the New York State Plan. At the State's request, CMS made a pen & ink change to HCFA-179 box 8 to correct the page numbers.

If you have any questions regarding this amendment, please call Joanne Hounsell at 212.616.2446 or e-mail at joanne.hounsell@cms.hhs.gov.

Sincerely,





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

Enclosures: HCFA-179 Form
State Plan Pages

cc: J. Ulberg
R. Deyette
P. LaVenja
M. Levesque

R. Weaver
R. Holligan
N. McKnight
M. Tabakov

S. Jew
J. Hounsell
M. Lopez

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL		1. TRANSMITTAL NUMBER: 17-0012	2. STATE New York
FOR: HEALTH CARE FINANCING ADMINISTRATION		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
		4. PROPOSED EFFECTIVE DATE January 1, 2017	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES			
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 1905(r)(5) of the Social Security Act and 42 CFR 447		7. FEDERAL BUDGET IMPACT: (<i>in thousands</i>) a. FFY 01/01/17-09/30/17 \$1,180.81 b. FFY 10/01/17-09/30/18 \$ 1,911.47	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: 2(p)(ii), 2(p)(iii), 2(p)(iv) Amendment 4.19-B: 2(p.1), 2(p.2), 2(p.3)		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (<i>If Applicable</i>):	
10. SUBJECT OF AMENDMENT: Minimum Wage – Article 28 Freestanding Clinics & Amb. Surgery Ctrs. (FMAP = 50%)			
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 Bureau of Federal Relations & Provider Assessments 99 Washington Ave – One Commerce Plaza Suite 1432 Albany, NY 12210	
13. TYPED NAME: Donna A. Helgeson			
14. TITLE: Medicaid Director Department of Health			
15. DATE SUBMITTED: NOV 18 2016			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED:		18. DATE APPROVED: DECEMBER 11, 2017	
PLAN APPROVED – ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: JANUARY 01, 2017		20. SIGNATURE OF REGIONAL OFFICIAL: 	
21. TYPED NAME: MICHAEL MELENDEZ		22. TITLE: Division of Medicaid and Children's Health Operations	
23. REMARKS: Per state's request dated December 5, 2017, CMS has corrected the page numbers in box 8.			

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2(p)(ii)**

Minimum Wage – Article 28 Freestanding Clinics

Effective January 1, 2017, and every January 1 thereafter until the minimum wage reaches the state statutorily described per hour wage as shown below, a minimum wage add-on will be developed and applied to the Ambulatory Patient Group (APG) rate for freestanding clinics and ambulatory surgery centers under Article 28.

Minimum Wage (MW) Region	12/31/2016	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021
New York City (Large employers)	\$11.00	\$13.00	\$15.00	\$15.00	\$15.00	\$15.00
New York City (Small employers)	\$10.50	\$12.00	\$13.50	\$15.00	\$15.00	\$15.00
Nassau, Suffolk, & Westchester counties	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00
Remainder of the State	\$9.70	\$10.40	\$11.10	\$11.80	\$12.50	\$12.50

The minimum wage add-on and the adjusted APG rate will be posted to Health Commerce System (HCS: https://commerce.health.state.ny.us/public/hcs_login.html). The minimum wage add-on will be developed and implemented as follows;

- a. Minimum wage costs will mean the additional costs incurred beginning January 1, 2017, and thereafter, as a result of New York state statutory increases to minimum wage.
 - i. Minimum wage cost development based on survey data collected.
 - 1. Survey data will be collected for facility specific wage data.
 - 2. Facilities will report by specified wage bands, the total count of FTEs and total hours paid to employees earning less than the statutory minimum wage applicable for each MW Region.
 - 3. Facilities will report an average fringe benefit percentage for the employees directly affected by the minimum wage increase.
 - 4. The minimum wage costs are calculated by multiplying the total hours paid by the difference between the statutory minimum wage and the midpoint of each wage band where the facility has reported total hours paid. To this result, the facility's average fringe benefit percentage is applied and added to the costs.
 - ii. Minimum wage cost development based on the AHCF cost report data.
 - 1. The average hourly wages of employees in occupational titles where the reported average hourly wage is below the regional statutory minimum wage are identified.
 - 2. The total payroll hours of the titles identified are then multiplied by the regional statutory minimum wage resulting in a projected payroll. The actual payroll as reported in the AHCF cost report is then subtracted from the projected payroll resulting in the expected wage costs increase.
 - 3. The facility's fringe benefit costs directly affected by the wage increase are identified, and the average fringe benefit percentage is calculated.
 - 4. The fringe benefit percentage is applied to the increased wage costs and added resulting in the minimum wage costs.

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- b. The 2017 minimum wage costs will be developed based on collected survey data received and attested to by clinics and ambulatory surgery centers. If a clinic or ambulatory surgery center did not submit a survey, its minimum wage costs will be calculated based on 2014 Ambulatory Health Care Facility (AHCF) Cost Report wage data. If a clinic or ambulatory surgery center fails to submit both the survey and the 2014 AHCF cost report, its minimum wage add-on will not be calculated.
- c. In the subsequent years until the minimum wage is completely implemented statewide, the Department will survey clinics and ambulatory surgery centers utilizing the methodology employed in year one. If a clinic or ambulatory surgery center fails to submit the minimum wage survey, the calculation for minimum wage costs will default to the use of the personnel wage data reported on the statewide latest available AHCF cost report. If a clinic or ambulatory surgery center fails to submit both the survey and the latest AHCF cost report, its minimum wage add-on will not be calculated. Once the costs are included in the development of the upstate/downstate APG base rate, the minimum wage add-on will be excluded from the rate.
- d. A minimum wage add-on will be developed by multiplying minimum wage costs pursuant to "a." above by a percentage of Medicaid visits to total visits, divided by total Medicaid visits for such services.
- e. Minimum Wage Reconciliation - After the end of each calendar year, the Department of Health will survey providers to obtain the following information for the purpose of reconciling annual minimum wage reimbursement. The state will release the reconciliation survey by the end of March and providers will have two weeks to complete the survey or request an extension if a provider determines it is unable to complete the survey within that time. Approval of extensions, and the time of the extension, is at the discretion of the state. If the reconciliation survey is not submitted within the two weeks or within the extension time frame, should one be granted, the provider's minimum wage add-on for the calendar year covered by the survey will be recouped.
- i. Total annual minimum wage funding paid to the provider (as determined from the minimum wage add-on to claims paid for services rendered in the prior calendar year) for the Medicaid share of the minimum wage law increase requirement. (This information will be supplied by the Department of Health.) Medicaid's share is the percentage of minimum wage costs that are attributable to Medicaid services based on the proportion of Medicaid services to a provider's total services.
 - ii. Medicaid's share of the total amount the provider was obligated to pay to bring salaries up to the minimum wage for the calendar year. (This information will be completed by the provider.)
 - iii. Minimum wage funds to be recouped or additional funds to be received by the provider. (This information will be completed by the provider.) This will be the

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difference between the amount paid to the provider for the Medicaid share of the minimum wage law increase requirement and the corresponding amount the provider determined it was actually obligated to pay.

- iv. The State agency will review providers' submissions for accuracy and reasonableness, following which it will process associated payments and recoupments via retroactive per unit rate adjustments as quickly as practical thereafter.

The agency's Chief Executive Officer or Chief Financial Officer must sign an Attestation verifying the data that is supplied in the survey.

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