

Table of Contents

State/Territory Name: **New York**

State Plan Amendment (SPA) #: **20-0041**

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS 179 Form/Summary Form (with 179-like data)
- 3) Approved SPA Pages



Medicaid and CHIP Operations Group

April 15, 2021

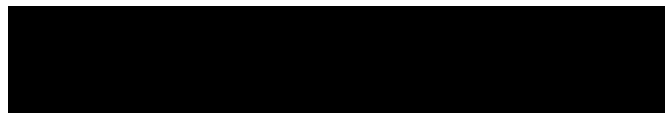
Ms. Donna Frescatore
State Medicaid Director
New York State Department of Health
99 Washington Ave- One Commerce Plaza, Suite 1432
Albany, NY 12210

Dear Ms. Frescatore:

This letter is to inform you that New York State Plan Amendment (SPA) #20-0041 was approved on April 8, 2021, for adoption into the State Medicaid Plan with an effective date of April 1, 2021. This amendment proposes to add EVV compliance language and make technical language changes to update personal care benefits under the state plan. There are no changes to services and no impact to beneficiaries.

Enclosed is a copy of the approved State Plan Amendment. If you have any questions or wish to discuss this further, please contact Michael Kahnowitz at 212-616-2327.

Sincerely,



Division of Program Operations
Center for Medicaid and CHIP Services

cc: Nicole Mcknight, CMS, New York Regional Operations Group Administrator
Michael Kahnowitz, CMS, New York Regional Operations Group
Regina Deyette, State Plan Coordinator, Division of Finance and Rate Setting
Michelle Levesque, State Division of Finance and Rate Setting

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER
2 0 — 0 0 4 1

2. STATE
New York

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)
TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR
CENTERS FOR MEDICARE & MEDICAID SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
October 1, 2020 *

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
§ 1902(a) of the Social Security Act and 42 CFR 447 *

7. FEDERAL BUDGET IMPACT*
a. FFY 10/01/20-09/30/21 \$ (315,800.000)
b. FFY 10/01/21-09/30/22 \$ (315,800,000)

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Attachment 3.1-A Supp. Pages: 3(d), 3(d)(A), 3(d)(i)
Attachment 3.1-B Supp. Pages: 3(d), 3(d)(A), 3(d)(i)

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

Attachment 3.1-A Supp. Pages: 3(d), 3(d)(A), 3(d)(i)
Attachment 3.1-B Supp. Pages: 3(d), 3(d)(A), 3(d)(i)

10. SUBJECT OF AMENDMENT
PCS- CDPAP Eligibility
(FMAP=50%)

11. GOVERNOR'S REVIEW (Check One)

GOVERNOR'S OFFICE REPORTED NO COMMENT OTHER, AS SPECIFIED
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL

13. TYPED NAME

Donna Frescatore

14. TITLE

Medicaid Director, Department of Health

15. DATE SUBMITTED

September 29, 2020

16. RETURN TO

New York State Department of Health
Division of Finance and Rate Setting
99 Washington Ave – One Commerce Plaza
Suite 1432
Albany, NY 12210

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED

September 29, 2020

18. DATE APPROVED

04/08/2021

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL

October 1, 2020*

20. SIGNATURE OF REGIONAL OFFICIAL

21. TYPED NAME

James G. Scott

22. TITLE

Director of Division of Program Operations
Center for Medicaid and CHIP Services

23. REMARKS

Box 4/19 – Proposed Effective Date:
April 01, 2021

Box 7 –Federal Budget Impact
04/01/21-09/30/21 \$(1,385.00)
10/01/21-09/30/22 \$(2,770.00)

Box 6 – Federal Statute/Regulation Citation
Social Services Law Sec. 365-f; NYCRR 505.14 and 505.28
1905(a)(24) of the SSA and federal regulation 42 CFR 440.167

**New York
3(d)**

- 24a. Prior approval is required for non-emergent transportation, including the services and subsistence of the attendant. Requests can be made by recipients or their family members; or medical practitioners acting on behalf of a recipient.

Transportation providers are assigned to requests for non-emergency transportation services based upon first, a recipient's choice of available participating vendors at the medically appropriate level of transportation; then, if the recipient indicates no preference, the ordering practitioner's choice among available participating vendors at the medically appropriate level of transportation; and finally, if no choice is made by the ordering practitioner, the request is given via rotation among the medically available and appropriate mode of transportation providers.

1. To assure comparability and statewide, each county's local department of social services manages transportation services on behalf of recipient's assigned to the county.
 2. The Commissioner of Health is authorized to assume the responsibility of managing transportation services from any local social services district. If the Commissioner elects to assume this responsibility, the Commissioner may choose to contract with a transportation manager or managers to manage transportation services in any local social services district.
 3. Recipient, family member, or volunteer reimbursement is made as an administrative expense of the Medicaid Program. This applies to any personal vehicle mileage reimbursement, lodging, airfare, or other expense borne on behalf of the Medicaid recipient by a non-direct vendor.
- 24d. Prior approval is required for skilled nursing facility services except when admitted directly from a hospital, another skilled nursing facility or from a health related facility.

Medicaid payments [shall] will not be authorized for skilled nursing facilities which are not certified or have not applied for certification to participate in Medicare.

26. Personal Care Services means some or total assistance with personal hygiene, dressing and feeding and nutritional and environmental support functions. Prior approval is required for all personal care services. The authorization period and amount of personal care services authorized depends upon patient need, as indicated in the patient's assessment.

Electronic Visit Verification System: NY will comply with the Electronic Visit Verification System (EVV) requirements for personal care services (PCS) by January 1, 2021.

[Personal care services, shared aide and individual aide, furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease, as determined to meet the recipient's needs for assistance, and when prescribed by a physician, in accordance with the recipient's plan of treatment and provided by individuals who are qualified to provide such services, who are supervised by a registered nurse and who are not members of the recipient's family, and furnished in the recipient's home or other location.]

**New York
3(d)(A)**

Personal care services, shared aide and individual aide, furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease, as determined to meet the recipient's needs for assistance, and when prescribed by a qualified independent physician or clinician selected or approved by the Department of Health, in accordance with the recipient's plan of treatment approved by the state and provided by individuals who are qualified to provide such services, who are supervised by a registered nurse and who are not members of the recipient's family, and furnished in the recipient's home or other location.

Providers of personal care services (personal care aides) must have:

- maturity, emotional and mental stability, and experience in personal care or homemaking;
- the ability to read and write, understand and carry out directions and instructions, record messages, and keep simple records;
- a sympathetic attitude toward providing services for patients at home who have medical problems;
- good physical health, as indicated by the documentation in the personnel file of all persons providing personal care services. This documentation must include the same assurances and proof of good physical health that the Department of health requires for employees of certified home agencies;
- a criminal history record check performed to the extent required under section 124 of the PHL; and
- successfully completed a training program approved by the Department.

Personal care aides must be supervised by a registered professional nurse who is licensed and currently certified to practice in New York State and who has at least two years satisfactory recent home health care experience. Nursing supervision includes orienting the personal care aide to his/her job assignment(s); providing needed on-the-job training; making nursing supervisory visits to the patient's home PRN, but at least every 90 days; and, annually conducting an overall job performance evaluation of the aide.

New York State's Personal Care Services are provided in accordance with 42 CFR 440.167.

**New York
3(d)(i)**

26 (cont.). Consumer Directed Personal Assistance Program

The Consumer Directed Personal Assistance Program (CDPAP) is a consumer directed home care services delivery model. The program serves Medicaid recipients who have a [Medicaid] medical need for home care services and who choose to participate in this model. It has operated under the State's Personal Care Services benefit since 1990. As such, the eligibility, assessment and prior authorization of services processes mirror that of the Personal Care Services Program (PCSP). In the traditional PCSP, the local department of social services [district] ([LSSD]LDSS) contracts with home care agencies for the provision of services. The home care agency is responsible for hiring, training, supervising and providing the home care worker with salary and benefits. In the CDPAP, [the LDSS contracts with a CDPAP agency (fiscal intermediary) and] there is a co-employer relationship between the CDPAP agency (also known as a fiscal intermediary) and the consumer that encompasses these functions.

The CDPAP consumer is responsible for hiring/training/supervising/and firing his/her aides. The CDPAP agency acts as the co-employer of each aide hired by the consumer for the purpose of setting wage levels and fringe benefits, including health insurance coverage and other benefits, e.g. unemployment and workers compensation. It is the CDPAP agency that actually pays each aide and administers related fringe benefits. The CDPAP agency also submits claims for payment to the Department's agent that processes and pays claims for services provided to Medicaid recipients.

**New York
3(d)**

- 24a. Prior approval is required for non-emergent transportation, including the services and subsistence of the attendant. Requests can be made by recipients or their family members; or medical practitioners acting on behalf of a recipient.

Transportation providers are assigned to requests for non-emergency transportation services based upon first, a recipient's choice of available participating vendors at the medically appropriate level of transportation; then, if the recipient indicates no preference, the ordering practitioner's choice among available participating vendors at the medically appropriate level of transportation; and finally, if no choice is made by the ordering practitioner, the request is given via rotation among the medically available and appropriate mode of transportation providers.

1. To assure comparability and statewide, each county's local department of social services manages transportation services on behalf of recipient's assigned to the county.
 2. The Commissioner of Health is authorized to assume the responsibility of managing transportation services from any local social services district. If the Commissioner elects to assume this responsibility, the Commissioner may choose to contract with a transportation manager or managers to manage transportation services in any local social services district.
 3. Recipient, family member, or volunteer reimbursement is made as an administrative expense of the Medicaid Program. This applies to any personal vehicle mileage reimbursement, lodging, airfare, or other expense borne on behalf of the Medicaid recipient by a non-direct vendor.
- 24d. Prior approval is required for skilled nursing facility services except when admitted directly from a hospital, another skilled nursing facility or from a health related facility.

Medicaid payments [shall] will not be authorized for skilled nursing facilities which are not certified or have not applied for certification to participate in Medicare.

26. Personal Care Services means some or total assistance with personal hygiene, dressing and feeding and nutritional and environmental support functions. Prior approval is required for all personal care services. The authorization period and amount of personal care services authorized depends upon patient need, as indicated in the patient's assessment.

Electronic Visit Verification System: NY will comply with the Electronic Visit Verification System (EVV) requirements for personal care services (PCS) by January 1, 2021.

[Personal care services, shared aide and individual aide, furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease, as determined to meet the recipient's needs for assistance, and when prescribed by a physician, in accordance with the recipient's plan of treatment and provided by individuals who are qualified to provide such services, who are supervised by a registered nurse and who are not members of the recipient's family, and furnished in the recipient's home or other location.]

**New York
3(d)(A)**

Personal care services, shared aide and individual aide, furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease, as determined to meet the recipient's needs for assistance, and when prescribed by a qualified independent physician or clinician selected or approved by the Department of Health, in accordance with the recipient's plan of treatment approved by the state and provided by individuals who are qualified to provide such services, who are supervised by a registered nurse and who are not members of the recipient's family, and furnished in the recipient's home or other location.

Providers of personal care services (personal care aides) must have:

- maturity, emotional and mental stability, and experience in personal care or homemaking;
- the ability to read and write, understand and carry out directions and instructions, record messages, and keep simple records;
- a sympathetic attitude toward providing services for patients at home who have medical problems;
- good physical health, as indicated by the documentation in the personnel file of all persons providing personal care services. This documentation must include the same assurances and proof of good physical health that the Department of health requires for employees of certified home agencies;
- a criminal history record check performed to the extent required under section 124 of the PHL; and
- successfully completed a training program approved by the Department.

Personal care aides must be supervised by a registered professional nurse who is licensed and currently certified to practice in New York State and who has at least two years satisfactory recent home health care experience. Nursing supervision includes orienting the personal care aide to his/her job assignment(s); providing needed on-the-job training; making nursing supervisory visits to the patient's home PRN, but at least every 90 days; and, annually conducting an overall job performance evaluation of the aide.

New York State's Personal Care Services are provided in accordance with 42 CFR 440.167.

**New York
3(d)(i)**

26 (cont.). Consumer Directed Personal Assistance Program

The Consumer Directed Personal Assistance Program (CDPAP) is a consumer directed home care services delivery model. The program serves Medicaid recipients who have a [Medicaid] medical need for home care services and who choose to participate in this model. It has operated under the State's Personal Care Services benefit since 1990. As such, the eligibility, assessment and prior authorization of services processes mirror that of the Personal Care Services Program (PCSP). In the traditional PCSP, the local department of social services [district] ([LSSD]LDSS) contracts with home care agencies for the provision of services. The home care agency is responsible for hiring, training, supervising and providing the home care worker with salary and benefits. In the CDPAP, [the LDSS contracts with a CDPAP agency (fiscal intermediary) and] there is a co-employer relationship between the CDPAP agency (also known as a fiscal intermediary) and the consumer that encompasses these functions.

The CDPAP consumer is responsible for hiring/training/supervising/and firing his/her aides. The CDPAP agency acts as the co-employer of each aide hired by the consumer for the purpose of setting wage levels and fringe benefits, including health insurance coverage and other benefits, e.g. unemployment and workers compensation. It is the CDPAP agency that actually pays each aide and administers related fringe benefits. The CDPAP agency also submits claims for payment to the Department's agent that processes and pays claims for services provided to Medicaid recipients.