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State/Territory Name: **New York**

State Plan Amendment (SPA) #: **21-0014**

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

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

May 12, 2022

Brett Friedman
Acting State Medicaid Director
New York State Department of Health
99 Washington Ave- One Commerce Plaza, Suite 1432
Albany, NY 12210

Re: State Plan Amendment (SPA) NY-21-0014

Dear Director Friedman:

The Centers for Medicare & Medicaid Services (CMS) reviewed your Medicaid State Plan Amendment (SPA) submitted under transmittal number (TN) NY-21-0014. This amendment proposes to amend the coverage of lactation counseling services for pregnant and post-partum women by expanding the list of those able to provide lactation services in accordance with Social Services Law 365-a(x)(i).

We conducted our review of your submittal according to the statutory requirements at sections 1902(a), 1905(a)(5)(A), 1905(a)(6), 1905(a)(17) and 1905(a)(21) of the Social Security Act and related regulations at 42 CFR 440.50, 42 CFR 440.60(a), 42 CFR 440.165 and 42 CFR 440.166. This letter is to inform you that New York Medicaid SPA 21-0014 was approved on May 12, 2022, with an effective date of April 1, 2021.

If you have any questions, please contact LCDR Frankeena McGuire at 215-861-4754 or Frankeena.McGuire@cms.hhs.gov.

Sincerely

A solid black rectangular box redacting the signature of Ruth A. Hughes.

Ruth A. Hughes, Acting Director
Division of Program Operations

cc: Regina Deyette, NYDOH

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

1. TRANSMITTAL NUMBER

2 1 — 0 0 1 4

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

April 1, 2021

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 04/01/21-09/30/21 \$ 25,000.00

b. FFY 10/01/21-09/30/22 \$ 50,000.00

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Attachment 3.1-A Supplement: Pages 2, 2(c.1), 3(c)(iii), 4(a)
Attachment 3.1-B Supplement: Pages 2, 2(c.1), 3(c)(iii), 4(a)

Attachment 4.19-B: Pages 1, 1(a), 1(a.1), 19

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 PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (*If Applicable*)

Attachment 3.1-A Supplement: Pages 2, 2(c.1), 3(c)(iii), 4(a)
Attachment 3.1-B Supplement: Pages 2, 2(c.1), 3(c)(iii), 4(a)

Attachment 4.19-B: Pages 1, 1(a), 19

10. SUBJECT OF AMENDMENT

Lactation Counseling
(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

June 29, 2021

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

June 29, 2021

18. DATE APPROVED

05/12/2022

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL

April 1, 2021

20. SIGNATURE OF REGIONAL OFFICIAL

21. TYPED NAME

Ruth A. Hughes

22. TITLE

Acting Director, Division of Program Operations

23. REMARKS

On March 28, 2022, the State authorized the following pen and ink changes:

Box 8: Attachment 3.1-A Supplement: Pages 2, 2(c.1), 3(c)(iii), 4(a)
Attachment 3.1-B Supplement: Pages 2, 2(c.1), 3(c)(iii), 4(a)
Attachment 4.19-B: Pages 1, 1(a), 1(a.1), 19

Box 9: Attachment 3.1-A Supplement: Pages 2, 2(c.1), 3(c)(iii), 4(a)
Attachment 3.1-B Supplement: Pages 2, 2(c.1), 3(c)(iii), 4(a)
Attachment 4.19-B: Pages 1, 1(a), 19

**New York
2**

- 4a. Prior approval is required for all out-of-state placements at Specialized Care Facilities for difficult to place individuals or High level Care facilities for the head injured.

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

Care days in nursing facilities is reimbursed for Medicaid patients requiring and receiving medically necessary lower level of care services. Medical Assistance is provided until such time as the appropriate level of care becomes available.

4.d.1. Face-to-Face Counseling Services

4.d.2. Face-to-Face Tobacco Cessation Counseling Services for Pregnant Women

Effective April 1, 2020, Medicaid coverage of comprehensive counseling and pharmacotherapy for cessation of tobacco use by all Medicaid eligible recipients, including pregnant women, will be provided. Such services will be provided face-to-face, by or under the supervision of a physician and no cost sharing (co-pays) will apply. In accordance with section 4107 of the Patient Protection and Affordable Care Act, current coverage of smoking cessation services for all Medicaid recipients, including pregnant women, will be based on medical necessity and without limitation.

5. Prior approval is required for certain procedures which may be considered cosmetic or experimental. Physicians are informed of the specific prior approval requirements in the MMIS Physician Provider Manual.
- 5a. **Collaborative Care Services:** Effective January 1, 2015, Physician services will include Collaborative Care Services as set forth in item 9 of the Supplement to Attachment 3.1-A of the Plan. Physician Services are in accordance with 42 CFR §440.50 and requirements for claim submission comply with the State Medicaid Manual, §4281 titled Restriction on Payments for Physician Services.
6. Care and services will be provided only if they are in accordance with regulations of the Department of Health.

**New York
2(c.1)**

8. The State will cover APIs that are included in extemporaneously compounded prescriptions when the API serves as the active drug component in the compounded formulation. A current list of covered APIs can be found at the following at:

<https://www.emedny.org/info/formfile.aspx>

13c. Preventive Services

New York State Medicaid covers and reimburses all United States Preventive Services Task Force (USPSTF) grade A and B preventive services and approved vaccines recommended by the Advisory Committee on Immunization Practices (ACIP), and their administration, without cost-sharing, when provided in a practitioner's office.

Preventive Services specified in section 4106 of the Affordable Care Act are all available under the State Plan and are covered under the physician, other practitioner, nurse-midwife and nurse practitioner service benefits and are reimbursed according to the methodologies provided in Attachment 4.19-B.

The State will maintain documentation supporting expenditures claimed for these Preventive Services and ensure that coverage and billing codes comply with any changes made to the USPSTF or ACIP recommendations.

Lactation Consultant Services

Effective April 1, 2021, evidence-based breastfeeding education and lactation counseling consistent with the United States Preventive Services Task Force (USPSTF) recommendation will be covered as a preventive service to prevent adverse outcomes and promote health of infants. Qualified providers include licensed physicians, licensed physician assistants, licensed pediatric or family nurse practitioners, licensed midwives, and licensed registered nurses. All practitioners must be certified as lactation educators/counselors by a nationally recognized accrediting agency.

Breastfeeding education and lactation counseling services must be recommended by a physician or other licensed practitioner of the healing arts acting within his or her scope of practice under state law.

**New York
3(c)(iii)**

Audiologist shall mean a person who is licensed as required by Article 159 of the New York State Education Law.

Respiratory therapist shall mean a person who is licensed and currently registered as a respiratory therapist pursuant to Article 164 of the New York State Education Law.

Providers of Hospice Services must be certified in accordance with Article 40 of the PHL. Services are provided in accordance with 42 CFR Part 418.

The State assures the provision of Hospice services will be provided in accordance with 42 CFR Part 418.

19. Limitations on Tuberculosis related services:

Directly Observed Therapy (DOT) – will be provided to clients who are being treated for Tuberculosis Disease.

22. Limitation on Respiratory Care:

Services may be rendered to EPSDT population by medical necessity and that services is furnished through the clinic and home benefits to this population.

**New York
4(a)**

Reserved

**New York
2**

- 4a. Prior approval is required for all out-of-state placements at Specialized Care Facilities for difficult to place individuals or High level Care facilities for the head injured.

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**New York
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**New York
4(a)**

Reserved

New York

1

Physician Services

1905(a)(5)(A)

Fee Schedules are developed by the Department of Health and approved by the Division of the Budget.

https://www.emedny.org/ProviderManuals/Physician/PDFS/Physician_Manual_Fee_Schedule_Sect2.xls

For primary care and specialty physicians meeting the eligibility and practice criteria of and enrolled in the HIV Enhanced Fees for Physicians (HIV-EFP) program, and the Preferred Physicians and Children's program (PPAC), fees for visits are based on the Products of Ambulatory Care (PAC) structure: fees are based on recipient diagnosis, service location and visit categories which reflect the average amount of physician time and resources for that level of visit. The PAC fee structure incorporates a regional adjustment for upstate and downstate physicians. Reimbursement for the initial and subsequent prenatal care and postpartum visit for MOMS is based on the Products of Ambulatory Care (PAC) rate structure. Reimbursement for delivery only services and total obstetrical services for physicians enrolled in MOMS is fixed at 90% of the fees paid by private insurers. Ancillary services and procedures performed during a visit must be claimed in accordance with the regular Medicaid fee schedule described in the first paragraph above. HIV-EFP, PPAC and MOMS fees were developed by the Department of Health and approved by the Division of the Budget. For services provided on and after June 1, 2003, a single fee, regionally adjusted (upstate and downstate) and based on program specific average cost per visit shall be established for the HIV-EFP and PPAC programs, respectively, and shall be paid for each visit. Visits for these programs shall be categorized according to the evaluation and management codes within the CPT-4 coding structure.

Effective January 1, 2018 reimbursement will be provided to outpatient clinics of general hospitals (outpatient clinic) and diagnostic and treatment centers (D&TC) for primary care practitioners who provide home visit primary care services to a patient who is unable to leave his or her residence to receive services at the outpatient clinic or D&TC without unreasonable difficulty due to circumstances, including but not limited to, clinical impairment.

1. The patient must have a pre-existing clinical relationship with the outpatient clinic or D&TC, or with the health care professional providing the service.
2. The primary care practitioner must be employed by either the outpatient clinic or D&TC and acting at the direction of that provider.
3. These services are provided by a primary care practitioner which includes the following: physician, physician assistant, nurse practitioner or licensed midwife.
4. Primary care services are defined as services ordinarily provided to patients on-site at the outpatient clinic or D&TC and cannot be:

TN#: #21-0014
Supersedes TN#: #18-0013

Approval Date: 05/12/2022
Effective Date: 04/01/2021

**New York
1(a)**

1905(a)(10) Dental Services (including dentures)

Payments are limited to the lower of the usual and customary charge to the public or the fee schedule developed by the Department of Health and approved by the Division of the Budget.

https://www.emedny.org/ProviderManuals/Dental/PDFS/Dental_Fee_Schedule.xls

1905(a)(6) Medical Care**Podiatrists**

Fee schedule developed by the Department of Health and approved by the Division of the Budget.

https://www.emedny.org/ProviderManuals/Podiatry/PDFS/Podiatry_Fee_Schedule.xls

Optometrists

Fee schedule developed by the Department of Health and approved by the Division of the Budget.

https://www.emedny.org/ProviderManuals/VisionCare/PDFS/VisionCare_Fee_Schedule.xls

Chiropractor's Services

Fee schedule developed by the Department of Health and approved by the Division of the Budget.

1905(a)(17) Nurse Midwives

Fee schedule developed by the Department of Health and approved by the Division of the Budget.

https://www.emedny.org/ProviderManuals/Midwife/PDFS/Midwife_Fee_Schedule.xls

1905(a)(21) Nurse Practitioners

Fee schedule developed by the Department of Health and approved by the Division of the Budget.

https://www.emedny.org/ProviderManuals/NursePractitioner/PDFS/Nurse_Practitioner_Fee_Schedule.xls

Other Practitioner Services**1905(a)(6) Medical Care****Clinical Psychologists**

Fee schedule developed by the Department of Health and approved by the Division of the Budget.

https://www.emedny.org/ProviderManuals/ClinicalPsych/PDFS/Clinical_Psychology_Fee_Schedule.pdf

1905(a)(2)(A) Outpatient Hospital Services/Emergency Room Services

For those facilities certified under Article 28 of the State Public Health Law: The Department of Health promulgates prospective, all-inclusive rates based upon reported historical costs. Allowable operating costs per visit are held to legislatively established ceiling limitations. Reported historical operating costs on a per visit basis, which are below or limited by ceilings, are deemed reimbursable and trended forward to the current rate period to adjust for inflation. Non-operating costs (such as capital costs) are not subject to the legislatively established ceiling and are added to the product of reimbursable operating costs times the roll factor.

1905(a)(8) Private Duty Nursing Services

Except as otherwise noted in the plan, state-developed fee schedule rates are the same for both governmental and private providers of private duty nursing services. The agency's fee schedule rate was set as of October 1, 2020 and is effective for services provided on or after that date.

All rates are published on

https://www.emedny.org/ProviderManuals/NursingServices/PDFS/Private_Duty_Nursing_Fee_Schedule.xls

**New York
1(a.1)**

Physician Services (continued)

1905(a)(5)(A)

4. (a) home care services provided by a home care services agency; (b) home health aide services; (c) personal care services; (d) homemaker services; (e) housekeeper or chore services. "Home care services agency" means an organization primarily engaged in arranging and/or providing directly or through contract arrangement one or more of the following: Nursing services, home health aide services, and other therapeutic and related services which may include, but shall not be limited to, physical, speech and occupational therapy, nutritional services, medical social services, personal care services, homemaker services, and housekeeper or chore services, which may be of a preventive, therapeutic, rehabilitative, health guidance, and/or supportive nature to persons at home.

TN#: #21-0014

Approval Date: 05/12/2022

Supersedes TN#: #NEW

Effective Date: 04/01/2021

New York
19

National Diabetes Prevention Program (NDPP)

1905(a)(13)

Reimbursement Methodology:

Effective July 1, 2019, the Medicaid rate for NDPP services will be set at 80 percent of the corresponding 2019 Medicare NDPP rate for the same or similar service.

Lactation Consultant Services

1905(a)(13)

Effective April 1, 2021, the Medicaid rate for lactation counseling services will be in accordance with the qualified providers applicable fee schedule found online at:

https://www.emedny.org/ProviderManuals/Physician/PDFS/Physician_Manual_Fee_Schedule_Se ct2.xls

https://www.emedny.org/ProviderManuals/NursePractitioner/PDFS/Nurse_Practitioner_Fee_Sch edule.xls

https://www.emedny.org/ProviderManuals/Midwife/PDFS/Midwife_Fee_Schedule.xls

Except as otherwise noted in the plan, state-developed fee schedule rates are the same for both governmental and private providers of *Lactation Consultant Services*. The agency's fee schedule rate was set as of *April 1, 2021* and is effective for services provided on or after that date. All rates are published on the agency's website.