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State/Territory Name: NY

State Plan Amendment (SPA) #: 22-0008

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
7500 Security Boulevard, Mail Stop S3-14-28
Baltimore, Maryland 21244-1850



Financial Management Group

November 18, 2022

Amir Bassiri
Medicaid Director
New York State Department of Health
99 Washington Ave – One Commerce Plaza Suite 1432
Albany, NY 12210

Reference: TN 22-0008

Dear Medicaid Director:

We have reviewed the proposed amendment to Attachment 4.19-D of your Medicaid State plan submitted under transmittal number (TN) 22-0008. This amendment proposes to amend Title XIX State Plan for long term care services to comply with Public Health law Section 2808 (2-c)(d). Through the quality incentive program, the non-specialty nursing homes will continue to recognize improvements in performance.

We conducted our review of your submittal according to the statutory requirements at sections 1902(a)(2), 1902(a)(13), 1902(a)(30), and 1903(a) of the Social Security Act and the implementing Federal regulations at 42 CFR 447 Subpart C.

This is to inform you that Medicaid State plan amendment NY-22-0008 is approved effective January 1, 2022. The CMS-179 and the amended plan page(s) are attached.

If you have any additional questions or need further assistance, please contact Kristina Mack-Webb at 617-565-1225 or Kristina.Mack-Webb@cms.hhs.gov.

Sincerely,

A solid black rectangular box redacting the signature of the sender.

Rory Howe
Director

Enclosures

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

1. TRANSMITTAL NUMBER

2. STATE

3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT

XIX

XXI

TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

5. FEDERAL STATUTE/REGULATION CITATION

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)

a. FFY _____ \$ _____

b. FFY _____ \$ _____

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

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 PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

9. SUBJECT OF AMENDMENT

10. 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:

11. SIGNATURE OF STATE AGENCY OFFICIAL

15. RETURN TO

12. TYPED NAME

13. TITLE

14. DATE SUBMITTED March 31, 2022

FOR CMS USE ONLY

16. DATE RECEIVED

17. DATE APPROVED

PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL

19. SIGNATURE OF APPROVING OFFICIAL

20. TYPED NAME OF APPROVING OFFICIAL

21. TITLE OF APPROVING OFFICIAL

22. REMARKS

**New York
110(d)(21)**

1905(a)(4)(A) Nursing Facility Services

The New York State Nursing Home Quality Pool (NHQP) is an annual budget-neutral pool of \$50 million dollars. The intent of the NHQP is to incentivize Medicaid-certified nursing facilities across New York State to improve the quality of care for their residents, and to reward facilities for quality based on their performance. The set of measures used to evaluate nursing homes are part of the Nursing Home Quality Initiative (NHQI). The performances of facilities in the NHQI determine the distribution of the funds in the NHQP.

NHQI is described below using MDS (Minimum Data Set) year and NHQI (Nursing Home Quality Initiative) year. MDS year refers to the year the assessment data is collected. NHQI year refers to the year when the nursing home performance is evaluated. For example, if the NHQI year is 2021, then the MDS year is 2020. For NHQI 2021, the Commissioner will calculate a score and quintile ranking based on data from the MDS year 2020 (January 1 of the MDS year through December 31 of the MDS year), for each non-specialty facility. The score will be calculated based on measurement components comprised of Quality and Compliance Measures. These measurement components and their resulting score and quintile ranking will be referred to as the Nursing Home Quality Initiative. From the NHQI, the Commissioner will exclude specialty facilities consisting of non-Medicaid facilities, Special Focus Facilities as designated by the Centers for Medicare and Medicaid Services (CMS), Continuing Care Retirement Communities, Transitional Care Units, specialty facilities, and specialty units within facilities. Specialty facilities and specialty units will include AIDS facilities or discrete AIDS units within facilities, facilities or discrete units within facilities for residents receiving care in a long-term inpatient rehabilitation program for traumatic brain injured persons, facilities or discrete units within facilities that provide specialized programs for residents requiring behavioral interventions, facilities or discrete units within facilities for long-term ventilator dependent residents, facilities or discrete units within facilities that provide services solely to children, and neurodegenerative facilities or discrete neurodegenerative units within facilities. The score for each such non-specialty facility will be calculated using the following Quality and Compliance Measures. To offset the impact of COVID-19, some of the quality and the efficiency measures are removed from NHQI 2021 with the intent of bringing back the measures for future NHQI. The measures in this NHQI are listed below:

Quality Measures		Measure Steward
	Percent of Long Stay Residents Who Received the Pneumococcal Vaccine	CMS
	Percent of Long Stay Residents Who Received the Seasonal Influenza Vaccine	CMS
	Percent of Long Stay Residents Experiencing One or More Falls with Major Injury	CMS
	Percent of Low Risk Long Stay Residents Who Lose Control of Their Bowels or Bladder	CMS

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110(d)(22)**

1905(a)(4)(A) Nursing Facility Services

Percent of Long Stay Antipsychotic Use in Persons with Dementia	Pharmacy Quality Alliance (PQA)
Percent of Long Stay Residents Whose Need for Help with Daily Activities Has Increased	CMS
Percent of Long Stay Residents with a Urinary Tract Infection	CMS
Percent of Employees Vaccinated for Influenza	NYS DOH
Percent of Contract/Agency Staff Used	NYS DOH
Rate of Staffing Hours per Resident per Day	NYS DOH
Compliance Measures	
CMS Five-Star Quality Rating for Health Inspections as of April 1 of the NHQI year (By Region)	CMS
Timely Submission and Certification of Complete New York State Nursing Home Cost Report to the Commissioner for the MDS year	NYS DOH
Timely Submission of Employee Influenza Immunization Data for the September 1 of the MDS year - March 31 of the NHQI year Influenza Season by the deadline	NYS DOH

Quality Component:

The maximum points a facility will receive for the Quality Component is 50. The applicable percentages or ratings for each of the 10 quality measures will be determined for each facility. Four quality measures are removed in this NHQI year. Three of these measures are temporarily removed to offset the impact of COVID-19 (Percent of Long Stay High Risk Residents with Pressure Ulcers, Percent of Long Stay Residents Who have Depressive Symptoms, Percent of Long Stay Residents Who Lose Too Much Weight). These measures would be reassessed and brought back in the next NHQI year as appropriate. One measure was retired by CMS in October 2019 (The Percent of Long Stay Residents Who Self-Report Moderate to Severe Pain).

The quality measures will be awarded points based on quintile values or threshold values. For quintile-based measures, the measures will be ranked and grouped by quintile with points awarded as follows:

Scoring for quintile-based Quality Measures	
Quintile	Points
1 st Quintile	5
2 nd Quintile	3
3 rd Quintile	1
4 th Quintile	0
5 th Quintile	0

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**New York
110(d)(22.1)**

1905(a)(4)(A) Nursing Facility Services

For threshold-based measures, the points will be awarded based on threshold values. The threshold-based measures are:

- Percent of Employees Vaccinated for Influenza: facilities will be awarded five points if the rate is 85% or higher, and zero points if the rate is less than 85%.
- Percent of Contract/Agency Staff Used: facilities will be awarded five points if the rate is less than 10%, and zero points if the rate is 10% or higher.
- Percent of Long Stay Residents Experiencing One or More Falls with Major Injury: facilities will be awarded five points if the rate is equal to or less than 5%, and zero points if the rate is greater than 5%.
- Percent of Long Stay Residents with a Urinary Tract Infection: facilities will be awarded five points if the rate is equal to or less than 5%, and zero points if the rate is greater than 5%.

Rate of Staffing Hours per Resident per Day

NYS DOH will calculate an annualized adjusted rate of staffing hours per resident per day using staffing information downloaded from the Centers for Medicare & Medicaid Services (CMS) appropriate for that year. The staffing information is based on Payroll Based Journal Public Use Files (PBJ PUFs). PBJ PUFs are public data sets prepared by the CMS. For this measure, staffs are defined as RNs, LPNs, and Aides. The rate of reported staffing hours and the rate of case-mix staffing hours will be taken from the staffing information and the adjusted rate of staffing hours will be calculated using the formula below.

Rate Adjusted = (Rate Reported/Rate Case-Mix) * Statewide average

Awarding for Improvement

Nursing homes will be awarded improvement points from previous years' performance in selected measures in the Quality Component only. One improvement point will be awarded for a nursing home that improves in its quintile for a specific quality measure, compared to its quintile in the previous year for that quality measure. Nursing homes that obtain the top quintile in a quality measure will not receive an improvement point because maximum points per measure cannot exceed five. The threshold-based quality measures below will not be eligible to receive improvement points:

- Percent of Employees Vaccinated for Influenza
- Percent of Long Stay Residents Experiencing One or More Falls with Major Injury
- Percent of Long Stay Residents With a Urinary Tract Infection

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**New York
110(d)(22.2)**

1905(a)(4)(A) Nursing Facility Services

- Percent of Contract/Agency Staff Used

The quintile-based quality measures that are eligible for improvement points are listed below:

- Percent of Low Risk Long Stay Residents Who Lose Control of Their Bowels or Bladder
- Percent of Long Stay Residents Whose Need for Help with Daily Activities Has Increased
- Percent of Long Stay Residents Who Received the Seasonal Influenza Vaccine
- Percent of Long Stay Antipsychotic Use in Persons with Dementia
- Percent of Long Stay Residents Who Received the Pneumococcal Vaccine
- Rate of Staffing Hours Per Resident Per Day

The grid below illustrates the method of awarding improvement points.

MDS year Performance						
NHQI year Performance	Quintiles	1 (best)	2	3	4	5
	1 (best)	5	5	5	5	5
	2	3	3	4	4	4
	3	1	1	1	2	2
	4	0	0	0	0	1
	5	0	0	0	0	0

For example, if MDS year performance is in the third quintile, and NHQI year performance is in the second quintile, the facility will receive four points for the measure. This is three points for attaining the second quintile and one point for improvement from the previous year's third quintile.

Risk Adjustment of Quality Measures

The three risk-adjusted quality measures are removed in this NHQI year (Percent of Long Stay Residents Who Self-Report Moderate to Severe Pain, Percent of Long Stay High Risk Residents with Pressure Ulcers, Percent of Long Stay Residents Who Lose Too Much Weight).

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**New York
110(d)(22.3)**

1905(a)(4)(A) Nursing Facility Services

Reduction of Points Base: When a quality measure is not available for a nursing home, the number of points the measure is worth will be reduced from the NHQI maximum base points. The nursing home's total score will be the sum of its points divided by the base. This reduction can happen in the following scenario:

- When a quality measure has a denominator of less than 30

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**New York
110(d)(23)**

1905(a)(4)(A) Nursing Facility Services

Compliance Component: The maximum points a facility will receive for the Compliance Component is 20 points. Points will be awarded as follows:

Scoring for Compliance Measures	
CMS Five-Star Quality Rating for Health Inspections (By Region)	Points
5 Stars	10
4 Stars	7
3 Stars	4
2 Stars	2
1 Star	0
Timely Submission and Certification of Complete New York State Nursing Home Cost Report to the Commissioner of the MDS year	5 (Facilities that fail to submit a timely, certified, and complete cost report will receive zero points)
Timely Submission of Employee Influenza Immunization Data	5 (Facilities that fail to submit timely influenza data by the deadline will receive zero points)

CMS Five-Star Quality Rating for Health Inspections

The CMS Five-Star Quality Rating for Health Inspections as of April 1 of the NHQI year will be adjusted by region. This is not a risk adjustment. For eligible New York State nursing homes, the health inspection scores from CMS will be stratified by region. Cut points for health inspection scores within each region will be calculated using the CMS 10-70-20% distribution method. Per CMS' methodology, the top 10% of nursing homes receive five stars. The middle 70% receive four, three, or two stars, with an equal percentage (~23.33%) receiving four, three, or two stars. The bottom 20% receive one star. Each nursing home will be awarded a star rating based on the health inspection score cut points specific to its region. Regions include the Metropolitan Area (MARO), Western New York (WRO), Capital District (CDRO), and Central New York (CNYRO). Regions are defined by the New York State Health Facilities Information System (NYS HFIS). The counties within each region are shown below.

Metropolitan Area Regional Offices (MARO): Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester.

Central New York Regional Offices (CNYRO): Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, Saint Lawrence, Tioga, and Tompkins.

Capital District Regional Offices (CDRO): Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington.

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**New York
110(d)(23.1)**

1905(a)(4)(A) Nursing Facility Services

Western New York Regional Offices (WRO): Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates.

Reduction of Points Base: When a compliance measure is not available for a nursing home, the number of points the measure is worth will be reduced from the NHQI maximum base points. The nursing home's total score will be the sum of its points divided by the base. This reduction can happen when a facility does not have a CMS Five-Star Quality Rating for Health Inspections.

Efficiency Component:

The potentially avoidable hospitalizations measure is temporarily removed in this NHQI year. This is to offset the impact of COVID-19 and the incompleteness of hospitalization data. This measure will be reassessed and brought back in the next NHQI year as appropriate.

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**New York
110(d)(24)**

Reserved

1905(a)(4)(A) Nursing Facility Services

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**New York
110(d)(25)**

1905(a)(4)(A) Nursing Facility Services

The following payments, which will be applicable to the NHQI Year, will be made to fund the NHQP and to make payments based upon the scores calculated from the NHQI as described above.

- Each non-specialty facility will be subject to a Medicaid rate reduction to fund the NHQI, which will be calculated as follows:
- For each such facility, Medicaid revenues, calculated by multiplying each facility's NHQI Year promulgated rate in effect for such period by reported Medicaid days, as reported in a facility's MDS Year cost report, will be divided by total Medicaid revenues of all non-specialty facilities. The result will be multiplied by the \$50 million dollars and divided by each facility's most recently reported Medicaid days as reported in a facility's cost report of the MDS Year. If a facility fails to submit a timely filed cost report in the MDS Year, the most recent cost report will be used.

The total scores as calculated above for each such facility will be ranked and grouped by quintile. Each of the top three quintiles will be allocated a share of the \$50 million NHQI and each such facility within such top three quintiles will receive a payment. Such payments will be paid as a lump sum payment outside of the Nursing Home rate for the NHQI Year. Such shares and payments will be calculated as follows:

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**New York
110(d)(26)**

1905(a)(4)(A) Nursing Facility Services

The following facilities will not be eligible for NHQP payments and the scores of such facilities will not be included in determining the share of the NHQP payments:

- A facility with health inspection survey deficiency data showing a level J/K/L deficiency during the time period of July 1 of the MDS year through June 30 of the NHQI year. Deficiencies will be reassessed on October 1 of the NHQI year to allow a three-month window (after the June 30 of the NHQI year cutoff date) for potential Informal Dispute Resolutions (IDR) to process. The deficiency data will be updated to reflect IDRs occurring between July 1 of the NHQI year and September 30 of the NHQI year. Any *new* J/K/L deficiencies between July 1 of the NHQI year and September 30 of the NHQI year will *not* be included in the NHQI. If a JKL citation is found to be expunged or lowered based upon an IDR panel review, the Department reserves the right to make the adjustments.

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