



Department  
of Health

Office of  
Mental Health

Office of Alcoholism and  
Substance Abuse Services

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### Cost-Effective Alternative Services (In Lieu of)

Effective July 6, 2016, federal regulations allowed and clarified the use of cost-effective alternative services that are approved by the New York State (NYS or State) to be offered by Medicaid Managed Care Organizations (MMCOs). These regulations encourage innovation and promote efficiency and quality by enabling MMCOs to offer their enrollees physical and behavioral health services that are not covered under the Medicaid State Plan.

MMCOs may, as a cost-effective alternative to Medicaid State Plan services and settings, provide Medicaid Managed Care enrollees with alternative services and settings as permitted by 42 CFR 438.3(e)(2) and approved by the State and the Centers for Medicare and Medicaid Services (CMS). These cost-effective alternative services are often referred to as “in lieu of services” (ILS). The cost of such services must be included in the development of the MMCO rates.

ILS are defined as alternative services or settings that are not included in the Medicaid State Plan but are medically appropriate, cost-effective substitutes for covered services or settings.<sup>1</sup> “State Approved ILS” means ILS proposed by an MMCO that has been approved by the State. “State Identified ILS” means ILS that has been identified by the State as appropriate ILS for the Medicaid Managed Care program. Both State Approved and State Identified ILS will be posted on State agency websites.

#### Requirements for ILS Provision:

- MMCOs may not provide ILS pursuant to 42 CFR 438.3(e)(2) without first applying to the State, obtaining State and CMS approval to offer the ILS, and demonstrating all of the following requirements will be met. Pursuant to 42 CFR 438.3(e)(1), MMCOs may voluntarily agree to provide any service to an enrollee outside of an approved ILS construct, however the cost of such voluntary services may not be included in determining State premium rates.
  - Voluntary for Enrollee: A MMCO cannot *require* an enrollee to use an ILS instead of a State Plan covered service or setting but can offer enrollees the option of such services when doing so would be medically appropriate and cost-effective.
  - Voluntary for MMCO: It is a MMCO’s option to offer ILS. A MMCO may apply to the State for approval if it chooses to provide an ILS.
  - Proposals for ILS must demonstrate that the alternate services are medically appropriate and cost-effective. The plan is responsible to calculate the cost-benefit analysis.
  - Proposal must clinically define target population and criteria for the alternate service(s).

<sup>1</sup> 42 CFR 438.3(e)(2), [https://www.ecfr.gov/cgi-bin/text-idx?SID=b91d306244cadc49c856f6b4539ec2b5&mc=true&node=se42.4.438\\_13&rqn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=b91d306244cadc49c856f6b4539ec2b5&mc=true&node=se42.4.438_13&rqn=div8).

- ILS may not include expenditures that are prohibited by CMS, such as training or equipment for law enforcement and room and board.<sup>2</sup>
  - ILS must be approvable through a State plan amendment authorized through the Social Security Act, including sections 1905(a), 1915(i), or 1915(k) of the Social Security Act, or a waiver under section 1915(c) of the Social Security Act.
  - The MMCO shall comply with all applicable requirements contained within the Medicaid Managed Care/ Family Health Plus/ HIV Special Needs Plan/ Health and Recovery Plan Model Contract, including section 10.43- Cost-Effective Alternative Services.
- Once the State approves an ILS application for an MMCO:
    - The ILS must be added to the MMCO's Medicaid Managed Care contract (amendment to Appendix M), which must be reviewed and approved by CMS prior to implementation.
    - The ILS will be posted on State agency websites as a State Approved ILS.
    - The cost and utilization of ILS will be factored into the medical portion of the MMCO's rates.
    - MMCO must inform enrollees of new ILS benefits and must post approved ILS publicly, including on MMCO website and in an updated member handbook or member handbook insert.
    - The MMCO will be responsible for offering the ILS to all enrollees that meet the defined population and criteria for the alternate service. The MMCO must utilize a consistent process to ensure that a provider (either the MMCO's licensed clinical staff or participating provider) using their professional judgment, and assessing the enrollee presenting medical condition, preferred course of treatment, and current or past medical treatment determines and documents that the ILS is medically appropriate for the specific enrollee. This documentation could be included, for example, in an enrollee's care plan or medical record.
    - ILS must be provided in a manner that preserves enrollees rights and protections guaranteed to Medicaid Managed Care enrollees in accordance with federal regulations and guidance. Enrollees have the right to request appeal, external appeal, and fair hearing regarding the denial of a State approved ILS being offered by the MMCO.
    - Encounter data tracking: Plans must use rate codes that have been approved by the State to track the claiming and provision of ILS.
    - Cost reports: Plans must have mechanisms to track and report ILS expenditures in a manner and format established by the State.
  - Termination of ILS:
    - State-initiated termination: State may terminate an ILS if it is determined to be harmful to the enrollee and/or is not cost effective, or upon direction by CMS.
    - MMCO-initiated termination: MMCO may terminate an ILS upon notice to NYS. The MMCO must publicize a termination date and provide 90 days' notice to enrollees. The MMCO must create and implement a plan for continuity of care for member(s) who are in receipt of the ILS.
    - Termination date must occur at the end of the fiscal quarter, except in the case the ILS is terminated due to a threat against the health, safety, or welfare of the plan's enrollees.

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<sup>2</sup> Unless otherwise specified in statute or regulation, section 4442.3.B.12 of the State Medicaid Manual, defines "room" as hotel or shelter-type expenses, including all property-related costs (e.g., rental or purchase of real estate and furnishings, maintenance, utilities, and related administrative services) and defines "board" as three meals a day or any other full nutritional regimen.

Process for Requesting Approval of In Lieu of Services:

MMCOs must complete the In Lieu of Request Form attached to this guidance and submit for review and approval to the NYS Department of Health at: [ILS@health.ny.gov](mailto:ILS@health.ny.gov) .

MMCOs may apply to the State for approval to:

- 1) provide State Identified ILS completing only Section One below;
- 2) provide a State Approved ILS previously developed by another MMCO as posted on State agency websites by completing only Section One below; and/or
- 3) Initiate a new ILS by completing the full application.

The State will use the information provided by the MMCO via this Request Form to approve or deny the request, and to serve as documentation for the State's actuary and/or CMS regarding the cost-effectiveness of the service. The Office of Mental Health and the Office of Alcohol and Substance Abuse Services, in consultation with the Department of Health, will determine the clinical appropriateness of the proposed ILS intended for Health and Recovery Plan (HARP) enrollees and for Behavioral Health ILS.

MMCOs may submit requests for approval of ILS to the State at any time. The State will review requests upon receipt. Upon State and CMS approval, plans may begin providing the ILS only at the beginning of a State fiscal quarter.

## New York State Medicaid Managed Care In Lieu of Services Request Form

The MMCO should answer each question as comprehensively as practical. Questions should be directed to [ILS@health.ny.gov](mailto:ILS@health.ny.gov) at the New York State Department of Health

### MMCO INFORMATION

Date:	
MMCO Plan Name:	
Contact Person:	Title:
Phone:	Email:

### SECTION ONE:

Complete only this section to provide State Approved or State Identified ILS. Add additional lines if necessary. If the MCO is modifying any portion of the State Approved or State Identified ILS, describe the change by completing the appropriate section(s) in Section Two of this form.

1.

ILS to be Provided	NYS Authorization Number	Expected start date for provision of service	Target area for availability of service	Related to DSRIP/VBP?
A.				
B.				
C.				

2. MCO Monitoring Activities – Describe activities, reports, and/or analyses your MCO will use to monitor the provision, utilization, quality, cost-benefit and/or outcomes of the in lieu of service. **MUST** be completed for State Identified ILS.

**SECTION TWO:**

Complete this section if the plan is initiating a new ILS. Complete appropriate areas as necessary if the MMCO is modifying a State Approved or State Identified ILS.

1. In Lieu Of Service Name and Description – Describe the proposed in lieu of service with sufficient detail so that the State can evaluate and assess the nature of this request. (One service per request form)

<b>Proposed In Lieu of Service</b>	
<b>A. Service name</b>	
<b>B. Description of service, including which State Plan service this may be offered as a substitute for</b>	
<b>C. Proposed procedure code(s) defining service (must include SE modifier)</b>	
<b>D. Is this ILS related to a DSRIP project or VBP contract?</b>	
<b>E. Expected start date for provision of service (must be at the beginning of a State fiscal quarter upon State and CMS approval.)</b>	
<b>F. Target area for availability of service or indicate ILS will be offered in full MMCP service area.</b>	
<b>G. Assessment of capacity to provide this service within each target area</b>	

2. **Information about the Population(s) that may receive the In Lieu Of Service** – Describe the clinically oriented target managed care population that will use/receive the proposed in lieu of service.<sup>3</sup>

Population	Age Range	Approximate Number of Expected Users over 12-Month Period	Characteristics of the Population (e.g., acuity level, gender, family status, placement setting, other)

3. **Goals and Objectives-** Describe the rationale for providing this service.

4. **Expected Outcomes** – Describe the expected outcomes resulting from the provision of this in lieu of service on member’s health status, utilization of services, cost of care, functional status and/or community integration. If your MMCO has provided this service in other programs or states, please describe the outcomes observed. The purpose of this question is to inform how the service will provide the same or better quality of care as the State Plan service for which it is being substituted.<sup>3</sup>

<sup>3</sup> MMCO’s should utilize experience and knowledge of their enrolled populations and any research/findings available regarding the proposed ILS to best estimate or approximate the information requested. The State will use this information in its assessment of the MMCO’s application; however, will not consider the estimates or approximations as binding for actual service delivery or outcomes.

5. **Staffing Qualifications, Credentialing Process, and Levels of Supervision, Administrative, and Clinical Required** – Describe the provider’s licensure or certification (if required), staffing patterns, and clinician oversight (if required) over unlicensed practitioners. Describe how your MMCO will enroll/screen qualified providers that meet the requirements to deliver the service with the quality outlined in #4 above.

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6. **Unit of Service** – For each proposed procedure code listed in question #1, what is the unit of service that defines this alternative in lieu of service (e.g., 1 hour, 1 day, a visit, 15 minutes)? If different units of service apply to different procedure codes, delineate in the following table as applicable. Add more rows as needed.

Procedure Code	Unit of Service Definition	Other Information (optional)

7. **Anticipated Units of Service per User** – For each proposed procedure code listed in question #1, what is the anticipated average number of expected users and average number of units per expected user over a 12-month period? (**Time frame, LOS, expected units**) If this metric varies by population, delineate by population type.<sup>3</sup>

Population	Age Range	Approximate Number of Expected Users over 12-Month Period	Procedure Code (must indicate unique identifier to track service)	Approximate Number of Units of Service Per User Per 12-Month Period

**8. Targeted Duration of Service** – For the service, describe the expected average duration of the service to achieve the desired outcomes. This could be the average length of treatment/care (e.g., 6 weeks, 6 months) or, if the service is not directly tied to a course of treatment, it could be the frequency at which the service is expected to be delivered to each user (e.g., weekly, monthly, as needed).

**9. Cost-Effectiveness** – For the population intended to receive the in lieu of service, provide information on the cost-effectiveness of the in lieu of service versus the State Plan service(s) available. The State is requesting this information to determine if the requested in lieu of service is cost-effective, consistent with the provisions of 42 CFR 438.3(e)(2).<sup>3</sup>

This question requires the MMCO to complete two Parts: Part 1 requests information on expenditures on the State Plan service(s) that the in lieu of service would be offered to replace, and Part 2 requests information on anticipated expenditures on the in lieu of service.\*\*

For the in lieu of service to be considered cost-effective, the total expected expenditure on the in lieu of service must be less than or equal to the total expected cost of comparable State Plan service(s).

**Part 1: Computation of Comparable State Plan Service(s) Cost (include type, amount, frequency, etc.)**

State Plan Service Name/Description	State Plan Service Identifying Code(s)	Unit of Service Definition	Average Number of Expected Users over 12-Month Period	Average Number of Units of Service Per User Per 12 Month Period	Average Unit Cost



**Part 2: Computation of In Lieu Of Services Cost (include type, amount, frequency, etc.)**

In Lieu Of Services Name/Description	In Lieu Of Services Identifying Code(s)- must include SE modifier	Unit of Service Definition	Average Number of Expected Users over 12-Month Period	Average Number of Units of Service Per User Per 12-Month Period	Average Unit Cost

\*\* MCOs may propose a different cost analysis approach that includes comparison of state plans services vs ILS to demonstrate projected cost with and without ILS.

**10. Encounter Data Reporting** – Describe the process by which your MMCO will submit valid and complete encounter data applicable to the in lieu of service. If possible, include descriptions of record/claim type(s), provider codes/taxonomies, and other data elements so that the State and its actuary will have the ability to locate and analyze actual encounter data for the requested in lieu of service.

**11. Financial Statement Reporting** – Please explain your MMCO’s ability to track in lieu of service expenditure. These expenditures will be required to be reported in the plans Operating Reports (i.e., MMCOR). The information will inform the State and its actuary the amount of in lieu of expenditure for the development of prospective managed care capitation rates.

**12. MMCO Monitoring Activities** – Describe activities, reports, and/or analyses your MMCO will use to monitor the provision, utilization, quality, cost-benefit and/or outcomes of the in lieu of service. This MUST be completed for state identified ILS.

**13. Other Information** – Provide any other relevant information for the State's consideration of this request. This could include, if the MMCO wishes to submit it, information like references to medical and scientific evidence in support of the proposed ILS, provider- and/or enrollee facing information regarding of the purpose of the ILS, authorization requirements for ILS, or other operational considerations.