Pursuant to authority vested in the Commissioner of Health by Sections 201 and 206 of the Public Health Law and Sections 363-a and 365-a(2) of the Social Services Law, Parts 505 and 537 of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended as follows, to be effective upon publication of a Notice of Adoption in New York State Register.

Subdivision (b) of section 505.5 of Title 18 is amended to read as follows:

(b) Written or electronic order required.

Paragraph (1) of subdivision (b) of section 505.5 of Title 18 is amended to read as follows:

(1) All durable medical equipment, medical/surgical supplies, orthotic and prosthetic appliances and devices, and orthopedic footwear may be furnished only upon a written or electronic order of a practitioner.

Paragraph (2) of subdivision (c) of section 505.5 of Title 18 is amended to read as follows:

(2) Written or electronic orders for durable medical equipment, medical/surgical supplies, prosthetic or orthotic devices, or orthopedic footwear must be maintained by the provider submitting the claim for audit by the department or other authorized agency for six years from the date of payment.

Subparagraph (ii) of paragraph (3) of subdivision (d) of section 505.5 of Title 18 is amended to read as follows:

(ii) The fee schedules and manuals for durable medical equipment, [schedule for]medical/surgical supplies, and orthotic and prosthetic appliances and orthopedic footwear are [is] available [from the department and is also contained in the department's MMIS Provider

Manual (Durable Medical Equipment, Medical/Surgical Supplies, Orthotic and Prosthetic Appliances). Copies of the manual may be obtained by writing Computer Sciences Corporation, Health and Administrative Services Division, 800 North Pearl St., Albany, NY 12204. Copies may also be obtained from the Department of Social Services, 40 North Pearl St., Albany, NY 12243. The manuals are provided free of charge to every provider of durable medical equipment, medical/surgical supplies, orthotic and prosthetic appliances and orthopedic footwear at the time of enrollment in the MA program] free of charge from the Medicaid fiscal agent's website.

Subdivision (d) of section 505.6 of Title 18 is amended to read as follows:

(d) Basis of payment.

Reimbursement and payment for ophthalmic supplies and services shall not exceed the fees contained in the current New York State Fee Schedule for ophthalmic supplies and services approved by the New York State Budget Director[as set forth in section 537.3 of this Subchapter] and available free of charge from the Medicaid fiscal agent's website.

Subdivision (a) of section 505.7 of Title 18 is amended to read as follows:

(a) Scope of services. This section sets forth the requirements and procedures for furnishing laboratory services and obtaining payment for laboratory services under the medical assistance (MA) program. Payment for laboratory services is limited to those medically necessary tests and procedures listed in the MA fee schedule for laboratory services. The MA fee schedule for laboratory services is available [from the Department and may also be found in the Medicaid Management Information System (MMIS) Provider Manual (Laboratory), which is available by writing Computer Sciences Corporation, Health and Administrative Services Division, 800 North Pearl Street, Albany, NY 12204. Copies may also be obtained from the

Department of Social Services, 40 North Pearl Street, Albany, NY 12243. The manual is provided free of charge to every laboratory upon enrollment in the MA program. Revisions to the manual are provided to laboratories as revisions are made] free of charge from the Medicaid fiscal agent's website.

Subdivision (d) of section 505.7 of Title 18 is amended to read as follows:

(d) Form required. All fiscal orders for laboratory services must be written or electronic on:

Paragraph (1) of subdivision (d) of section 505.7 of Title 18 is amended to read as follows

(1) a qualified practitioner's prescription form [or imprinted stationery], either hardcopy or electronic with all tests to be performed listed individually [in writing] by the practitioner; or

Paragraph (3) of subdivision (d) of section 505.7 of Title 18 is amended to read as follows:

(3) a pre-printed or electronic order form which is issued by a facility certified under article 28 of the Public Health Law for laboratory services to be provided by the hospital's laboratory.

Paragraph (3) of subdivision (f) of section 505.7 of Title 18 is amended to read as follows:

(f) (3) A qualified practitioner who does not hold a currently valid laboratory permit may only provide laboratory services which are listed in the MA fee schedule of the Medicaid Management Information System Provider Manual for that practitioner's services. These services must be provided in the practitioner's office in the course of treating [his or her]their own patients and may be billed directly by the practitioner. The manuals are available [from

Computer Sciences Corporation, Health and Administrative Services Division, 800 North Pearl Street, Albany, NY 12204. Copies also may be obtained from the Department of Social Services, 40 North Pearl Street, Albany, NY 12243. The applicable MMIS provider manual is provided free of charge to every practitioner upon enrollment in the MA program. Revisions to the various manuals are provided to practitioners as revisions are made] free of charge from the Medicaid fiscal agent's website.

Subdivision (e) of section 505.8 of Title 18 is amended to read as follows:

(e) Physician's written or electronic order required. All nursing services provided by a registered professional nurse or licensed professional nurse in a recipient's home, a school, an approved pre-school, or a natural environment, including home and community settings, where such child would otherwise be found, must be provided in accordance with the attending physician's written or electronic order and plan of treatment. In extraordinary circumstances and for valid reasons which must be documented, nursing services in the home may be initiated by a home health agency before the physician examines the recipient. A physician's written or electronic order is required for all such nursing services in excess of the initial two visits.

Paragraph (1) of subdivision (c) of section 505.10 of Title 18 is amended to read as follows:

(1) Who may order. Only those practitioners, facilities or programs listed in paragraphs (d)(7) and (8) of this section may order or submit an order on behalf of a practitioner for ambulette or nonemergency ambulance transportation services. All requests for ambulette and nonemergency ambulance transportation must include a written or electronic form verifying MA transportation abilities as specified by the department.

Paragraph (7) of subdivision (d) of section 505.10 of Title 18 is amended to read as follows:

(7) A request for prior authorization for nonemergency ambulance transportation must be supported by the written or electronic order of an ordering practitioner who is the MA recipient's attending physician, physician's assistant or nurse practitioner.

Paragraph (8) of subdivision (d) of section 505.10 of Title 18 is amended to read as follows:

(8) A request for prior authorization for transportation by ambulette or paratransit vehicle must be supported by the written or electronic order of an ordering practitioner who is the MA recipient's attending physician, physician's assistant, nurse practitioner, dentist, optometrist, podiatrist or other type of medical practitioner approved by the department.

Subdivision (e) of section 505.11 of Title 18 is amended to read as follows:

(e) Physician's written or electronic order required.

Paragraph (1) of subdivision (e) of section 505.11 of Title 18 is amended to read as follows:

(1) Rehabilitation services must be supported by a written or electronic order of a qualified physician and must be carried out under [his or her]their medical direction. The written or electronic order constitutes medical direction of the physician.

Subdivision (b) of section 505.24 of Title 18 is amended to read as follows:

(b) The cost of blood, plasma or related products when not available without charge or when not provided for as in subdivision (a) of this section, may be eligible for reimbursement if provided on the written or electronic order of a physician.

Paragraph (2) of subdivision (d) of section 505.26 of Title 18 is amended to read as follows:

(2) The fee schedule for chemical dependence outpatient medically supervised withdrawal services is available [from the department and is also contained in the department's

MMIS Provider Manual (Clinic). Copies of the manual may be obtained by writing Computer Sciences Corporation, Health and Administrative Services Division, 800 North Pearl St., Albany, New York 12243. Copies may also be obtained from the Department of Health, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12237. The manuals are provided free of charge to every provider of chemical dependence outpatient medically supervised services at the time of enrollment in the Medical Assistance Program] free of charge from the Medicaid fiscal agent's website.

Paragraph (2) of subdivision (d) of section 505.27 of Title 18 is amended to read as follows:

(2) The fee schedule for chemical dependence outpatient services is available [from the department and is also contained in the department's MMIS Provider Manual (Clinic). Copies of the manual may be obtained by writing Computer Sciences Corporation, Health and Administrative Services Division, 800 North Pearl St., Albany, New York 12243. Copies may also be obtained from the Department of Health, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12237. The manuals are provided free of charge to every provider of chemical dependence outpatient services at the time of enrollment in the Medical Assistance Program] free of charge from the Medicaid fiscal agent's website.

Paragraph (1) of subdivision (c) of section 505.31 of Title 18 is amended to read as follows:

(1) All recommendations for hearing aids must be in writing, either hardcopy or electronic, and comply with article 37-A of the General Business Law.

Paragraph (1) of subdivision (f) of section 505.31 of Title 18 is amended to read as follows:

(1) Audiology services, except for conformity evaluations (hearing aid checks), must be supported by a written referral, either hardcopy or electronic, by a licensed physician. The written referral must be maintained with the recipient record.

Subparagraph (ii) of paragraph (2) of subdivision (h) of section 505.31 of Title 18 is amended to read as follows:

(ii) Reimbursement to qualified audiologists or hearing aid dealers that employ qualified audiologists for audiology services is based on the fee schedule for hearing aid/audiology supplies and services. The fee schedule for hearing aid/audiology supplies and services is available [from the department and is also contained in the MMIS Provider Manual (Hearing Aid/Audiology Services). Copies of the manual may be obtained by writing Computer Sciences Corporation, Health and Administrative Services Division, 800 North Pearl St., Albany, NY 12204. Copies may also be obtained from the Department of Social Services, 40 North Pearl St., Albany, NY 12243. The manual is provided free of charge to every provider of audiology services at the time of enrollment in the MA program] free of charge from the Medicaid fiscal agent's website.

Section 537.3 of Title 18 is repealed.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department of Health (Department) is the single State agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program. In addition, SSL section 365-a authorizes the Commissioner of the Department to establish standards related to the amount, nature and manner of providing medical assistance for needy persons, including payment of medically necessary medical, dental and remedial care, services and supplies, as authorized in the regulations of the Department.

Legislative Objectives:

To establish standards for the provision of medical assistance for needy persons in a clear and efficient manner.

Needs and Benefits:

Governor Hochul launched EXPRESS NY (Expediting Processes and Regulations to Enable Streamlined Services), a new statewide effort to make government work better by tackling outdated and burdensome regulations, policies, and practices that stand in the way of delivering for New Yorkers. In accordance with this effort, the Department Health proposes to amend various sections of 18 NYCRR Part 505, to explicitly authorize provider use of electronic orders and forms, and to direct providers to the Medicaid fiscal agent website for current copies

of provider manuals and fee schedules. Electronic orders and forms are widely recognized as standard, secure methods of communication in the health care industry and enable the instantaneous transmission of information, thereby promoting more timely and efficient patient care. Directing providers to the Medicaid fiscal agent website will reduce confusion by identifying a single, authoritative source of Medicaid guidance and ensuring access to the most current information. Correspondingly, 18 NYCRR § 537.3 will be repealed as it is no longer applicable and has been superseded by fee schedules published on the Medicaid fiscal agent website. The reference to 18 NYCRR § 537.3 in 18 NYCRR § 505.6 will be replaced with a directive to the Medicaid fiscal agent website. These amendments will update regulations to align with current practice.

Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

The Department does not anticipate costs for Medicaid providers to comply with these amended regulations.

Costs to State and Local Governments:

The Department does not anticipate costs for State and local governments to comply with these amended regulations.

Costs to the Department of Health:

There are no expected additional costs to the Department to comply with these amended regulations.

Local Government Mandates:

This amendment does not impose any new programs, services, duties, or responsibilities on local governments.

Paperwork:

There is no expected additional paperwork to comply with these amended regulations. Electronic orders and forms will reduce the volume of paperwork that must be produced, disseminated and maintained by certain providers.

Duplication:

These amendments align with the coinciding Federal requirement and do not conflict with any State or Federal rules.

Alternatives:

An alternative would be to leave current regulations in place. Leaving the current standards in place is not consistent with the Governor's effort to update outdated practices. Therefore, the Department decided that revising the current regulation was the most appropriate approach.

Federal Standards:

This regulation aligns with Federal regulations and does not overlap or conflict with any legal requirements.

Compliance Schedule:

This regulation will go into effect upon publication of a Notice of Adoption in the New York State Register.

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STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS FOR
SMALL BUSINESSES AND LOCAL GOVERNMENTS

A Regulatory Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on small businesses and local governments. There are no professional services, capital, or other compliance costs imposed on small businesses and local governments as a result of the proposed amendments.

STATEMENT IN LIEU OF

RURAL AREA FLEXIBILITY ANALYSIS

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

STATEMENT IN LIEU OF

JOB IMPACT STATEMENT

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.