

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

December 30, 2011

National Institutional Reimbursement Team
Attention: Mark Cooley
CMS, CMCS
7500 Security Boulevard, M/S 3-14-28
Baltimore, MD 21244-1850

RE: SPA #11-92
Long-Term Care Facility Services (ICF/DDs)

Dear Mr. Cooley:

The State requests approval of the enclosed amendment #11-92 to the Title XIX (Medicaid) State Plan for long-term care facility services (ICF/DDs) to be effective October 1, 2011 (Appendix I). This amendment is being submitted based on adopted regulation. A summary of the proposed amendment is provided in Appendix II.

This amendment is submitted pursuant to §1902(a) of the Social Security Act (42 USC 1396a(a)) and Title 42 of the Code of Federal Regulations, Part 447, Subpart C, (42 CFR §447).

1. The State of New York pays for long-term care services using rates determined in accordance with methods and standards specified in an approved State Plan following a public process which complies with §1902(a)(13)(A) of the Social Security Act.
2. (a) It is estimated that the changes represented by the estimated average payment rates for long-term care facility services will have no noticeable short-term or long-term effect on the availability of services on a statewide and geographic area basis.

(b) It is estimated that the changes represented by the estimated average payment rates for long-term care facility services will have no noticeable short-term or long-term effect on care furnished.

(c) It is estimated that the changes represented by the estimated average payment rates for long-term care facility services will have no noticeable short-term or long-term effect on the extent of provider participation.

In accordance with 42 CFR §447.272, New York assures that the aggregate Medicaid payments for inpatient services provided by ICF/DD facilities for each prescribed category of providers does not exceed the upper payment limit for the particular category of providers.

Copies of the pertinent sections of enacted State statute and adopted regulations are enclosed for your information (Appendix III). Copies of the public notice of this proposed amendment, which was given in the New York State Register on August 17, 2011, is also enclosed for your information (Appendix IV). In addition responses to the five standard funding questions are also enclosed (Appendix V, respectively).

If you have any questions regarding this matter, please do not hesitate to contact John E. Ulberg, Jr., Director, Division of Health Care Financing at (518) 474-6350.

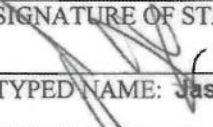
Sincerely,



Jason A. Halgerson
Medicaid Director
Deputy Commissioner
Office of Health Insurance Programs

Enclosures

cc: Mr. Michael Melendez
Mr. Tom Brady

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION		1. TRANSMITTAL NUMBER: 11-92	2. STATE New York
		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE October 1, 2011	
5. TYPE OF PLAN MATERIAL (<i>Check One</i>): <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (<i>Separate Transmittal for each amendment</i>)			
6. FEDERAL STATUTE/REGULATION CITATION: Section 1902(a) of the Social Security Act, and 42 CFR 447		7. FEDERAL BUDGET IMPACT: a. FFY 10/01/11-09/30/12 \$83,000 b. FFY 10/01/12-09/30/13 \$83,000	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.19-D-Part II: Pages 12, 12a		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (<i>If Applicable</i>): Attachment 4.19-D-Part II: Pages 12	
10. SUBJECT OF AMENDMENT: OPWDD Willowbrook Case Services for ICF/DDs (FMAP = 50%)			
11. GOVERNOR'S REVIEW (<i>Check One</i>): <input checked="" type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> OTHER, AS SPECIFIED: <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL: 		16. RETURN TO: New York State Department of Health Corning Tower Empire State Plaza Albany, New York 12237	
13. TYPED NAME: Jason A. Helgerson			
14. TITLE: Medicaid Director & Deputy Commissioner Department of Health			
15. DATE SUBMITTED: December 30, 2011			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED:		18. DATE APPROVED:	
PLAN APPROVED – ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL:		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME:		22. TITLE:	
23. REMARKS:			

Appendix I
2011 Title XIX State Plan
Fourth Quarter Amendment
Non-Institutional Services
Amended SPA Pages

persons to and from an outpatient service certified pursuant to Article 28 of the Public Health law for certain persons if:

- (a) in order to meet a person's active treatment needs the person's Individual Program Plan requires a day service (comprising regular attendance at a sheltered workshop or a day training service) in combination with visits to the outpatient service described above, and
 - (b) prior to July 1, 1996, transportation to and from the outpatient service was not included in the rate for the operator of the outpatient service, and
 - (c) prior to July 1, 1996, the rate approved by the local social services district was billed separately by a transportation vendor for transportation to and from the outpatient service, and
 - (d) the vendor ceased billing for transportation of persons residing in the facility to and from the outpatient service.
- (x) The transportation add-on shall be a reimbursable cost added to a facility's rate subject to the conditions set forth in subparagraph (ix) of this paragraph. The transportation add-on shall be calculated using payment/rate data based on local social service district approved Medicaid payment rates made to transportation vendors as of June 30, 1996. A weighted transportation average shall be calculated for each facility by dividing the aggregate transportation payments by the aggregate day service transportation round trips for all persons described in subparagraph (ix) of this paragraph.
- (a) The weighted transportation average for each facility shall be ranked among all day treatment facilities statewide pursuant to the methodology for calculating the transportation component add-on for day treatment facilities described in NYCRR Part 690 subclauses 690.7(e)(3)(vii)(a)(1) through and including (a)(3).
 - (b) The modified weighted transportation average shall be multiplied by the total to and from day service transportation units of service to determine reimbursable transportation costs.
- (xi) Effective October 1, 2011, the rate shall be adjusted for providers with ICF/DD populations that include individuals who are Willowbrook Class members and who are accessing Willowbrook Case Services delivered by a non-State provider.
- (a) The add-on to the rate shall be predicated on the number of Willowbrook Class members accessing Willowbrook Case Services delivered by a service coordinator who is qualified to provide Medicaid Service Coordination (see Subpart 635-5). Willowbrook Case Services are those case management

TN _____ #11-92 _____

Approval Date _____

Supersedes TN _____ #03-36 _____

Effective Date _____

Appendix II
2011 Title XIX State Plan
Fourth Quarter Amendment
Non-Institutional Services
Summary

SUMMARY
SPA #11-92

This state plan amendment implements changes to the reimbursement methodology for ICF/DDs certified by the Office for People with Developmental Disabilities consistent with emergency regulations adopted effective on September 1, 2011. The amendment provides for an increase in the rate in circumstances whereby Willowbrook Case Services are provided by voluntary agencies to Willowbrook class members residing in ICF/DDs.

Appendix III
2011 Title XIX State Plan
Fourth Quarter Amendment
Non-Institutional Services
Authorizing Provisions

SPA #11-92

New York State Mental Hygiene Law

§43.02 Rates or methods of payment for services at facilities subject to licensure or certification by the office of mental health, the office for people with developmental disabilities or the office of alcoholism and substance abuse services.

(a) Notwithstanding any inconsistent provision of law, payment made by government agencies pursuant to title eleven of article five of the social services law for services provided by any facility licensed by the office of mental health pursuant to article thirty-one of this chapter or licensed or operated by the office of mental retardation and developmental disabilities pursuant to article sixteen of this chapter or certified by the office of alcoholism and substance abuse services pursuant to this chapter to provide inpatient chemical dependence services, as defined in section 1.03 of this chapter, shall be at rates or fees certified by the commissioner of the respective office and approved by the director of the division of the budget, provided, however, the commissioner of mental health shall annually certify such rates or fees which may vary for distinct geographical areas of the state and, provided, further, that rates or fees for service for inpatient psychiatric services or inpatient chemical dependence services, at hospitals otherwise licensed pursuant to article twenty-eight of the public health law shall be established in accordance with section two thousand eight hundred seven of the public health law.

(b) Operators of facilities licensed by the office of mental health pursuant to article thirty-one of this chapter, licensed by the office of mental retardation and developmental disabilities pursuant to article sixteen of this chapter or certified by the office of alcoholism and substance abuse services pursuant to this chapter to provide inpatient chemical dependence services shall provide to the commissioner of the respective office such financial, statistical and program information as the commissioner may determine to be necessary. The commissioner of the appropriate office shall have the power to conduct on-site audits of books and records of such facilities.

(c) The commissioner of the office of mental health, the commissioner of the office of mental retardation and developmental disabilities and the commissioner of the office of alcoholism and substance abuse services shall adopt rules and regulations to effectuate the provisions of this section. Such rules and regulations shall include, but not be limited to, provisions relating to:

(i) the establishment of a uniform statewide system of reports and audits relating to the quality of care provided, facility utilization and costs of providing services; such a uniform statewide system may provide for appropriate variation in the application of the system to different classes or subclasses of facilities licensed by the office of mental health pursuant to article thirty-one of this chapter or licensed or operated by the office of mental retardation and developmental disabilities pursuant to article sixteen of this chapter, or certified by the office of alcoholism and substance abuse services pursuant to this chapter to provide inpatient chemical dependence services; and

(ii) methodologies used in the establishment of the schedules of rates or fees pursuant to this section.

participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Excelsior Jobs Program is a statewide business assistance program. Strategic businesses in rural areas of New York State are eligible to apply to participate in the program entirely at their discretion. Municipalities are not eligible to participate in the Program. The emergency rule does not impose any special reporting, record keeping or other compliance requirements on private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas nor on the reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Excelsior Jobs Program. The Excelsior Jobs Program will enable New York State to provide financial incentives to businesses in strategic industries that commit to create new jobs and/or to make significant capital investment. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. The emergency rule will immediately enable the Department to fulfill its mission of job creation and investment throughout the State and in economically distressed areas through implementation of this new economic development program. Because this emergency rule will authorize the Department to immediately begin offering financial incentives to strategic industries that commit to creating new jobs and/or to making significant capital investment in the State during these difficult economic times, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

Office for People with Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Willowbrook Case Services Add-On to the Rate for Intermediate Care Facilities (ICF/DD)

I.D. No. PDD-38-11-00001-EP

Filing No. 773

Filing Date: 2011-09-01

Effective Date: 2011-09-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Proposed Action: Amendment of section 681.14 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) and 43.02

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: The reason justifying the emergency adoption of these amendments is the preservation of the health, safety and general welfare of persons in New York State who are members of the Willowbrook Class who live in Intermediate Care Facilities (ICFs).

Historically, these individuals have received supplemental case management services from OPWDD employees. With attrition, the number of New York State employees who are available to deliver these special case management services is dwindling. OPWDD expects that beginning September 1, 2011, some Willowbrook Class members in specific geographic areas would no longer be able to access these essential services from New York State employees. In order

to meet the need for supplemental case management services, OPWDD is promulgating these emergency regulations to establish a mechanism to pay non-state providers to provide these services, which are known as Willowbrook Case Services.

Willowbrook Case Services include many functions important for the health, safety and/or welfare of these individuals. The services include providing advocacy related to the individual's safety and physical environment, and advocacy related to protection from harm. In addition, the services include assisting the individual and/or their family with unanticipated crisis intervention. Furthermore, the services include ensuring the implementation of preventive actions, and other needed follow-up on incidents that pose a risk to the health and safety of the class member or to others in the class member's immediate environment. Without the promulgation of these emergency regulations OPWDD considers that the health, safety and/or welfare of Willowbrook Class members who live in ICF/DDs might be compromised.

Subject: Willowbrook Case Services add-on to the rate for Intermediate Care Facilities (ICF/DD).

Purpose: To establish a mechanism to pay for case management services for ICF/DD residents who are members of the Willowbrook Class.

Text of emergency/proposed rule: Subparagraph 681.14(c)(4)(xi) is added as follows:

(xi) Effective September 1, 2011, the rate shall be adjusted for providers with ICF/DD populations that include individuals who are Willowbrook Class members and who are accessing Willowbrook Case Services delivered by a non-State provider.

(a) The add-on to the rate shall be predicated on the number of Willowbrook Class members accessing Willowbrook Case Services delivered by a service coordinator who is qualified to provide Medicaid Service Coordination (see Subpart 635-5). Willowbrook Case Services are those case management services required by Appendix I of the Permanent Injunction ordered by the United States District Court of the Eastern District of New York on March 11, 1993 in the case of New York State Association for Retarded Children v. Cuomo, that exceed the case management services delivered by the QMRP in the ICF/DD.

(b) The amount of the additional reimbursement per provider on an annual basis shall be equal to the sum of the months in which each Willowbrook Class member residing in any of the provider's ICF/DDs receives Willowbrook Case Services over the span of the ICF/DD provider's accounting/reporting year multiplied by one half of the Medicaid Service Coordination fee established for Willowbrook Class members as identified in the Medicaid Service Coordination contract for providers of that service.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire November 29, 2011.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Regulatory Affairs Unit, Office for People With Developmental Disabilities, 44 Holland Ave., 3rd Floor, Albany, NY 12229, (518) 474-1830, email: Barbara.Brundage@opwdd.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority:

a. OPWDD has the statutory authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

b. OPWDD has the statutory responsibility for setting Medicaid rates and fees for other services in facilities licensed or operated by OPWDD, as stated in section 43.02 of the Mental Hygiene Law.

2. Legislative Objectives: These emergency/proposed amendments further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The emergency/proposed amend-

ments concern changes in OPWDD's approach for delivering case management services to some Willowbrook Class members who reside in ICF/DDs and they establish a mechanism to accommodate reimbursement for those services.

3. Needs and Benefits: OPWDD is legally bound to comply with requirements outlined in the Willowbrook Permanent Injunction issued by the US District Court for the Eastern District of New York on March 11, 1993 in *New York State Association for Retarded Children v. Cuomo*. The Permanent Injunction guarantees class members certain rights and sets standards for care. As with most individuals served by OPWDD, case management is the starting point for assessing and reassessing needs and directing an individual to appropriate services. Traditionally, in an Intermediate Care Facility (ICF/DD) setting, Qualified Mental Retardation Professionals (QMRPs) deliver case management services to the individuals residing there. In the case of Willowbrook Class members, the additional services required to provide the case management outlined in Appendix I of the Permanent Injunction have been provided by State employees, generally from the local Developmental Disabilities Services Office (DDSO). These additional services include functions that are important for the health, safety and welfare of these individuals, as discussed in the emergency justification. With attrition, the number of State employees available to deliver these additional case management services is dwindling. These emergency/proposed regulations address the need to find alternative means to deliver the requisite level of case management services. By the promulgation of these regulations, OPWDD is increasing the ICF/DD rate in order to provide a mechanism to sufficiently compensate the ICF/DD for payments to service coordination providers which will be providing these additional, essential services. It is expected that the transition from augmented services delivered by the State to augmented services delivered by non-state providers will occur on a gradual basis corresponding to the attrition rate of State employees who previously performed these services.

4. Costs:

a. Costs to the agency and to the State and its local governments: Additional reimbursement reflected in the ICF/DD Medicaid rates for the first year of implementation is expected to fall within a range from \$22,750 to \$166,000 which will be shared evenly by the State (approximately \$11,375 to \$83,000) and the federal (approximately \$11,375 to \$83,000) governments. This broad range is indicative of OPWDD's inability to predict the attrition rate for those State employees currently delivering the augmented services to Willowbrook Class members living in ICF/DDs or the fluctuation in the Willowbrook Class member population of the ICF/DDs. The costs to the State will be mitigated as it recognizes savings attributable to the attrition of State employees. There will be no additional costs to local governments as a result of these specific amendments because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services.

b. Costs to private regulated parties: There are no initial capital investment nor non-capital costs for providers of ICF/DD services. There will be an add-on to the rate for ICF/DD services to pay for the delivery of WCS when the services are needed. The amount of the add-on will be equivalent to the compensation paid to providers of service coordination for the provision of WCS. OPWDD estimates that the increase in compensation to private providers will fall within a range of \$22,750 to \$166,000. As noted above, OPWDD is unable to predict the rate of attrition of state service coordinators which will result in the need for the provision of WCS and the corresponding compensation to providers for the delivery of WCS.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: The ICF/DD providers with Willowbrook Class members in their ICF/DD populations who access Willowbrook Case Services will need to enter into an agreement with the deliverer of the services. This will involve a minimum of paperwork and some engagement of the Board of Directors. Service coordination providers who

choose to provide WCS will have routine paperwork associated with billing and documentation of service delivery.

7. Duplication: The emergency/proposed amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities.

8. Alternatives: In developing this emergency/proposed regulation, OPWDD consulted with representatives of provider associations to refine the approach and the reimbursement terms. It did not consider other avenues by which to plug the anticipated gap in mandated services because it regards this approach as the most expedient and efficacious in the long term.

9. Federal Standards: The emergency/proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: OPWDD is adopting the emergency amendments effective September 1, 2011. OPWDD expects to finalize the proposed regulations as soon as possible consistent with the timeframes established by the State Administrative Procedure Act.

There are minimal compliance activities required by these amendments. As discussed under "Paperwork," ICF/DD providers that serve Willowbrook Class members will need to execute agreements with a service coordination provider for the delivery of WCS.

Regulatory Flexibility Analysis

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

The regulations amend the ratesetting methodology for ICF/DD facilities to establish an add-on for Willowbrook Case Services (WCS). This will create a mechanism to compensate ICF/DDs for payments to non-state providers for the provision of these services. Because of these regulations, some small business providers of service coordination will have the option to be compensated to provide WCS. Service coordination providers will need to comply with requirements established for service delivery of WCS only if they choose to deliver these services.

As noted in the Regulatory Impact Statement, there will be an increase in Medicaid expenditures. However, there is no local share in this increase. These amendments do not impose any requirements on local governments.

The amendments will consequently have no adverse impacts on small businesses or local governments.

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 reporting, record keeping or other compliance requirements on public or private entities in rural areas. There will be no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

The regulations amend the rate setting methodology for ICF/DD facilities to establish an add-on for Willowbrook Case Services (WCS). This will create a mechanism to compensate ICF/DDs for payments to non-state providers for the provision of these services. Because of these regulations, some private providers of service coordination in rural areas will have the option to be compensated to provide WCS. Service coordination providers will need to comply with requirements established for service delivery of WCS only if they choose to deliver these services.

The amendments will consequently have no adverse impacts on public or private entities in rural areas.

Job Impact Statement

A job impact statement for these amendments is not being submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment.

The regulations amend the rate setting methodology for ICF/DD facilities to establish an add-on for Willowbrook Case Services (WCS).

This will create a mechanism to compensate ICF/DDs for payments to non-state providers of WCS. Because of these regulations, some private providers of service coordination will have the option to be compensated to provide WCS. Although in some circumstances these providers will utilize service coordinators who are currently employed by the agency, OPWDD generally expects that providers will hire new service coordinators to provide WCS. OPWDD expects that the number of new employment opportunities at non-state providers will be roughly equivalent to the decrease in the number of service coordinators employed by OPWDD which necessitated the promulgation of these regulations. Since rules governing the provision of the case management services are the same whether the services are delivered by state or non-state staff (e.g. mandated caseload size), the overall number of employees necessary to deliver the services should be about the same.

The amendments are consequently expected to have a neutral overall impact on jobs and employment opportunities.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Operation and Maintenance Procedures Pertaining to Steam Trap Caps

I.D. No. PSC-38-11-00002-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering a petition by Consolidated Edison Company of New York, Inc. to allow modification of steam operation and maintenance procedures pertaining to steam traps.

Statutory authority: Public Service Law, sections 2, 5, 79 and 80

Subject: Operation and maintenance procedures pertaining to steam trap caps.

Purpose: Adopt modified steam operation and maintenance procedures.

Substance of proposed rule: On August 4, 2011 the Consolidated Edison Company of New York, Inc. (Company) filed a petition requesting Commission approval of the Company's proposal to modify its steam trap cap inspection and replacement program. Specifically, the Company proposes: (1) to discontinue the inspection of steam trap caps for steam traps installed in new-style trap assemblies; (2) to modify the frequency of scheduled trap replacements from once every year to once every three years for steam traps installed in new-style trap assemblies; (3) that the Commission authorize the Staff of the Department of Public Service (Staff) to approve future Company proposals to either further extend the time between scheduled trap replacements or eliminate scheduled trap replacements; and (4) to discontinue the Company's quarterly written status reports on the feasibility of alternative trap designs and remote monitoring. The Company proposal is supported by new procedures, process changes, enhanced design of the trap assemblies, and equipment that have greatly improved steam trap inspection findings and is estimated to provide savings of approximately \$330,000 annually. The Commission may approve, reject or modify in whole or in part, the Company's request and may apply aspects of its decision here to the requirements for other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(07-S-0984SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of Certain Provisions of the Electric Service Tariffs of Con Edison

I.D. No. PSC-38-11-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering a filing from New York City requesting a waiver of certain provisions of the electric service tariffs of the Consolidated Edison Company of New York, Inc. (Con Edison).

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10) and (12)

Subject: Waiver of certain provisions of the electric service tariffs of Con Edison.

Purpose: Consideration of waiver of certain provisions of the electric service tariffs of Con Edison.

Substance of proposed rule: The Public Service Commission is considering a petition filed on August 24, 2011 by the City of New York, acting on behalf of its Department of Corrections (DOC), asking that it be decided that a cogeneration facility DOC plans to install at Rikers Island is eligible for standby delivery service of energy and capacity provided by the New York Power Authority under the terms contained in Consolidated Edison Company of New York Inc.'s tariffs at P.S.C. No. 2, Retail Access, S.C. No. 14-RA, Special Provision E. The City requests that any provisions of that tariff that prevent DOC from qualifying for standby service be waived. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-E-0464SP1)

**Appendix IV
2011 Title XIX State Plan
Fourth Quarter Amendment
Non-Institutional Services
Public Notice**

35. Huyler Building, Buffalo, Erie Co.
36. Newton Hopper Site, Elma, Erie Co.
37. Pioneer Cemetery, Evans, Erie Co.
38. Avon Five-Arch Bridge, Avon, Livingston County
39. J. P. Sommers House, Lancaster, Erie County
40. Rogers Mansion Museum Complex, Southampton, Suffolk Co.
41. Alexander Eustace House, Elmira, Chemung Co.
42. Knollwood, Town of Fine, St. Lawrence Co.
43. B'Nai Israel Temple, Olean, Cattaraugus Co.
44. Jefferson Street Cemetery, Ellicottville, Cattaraugus Co.
45. Lower Niagara River Spear Fishing Dock Historic District, Town of Lewiston, Niagara Co.
46. Smithfield Presbyterian Church, American, Dutchess Co.
47. District School No. 16, East Hebron, Washington Co.
48. St. George's Chapel, Mohegan Lake, Westchester Co.
49. Backus Farmstead, Pittstown, Rensselaer Co.
50. Norwood Methodist Church and Parsonage, Norwood, St. Lawrence Co.
51. Rowe Farm, Selkirk vic., Albany Co.
52. Copake Memorial Clock, Copake, Columbia Co.
53. BQ&T Trolley, Kingston, Ulster Co.
54. Marine Midland Trust Company Building, Binghamton, Broome Co.
55. Pyngyp School, Stony Point, Rockland Co.

Comments may be submitted to Ruth L. Pierpont, Acting Deputy Commissioner for Historic Preservation, attention Historic Preservation Field Services Bureau, Peebles Island, P.O. Box 189, Waterford, New York 12188-0189, no later than Tuesday, October 18 or may be submitted in person at the meeting by contacting Ruth L. Pierpont at the same address no later than October 18, 2011.

For further information, contact: Ruth L. Pierpont, Acting Deputy Commissioner for Historic Preservation, Peebles Island, P.O. Box 189, Waterford, NY 12188-0189, (518) 237-8643

PUBLIC NOTICE

Office for People with Developmental Disabilities
and
Department of Health

Pursuant to 42 CFR Section 447.205, the New York State Office for People With Developmental Disabilities (OPWDD) and the New York State Department of Health hereby give notice of the following:

OPWDD is planning to change its approach for delivering case management services to some Willowbrook Class members who reside in Intermediate Care Facilities (ICF/DDs) and will be establishing a mechanism to accommodate reimbursement for those services.

OPWDD is legally bound to comply with requirements outlined in the Willowbrook Permanent Injunction issued by the US District Court for the Eastern District of New York on March 11, 1993 in *New York State Association for Retarded Children v. Cuomo*. The Permanent Injunction guarantees class members certain rights and sets standards for care. In the case of Willowbrook Class members, the additional services required to provide the case management outlined in Appendix I of the Permanent Injunction have been provided by State employees, generally from the local Developmental Disabilities Services Office (DDSO). These additional services include functions that are important for the health, safety and welfare of these individuals. With attrition, the number of State employees available to deliver these additional case management services is dwindling. OPWDD plans to make this change to address the need to find alternative means to deliver the requisite level of case management services. By this change, OPWDD would be increasing the ICF/DD rate in order to provide a mechanism to sufficiently compensate the ICF/DD for payments to service coordination providers which will be providing these additional, essential services.

The regulations to implement this change will include the methodol-

ogy for the calculation of the add-on to the ICF/DD rate. On an annual basis, the amount of the add-on is set at half of the MSC Vendor Contract payment for MSC provided for Willowbrook Class members times the number of months each Willowbrook Class member residing in any of the provider's ICF/DDs receives Willowbrook Case Services over the span of the ICF/DD provider's accounting/reporting year.

Additional reimbursement reflected in the ICF/DD Medicaid rates for the first year of implementation is expected to fall within a range from \$22,750 to \$166,000. The costs to the State will be mitigated as it recognizes savings attributable to the attrition of State employees.

Texts of regulations to implement this change will be distributed to the offices of the local (county) Mental Hygiene Directors and are available for public review. To determine the location of your local Mental Hygiene Director including the office within Manhattan (New York County), you may access a list online at <http://clmhd.org/about/countydirectory.aspx>.

In New York City, the text of the regulations will be available at the following Developmental Disabilities Services Office locations:

Metro New York DDSO
75 Morton St.
New York, NY 10014

Bernard M. Fineson DDSO
80-45 Winchester Blvd.
Administration Bldg. 80-00
Queens Village, NY 11427

Brooklyn DDSO
888 Fountain Ave.
Brooklyn, NY 11208

Metro New York DDSO
2400 Halsey St.
Bronx, NY 10461

Staten Island DDSO
1150 Forest Hill Rd.
Staten Island, NY 10314

The text of the regulations may also be found on the OPWDD internet website at <http://www.opwdd.ny.gov/regs/index.jsp> or at the NYS Department of State website.

The public is invited to review and comment on these proposed changes.

For further information and to review and comment, please contact: Barbara Brundage, Regulatory Affairs Unit, Office of Counsel, Office for People with Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830, Fax (518) 474-7382, e-mail: Barbara.Brundage@opwdd.ny.gov

SALE OF FOREST PRODUCTS Cortland Reforestation Area No. 4 Contract No. X008240

Pursuant to Section 9-0505 of the Environmental Conservation Law, the Department of Environmental Conservation hereby gives Public Notice of the following:

Sealed bids for 150.8 MBF more or less of sawtimber and 230 cords more or less of hardwood pulp, located on Cortland Reforestation Area No. 4, Morgan Hill State Forest, Stand B-34.2, will be accepted at the Department of Environmental Conservation, Contract Unit, 625 Broadway, 10th Fl., Albany, NY 12233-5027 until 11:00 a.m., Thursday, Aug. 25, 2011.

For further information, contact: Mark Zupal, Senior Forester,

Appendix V
2011 Title XIX State Plan
Fourth Quarter Amendment
Non-Institutional Services
Responses to Standard Funding Questions

**NON-INSTITUTIONAL SERVICES
State Plan Amendment #11-92**

CMS Standard Funding Questions

The following questions are being asked and should be answered in relation to all payments made to all providers reimbursed pursuant to a methodology described in Attachment 4.19-D of this SPA. For SPAs that provide for changes to payments for clinic or outpatient hospital services or for enhanced or supplemental payments to physician or other practitioners, the questions must be answered for all payments made under the state plan for such service.

- 1. Section 1903(a)(1) provides that Federal matching funds are only available for expenditures made by States for services under the approved State plan. Do providers receive and retain the total Medicaid expenditures claimed by the State (includes normal per diem, supplemental, enhanced payments, other) or is any portion of the payments returned to the State, local governmental entity, or any other intermediary organization? If providers are required to return any portion of payments, please provide a full description of the repayment process. Include in your response a full description of the methodology for the return of any of the payments, a complete listing of providers that return a portion of their payments, the amount or percentage of payments that are returned and the disposition and use of the funds once they are returned to the State (i.e., general fund, medical services account, etc.).**

Response: OPWDD's ICF/DD rate setting methodology includes a 5.5 provider assessment on the gross receipts of the ICF/DD facility. This assessment is authorized by Public Law 102-234, Section 43.04 of the New York State Mental Hygiene Law, Federal Medicaid regulations at 42 CFR 433.68, and Attachment 4.19-D, Part II page 29. All voluntary and State-operated ICF/DDs are subject to this provider assessment. Using "Authorization to Withhold" forms submitted by voluntary providers, OPWDD recoups the assessment from the ICF/DD Medicaid payment before the payment is sent to the voluntary provider. This assessment is deposited into a fund called "Assessments for Business Organizations".

For State operated ICF/DDs, the legislature appropriates an amount for payment of the assessment. Periodically, funds from this appropriation are used to pay the assessment. These amounts are deposited into the general fund of the State Treasury.

Aside from the assessments, providers receive and retain all the Medicaid payments for ICF/DD services.

- 2. Section 1902(a)(2) provides that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan. Please describe how the state share of each type of Medicaid payment (normal per diem, supplemental, enhanced, other) is funded. Please describe whether the state share is from appropriations from the legislature to the Medicaid agency, through intergovernmental transfer agreements (IGTs), certified public expenditures (CPEs), provider taxes, or any other mechanism used by the state to provide**

state share. Note that, if the appropriation is not to the Medicaid agency, the source of the state share would necessarily be derived through either through an IGT or CPE. In this case, please identify the agency to which the funds are appropriated. Please provide an estimate of total expenditure and State share amounts for each type of Medicaid payment. If any of the non-federal share is being provided using IGTs or CPEs, please fully describe the matching arrangement including when the state agency receives the transferred amounts from the local governmental entity transferring the funds. If CPEs are used, please describe the methodology used by the state to verify that the total expenditures being certified are eligible for Federal matching funds in accordance with 42 CFR 433.51(b). For any payment funded by CPEs or IGTs, please provide the following:

- (i) a complete list of the names of entities transferring or certifying funds;
- (ii) the operational nature of the entity (state, county, city, other);
- (iii) the total amounts transferred or certified by each entity;
- (iv) clarify whether the certifying or transferring entity has general taxing authority: and,
- (v) whether the certifying or transferring entity received appropriations (identify level of appropriations).

Response: For services delivered by non-State operated ICF/DDs, the source of funds for the State share is tax revenues appropriated to OPWDD. When these ICF/DDs bill eMedNY for payment, the Department of Health covers the non-federal share expenditures in the first instance. Throughout the state fiscal year, such expenditures are applied against OPWDD appropriations by the transfer of funds from OPWDD to DOH. The total amount to be transferred from OPWDD to DOH for non-State operated ICF/DDs for the current fiscal year is projected at approximately \$331.7 million.

State tax revenues are the source of funds for the state share for ICF/DD services delivered by OPWDD. The non-federal share is appropriated to the DOH and paid to OPWDD along with the federal share. The total amount appropriated to DOH for ICF/DD services delivered by OPWDD and projected to be transferred to OPWDD for the current fiscal year is approximately \$1.2 billion.

3. **Section 1902(a)(30) requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) provides for Federal financial participation to States for expenditures for services under an approved State plan. If supplemental or enhanced payments are made, please provide the total amount for each type of supplemental or enhanced payment made to each provider type.**

Response: No supplemental or enhanced payments are made in the ICF/DD program.

4. **For clinic or outpatient hospital services please provide a detailed description of the methodology used by the state to estimate the upper payment limit**

(UPL) for each class of providers (State owned or operated, non-state government owned or operated, and privately owned or operated). Please provide a current (i.e., applicable to the current rate year) UPL demonstration.

Response: This plan amendment does not concern clinic or outpatient hospital services.

- 5. Does any governmental provider receive payments that in the aggregate (normal per diem, supplemental, enhanced, other) exceed their reasonable costs of providing services? If payments exceed the cost of services, do you recoup the excess and return the Federal share of the excess to CMS on the quarterly expenditure report?**

Response: OPWDD operated ICF/DDs may receive payments that in the aggregate exceed their cost of providing services. The State does not recoup the excess or return the federal share of the excess to CMS.

Tribal Assurance:

- 1. The State needs to verify it is in compliance with the provisions of Section 5006 of the Recovery Act concerning tribal consultations for the SPA, or an explanation why the provisions did not apply in this instance.**

Response: In New York State, Indian Health Programs and Urban Indian Organizations do not furnish long-term care services; therefore, solicitation of advice on this issue was not applicable.

ACA Assurances:

- 1. Maintenance of Effort (MOE).** Under section 1902(gg) of the Social Security Act (the Act), as amended by the Affordable Care Act, as a condition of receiving any Federal payments under the Medicaid program during the MOE period indicated below, the State shall not have in effect any eligibility standards, methodologies, or procedures in its Medicaid program which are more restrictive than such eligibility provisions as in effect in its Medicaid program on March 10, 2010.

MOE Period.

- **Begins on:** March 10, 2010, and
- **Ends on:** The date the Secretary of the Federal Department of Health and Human Services determines an Exchange established by a State under the provisions of section 1311 of the Affordable Care Act is fully operational.

Response: This SPA complies with the conditions of the MOE provision of section 1902(gg) of the Act for continued funding under the Medicaid program.

- 2. Section 1905(y) and (z) of the Act provides for increased FMAPs for expenditures made on or after January 1, 2014 for individuals determined eligible under section 1902(a)(10)(A)(i)(VIII) of the Act. Under section 1905(cc) of the Act, the increased FMAP**

under sections 1905(y) and (z) would not be available for States that require local political subdivisions to contribute amounts toward the non-Federal share of the State's expenditures at a greater percentage than would have been required on December 31, 2009.

Prior to January 1, 2014 States may potentially require contributions by local political subdivisions toward the non-Federal share of the States' expenditures at percentages greater than were required on December 31, 2009. However, because of the provisions of section 1905(cc) of the Act, it is important to determine and document/flag any SPAs/State plans which have such greater percentages prior to the January 1, 2014 date in order to anticipate potential violations and/or appropriate corrective actions by the States and the Federal government.

Response: This SPA would [] / would not [] violate these provisions, if they remained in effect on or after January 1, 2014.

3. Section 1905(aa) of the Act provides for a "disaster-recovery FMAP" increase effective no earlier than January 1, 2011. Under section 1905(cc) of the Act, the increased FMAP under section 1905(aa) of the Act is not available for States that require local political subdivisions to contribute amounts toward the non-Federal share of the State's expenditures at a greater percentage than would have been required on December 31, 2009.

Response: This provision is not applicable as this SPA does not qualify for such increased FFP.

4. This SPA complies with the requirements of section 1902(a)(37) of the Act regarding prompt payment of claims.