

**NEW YORK**  
*state department of*  
**HEALTH**

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

Sue Kelly  
Executive Deputy Commissioner

June 30, 2012

National Institutional Reimbursement Team  
Attention: Mark Cooley  
CMS, CMCS  
7500 Security Boulevard, M/S S3-14-28  
Baltimore, MD 21244-1850

RE: SPA #12-03  
Long Term Care Facility Services

Dear Mr. Cooley:

The State requests approval of the enclosed amendment #12-03 to the Title XIX (Medicaid) State Plan for long term care facility services to be effective July 1, 2012 (Appendix I). This amendment is being submitted based on enacted legislation. 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).

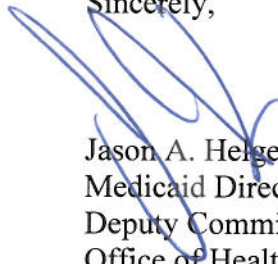
1. The State of New York pays for long-term care services using rates determined in accordance with methods and standards specified in an approved State Plan following a public process which complies with §1902(a)(13)(A) of the Social Security Act.
2. (a) It is estimated that the changes represented 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 intermediate care facilities for the developmentally disabled (ICF/DDs) for each prescribed category of providers does not exceed the upper payment limit for the particular category of providers.

A copy of the pertinent section of enacted State statute is enclosed for your information (Appendix III). A copy of the public notice of this proposed amendment, which was given in the New York State Register on June 27, 2012, is also enclosed for your information (Appendix IV). In addition responses to the five standard funding questions and standard access questions are also enclosed (Appendix V and VII, respectively).

If you have any questions regarding this matter, please do not hesitate to contact John E. Ulberg, Jr., Medicaid Chief Financial Officer, Division of Finance and Rate Setting at (518) 474-6350.

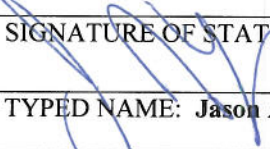
Sincerely,



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

Enclosures

cc: Mr. Michael Melendez  
Mr. Tom Brady

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b>		1. TRANSMITTAL NUMBER: <b>#12-03</b>	2. STATE
<b>FCM HEALTH CARE FINANCING ADMINISTRATION</b>		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
		4. PROPOSED EFFECTIVE DATE <b>July 1, 2012</b>	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES			
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 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 Part 447		7. FEDERAL BUDGET IMPACT: a. FFY 07/01/12-09/30/12    \$ 0 b. FFY 10/01/12-09/30/13    \$(41,500,000)	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:  <b>Attachment 4.19-D, Part II: Pages 62, 63, 64, 65, 66, 67, 68, 69</b>		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT ( <i>If Applicable</i> ):	
10. SUBJECT OF AMENDMENT: <b>OPWDD-Rate Setting for State Operated Intermediate Care Facilities (FMAP = 50%)</b> <ul style="list-style-type: none"> <li>• FFY 10/01/13 – 9/30/14 \$(111,000,000), FFY 10/01/14 – 9/30/15 \$(156,500,000), FFY 10/01/15 – 9/30/16 \$(188,500,000)</li> <li>• FFY 10/01/16 – 9/30/17 \$(501,000,000), FFY 10/01/17 – 9/30/18 \$(799,000,000)</li> </ul>			
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:	
13. TYPED NAME: <b>Jason A. Helgerson</b>			
14. TITLE: <b>Medicaid Director &amp; Deputy Commissioner Department of Health</b>			
15. DATE SUBMITTED: <b>June 30, 2012</b>			
<b>FOR REGIONAL OFFICE USE ONLY</b>			
17. DATE RECEIVED:		18. DATE APPROVED:	
<b>PLAN APPROVED – ONE COPY ATTACHED</b>			
19. EFFECTIVE DATE OF APPROVED MATERIAL:		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME:		22. TITLE:	
23. REMARKS:			

**Appendix I**  
**2012 Title XIX State Plan**  
**Second Quarter Amendment**  
**Long-Term Care Facility Services**  
**Amended SPA Pages**



m) Effective July 1, 2012, rate setting for facilities operated by New York State will be governed by the Definitions applicable; Reporting requirements; Appeals to rates; Reserve bed days for overnight absences for hospitalization or leaves of absence in facilities; General Rules for Capital Costs and Costs of Related Party Transactions; Glossary sections, and this section of Part II of Attachment 4.19-D. These facilities include developmental centers, over-30 bed State operated Intermediate Care Facilities for the Developmentally Disabled (ICF/DDs) and under-30 bed State operated ICF/DDs.

**(1) Units of Service.**

- (i) A unit of service is the unit of measure denoting lodging and services rendered to one consumer between the census taking hours of the facility on two successive days; the day of admission but not the day of discharge will be counted. One unit of service will be counted if the consumer is discharged on the same day the consumer is admitted, providing there was an expectation that the admission would have at least a 24-hour duration.
- (ii) Reserve bed days determined in accordance with Attachment 4.19-C of the State Plan are units of service.

**(2) Rate Cycle.**

- (i) The rate cycle is comprised of a base period and subsequent period or periods.
  - (a) The base period regardless of region is the first 12-month period of the rate cycle; however, the first base period will be July 1, 2012 to March 31, 2013.
  - (b) Each subsequent period will begin April 1 and end the following March 31.

**(3) Computation of Rates (General).**

- (i) All rates will not be final unless approved by the Director of the Division of the Budget.
- (ii) The Commissioner of the Office of People with Developmental Disabilities (OPWDD) may make adjustments to rates based upon allowable costs as determined by the Allowable costs (general); the General Rules for Capital Costs and Costs of Related Party Transactions; and Glossary sections of Part II of this Attachment.
- (iii) The Commissioner may also make adjustments based on errors which occurred in the computation of the rate, changes in certified capacity/census, changes in payments for real property which have the approval of the Director of the Division of the Budget, or

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- (i) Trended reimbursable operating costs + untrended reimbursable operating costs + reimbursable capital costs = total reimbursable costs.
  - (ii) Total reimbursable costs / units of service = the rate.
- (b) Since July 1, 1996, Developmental Centers have been responsible for any necessary transportation to and from physician, dentist, and other clinical services, and any other transportation appropriate to the consumer's participation in community based out of residence activities planned for or sponsored by the facility. Nothing herein shall be interpreted as precluding the accessing of separate Medicaid claiming for emergency/nonemergency ambulance services necessitated by the consumer's medical condition.

**(4) Computation of the base period rate.**

- (i) For each facility the Commissioner will establish rates in accordance with the census or the certified capacity in the facility's provider agreement.
- (ii) The base period rate for all facilities regardless of region, will be computed on the basis of a full 12-month cost report for the period beginning April 1, 2009, adjusted in accordance with paragraph (3)(ii) of this section. Thereafter, the base period rates for under thirty-one bed facilities , over thirty bed facilities, and developmental centers will be computed on the basis of a full 12-month cost report for the 12-month period beginning 36 months prior to the effective date of the rate period. For a newly certified under thirty-one bed facilities and over thirty bed facilities, OPWDD will use budget data.
- (iii) For a newly certified facility, the initial base period rate will be determined pursuant to paragraph (5)(ii) of this section. For under thirty-one bed facilities and over thirty bed facilities the units of service are determined by multiplying the certified capacity of the facility by 365 days. A facility's submitted budget costs may be adjusted based on a comparison to the actual costs of other existing facilities operated by New York State in order to determine the costs of an efficient and economic operation.
- (iv) For facilities which are not newly certified facilities, the initial base period rate shall be determined pursuant to paragraph (5)(ii) of this section. For under thirty-one bed facilities, over thirty bed facilities, and developmental centers regardless of region, the units of service are determined by multiplying the certified capacity/census of the facility by 365 days and by the historical utilization pattern from the base year cost report.
- (v) As appropriate, OPWDD will apply trend factors to each facility's reimbursable operating costs, except for education and related services.

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- (vi) There will be a day program services add-on so that facilities which have day program services included in their rate will be reimbursed as follows for these services. The add-on will reflect service needs as well as efficiency and economy of operation.
- (a) Effective January 1, 2003, a provider may request that a day services add-on be included in the facility's rate. The day program services add-on for all day program services will be either the day program services reimbursement included in the rate on December 31, 2002 and adjusted for actual service delivery; or the lower of:
- (1) the actual costs per the cost report, or  
(2) the budget costs.
- Such costs are subject to a desk audit.
- (b) Effective June 1, 1995, the facility will be reimbursed for education and related services. These costs will not be trended.

**(5) Computation of the subsequent period rate.**

- (i) The reimbursable operating costs contained in the subsequent period rates will be computed as follows. OPWDD will determine the total reimbursable operating costs (with the exception of education and related service costs, sheltered workshop services, day training services) included in the payment rate in effect on March 31 of the immediately preceding rate period applicable to that facility. The reimbursable operating costs for day program services will be revised based upon the number of individuals participating in the program. The reimbursable operating costs plus any revised day program costs will be increased by the trend factor described in paragraph (7) of this section and may be adjusted for appropriate appeals. Education and related services reimbursable operating costs will be updated. OPWDD will determine the capital cost portion of the subsequent period rate by reviewing the component relating to capital costs for substantial material changes. If such changes conform to the requirements of the Allowable costs (general) and Allowable costs (capital) paragraphs of the Allowable costs section; the General Rules for Capital Costs and Costs of Related Party Transactions section; and the Glossary section of Part II of this Attachment, OPWDD will make corresponding adjustments in computing the subsequent period rate.
- (ii) The computation of the rate resulting from the application of this paragraph can also be represented by the following formula:
- (a) trended reimbursable operating costs + untrended reimbursable operating costs + reimbursable capital costs = total reimbursable costs.
- (b) total reimbursable costs / units of service = the rate.

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**(6) Reimbursable Costs for the July 1, 2012 to March 31, 2013 base period rate.****(i) Administration reimbursement**

A per person average staffing ratio will be calculated using the 4/1/2009-3/31/2010 cost report. The total number of Administration FTE's (full time equivalents) is divided by the corresponding certified capacity/census from the 4/1/2009-3/31/2010 cost report which will produce an Administration staffing ratio.

(a) An average Administration salary will be calculated using the 4/1/2009-3/31/2010 cost report by taking the total annual salary of all Administration employees divided by total Administration FTE's.

(b) The Administration staffing ratio is then multiplied by the beginning certified capacity/census on March 31 immediately prior to the beginning of the rate period. The product of this calculation is the total number of Administration FTE's.

(c) The calculated average Administration salary is then multiplied by the calculated Administration FTE's. The product of this calculation is the total Administration salary cost.

(d) The result of paragraph (6)(i)(c) is then trended in accordance with paragraph (7) then divided by the total units as projected on March 31 immediately prior to the beginning of the rate period to derive at the Administration salary cost per diem.

(e) To arrive at the non-personal service costs for facilities operated by New York State, a per person categorical average was calculated using the total non-personal service Administration expenditures from the 4/1/2009-3/31/2010 cost report divided by the certified capacity/census on March 31 immediately prior to the beginning of the rate period. The result is trended in accordance with paragraph (7) then divided by the total units as projected on March 31 immediately prior to the beginning of the rate period to derive at the non-personal service Administration cost per diem.

**(ii) Direct Care reimbursement**

A per person average staffing ratio will be calculated using the 4/1/2009-3/31/2010 cost report. The total number of direct care FTE's (full time equivalents) is divided by the corresponding certified capacity/census from the 4/1/2009-3/31/2010 cost report which will produce a Direct Care staffing ratio.

(a) An average Direct Care salary is calculated using the 4/1/2009-3/31/2010 cost report by taking the total annual salary of all Direct Care employees divided by total Direct Care FTE's.

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- (b) The Direct Care staffing ratio is multiplied by the beginning certified capacity/census on March 31 immediately prior to the beginning of the rate period. The product of this calculation is the total number of Direct Care FTE's.
- (c) The calculated average Direct Care salary is then multiplied by the calculated Direct Care FTE's. The product of this calculation is the total Direct Care salary cost.
- (d) The result of paragraph (6)(ii)(c) is trended in accordance with paragraph (7) then divided by the total units as projected on March 31 immediately prior to the beginning of the rate period to derive at the Direct Care salary per diem.

(iii) Support reimbursement

A per person average staffing ratio will be calculated using the 4/1/2009-3/31/2010 cost report. The total number of Support FTE's (full time equivalents) is divided by the corresponding certified capacity/census from the 4/1/2009-3/31/2010 cost report which will produce a Support staffing ratio.

- (a) An average Support salary is calculated using the 4/1/2009-3/31/2010 cost report by taking the total annual salary of all Support employees divided by total Support FTE's.
- (b) The Support staffing ratio is then multiplied by the beginning certified capacity/census on March 31 immediately prior to the beginning of the rate period. The product of this calculation is the total number of Support FTE's.
- (c) The calculated average Support salary is multiplied by the calculated Support FTE's. The product of this calculation is the total Support salary cost.
- (d) The result of paragraph (6)(iii)(c) is trended in accordance with paragraph (7) then divided by the total units as projected on March 31 immediately prior to the beginning of the rate period to derive at the Support salary per diem.
- (e) To arrive at non-personal service costs for facilities operated by New York State, a per person categorical average was calculated using the total non-personal service Support expenditures from the 4/1/2009-3/31/2010 cost report divided by the certified capacity/census on March 31 immediately prior to the beginning of the rate period. The result is trended in accordance with paragraph (7) then divided by the total units as projected on March 31 immediately prior to the beginning of the rate period to derive at the non-personal service Support cost per diem.

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(iv) Clinical reimbursement

A per person average Clinical staffing ratio will be calculated using the 4/1/2009-3/31/2010 cost report. The total number of Clinical FTE's (full time equivalents) is divided by the corresponding certified capacity/census from the 4/1/2009-3/31/2010 cost report which will produce the Clinical staffing ratio.

(a) An average Clinical salary is calculated using the 4/1/2009-3/31/2010 cost report by taking the total annual salary of all Clinical employees divided by total Clinical FTE's.

(b) The Clinical staffing ratio is multiplied by the beginning certified capacity/census on March 31 immediately prior to the beginning of the rate period. The product of this calculation is the total number of Clinical FTE's.

(c) The calculated average salary is then multiplied by the calculated Clinical FTE's . The product of this calculation is the total Clinical salary cost.

(d) The result of paragraph (6)(iv)(c) is trended in accordance with paragraph (7) then divided by the total units as projected on March 31 immediately prior to the beginning of the rate period to derive at the Clinical salary cost per diem.

(v) The fringe benefits are applied to the trended allowable personal service dollars at a rate allowed by the NYS Division of Budget/Office of the State Controller (OSC) in its annual accounting bulletin regarding fringe benefits paid to NYS employees. The result is divided by the total units as projected on March 31 immediately prior to the beginning of the rate period to derive at the fringe per diem.

(vi) The utilities cost will be included within the support non-personal service reimbursement as explained in paragraph (6)(iii)(e) of this section.

(vii) Sum products of paragraphs (6)(i)(d),(6)(i)(e), 6(ii)(d), (6)(iii)(d),(6)(iii)(e) and (6)(iv)(d) of this section to arrive at the total trended reimbursable per diem.

**(7) Trend Factors.**

Trend factors will be based on the percentage increase as reported from the U.S. Bureau of Labor and Statistics and will be based on the annual July to July movement of the CPI-U Medical Services Index.

**(8) Supplemental payment.**

(i) In addition to the per-diem as calculated above, facilities operated by the State of New York will be paid a monthly supplemental payment.

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(ii) The annual total computable amount of supplemental payments paid for all State-operated facilities will be the following amounts:

<u>2012/2013</u>	<u>\$1,598,000,000</u>
<u>2013/2014</u>	<u>\$1,432,000,000</u>
<u>2014/2015</u>	<u>\$1,320,000,000</u>
<u>2015/2016</u>	<u>\$1,250,000,000</u>
<u>2016/2017</u>	<u>\$1,192,000,000</u>
<u>2017/2018 and thereafter</u>	<u>\$0</u>

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**Appendix II**  
**2012 Title XIX State Plan**  
**Second Quarter Amendment**  
**Long-Term Care Facility Services**  
**Summary**

**SUMMARY**  
**SPA #12-03**

This State Plan Amendment implements changes to the reimbursement methodology for developmental centers, State operated over-30- bed ICF/DDs and State-operated under 31 bed ICF/DDs, effective July 1, 2012.



**Appendix III**  
**2012 Title XIX State Plan**  
**Second Quarter Amendment**  
**Long-Term Care Facility Services**  
**Authorizing Provisions**

**Authorizing Provisions**  
**SPA 12-03**

**New York Mental Hygiene Law § 13.07 (a)**

The office for people with developmental disabilities shall assure the development of comprehensive plans, programs, and services in the areas of research, prevention, and care, treatment, habilitation, rehabilitation, vocational and other education, and training of individuals with developmental disabilities. Such plans, programs, and services shall be developed by the cooperation of the office, other offices of the department where appropriate, other state departments and agencies, local governments, community organizations and agencies providing services to individuals with developmental disabilities, their families and representatives. It shall provide appropriate facilities, programs, supports and services and encourage the provision of facilities, programs, supports and services by local government and community organizations and agencies.

**New York Mental Hygiene Law § 13.15 (a)**

The commissioner shall plan, promote, establish, develop, coordinate, evaluate, and conduct programs and services of prevention, diagnosis, examination, care, treatment, rehabilitation, training, and research for the benefit of individuals with developmental disabilities. Such programs shall include but not be limited to in-patient, out-patient, partial hospitalization, day care, emergency, rehabilitative, and other appropriate treatments and services. He shall take all actions that are necessary, desirable, or proper to implement the purposes of this chapter and to carry out the purposes and objectives of the office within the amounts made available therefor by appropriation, grant, gift, devise, bequest, or allocation from the mental health services fund established under section ninety-seven-f of the state finance law.

**New York Mental Hygiene Law § 43.02 (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 or operated by the office for people with developmental disabilities pursuant to article sixteen of this chapter . . . shall be at rates or fees certified by the commissioner of the . . . office and approved by the director of the division of the budget . . . .

**Appendix IV  
2012 Title XIX State Plan  
Second Quarter Amendment  
Long-Term Care Facility Services  
Public Notice**



Department of Health, Bureau of HCRA Operations & Financial Analysis, Corning Tower Bldg., Rm. 984, Empire State Plaza, Albany, NY 12237, (518) 474-1673, (518) 473-8825 (FAX), e-mail: spa\_inquiries@health.state.ny.us

## PUBLIC NOTICE

### Monroe County

Monroe County is issuing requests for proposals for the following services. Request for proposal documents are available at [www.monroecounty.gov/bid/rfps](http://www.monroecounty.gov/bid/rfps). There will be no formal opening of proposals. Proposals must be received at the date, time and location identified in the request for proposal.

#### Deferred Compensation Plan

Proposals are due 7/27/12 by 5:00pm.

Send responses to: Brayton McK. Connard, SPHR, Chairman, Monroe County Deferred Compensation Committee, c/o County of Monroe, Department of Human Resources, 39 W. Main St., 210 County Office Bldg., Rochester, NY 14614

## 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:

The State proposes to change the methods and standards for setting Medicaid payment rates for intermediate care facilities for the developmentally disabled (ICF/DDs) that are operated by the New York State Office for People with Developmental Disabilities (OPWDD), residential and day habilitation programs operated by OPWDD and Medicaid service coordination. The ICF/DDs operated by OPWDD include developmental centers, over thirty bed State operated ICF/DDs and under thirty bed State operated ICF/DDs.

The ICF/DD methodology will change effective July 1, 2012. There will be a rate cycle which will consist of a base period and subsequent period or periods. The base period will be July 1, 2012 to March 31, 2013. Each subsequent period will begin April 1 and end the following March 31. The rate will be total reimbursable costs divided by the units of service. Total reimbursable costs will be trended reimbursable operating costs, untrended reimbursable operating costs (education and related service costs, sheltered workshop services, day training services and day services costs) and reimbursable capital costs.

The units of service for the base period rate will be based on the census or certified capacity. The base period rate will be computed on the basis of a full twelve month cost report for the period beginning April 1, 2009. Thereafter, the base period rates will be computed on the basis of a cost report for the twelve month period beginning 36 months prior to the rate period.

For the base period rates for existing ICF/DDs, OPWDD will determine total reimbursable per diem amounts for the categories of administration, direct care, support and clinical. Using census/certified capacity, there will be an average salary and staffing ratio calculated using the 4/1/2009-3/31/2010 cost report. Using census/certified capacity OPWDD will also calculate a per person non personal service amount based on the 2009 - 2010 cost report. OPWDD will apply fringe benefits to the personal service dollars at a rate stated in the Office of the State Controller annual accounting bulletin regarding fringe benefits paid to New York State employees.

Trend factors will be based on the percentage increase as reported from the U.S. Bureau of Labor and Statistics website; it will be based on the annual July to July movement of the CPI-U Medical Services Index. In addition to the per-diem rate, ICF/DDs operated by the State will be paid a supplemental payment as they transition to the new payment structure. The supplemental payment will be phased out over several years.

The methodologies for residential and day habilitation will change effective July 1, 2012. There will be a price cycle which will consist of a base period and subsequent period or periods. The base price period

will be July 1, 2012 to March 31, 2013. Each subsequent period will begin April 1 and end the following March 31. The price will be total reimbursable costs divided by the units of service.

The base period price will be computed on the basis of a full twelve month cost report for the period beginning April 1, 2009. Thereafter, the base period prices will be computed on the basis of a cost report for the twelve month period beginning 36 months prior to the price period.

For the base period price OPWDD will determine total reimbursable operating costs. OPWDD will determine total reimbursable per unit of service amounts for the categories of administration, direct care, support and clinical. Using capacity, there will be an average salary and staffing ratio calculated using the 4/1/2009-3/31/2010 cost report. Using capacity OPWDD will also calculate a per person non personal service amount based on the 2009 - 2010 cost report. OPWDD will apply fringe benefits to the personal service dollars at a rate stated in the Office of the State Controller annual accounting bulletin regarding fringe benefits paid to New York State employees.

Trend factors will be based on the percentage increase as reported from the U.S. Bureau of Labor and Statistics website; it will be based on the annual July to July movement of the CPI-U Medical Services Index. In addition to the price, State operated day and residential habilitation programs will be paid a supplemental payment. In addition to the price, residential and day habilitation programs operated by the State will be paid a supplemental payment as they transition to the new payment structure. The supplemental payment will be phased out over several years.

Effective 10/1/12 for Medicaid Service Coordination, OPWDD will no longer be the sole provider of the service. For voluntary providers of MSC, the payment will remain at the current level. For State provided MSC, reimbursement will be based upon adjusted 2009/10 cost data trended to 4/1/12. In addition, MSC services provided by the State will be paid a supplemental payment as they transition to the new payment structure. The supplemental payment will be phased out over several years.

The reason for all of these proposed changes is to more closely align rates and prices with the costs of providing these services.

The State estimates that there will be no increase or decrease in annual aggregate expenditures as a result of this change.

Outside New York City, a detailed description of the changes is available for public review at the following addresses:

Albany  
Albany County Department of Mental Health  
175 Green St.  
Albany NY 12202

Allegany  
Allegany County Mental Health Department  
45 North Broad St.  
Wellsville NY 14895

Broome  
Broome County Mental Health Department  
229-231 State St., Fl 4  
Binghamton NY 13901-6635

Cattaraugus  
Cattaraugus County Community Services  
1 Leo Moss Dr., Suite 4308  
Olean NY 14760

Cayuga  
Cayuga County Mental Health Department  
146 North St.  
Auburn NY 13021  
Chautauqua

Chautauqua County Mental Health Services  
HRC Bldg., 7 N. Erie St., 1st Floor  
Mayville NY 14757

Chemung  
Chemung County Mental Health Hygiene Department  
425 Pennsylvania Ave.  
Elmira NY 14902

Chenango  
Chenango County Mental Hygiene Services  
County Office Bldg., 5 Court St., Ste. 42  
Norwich NY 13815

Clinton  
Clinton County Mental Health/Addictions Services  
16 Ampersand Dr.  
Plattsburgh NY 12901

Columbia  
Columbia County Department of Human Services  
325 Columbia St.  
Hudson NY 12534

Cortland  
Cortland County Community Services  
7 Clayton Ave.  
Cortland NY 13045

Delaware  
Delaware County Mental Health Clinic  
1 Hospital Rd.  
Walton NY 13856

Dutchess  
Dutchess County Department of Mental Hygiene  
82 Washington St.  
Poughkeepsie NY 12601

Erie  
Erie County Department of Mental Health  
95 Franklin St., Rm. 1237  
Buffalo NY 14202

Essex  
Essex County Mental Health Services  
7513 Court St.  
Elizabethtown NY 12932

Franklin  
Franklin County Community Services  
70 Edgewood Rd., PO Box 1270  
No. Saranac Lake NY 12983

Fulton  
Fulton County Mental Health Clinic  
57 E. Fulton St., Rm. 106  
Gloversville NY 12078

Genesee  
Genesee County Mental Health Services  
5130 E. Main Rd., Suite 2

Batavia NY 14020

Greene  
Greene County Department of Mental Health  
905 Greene County Office Bldg.  
Cairo NY 12413

Hamilton  
Hamilton County Community Services  
83 White Birch Lane  
Indian Lake NY 12842

Herkimer  
Herkimer County Mental Health Services  
301 North Washington St., Ste. 2470  
Herkimer NY 13350

Jefferson  
Jefferson County Community Services  
175 Arsenal St.  
Watertown NY 13601

Lewis  
Lewis County Mental Hygiene Department  
7714 Number Three Rd.  
Lowville NY 13367

Livingston  
Livingston County Community Services  
4600 Millennium Dr.  
Geneseo NY 14454

Madison  
Madison County Mental Health Department  
Veterans' Memorial Bldg.  
Wampsville NY 13163

Monroe  
Monroe County Office of Mental Health  
1099 Jay St., Bldg. J, Ste. 201A  
Rochester NY 14611

Montgomery  
Montgomery County Department of Community Services  
St. Mary's Hospital, 427 Guy Park Ave.  
Amsterdam NY 12010

Nassau  
Nassau County Department of Mental Health,  
Chemical Dependency and Developmental Disabilities Services  
60 Charles Lindberg Blvd., Ste. 200  
Uniondale NY 11553

Niagara  
Niagara County Department of Mental Health  
5467 Upper Mountain Rd., Ste. 200  
Lockport NY 14094

Oneida  
Oneida County Department of Mental Health  
235 Elizabeth St.  
Utica NY 13501



## Onondaga

Onondaga County Department of Mental Health  
421 Montgomery St., 10th Fl.  
Syracuse NY 13202

## Ontario

Ontario County Mental Health Department  
3019 County Complex Dr.  
Canandaigua NY 14424

## Orange

Orange County Department of Mental Health  
30 Harriman Dr.  
Goshen NY 10924-2410

## Orleans

Orleans County Mental Health/Community Services  
14014 Route 31 West  
Albion NY 14411

## Oswego

Oswego County DSS, Division Mental Hygiene  
100 Spring St.  
Mexico NY 13114

## Otsego

Otsego County Mental Health Clinic  
242 Main St.  
Oneonta NY 13820

## Putnam

Putnam County Department of Social Services/Mental Health  
110 Old Route 6  
Carmel NY 10512

## Rensselaer

Rensselaer County Department of Mental Health  
1600 7th Av. Rensselaer Co. Off. Bldg., 3rd Fl.  
Troy NY 12180

## Rockland

Rockland County Department of Mental Health  
50 Sanatorium Rd., Bldg. F  
Pomona NY 10970

## Saratoga

Saratoga County Mental Health Center  
211 Church St., Cramer House  
Saratoga Springs NY 12866

## Schenectady

Schenectady County Mental Health Dept.  
797 Broadway, Ste. 304  
Schenectady NY 12305

## Schoharie

Schoharie County Community Service and MH  
113 Park Pl., Ste. 1, Co. Annex Bldg.  
Schoharie NY 12157-0160  
Schuyler

Schuyler County Community Services  
Mill Creek Ctr., 106 S. Perry St., Ste. 4  
Watkins Glen NY 14891

## Seneca

Seneca County Mental Health Department  
31 Thurber Dr.  
Waterloo NY 13165

## St. Lawrence

St. Lawrence County Mental Health Clinic  
80 State Hwy. 310, Ste. 1  
Canton NY 13617-1493

## Steuben

Steuben County Community Mental Health Center  
115 Liberty St.  
Bath NY 14810

## Suffolk

Suffolk County Community Mental Hygiene  
No. County Complex, Bldg. C-928  
Hauppauge NY 11788

## Sullivan

Sullivan County Department of Community Services  
P.O. Box 716  
Liberty NY 12754

## Tioga

Tioga County Department of Mental Hygiene  
1062 State Rt. 38  
Owego NY 13827

## Tompkins

Tompkins County Mental Health Department  
201 E. Green St.  
Ithaca NY 14850

## Ulster

Ulster County Mental Health Department  
239 Golden Hill La.  
Kingston NY 12401

## Warren

Warren County Community Services  
230 Maple St., Suite 1  
Glens Falls NY 12801

## Washington

Washington County Community Services  
230 Maple St., Suite 1  
Glens Falls NY 12801

## Wayne

Wayne County DMH/Behavior Health Network  
1519 Nye Rd.  
Lyons NY 14489

## Westchester

Westchester County Community Mental Health Department  
112 E. Post Rd., 2nd Fl.



White Plains NY 10601

Wyoming  
Wyoming County Mental Health Department  
338 North Main St.  
Warsaw NY 14569

Yates  
Yates County Community Services  
417 Liberty St., Ste. 2033  
Penn Yan NY 14527

In New York City, a detailed description of the changes is available for public review at the following OPWDD Office locations:

Metro New York  
75 Morton Street  
New York, New York 10014

Bernard M. Fineson  
80-45 Winchester Blvd.  
Administration Building 80-00  
Queens Village, New York 11427

Brooklyn  
888 Fountain Avenue  
Brooklyn, New York 11208

Metro New York  
2400 Halsey Street  
Bronx, New York 10461

Staten Island DDSO  
1150 Forest Hill Road  
Staten Island, New York 10314

*For further information and to review and comment, please contact:*  
Donna Cater, Office for People With Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1745, e-mail: donna.cater@opwdd.ny.gov

**PUBLIC NOTICE**

**Susquehanna River Basin Commission**

**SUMMARY:** At its regular meeting in Binghamton, New York on June 7, 2012, the Susquehanna River Basin Commission (SRBC) extended the comment deadline for its proposed Low Flow Protection Policy to July 16, 2012. The original comment deadline had been May 16, 2012. On March 15, 2012, SRBC's commissioners approved the release of the proposed Low Flow Protection Policy for public review and comment. The proposed policy was developed over the past year - based on scientific advances in ecosystem flow protection - to improve low flow protection standards associated with approved water withdrawals. SRBC will use the final policy and supporting technical guidance when reviewing withdrawal applications to establish limits and conditions on approvals consistent with SRBC's regulatory standards (18 CFR § 806.23).

**DATES:** The new deadline for the submission of comments is July 16, 2012.

**ADDRESS:** Comments may be mailed to: Mr. John Balay, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391, or electronically submitted through <http://www.srbc.net/pubinfo/businessmeeting.htm>.

**FOR FURTHER INFORMATION CONTACT:** John W. Balay, Manager, Planning and Operations, telephone: (717) 238-0423, ext.217; fax: (717) 238-2436. Also, the proposed policy and back-

ground information on the policy are available at the Commission's web site [www.srbc.net](http://www.srbc.net).

**AUTHORITY:** Public Law 91-575, 84 Stat.1509 et seq., 18 CFR Parts 806-808.

Dated: June 7, 2012.  
Thomas W. Beauduy  
Deputy Executive Director

**PUBLIC NOTICE**

**Uniform Code Regional Boards of Review**

Pursuant to 19 NYCRR 1205, the petitions below have been received by the Department of State for action by the Uniform Code Regional Boards of Review. Unless otherwise indicated, they involve requests for relief from provisions of the New York State Uniform Fire Prevention and Building Code. Persons wishing to review any petitions, provide comments, or receive actual notices of any subsequent proceeding may contact Steven Rocklin, Codes Division, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-4073 to make appropriate arrangements.

2012-0297 Matter of Shawn Wright for Wright + Young Architectural, 740 Seneca Street, Buffalo, New York, 14210, for a variance concerning fire safety requirements including relief from requirement to provide 50% accessible sleeping rooms. The building is classified as an I-2 (institutional occupancy) assisted care facility, 2 stories in height of Type 2A (fire protected non-combustible) construction, approximately 67,161 square feet in area and located at Emeritus at Brighton, 1320 County Road 239, in the Town of Brighton, Monroe County, State of New York.

2012-0298 Matter of SUNY Cortland, attn: Jeffrey Lallas, Director of Facilities Planning, PO Box 2000, Cortland, NY 13045 for a variance concerning fire safety and building code requirements including the requirement for in-water swimming pool alarm devices.

Involved is the construction of a student recreational and fitness center known as the "Student Life Center" located at Pashley Drive, City of Cortland, Cortland County, State of New York.

**SALE OF FOREST PRODUCTS**

**Chenango Reforestation Area No. 11  
Contract No. X008667**

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

Sealed bids for 1,168 cords +/- Norwayspruce, 1.7 MBF +/- black cherry, 0.8 MBF +/- white ash, 0.2 MBF +/- sugar maple, 0.2 MBF +/- red maple, 11 cords +/- firewood, located on Chenango Reforestation Area No. 11, Bowman Creek State Forest, Stands A-8, 12, 20, 21, 37 and 39, will be accepted at the Department of Environmental Conservation, Contract Unit, 625 Broadway, 10th Fl., Albany, NY 12233-5023 until 11:00 a.m. on Thursday, July 5, 2012.

*For further information, contact:* Robert Slavicek, Supervising Forester, Department of Environmental Conservation, Division of Lands and Forests, Region 7, 2715 State Hwy. 80, Sherburne, NY 13460-4507, (607) 674-4036

**Appendix V**  
**2012 Title XIX State Plan**  
**Second Quarter Amendment**  
**Long-Term Care Facility Services**  
**Responses to Standard Funding Questions**



**LONG TERM CARE SERVICES**  
**State Plan Amendment 12-03**

**CMS Standard Funding Questions (NIRT Standard Funding Questions)**

The following questions are being asked and should be answered in relation to all payments made to all providers under Attachment 4.19-D of your state plan.

- 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 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 State-operated ICF/DDs are subject to this provider assessment. 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.

The State receives and retains all the Medicaid payments for State operated 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 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 government 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:** 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 \$1.1 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 per diem rates. The only supplemental payments are the ones described in section (m) (8) of the State plan amendment.

- 4. 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. Under regulations at 42 CFR 4447.272, States are prohibited from setting payment rates for Medicaid inpatient services that exceed a reasonable estimate of the amount that would be paid under Medicare payment principals.**

**Response:** The UPL calculation is attached to this State plan amendment. Inherent in the calculation is the methodology used to establish the UPL.

- 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 will not receive payments in excess of the reasonable cost of providing services. The supplemental payments will exceed costs, but they will phase out over five years.

**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. Please indicate whether the State is currently in conformance with the requirements of section 1902(a)(37) of the Act regarding prompt payment of claims.

**Response:** This SPA does comply with the requirements of section 1902(a)(37) of the Act regarding prompt payment of claims.

**Tribal Assurance:**

Section 1902(a)(73) of the Social Security Act the Act requires a State in which one or more Indian Health Programs or Urban Indian Organizations furnish health care services to establish a process for the State Medicaid agency to seek advice on a regular ongoing basis from designees of Indian health programs whether operated by the Indian Health Service HIS Tribes or Tribal organizations under the Indian Self Determination and Education Assistance Act ISDEAA or Urban Indian Organizations under the Indian Health Care Improvement Act.

IHCIA Section 2107(e)(I) of the Act was also amended to apply these requirements to the Children's Health Insurance Program CHIP. Consultation is required concerning Medicaid and CHIP matters having a direct impact on Indian health programs and Urban Indian organizations.

- a) Please describe the process the State uses to seek advice on a regular ongoing basis from federally recognized tribes Indian Health Programs and Urban Indian Organizations on matters related to Medicaid and CHIP programs and for consultation on State Plan Amendments waiver proposals waiver extensions waiver amendments waiver renewals and proposals for demonstration projects prior to submission to CMS.
- b) Please include information about the frequency inclusiveness and process for seeking such advice.
- c) Please describe the consultation process that occurred specifically for the development and submission of this State Plan Amendment when it occurred and who was involved.

**Response:** The process that New York State uses is detailed in SPA #11-06, which was approved by CMS on 8/4/11. The tribal leaders were sent information regarding the SPA via postal mail, and the health clinic administrators were emailed the same information. Copies of tribal consultation are enclosed.



**Appendix VI**  
**2012 Title XIX State Plan**  
**Second Quarter Amendment**  
**Long-Term Care Facility Services**  
**Responses to Standard Access Questions**

**ICF/DD SERVICES**  
**State Plan Amendment #12-03**

**CMS Standard Access Questions**

The following questions have been asked by CMS and are answered by the State in relation to all payments made to all providers under Attachment 4.19-D of the state plan.

- 1. Specifically, how did the State determine that the Medicaid provider payments that will result from the change in this amendment are sufficient to comply with the requirements of 1902(a)(30)?**

**Response:** The State determined that the Medicaid provider payments that will result from the change in this amendment are sufficient to comply with the requirements of Social Security Act §1902(a)(30) because the new methodology more closely aligns reimbursement with actual costs. Although the methodology reduces rates, it will not reduce them below the State's actual cost of providing the ICF/DD services. In addition, there will be supplemental payments over a five year period, to allow for stability of operations and services while the State adjusts to the new reimbursement levels.

- 2. How does the State intend to monitor the impact of the new rates and implement a remedy should rates be insufficient to guarantee required access levels?**

**Response:** Since the State operates the ICF/DDs affected by this plan amendment, the State will be directly aware if rates are insufficient to cover the cost of operation and will adjust accordingly.

- 3. How were providers, advocates and beneficiaries engaged in the discussion around rate modifications? What were their concerns and how did the State address these concerns?**

**Response:** The State is the only provider directly affected by the rate modifications, and the State, in cooperation with CMS, designed the new methodology. In addition, the methodology changes were contained in a public notice that appeared in the State Register on June 27, 2012, and will be discussed with providers, advocates and beneficiaries in the coming months.

- 4. What action(s) does the State plan to implement after the rate change takes place to counter any decrease to access if the rate decrease is found to prevent sufficient access to care?**

**Response:** In the unlikely event that a State operated ICF/DD experienced Medicaid revenue issues that would prevent it from continuing to operate, OPWDD would take

any of the following measures: adjust its operations in other areas to ensure continued access to ICF/DD services or work with CMS to address the revenue shortfalls.

- 5. Is the State modifying anything else in the State Plan which will counterbalance any impact on access that may be caused by the decrease in rates (e.g. increasing scope of services that other provider types may provide or providing care in other settings)?**

**Response:** No. The State does not expect there to be any change in access to ICF/DD services.