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. Helgerson
Medicaid Director
Deputy Commissioner
Office of Health Insurance Programs

Enclosures

cc: Mr. Michael Melendez
Mr. Tom Brady

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR HEALTH CARE FINANCING ADMINISTRATION	1. TRANSMITTAL NUMBER: **#12-03**	2. STATE
	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 **July 1, 2012**	

5. TYPE OF PLAN MATERIAL *(Check One)*:

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN ☐ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT *(Separate Transmittal for each amendment)*

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: **Attachment 4.19-D, Part II: Pages 62, 63, 64, 65, 66, 67, 68, 69**	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*:

10. SUBJECT OF AMENDMENT:

OPWDD-Rate Setting for State Operated Intermediate Care Facilities (FMAP = 50%)

- **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)**
- **FFY 10/01/16 – 9/30/17 $(501,000,000) , FFY 10/01/17 – 9/30/18 $(799,000,000)**

11. GOVERNOR'S REVIEW *(Check One)*:

GOVERNOR'S OFFICE REPORTED NO COMMENT
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL
☐ OTHER, AS SPECIFIED:

12. SIGNATURE OF STATE AGENCY OFFICIAL:	16. RETURN TO:
13. TYPED NAME: **Jason A. Helgerson**	
14. TITLE: **Medicaid Director & Deputy Commissioner Department of Health**	
15. DATE SUBMITTED: June 30, 2012	

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:

FORM HCFA-179 (07-92)

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

changes based upon previously determined final audit findings. If a facility has undergone a change in certified capacity/census, the Commissioner may:

(a) request the facility to submit a budget report ; or

(b) request the facility to submit incremental/decremental cost data which is associated with the capacity change.

Utililizing the submitted incremental/decremental data or budget report, OPWDD will make the appropriate upward or downward adjustment in a facility's rate; or continue the then existing rate for the remainder of the subject rate period in those instances where the Commissioner has determined that the facility is operating at a loss for the rate period in question and adjusting the current rate would further increase such loss, or the facility is operating at a surplus for the rate period in question and adjusting the rate would further increase such surplus.

(iv) Rate adjustments as described in paragraph (iii) of this section will be limited to those adjustments which will result in an annual increase or decrease in reimbursement of $5,000 or more.

(v) The reimbursable operating costs contained in the rates will be computed as follows.

(a) For all facilities, OPWDD will determine the total reimbursable operating costs, with the exception of education and related service costs, sheltered workshop services, and day training services. The reimbursable operating costs for sheltered workshop and day training services will be revised based upon the number of individuals participating in the program. The reimbursable operating costs plus any revised sheltered work and day training costs will be increased by the trend factor calculated in the Trend factors section of Part II of this Attachment and may be adjusted for appropriate appeals. Education and related services reimbursable operating costs will be updated. To determine the capital cost portion of the subsequent period rate OPWDD will review the component relating to capital costs for substantial material changes and, if said 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, make corresponding adjustments in computing the subsequent period rate.

(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.

(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.

(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.

(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.

(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.

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

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

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 HCRAOperations & Financial Analysis, Corning Tower Bldg., Rm. 984, EmpireState 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 requestsfor proposals for the following services. Request for proposal documents areavailable at www.monroecounty.gov/bid/rfps. There will be no formal openingof proposals. Proposals must be received at the date, time and location identifiedin the request for proposal.

Deferred Compensation Plan

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

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

PUBLIC NOTICE

Office for People with Developmental Disabilities andDepartment 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 methodsand standards for setting Medicaid payment rates for intermediate care facilitiesfor the developmentally disabled (ICF/DDs) that are operated by the New YorkState Office for People with Developmental Disabilities (OPWDD), residentialand day habilitation programs operated by OPWDD and Medicaid service coordination.The ICF/DDs operated by OPWDD include developmental centers, over thirty bedState operated ICF/DDs and under thirty bed State operated ICF/DDs.

The ICF/DD methodology will changeeffective July 1, 2012. There will be a rate cycle which will consist of abase period and subsequent period or periods. The base period will be July1, 2012 to March 31, 2013. Each subsequent period will begin April 1 and endthe following March 31. The rate will be total reimbursable costs dividedby the units of service. Total reimbursable costs will be trended reimbursableoperating costs, untrended reimbursable operating costs (education and relatedservice costs, sheltered workshop services, day training services and dayservices costs) and reimbursable capital costs.

The units of service for the baseperiod rate will be based on the census or certified capacity. The base periodrate will be computed on the basis of a full twelve month cost report forthe period beginning April 1, 2009. Thereafter, the base period rates willbe computed on the basis of a cost report for the twelve month period beginning36 months prior to the rate period.

For the base period rates for existingICF/DDs, OPWDD will determine total reimbursable per diem amounts for thecategories of administration, direct care, support and clinical. Using census/ certifiedcapacity, there will be an average salary and staffing ratio calculated usingthe 4/1/2009-3/31/2010 cost report. Using census/ certified capacity OPWDDwill also calculate a per person non personal service amount based on the2009 - 2010 cost report. OPWDD will apply fringe benefits to the personalservice dollars at a rate stated in the Office of the State Controller annualaccounting bulletin regarding fringe benefits paid to New York State employees.

Trend factors will be based on thepercentage increase as reported from the U.S. Bureau of Labor and Statisticswebsite; it will be based on the annual July to July movement of the CPI-UMedical Services Index. In addition to the per-diem rate, ICF/DDs operatedby the State will be paid a supplemental payment as they transition to thenew payment structure. The supplemental payment will be phased out over severalyears.

The methodologies for residentialand day habilitation will change effective July 1, 2012. There will be a pricecycle 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 subsequentperiod will begin April 1 and end the following March 31. The price will betotal reimbursable costs divided by the units of service.

The base period price will be computedon the basis of a full twelve month cost report for the period beginning April1, 2009. Thereafter, the base period prices will be computed on the basisof a cost report for the twelve month period beginning 36 months prior tothe price period.

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

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

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

The reason for all of these proposedchanges is to more closely align rates and prices with the costs of providingthese services.

The State estimates that there willbe no increase or decrease in annual aggregate expenditures as a result ofthis change.

Outside New York City, a detaileddescription of the changes is available for public review at the followingaddresses:

Albany
Albany County Department of MentalHealth
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 HygieneDepartment
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/AddictionsServices
16 Ampersand Dr.
Plattsburgh NY 12901

Columbia
Columbia County Department of HumanServices
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 MentalHygiene
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 MentalHealth
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 CommunityServices
St. Mary's Hospital, 427 GuyPark Ave.
Amsterdam NY 12010

Nassau
Nassau County Department of MentalHealth,
Chemical Dependency and DevelopmentalDisabilities Services
60 Charles Lindberg Blvd., Ste. 200
Uniondale NY 11553

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

Oneida
Oneida County Department of MentalHealth
235 Elizabeth St.
Utica NY 13501

Onondaga
Onondaga County Department of MentalHealth
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 MentalHealth
30 Harriman Dr.
Goshen NY 10924-2410

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

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

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

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

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

Rockland
Rockland County Department of MentalHealth
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 Serviceand 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 HealthClinic
80 State Hwy. 310, Ste. 1
Canton NY 13617-1493

Steuben
Steuben County Community Mental HealthCenter
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 CommunityServices
P.O. Box 716
Liberty NY 12754

Tioga
Tioga County Department of MentalHygiene
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 MentalHealth 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 descriptionof the changes is available for public review at the following OPWDD Officelocations:

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 toreview and comment, please contact: Donna Cater, Office for People WithDevelopmental 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 inBinghamton, 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 proposedLow Flow Protection Policy for public review and comment. The proposed policywas developed over the past year - based on scientific advances in ecosystemflow protection - to improve low flow protection standards associated withapproved water withdrawals. SRBC will use the final policy and supportingtechnical guidance when reviewing withdrawal applications to establish limitsand conditions on approvals consistent with SRBC's regulatory standards(18 CFR § 806.23).

DATES: The new deadline for the submissionof 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: JohnW. Balay, Manager, Planning and Operations, telephone: (717) 238-0423, ext.217; fax: (717) 238-2436. Also, the proposed policy and background informationon the policy are available at the Commission's web site 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 petitionsbelow have been received by the Department of State for action by the UniformCode Regional Boards of Review. Unless otherwise indicated, they involve requests-for relief from provisions of the New York State Uniform Fire Prevention andBuilding Code. Persons wishing to review any petitions, provide comments,or receive actual notices of any subsequent proceeding may contact StevenRocklin, Codes Division, Department of State, One Commerce Plaza, 99 WashingtonAve., Albany, NY 12231, (518) 474-4073 to make appropriate arrangements.

2012-0297 Matter of Shawn Wright forWright + Young Architectural, 740 Seneca Street, Buffalo, New York, 14210,for a variance concerning fire safety requirements including relief from requirementsto provide 50% accessible sleeping rooms. The building is classified as anI-2 (institutional occupancy) assisted care facility, 2 stories in heightof Type 2A (fire protected non-combustible) construction, approximately 67,161square feet in area and located at Emeritus at Brighton, 1320 County Road239, 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 requirementsincluding the requirement for in-water swimming pool alarm devices.

Involved is the construction of astudent recreational and fitness center known as the ''Student Life Center"located at Pashley Drive, City of Cortland, Cortland County, State of NewYork.

SALE OF FOREST PRODUCTS
Chenango Reforestation Area No. 11
ContractNo. X008667

Pursuant to Section 9-0505 of theEnvironmental Conservation Law, the Department of Environmental Conservationhereby 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, ContractUnit, 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, NY13460-4507, (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.