

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

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

Sue Kelly  
Executive Deputy Commissioner

September 30, 2011

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

Re: SPA #11-74  
Inpatient Hospital Services

Dear Mr. Cooley:

The State requests approval of the enclosed amendment #11-74 to the Title XIX (Medicaid) State Plan for inpatient hospital services to be effective July 1, 2011 (Appendix I). This amendment is being submitted based upon enacted legislation. A summary of the proposed amendment is contained 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 (CFR), Part 447, Subpart C.

The State of New York pays for inpatient general hospital services using rates determined in accordance with methods and standards specified in an approved State Plan, following a public process, which complies with Social Security Act §1902(a)(13)(A).

Notice of the changes in the methods and standards for setting payment rates for general hospital inpatient services were given in the New York State Register on September 14, 2011 (Appendix IV).

It is estimated that the changes represented by 2011 payment rates for inpatient general hospital services will have no noticeable short-term or long-term effect on the availability of services on a statewide or geographic area basis, the type of care furnished, or the extent of provider participation.

In accordance with 42 CFR §447.272(c), New York assures that its aggregate disproportionate share hospital payments do not exceed the disproportionate share hospital payment limit.

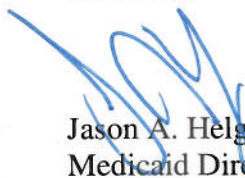
In accordance with §1923(g) of the Social Security Act, New York assures that it has calculated facility specific limits for disproportionate share payments for each disproportionate

share hospital. New York assures that it will not make disproportionate share payments to a hospital in excess of the facility specific limits established for such hospital.

Copies of pertinent sections of enacted state statute are enclosed for your information (Appendix III). In addition, responses to the five standard funding questions are also enclosed (Appendix V).

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

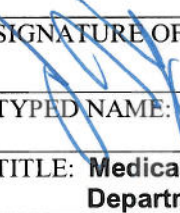
Sincerely,



Jason A. Helgerson  
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>  <b>FOR: CENTERS FOR MEDICARE &amp; MEDICAID SERVICES</b>		1. TRANSMITTAL NUMBER: <b>11-74</b>	2. STATE <b>New York</b>
		3. PROGRAM IDENTIFICATION: <b>TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)</b>	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE <b>July 1, 2011</b>	
5. TYPE OF PLAN MATERIAL ( <i>Check One</i> ):  <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT ( <i>Separate Transmittal for each amendment</i> )			
6. FEDERAL STATUTE/REGULATION CITATION: <b>Section 1902(a) of the Social Security Act, and 42 CFR 447</b>		7. FEDERAL BUDGET IMPACT: a. FFY 07/01/11-09/30/11 \$0 b. FFY 10/01/11-09/30/12 \$0	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:  <b>Attachment 4.19-A: Page 161(2)</b>		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT ( <i>If Applicable</i> ):	
10. SUBJECT OF AMENDMENT: <b>Certified Public Expenditures (CPEs) – Local Share (FMAP = 50% 7/1/11 forward)</b>			
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: <b>New York State Department of Health Corning Tower Empire State Plaza Albany, New York 12237</b>	
13. TYPED NAME: <b>Jason A. Helgerson</b>			
14. TITLE: <b>Medicaid Director &amp; Deputy Commissioner Department of Health</b>			
15. DATE SUBMITTED: <b>September 30, 2011</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**  
**2011 Title XIX State Plan**  
**Third Quarter Amendment**  
**Inpatient Hospital Services**  
**Amended SPA Pages**

**New York  
161(2)**

**Attachment 4.19-A  
(09/10)**

**Certified Public Expenditures**

Effective for the periods on or after July 1, 2011, the Commissioner of Health may utilize certified public expenditures (CPEs) with regard to Medicaid payments made to general government hospitals, for the purpose of recognizing otherwise un-reimbursed allowable medical assistance costs for patients eligible for federal financial participation under title XIX of the federal Social Security Act. Such CPEs may be utilized with regard to Medicaid payments made to or on behalf of non-state owned government hospitals located in a city of more than one million. General non-state owned government hospitals seeking to utilize CPEs for Medicaid payment purposes will provide documentation and supporting data as the Commissioner of Health deemed necessary to further such utilization. The federal matching funds received for approved CPEs will be remitted to the general public hospital whose expenditures formed the basis of the CPE.

**TN #11-74** \_\_\_\_\_

**Approval Date** \_\_\_\_\_

**Supersedes TN**   New   \_\_\_\_\_

**Effective Date** \_\_\_\_\_

**Appendix II  
2011 Title XIX State Plan  
Third Quarter Amendment  
Inpatient Hospital Services  
Summary**

**SUMMARY**  
**SPA #11-74**

This state plan amendment proposes to allow local service districts to voluntarily fulfill their non-federal share of intergovernmental payments responsibilities through the use of public expenditures certified by the eligible public hospital located in the applicable social services district. The federal matching funds received for approved certified public expenditures shall be remitted to the general public hospital whose expenditures formed the basis for such expenditure.

**Appendix III**  
**2011 Title XIX State Plan**  
**Third Quarter Amendment**  
**Inpatient Hospital Services**  
**Authorizing Provisions**



**STATUS:**

**A8306** Lavine Same as S 5644 HANNON

Education Law

TITLE.....Authorizes social services districts to fulfill their payment obligations to public general hospitals by public expenditures for the benefit of such hospitals

- 06/13/11 referred to health
- 06/16/11 reported referred to ways and means
- 06/16/11 reported referred to rules
- 06/16/11 reported
- 06/16/11 rules report cal.387
- 06/16/11 ordered to third reading rules cal.387
- 06/16/11 passed assembly
- 06/16/11 delivered to senate
- 06/16/11 REFERRED TO RULES
- 06/17/11 SUBSTITUTED FOR S5644
- 06/17/11 3RD READING CAL.1346
- 06/17/11 PASSED SENATE
- 06/17/11 RETURNED TO ASSEMBLY
- 07/22/11 delivered to governor
- 08/03/11 signed chap.379

**SUMMARY:**

LAVINE

Amd S213, Chap 474 of 1996

Authorizes social services districts to fulfill their payment obligations to public general hospitals by public expenditures for the benefit of such hospitals.

EFF. DATE 08/03/2011

**CHAPTER TEXT:**

LAWS OF NEW YORK, 2011

CHAPTER 379

AN ACT to amend chapter 474 of the laws of 1996, amending the education law and other laws relating to rates for residential health care facilities, in relation to payments by social services districts for public general hospitals

Became a law August 3, 2011, with the approval of the Governor.  
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 213 of chapter 474 of the laws of 1996, amending the education law and other laws relating to rates for residential health care facilities, is amended to read as follows:

§ 213. Notwithstanding any inconsistent provision of law or regulation to the contrary, the social services district in which an eligible public general hospital is physically located shall be responsible for the payments for such public general hospital as determined in accordance with sections two hundred eleven and two hundred twelve of

this act for all hospital services provided by such public general hospital in accordance with section 365-a of the social services law, regardless of whether another social services district or the department of social services may otherwise be responsible for furnishing medical assistance to the eligible persons receiving such services. To the extent permitted by the federal Centers for Medicare and Medicaid Services, the social services district's responsibility for payments may be fulfilled through public expenditures certified by the eligible public general hospital located in the social services district as meeting the requirements for the payments authorized by sections two hundred eleven and two hundred twelve of this act.

§ 2. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS  
Temporary President of the Senate

SHELDON SILVER  
Speaker of the Assembly

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

**STATUS:**

**S5833 HANNON** Same as A 8516 Lavine  
Health

**TITLE....**Chapter amends S.5644 and A. 8306, to direct the commissioner of health to seek federal approvals for use of certified public expenditures for public hospitals

06/20/11 REFERRED TO RULES  
06/23/11 ORDERED TO THIRD READING CAL.1538  
06/23/11 PASSED SENATE  
06/23/11 DELIVERED TO ASSEMBLY  
06/23/11 referred to ways and means  
06/24/11 substituted for a8516  
06/24/11 ordered to third reading rules cal.627  
06/24/11 passed assembly  
06/24/11 returned to senate  
07/22/11 DELIVERED TO GOVERNOR  
08/03/11 SIGNED CHAP.386

**SUMMARY:****HANNON**

Amd S213, add S214-a, Chap 474 of 1996 (as proposed in S. 5644 and A. 8306)  
Chapter amendment to S. 5644 and A. 8306, to direct the commissioner of health to seek federal approvals for use of certified public expenditures for certain payments to public general hospitals on behalf of recipients of medical assistance.  
EFF. DATE 08/03/2011

**CHAPTER TEXT:**

## LAWS OF NEW YORK, 2011

## CHAPTER 386

AN ACT to amend chapter 474 of the laws of 1996, amending the education law and other laws relating to rates for residential health care facilities, in relation to utilization of certified public expenditures for certain payments to public general hospitals

Became a law August 3, 2011, with the approval of the Governor.  
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 213 of chapter 474 of the laws of 1996, amending the education law and other laws relating to rates for residential health care facilities, as amended by a chapter of the laws of 2011 amending chapter 474 of the laws of 1996 amending the education law and other laws relating to rates for residential health care facilities, relating to payments by social services districts for public general hospitals, as proposed in legislative bills numbers S.5644 and A.8306, is amended and a new section 214-a is added to read as follows:

§ 213. Notwithstanding any inconsistent provision of law or regulation to the contrary, the social services district in which an eligible public general hospital is physically located shall be responsible

for the payments for such public general hospital as determined in accordance with sections two hundred eleven and two hundred twelve of this act for all hospital services provided by such public general hospital in accordance with section 365-a of the social services law, regardless of whether another social services district or the department of social services may otherwise be responsible for furnishing medical assistance to the eligible persons receiving such services. To the extent permitted by the federal Centers for Medicare and Medicaid Services, the social services district's responsibility for payments may be fulfilled through public expenditures certified by the eligible public general hospital located in the social services district as meeting the requirements for the payments authorized by sections two hundred eleven and two hundred twelve of this act and as otherwise provided in accordance with section two hundred fourteen-a of this act.

§ 214-a. 1. Notwithstanding any contrary provision of law and subject to the availability of federal financial participation, effective for periods on or after July 1, 2011, the commissioner of health is authorized to seek all necessary federal approvals to utilize certified public expenditures (hereinafter referred to in this section as "CPE") with regard to payments made to general hospitals pursuant to sections two hundred eleven and two hundred twelve of this act, for the purpose of recognizing otherwise un-reimbursed allowable medical assistance costs pursuant to title 11 of article 5 of the social services law for patients eligible for federal financial participation under title XIX of the federal social security act. Such CPEs may be utilized with regard to payments made pursuant to sections two hundred eleven and two hundred twelve of this act to or on behalf of public general hospitals. General

EXPLANATION--Matter in *italics* is new; matter in brackets [-] is old law to be omitted.

CHAP. 386

2

public hospitals seeking to utilize CPEs for Medicaid payment purposes shall provide such documentation and supporting data as the commissioner of health deems necessary. The federal matching funds received for approved CPEs pursuant to this section shall be remitted to the general public hospital whose expenditures formed the basis for such CPE. Further, the amount of such CPEs shall be excluded from all calculations made pursuant to section 1 of part C of chapter 58 of the laws of 2005. The commissioner of health may promulgate regulations, including emergency regulations, to implement the provisions of this section.

2. Fulfillment of the social services district responsibility for funding of the non-federal share of any payments pursuant to this section shall be deemed to be voluntary for purposes of the increased federal medical assistance percentage provisions of the American Recovery and Reinvestment Act of 2009; provided however that, in the event the federal Centers for Medicare and Medicaid Services determines that such non-federal share payments are not voluntary payments for purposes of such Act or otherwise disallows federal financial participation in such payments, the provisions of this section shall be null and void and payments made pursuant to this section shall be recouped by the commissioner of health.

§ 2. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2011 amending chapter 474 of the laws of 1996 amending the education law and other laws relating to rates for residential health care facilities, relating to payments for social services districts for public general hospitals, as proposed in legislative bills numbers S.5644 and A.8306, takes effect.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS  
Temporary President of the Senate

SHELDON SILVER  
Speaker of the Assembly

**Appendix IV  
2011 Title XIX State Plan  
Third Quarter Amendment  
Inpatient Hospital Services  
Public Notice**

# MISCELLANEOUS NOTICES/HEARINGS

## Notice of Abandoned Property Received by the State Comptroller

Pursuant to provisions of the Abandoned Property Law and related laws, the Office of the State Comptroller receives unclaimed monies and other property deemed abandoned. A list of the names and last known addresses of the entitled owners of this abandoned property is maintained by the office in accordance with Section 1401 of the Abandoned Property Law. Interested parties may inquire if they appear on the Abandoned Property Listing by contacting the Office of Unclaimed Funds, Monday through Friday from 8:00 a.m. to 4:30 p.m., at:

1-800-221-9311  
or visit our web site at:  
[www.osc.state.ny.us](http://www.osc.state.ny.us)

Claims for abandoned property must be filed with the New York State Comptroller's Office of Unclaimed Funds as provided in Section 1406 of the Abandoned Property Law. For further information contact: Office of the State Comptroller, Office of Unclaimed Funds, 110 State St., Albany, NY 12236.

## PUBLIC NOTICE

### Department of Environmental Conservation

Pursuant to ECL § 9-1303, the Department of Environmental Conservation hereby gives notice of the following:

To expand the existing quarantine district in eastern New York which currently includes Ulster and Greene Counties to include Orange County in order to limit the potential introduction of the invasive Emerald Ash Borer (EAB) to other areas of the state.

DEC's quarantine order prohibits the intrastate movement of EAB, and the movement of ash nursery stock, ash trees, and ash wood products, and firewood, wood chips and bark mulch from any tree species, beyond the quarantine district without certification or compliance agreements from the New York State Department of Agriculture and Markets, or the Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS), in addition to other provisions as defined in the order. This quarantine order also prohibits the movement of all ash logs from Pennsylvania into this quarantine district during the EAB flight season. Minor revisions are also made to the current regulations, reflecting administrative directions previously issued by the Commissioner of the NYS Department of Agriculture and Markets since the original order was imposed. The final Quarantine Order will become effective 10 days after it is filed with the clerks of Ulster, Greene, and Orange Counties.

A copy of the Quarantine Order can be found at: <http://www.dec.ny.gov/animals/47761> on the Department's website.

For further information, contact: Douglas Schmid, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4250, (866) 640-0652, e-mail: [firewood@gw.dec.state.ny.us](mailto:firewood@gw.dec.state.ny.us)

## PUBLIC NOTICE

### Department of Health

Pursuant to 42 CFR Section 447.205, the Department of Health hereby gives public notice of the following:

The Department of Health proposes to amend the Title XIX

(Medicaid) State Plan, effective on or after July 1, 2011, to authorize the Commissioner of Health to seek federal approval to allow local social service districts to fulfill their intergovernmental payment responsibility through the use of public expenditures certified by the eligible public hospital located in the applicable social services district. The general public hospital(s) shall provide the documentation and supporting data as the Commissioner of Health deems necessary. The federal matching funds received for approved certified public expenditures (CPEs) shall be remitted to the general public hospital whose expenditures formed the basis for such CPE.

Fulfillment of the social services district responsibility for funding of the non-federal share of any payments pursuant to these provisions shall be deemed to be voluntary.

There is no estimated annual change to gross Medicaid expenditures as a result of this proposed initiative.

Copies of the proposed state plan amendment will be available for public review on the Department's website at: [http://www.health.ny.gov/regulations/state\\_plans/status](http://www.health.ny.gov/regulations/state_plans/status) In addition, copies will be on file in each local (county) social services district.

For the New York City district, copies will be available at the following places:

New York County  
250 Church Street  
New York, New York 10018

Queens County, Queens Center  
3220 Northern Boulevard  
Long Island City, New York 11101

Kings County, Fulton Center  
114 Willoughby Street  
Brooklyn, New York 11201

Bronx County, Tremont Center  
1916 Monterey Avenue  
Bronx, New York 10457

Richmond County, Richmond Center  
95 Central Avenue, St. George  
Staten Island, New York 10301

The public is invited to review and comment on this proposed state plan amendment.

For further information and to review and comment, please contact: Bureau Director, 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](mailto:spa_inquiries@health.state.ny.us)

## PUBLIC NOTICE

### Islip Resource Recovery Agency

Pursuant to section 457 of the Internal Revenue Code and Section 5 of the State Finance Law, the Islip Resource Recovery Agency hereby gives notice of the following:

**Appendix V**  
**2011 Title XIX State Plan**  
**Third Quarter Amendment**  
**Inpatient Hospital Services**  
**Responses to Standard Funding Questions**



**HOSPITAL SERVICES**  
**State Plan Amendment #11-74**

**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-(A or 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:** Providers do retain the payments made pursuant to this amendment. However, this requirement in no way prohibits the public provider, including county providers, from reimbursing the sponsoring local government for appropriate expenses incurred by the local government on behalf of the public provider. The State does not regulate the financial relationships that exist between public health care providers and their sponsoring governments, which are extremely varied and complex. Local governments may provide direct and/or indirect monetary subsidies to their public providers to cover on-going unreimbursed operational expenses and assure achievement of their mission as primary safety net providers. Examples of appropriate expenses may include payments to the local government which include reimbursement for debt service paid on a provider's behalf, reimbursement for Medicare Part B premiums paid for a provider's retirees, reimbursement for contractually required health benefit fund payments made on a provider's behalf, and payment for overhead expenses as allocated per federal Office of Management and Budget Circular A-87 regarding Cost Principles for State, Local, and Indian Tribal Governments. The existence of such transfers should in no way negate the legitimacy of these facilities' Medicaid payments or result in reduced Medicaid federal financial participation for the State. This position was further supported by CMS in review and approval of SPA 07-07C when an on-site audit of these transactions for New York City's Health and Hospitals Corporation was completed with satisfactory results.

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:** Payments made to service providers under the provisions of this SPA are funded through certified public expenditures. The state is in the process of working with CMS to develop a methodology for determining eligibility and the amounts of the payments, in accordance with federal regulations.

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:** The payments authorized for this provision are not supplemental or enhanced payments.

- 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 State submitted the 2011 inpatient UPL to CMS for review and approval on September 9, 2011.

- 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:** The rate methodology included in the approved state plan for institutional services is a prospective payment. We are unaware of any requirement under current federal law or regulation that limits individual provider payments to their actual costs.

**Assurances:**

- 1. In compliance with provisions of the Recovery Act, the State should provide assurances that they are in compliance with the terms of the Recovery Act concerning (1) Maintenance of Effort (MOE); (2) State or local match; (3) Prompt payment; (4) Rainy day funds; and (5) Eligible expenditures (e.g. no DSH or other enhanced match payments).**

**Response:** The State hereby provides assurances that it remains in compliance with the terms of the Recovery Act with regard to the requirements pertaining to the maintenance of effort, State or local match, prompt payment, rainy day funds, and eligible expenditures. In addition, the HHS Office of Inspector General has reviewed the State's compliance with the political subdivision requirement for increased FMAP under ARRA and found the State to be in compliance with this provision (Report A-02-09-01029).

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

**Response:** The provision concerning tribal consultations does not apply to this SPA since Indian Health Programs in New York State do not provide inpatient hospital services and, therefore, receive no Medicaid payments for such services.