NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

March 6, 2012

Mr. Michael Melendez
Associate Regional Administrator
Department of Health & Human Services
Centers for Medicare & Medicaid Services
New York Regional Office
Division of Medicaid and Children's Health Operations
26 Federal Plaza - Room 37-100 North
New York, New York 10278

RE: SPA #11-90
Inpatient Hospital Services

Dear Mr. Melendez:

The State requests approval of the enclosed amendment #11-90 to the Title XIX (Medicaid) State Plan for inpatient hospital services to be effective January 1, 2012 (Appendix I). This amendment is being submitted as a result of enacted legislation in the 2011-2012 Executive Budget. A summary of the plan amendment is provided in Appendix II.

The State of New York reimburses these services through the use of rates that are consistent with and promote efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area as required by §1902(a)(30) of the Social Security Act and 42 CFR §447.204.

Copies of pertinent sections of proposed regulations are enclosed for your information (Appendix III). A copy of the public notice of this plan amendment, which was given in the New York State Register on November 9, 2011, is also enclosed for your information (Appendix IV). In addition, responses to the five standard funding questions and the standard access questions are also enclosed (Appendix V and VI, respectively).

If you have any questions regarding this State Plan submission, 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

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: **11-90**	2. STATE **New York**
	3. PROGRAM IDENTIFICATION: **TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)**	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE **January 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: **42 CFR § 447.272(a)**	7. FEDERAL BUDGET IMPACT: a. FFY **01/01/12-09/30/12 ($771,870)** b. FFY **10/01/12-09/30/13 ($1,029,160)**	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: **Attachment 4.19-A, Part III: Page 1**	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*: **Attachment 4.19-A, Part III: Page 1**	
10. SUBJECT OF AMENDMENT: **2011-12 Private Psychiatric Hospital (PPH) Rate Freeze (FMAP = 50%)**		
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: **New York State Department of Health** **Corning Tower** **Empire State Plaza** **Albany, New York 12237**	
13. TYPED NAME: **Jason A. Helgerson**		
14. TITLE: **Medicaid Director & Deputy Commissioner Department of Health**		
15. DATE SUBMITTED: March 6, 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:		

Appendix I
2012 Title XIX State Plan
First Quarter Amendment
Non-Institutional Services
Amended SPA Pages

METHODS AND STANDARDS OF SETTING PAYMENT RATES FOR HOSPITALS LICENSED BY THE OFFICE OF MENTAL HEALTH

In accordance with the New York State Mental Hygiene Law, the State's Office of Mental Health establishes Medicaid rates of reimbursement for hospitals issued operating certificates by the Office of Mental Health. The class of facilities defined as hospitals includes the subclass of Residential Treatment Facilities for Children and Youth ("RTFs") which furnish inpatient psychiatric services for individuals under age 21 in psychiatric facilities or programs. Medicaid rates established by the Office of Mental Health must be certified by the Commissioner and approved by the Director of the Budget. The Methods and Standards set forth below do not apply to hospitals operated by the Office of Mental Health or to hospitals licensed by the Department of Health.

A. HOSPITALS OTHER THAN RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN AND YOUTH

1. OPERATING COSTS

The rate of payment effective January 1, 2012 through December 31, 2012 shall be a continuance of the rate of payment in effect on December 31, 2011. Otherwise, Medicaid rates are established prospectively and are all inclusive, taking into account all allowable patient days and all allowable costs and are effective for a twelve month period. Payment rates for a rate year are based on base year financial and statistical reports submitted by hospitals to the Office of Mental Health. The base year is the fiscal year two years prior to the rate year. The financial and statistical reports are subject to audit by the Office of Mental Health.

Allowable base year operating costs are determined by the application of the principles developed for determining reasonable cost payments under the Medicare program. To be allowable, costs must be reasonable and must relate to patient care. Allowable costs may not include costs for services which have not been approved by the Commissioner.

Hospitals which have no previous costs or operating experience will submit a budget report as the basis for calculating a prospective Medicaid rate. The budget report will contain all proposed revenues and expenses for the period under consideration. The operating cost component of the rate will be the lower of the calculated per diem, utilizing the approved budgeted operating costs and the approved budgeted patient days, or 110[%] percent of the statewide weighted average of the operating cost component of all statewide weighted average of the operating cost component of all private psychiatric hospitals. The hospital is required to submit a cost report after it has operated for six months at a minimum occupancy level of at least 75[%] percent. This cost report will be used to set a cost based rate for the hospital effective the first day of the cost report period.

Appendix II
2012 Title XIX State Plan
First Quarter Amendment
Non-Institutional Services
Summary

SUMMARY
SPA #11-90

This state plan amendment proposes to continue the 2011 rates for the 2012 rate year for private psychiatric hospitals (PPH) licensed by the Office of Mental Health.

Appendix III
2012 Title XIX State Plan
First Quarter Amendment
Non-Institutional Services
Authorizing Provisions

concurrent review of inpatient behavioral health services and coordinating the provision of behavioral health services and other services available under the Medicaid Program. After a successful procurement, five regional BHOs were selected. The amendments to 14 NYCRR Parts 580, 582 and 587 are necessary to inform providers of services of the requirements and expectations of the Office of Mental Health with respect to the BHO implementation.

4. Costs:

a) Costs to state government: These regulatory amendments will not result in any additional costs to State government.

b) Costs to local government: These regulatory amendments will not result in any additional costs to local government.

c) Costs to regulated parties: There will be no fiscal impact, nor will there be any change in reimbursement or rates of payments to regulated parties as a result of these regulatory amendments.

5. Local government mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not have a significant increase in the paperwork requirements of providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only alternative to the regulatory amendment would be inaction. BHO implementation is consistent with statute. Providers of service must be aware of their responsibilities and the requirements associated with the BHO implementation; this rule making clarifies those responsibilities and makes clear the Office's expectations with respect to BHO implementation. Therefore, that alternative was not considered.

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

10. Compliance schedule: These regulatory amendments are effective immediately upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not have an adverse economic impact upon small businesses or local governments. The rule making merely serves to clarify the expectations of the Office of Mental Health regarding Behavioral Health Organization (BHO) implementation and notify providers of services of their responsibilities as a result of the BHO implementation.

Rural Area Flexibility Analysis

The amendments to Parts 580, 582 and 587 of Title 14 NYCRR serve to clarify the expectations of the Office of Mental Health regarding Behavioral Health Organization (BHO) implementation and notify providers of services of their responsibilities as a result of the BHO implementation. The amendments will not impose any adverse economic impact on rural areas; therefore, a Rural Area Flexibility Analysis is not submitted with this notice.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the purpose of this rule making is merely to clarify the expectations of the Office of Mental Health regarding Behavioral Health Organization (BHO) implementation and notify providers of services of their responsibilities as a result of the BHO implementation. There will be no adverse impact on jobs and employment opportunities as a result of this rulemaking.

NOTICE OF ADOPTION

Rates of Reimbursement - Hospitals Licensed by the Office of Mental Health

I.D. No. OMH-46-11-00003-A

Filing No. 2

Filing Date: 2012-01-03

Effective Date: 2012-01-18

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

Action taken: Amendment of Part 577 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

Subject: Rates of Reimbursement - Hospitals Licensed by the Office of Mental Health.

Purpose: To freeze rates of payments to freestanding psychiatric centers licensed under Mental Hygiene Law article 31 effective 1/1/12.

Text or summary was published in the November 16, 2011 issue of the Register, I.D. No. OMH-46-11-00003-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Joyce.Donohue@omh.ny.gov

Assessment of Public Comment

The agency received no public comment.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Requirements Pertaining to the Investigation and Review of Serious Reportable Incidents and Abuse Allegations

I.D. No. PDD-45-11-00015

Filing No. 1

Filing Date: 2012-01-03

Effective Date: 2012-01-18

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

Action taken: Amendment of section 624.5(c)(1)(iii) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and16.00

Subject: Requirements pertaining to the investigation and review of serious reportable incidents and abuse allegations.

Purpose: To clarify the effective date of recently promulgated regulations.

Text or summary was published in the November 9, 2011 issue of the Register, I.D. No. PDD-45-11-00015-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, Albany, NY 12229, (518) 474-1830, email: barbara.brundage@opwdd.ny.gov

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Net Metering

I.D. No. PSC-03-12-00012-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Consolidated Edison Company of New York, Inc. to make revisions to electric tariff schedule, P.S.C. No. 9—Electricity.

Statutory authority: Public Service Law, section 66(12)

Subject: Net Metering.

Purpose: To provide for net metering of micro-hydroelectric and fuel cell generating facilities.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. to provide for the net metering of micro-hydroelectric and fuel cell generating facilities pursuant to Commission Order issued November 21, 2011 in Case 11-E-0319. The proposed filing has an effective date of April 1, 2012. The Commission

fice's Clinic Plus initiative for children and extrapolating this performance to all clinics serving children. It is anticipated that the additional cost of paying for off-site crisis services will be minimal. The Office has no means to estimate any savings that may accrue prior to Federal approval for all off-site procedures delivered to adults that will not be reimbursed prior to Federal approval.

(b) cost to local government: These regulatory amendments will not result in any additional costs to local government.

(c) cost to regulated parties: These regulatory amendments will not result in any additional costs to regulated parties.

5. Local Government Mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: No substantial increase in paperwork is anticipated as a result of the amendments to 14 NYCRR Part 599.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only alternative to the regulatory amendment which was considered was inaction. Since inaction would perpetuate the inability of providers to seek reimbursement for certain off-site services and would prolong the confusion regarding non-controversial provisions of the existing regulation, that alternative was necessarily rejected.

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

10. Compliance Schedule: The regulatory amendments are effective immediately.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not have an adverse economic impact upon small businesses or local governments. In fact, these amendments will afford financial relief to providers who are rendering certain services to clients but who, so far, have been unable to be reimbursed for these services because Federal approval has yet to be granted. The amendments to 14 NYCRR Part 599 will enable providers to seek reimbursement on a Federally-non participating basis for certain off-site services until such time as Federal approval is granted. Further, the rule clarifies some areas of confusion within existing regulation and includes provisions regarding the Office of Mental Health's expectations pertaining to clinic treatment programs and Behavioral Health Organizations.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because its purpose is to enable providers to seek reimbursement on a Federally-non-participating basis for certain off-site services until such time as Federal approval is granted and to clear up areas of confusion within the existing regulation. In addition, the rule making includes provisions regarding the Office of Mental Health's expectations regarding clinic treatment programs and Behavioral Health Organizations. The amendments to 14 NYCRR Part 599 will not impose any adverse economic impact on rural areas. In fact, these amendments will afford financial relief to providers who are rendering certain services to clients but who, so far, have been unable to be reimbursed for these services because Federal approval has yet to be granted.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the purpose of rulemaking is to clarify issues which have resulted in confusion within existing regulation. In addition, the rule includes provisions regarding Behavioral Health Organizations, and serves to enable providers to seek reimbursement on a Federally-non-participating basis for certain off-site services until such time as Federal approval is granted. There will be no adverse impact on jobs and employment opportunities as a result of this rulemaking.

NOTICE OF ADOPTION

Operation of Psychiatric Inpatient Units of General Hospitals

I.D. No. OMH-34-11-00006-A
Filing No. 1041
Filing Date: 2011-10-26
Effective Date: 2011-11-16

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

Action taken: Amendment of section 580.6(b)(4) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 31.04

Subject: Operation of Psychiatric Inpatient Units of General Hospitals.

Purpose: To prohibit commingling of adults and children receiving services in groups in hospitals licensed by the Office of Mental Health.

Text or summary was published in the August 24, 2011 issue of the Register, I.D. No. OMH-34-11-00006-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Joyce.Donohue@omh.ny.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rates of Reimbursement - Hospitals Licensed by the Office of Mental Health

I.D. No. OMH-46-11-00003-P

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

Proposed Action: This is a consensus rule making to amend Part 577 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

Subject: Rates of Reimbursement - Hospitals Licensed by the Office of Mental Health.

Purpose: Freeze rates of payments to freestanding psychiatric centers licensed under Mental Hygiene Law Article 31 effective 1/1/12.

Text of proposed rule: Subdivision (a) of Section 577.7 of Title 14 NYCRR is amended to read as follows:

(a) Payment rates shall be established on a prospective basis effective January 1, 1992 and each January 1st thereafter, *except that the rate of payment effective January 1, 2012 through December 31, 2012 shall be a continuance of the rate of payment effective December 31, 2011,* and shall be provisional pending the completion of an audit in accordance with section 577.6 of this Part.

Text of proposed rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Joyce.Donohue@omh.ny.gov

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

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

Consensus Rule Making Determination

This rule making is filed as a Consensus rule on the grounds that its purpose is to conform to non-discretionary statutory requirements.

Chapter 59 of the Laws of 2011 includes a series of programmatic changes and cost-containment measures that are expected to generate savings in fiscal year 2012 and restrain growth in future years. These include, among other initiatives, programmatic reforms to Medicaid payments and program structures, as well as elimination of annual statutory inflation factors for hospitals, nursing homes and home and personal care providers. This rule making amends 14 NYCRR Part 577 by freezing rates paid to freestanding psychiatric hospitals that are licensed under Article 31 of the Mental Hygiene Law and issued an operating certificate in accordance with 14 NYCRR Part 582. This rate freeze will be effective as of January 1, 2012, and shall continue the rate of payment in effect as of December 31, 2011. This continuation of current rates is consistent with the 2011-2012 enacted State budget and is the result of the serious fiscal condition of the State.

Statutory Authority: Sections 7.09 and 43.02 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his/her jurisdiction and to establish standards and methods for determining rates of payment made by government agencies pursuant to Title 11 of Article 5 of the Social Services Law for services provided by facilities, including hospitals, licensed by the Office of Mental Health pursuant to Article 31 of the Mental Hygiene Law. All payments by such agencies shall be at rates

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(11-E-0583SP1)

Workers' Compensation Board

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Workers' Compensation Board publishes a new notice of proposed rule making in the NYS *Register*.

Group Self-Insurance

I.D. No.	Proposed	Expiration Date
WCB-43-10-00006-P	October 27, 2010	October 27, 2011

Appendix IV
2012 Title XIX State Plan
First Quarter Amendment
Non-Institutional Services
Public Notice

installments. The first installment may be billed up front, and the second installment will automatically be paid once the Health Home provider meets certain pre-set state quality metrics. In the first year, a percentage (90 percent) of the PMPM will be paid up front and the remaining percentage (10 percent) will be reserved against meeting the quality benchmarks.

If the State achieves overall savings from the implementation of this program, Health Home providers will be eligible to participate in a shared savings pool. The pool will be developed at the end of the first year of health home operation and will consist of a percentage (15 percent) of the documented State share savings derived from Health Home operation. The State will use a method to adjust savings for regression to the mean before setting up the pool. If the federal portion of savings becomes eligible for shared savings with providers, then a portion of those savings will be included in the pool based on any federal conditions that may be applied to such savings. Under federal rules, some shared savings incentive payments cannot exceed 105 percent of the aggregate payment for Medicaid services received.

The estimated net aggregate decrease in gross Medicaid expenditures attributable to this initiative for the period January 1, 2012 through September 30, 2012 is $13.6 million and for the period October 1, 2012 through September 30, 2013 is $48.3 million.

The public is invited to review and comment on this proposed state plan amendment, copies of which will be available for public review on the Department's website at: http://www.health.ny.gov/regulations/state_plans/status

In addition, copies of the proposed state plan amendment will be on file and available for public review 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

For further information and to review and comment, please contact: 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

Office of Mental Health

As a result of the enacted 2011-2012 State Budget, the New York State Office of Mental Health will be amending its State Medicaid Plan to reflect the continuation of the 2011 rates for the 2012 calendar rate year, effective January 1, 2012, for freestanding psychiatric hospitals licensed under Article 31 of the Mental Hygiene Law.

PUBLIC NOTICE

Department of State

F-2011-0872

Date of Issuance - November 9, 2011

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program. The applicant's consistency certification and accompanying public information and data are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

In F-2011-0872, Harbor One Marina, located at 26 Bridge Street, Old Saybrook, Middlesex County, CT, has applied to the U.S. Army Corps of Engineers, New England District, under the Connecticut Programmatic General Permit to perform maintenance dredging of the existing marina facility, with subsequent disposal of approximately 24,471 cubic yards of dredged material at the Cornfield Shoals Disposal Site (CSDS) within Long Island Sound. The CSDS is located within Long Island Sound, approximately 3.3 nautical miles south of Cornfield Point, Old Saybrook, CT and approximately 4.1 nautical miles north of East Marion, Town of Southold, Suffolk County, NY.

Any interested parties and/or agencies desiring to express their views concerning the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 15 days from the date of publication of this notice, or, by November 24, 2011.

Comments should be addressed to: Department of State, Division of Coastal Resources, One Commerce Plaza, Suite 1010, 99 Washington Ave., Albany, NY 12231, (518) 474-6000, Fax (518) 473-2464

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of Taxation and Finance

Tax Law Article 13-A Rates

Pursuant to the provisions of subdivisions (e), (f), (g) and (h) of section 301-a, subdivision (b) of section 301-d, subdivisions (b) and (c) of section 301-e, subdivisions (a) and (c) of section 301-j and subdivision (a) of section 308 of the Tax Law, the Commissioner of Taxation and Finance hereby gives public notice regarding the petroleum business tax (Tax Law, Article 13-A) rate adjustment calculation and the resulting rates effective January 1, 2012 (effective March 1, 2012 for quarterly filers) as follows: The motor fuel and highway diesel motor fuel rate is adjusted from $.102 to $.107; the non-highway diesel motor fuel rate is adjusted from $.093 to $.097; the residual petroleum product rate is adjusted from $.071 to $.074; the kero-jet fuel rate is adjusted from $.068 to $.071; the aviation gasoline rate is adjusted from $.102 to $.107; the rate of the supplemental tax on aviation gasoline is adjusted from $.068 to $.071; and the rate of the supplemental petroleum business tax is adjusted from $.068 to $.071. The separate rate of supplemental petroleum business tax with respect to highway diesel motor fuel is adjusted from $.0505 to $.0535; it is computed by subtracting one and three-quarters cents from the adjusted rate of the supplemental petroleum business tax. The railroad diesel rate is adjusted from $.089 to $.094; it is computed by subtracting one and three-tenths cents from the motor fuel and highway diesel motor fuel rate.

The utility credit (or reimbursement) rate with respect to residual petroleum product is adjusted from $.0567 to $.0595 and the utility credit (or reimbursement) rate with respect to non-highway diesel product is adjusted from $.0571 to $.0599. The utility credit (or reimbursement) rates are further adjusted by adding one-half of one cent to the adjusted rates of the utility credits (or reimbursements); the utility credit (or reimbursement) rate with respect to residual petroleum product is further adjusted from $.0617 to $.0645, and the utility

Appendix V
2012 Title XIX State Plan
First Quarter Amendment
Non-Institutional Services
Responses to Standard Funding Questions

HOSPITAL SERVICES
State Plan Amendment #11-90

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 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: The total annual Medicaid reimbursement for all nine private psychiatric hospitals (PPHs) is approximately $86 million. The entire balance of Medicaid payments that is paid directly to the PPHs is retained by them to support their costs of operations.

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: The entire non-Federal share of Medicaid payments for inpatient hospital services under the State plan provided by PPHs is paid by State funds provided by appropriations enacted by the State legislature.

Regarding CMS' inquiry as to the use of certified public expenditures (CPEs) and intergovernmental transfers (IGTs) by the State please note that New York does not utilize CPEs or IGTs to assist in financing any portion of the non-Federal share of Medicaid payments to PPHs.

Regarding CMS' inquiry as to the use of provider taxes by the State please note that New York does not impose any provider taxes to fund the non-Federal share of Medicaid payments to PPHs.

Regarding the State's practices for verifying that expenditures being certified are eligible for Federal matching funds in accordance with 42 CFR §433.51(b), the State Department of Health (DOH) contracts with a fiscal agent, Computer Sciences Corporation (CSC), to process Medicaid claims and make payments to providers. The fiscal agent processes claims and pays providers for services rendered to eligible Medicaid recipients through the EMEDNY System, a computerized payment and information reporting system. All claims are subjected to numerous system edits to help ensure only legitimate services are reimbursed to properly enrolled providers. In addition, both the DOH and the New York State Comptroller's office subject Medicaid claims to both prepayment and post-payment audits to ensure that providers comply with all applicable State and Federal laws and regulations.

In New York State Medicaid payments are issued to providers every Wednesday. CSC provides a weekly summary to the DOH that includes the total Federal, State, and local funding required to support all checks to be released for payment to providers. The DOH arranges for the required funds to be placed in an escrow account until they are needed to pay for the checks presented by providers. All Federal Medicaid matching funds are drawn down by the State in accordance with an agreement between the United States Department of the Treasury and the State as required by the Cash Management Improvement Act of 1990, as amended.

On a quarterly basis CSC provides a report of paid claims to the DOH. The DOH combines that expenditure information with data concerning other Medicaid expenditures made directly by the DOH or other State agencies. The DOH then submits the CMS-64 report to the Department of Health and Human Services, which enables the State to earn the appropriate Federal reimbursement for its certified claims submitted either by providers of service or by State agency representatives. These procedures are followed by the State in order to ensure that Federal Medicaid funds are only used to pay for legitimate Medicaid services.

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 for PPH services.

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 447.272, 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 hospital inpatient upper payment limit is calculated in accordance with 42 CFR §447.272. The upper payment limit refers to a reasonable estimate of the amount that would be paid for services furnished by the applicable class of providers using Medicare payment principles. Aggregate Medicaid payments to the specific class of providers may not exceed the upper payment limit.

   Based on guidance from CMS, the State and CMS staff will engage in discussions to develop a strategic plan to complete the UPL demonstration for 2012.

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: All providers included in this proposed SPA are either for profit or not-for-profit corporations. This SPA language is not applicable for government providers.

Tribal Assurance:

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 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 on 1/31/12 via U.S. mail, and the health clinic administrators were emailed the same information on 1/31/12. Responses were due back 2/14/12 and to date, no comments have been received. Copies of the notifications are enclosed.

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.

Appendix VI
2012 Title XIX State Plan
First Quarter Amendment
Non-Institutional Services
Responses to Standard Access Questions

NON-INSTITUTIONAL SERVICES
State Plan Amendment #11-90

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-B 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: This amendment seeks to slow the growth in the Program's cost while maintaining patient access and quality of care.

   The State Plan for the private psychiatric hospitals established the framework for setting Medicaid rates for hospitals licensed by the Office of Mental Health. In doing so, eligible children, youths and the aged have been and are currently receiving inpatient treatment that they may not have otherwise been afforded.

   The one year rate freeze proposed in this amendment will not have an adverse effect on providers, because the current rate paid to these providers continues to be adequate to ensure access and quality of care. The proposal does not reduce payments from the current level; rather it ensures that program costs will not escalate over the coming year.

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: This amendment does not establish new rates for the services covered. It leaves existing rates in place for a period of one year. The rates in question have heretofore been adequate to ensure access to PPH services.

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: This change was enacted by the State Legislature as part of the negotiation of the 2011-12 Budget. The impact of this change was weighed in the context of the overall Budget in the State. The legislative process provides opportunities for all stakeholders to lobby their concerns, objections, or support for various legislative initiatives.

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: Should any essential community provider experience Medicaid or other revenue issues that would prevent access to needed community services, per usual practice, the State would meet with them to explore the situation and discuss possible solutions, if necessary.

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: Over the course of the past three years, the State has undertaken a massive reform initiative to better align reimbursement with care. When fully implemented in 2010-11, the initiative will invest over $600 million in the State's ambulatory care system (outpatient, ambulatory surgery, emergency department, clinic and physicians) to incentivize care in the most appropriate setting. The State has also increased its physician reimbursement schedule to resemble Medicare payments for similar services, thus ensuring continued access for Medicaid beneficiaries. Further, the State is implementing initiatives that will award $600 million annually, over five years, to providers who promote efficiency and quality care through the Federal-State Health Reform Partnership(F-SHRP)/ NYS Healthcare Efficiency and Affordability Law (HEAL). While some of these initiatives are outside the scope of the State Plan, they represent some of the measures the State is taking to ensure quality care for the State's most vulnerable population.