NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

September 30, 2011

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 #11-88
Non-Institutional Services

Dear Mr. Melendez:

The State requests approval of the enclosed amendment #11-88 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective July 1, 2011 (Appendix I). This amendment is being submitted based on recently promulgated regulations. 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 State statute 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 June 29, 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., Director, Division of Health Care Financing 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: **11-88**	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 **July 1, 2011**	
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 **07/01/11-09/30/11 ($292,488)** b. FFY **10/01/11-09/30/12 ($1,169,952)**	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: **Attachment 4.19-A, Part III: Page 3**	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*: **Attachment 4.19-A, Part III: Page 3**	
10. SUBJECT OF AMENDMENT: **OMH – 2011-12 Residential Treatment Facilities (RTF) Rate Freeze (FMAP = 50% 7/1/11 forward)**		
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: September 30, 2011		
FOR REGIONAL OFFICE USE ONLY		
17. DATE RECEIVED:	18. DATE APPROVED:	
PLAN APPROVED – ONE COPY ATTACHED		
19. EFFECTIVE DATE OF APPROVED MATERIAL:	20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME:	22. TITLE:	
23. REMARKS:		

FORM HCFA-179 (07-92)

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

B. RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN AND YOUTH

Medicaid rates for Residential Treatment Facilities for Children and Youth ("RTFs") are established prospectively, based upon actual costs and patient days as reported on cost reports for the fiscal year two years prior to the rate year. The RTF fiscal year and rate year are for the twelve months July 1 through June 30. Actual patient days are subject to a maximum utilization of 98 percent and a minimum utilization of 95 percent. For the rate years July 1, 1994 through June 30, 1995 and July 1, 1995 through June 30, 1996 the base year for both rate years for the purpose of setting rates will be July 1, 1992 through June 30, 1993. The rate of payment in effect June 30, 2011 shall be the rate of payment effective July 1, 2011 through June 30, 2012.

1. OPERATING COSTS

Allowable operating costs are subject to the review and approval of the Office of Mental Health, excluding eligible pharmaceuticals which will be reimbursed using the Fee-for-Service Program through the Medicaid Formulary administered by the New York State Department of Health, effective on or after August 1, 2011. In determining the allowability of costs, the Office of Mental Health reviews the categories of cost, described below, with consideration given to the special needs of the patient population to be served by the RTF. The categories of costs include:

([I]i) Clinical Care. This category of costs includes salaries and fringe benefits for clinical staff.

(ii) Other than Clinical Care. This category of costs includes the costs associated with administration, maintenance and child support.

Allowable per diem operating costs in the category of clinical care are limited to the lesser of the reported costs or the amount derived from the number of clinical staff approved by the Commissioner multiplied by a standard salary and fringe benefit amount. Clinical services such as dental services, purchased on a contractual basis will be considered allowable and not subject to the clinical standard if the services are not uniformly provided by all RTFs and thus not considered by the Commissioner in the establishment of the approved staffing levels.

Allowable per diem operating costs in the category of other than clinical care are limited to the lesser of the reported costs or a standard amount.

The standard amounts for the clinical and other than clinical categories are computed as follows. For RTFs located in the New York City metropolitan statistical area and Nassau and Suffolk counties the standard is: the sum of 50[%] percent of the average per diem cost for all RTFs in this geographic area and 50[%] percent of the average per diem cost for all RTFs in the state; increased by seven and one half percent. For RTFs located outside the New York City metropolitan statistical area and Nassau and Suffolk counties the standard is: the sum of 50[%] percent of the average per diem cost for all RTFs located outside the New York City metropolitan statistical area and Nassau and Suffolk Counties and 50[%] percent of the average per diem cost for all RTFs in the state; increased by seven and one half percent.

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

SUMMARY
SPA #11-88

This state plan amendment proposes to continue the 2010-11 rates for the 2011-2012 rate year for residential treatment facilities for children and youth (RTFs) licensed by the Office of Mental Health.

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

Assessment of Public Comment

Public comment was received from 3 commentators, the Cystic Fibrosis Center at SUNY-Upstate, SAPS Drug Wholesale, Inc., and Abbott Nutrition, a manufacturer of enteral nutritional formulas.

Comments received were focused on one area of the emergency regulations:

Subdivision (g)(2) of section 505.5 benefit limitations for enteral nutritional formulas:

The Cystic Fibrosis Center at SUNY-Upstate stated that they have obtained authorization for enteral nutritional formula in the treatment of cystic fibrosis, an inborn metabolic disease, but the provider could not dispense because the formula ordered was not an inborn metabolic formula. Some cystic fibrosis patients require greatly increased caloric intake through standard oral formulas because of the nature of the disease. The Department subsequently manually authorized the formula to allow payment and plans to institute automated prior authorization system changes to avert potential delays in treatment. The Department has also reached out to Cystic Fibrosis centers to inform them of the temporary workaround and long term solution. SAPS Drug Wholesale expressed concern that the State is not offering coverage for oral nutritional formulas for HIV/AIDS and chemotherapy patients and those who have lost significant weight. They stated that coverage for adults should not be limited to tube feeding and suggested that patients will now use the emergency room for treatment. The Department plans to publish links to resources for health care practitioners and beneficiaries regarding good nutrition practices and food assistance programs that will assist in meeting special nutritional requirements to maintain good health.

Abbott Nutrition expressed concern that coverage for children had been dropped and that there was a stark contrast between the statutory language and the regulatory language. Additionally Abbot stated its belief that the regulation is more limiting than the statute and excludes coverage for children with growth and development needs. Abbott stated that the Medicaid Redesign Team's proposal language also dropped coverage for children.

The Department and the MRT process did not nor has intention to drop or change enteral nutritional formula coverage or prior authorization criteria for children. The statutory language cited by Abbott was inserted during the legislative process to assure that coverage for children would not change. In the regulatory language, the Department reiterated its longstanding medical criteria for children that formulas are covered when nutrients from food cannot be absorbed or metabolized. Growth and development issues remain covered by Medicaid under the provisions of Social Services Law Article 5 Title 11 Section 365-a (3), early periodic screening, diagnosis and treatment (EPSDT).

The Department refers the commentator to the New York State Medicaid Program Enteral Formula Prior Authorization Prescriber Worksheet (revised May 2011) which contains, as did previous versions, the criteria regarding individuals under the age of 21. Specifically, medical conditions that prevent consumption normal table, and softened, mashed, pureed, or blenderized foods, documentation of alternatives tried but not successful, significant unintentional weight loss or no weight gain in six months and other objective medical evidence in the medical record to support the need for enteral nutritional formulas. The worksheet is available at: http://www.emedny.org/ProviderManuals/communications/Prescriber__Worksheet-20110504.pdf

Office of Mental Health

EMERGENCY RULE MAKING

Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth

I.D. No. OMH-29-11-00005-E
Filing No. 617
Filing Date: 2011-07-01
Effective Date: 2011-07-01

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

Action taken: Amendment of Part 578 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The rulemaking serves to amend two separate provisions within 14 NYCRR Part 578. The first amendment provides consistency with the enacted State budget by freezing the rate of payments received by residential treatment facilities (RTF), effective July 1, 2011. The second amendment provides for a change in the reimbursement methodology for eligible pharmaceutical costs for RTFs that would be effective on or after January 1, 2011, and upon receipt of federal approval. Due to the implementation dates of these provisions and the need for RTF providers to be aware of these amendments, it was determined that this rule warrants emergency filing.

Subject: Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth.

Purpose: Amend reimbursement methodology for eligible pharmaceutical costs for RTFs and freeze the rates of payments effective 7/1/11.

Text of emergency rule: 1. Subdivision (a) of Section 578.8 of Title 14 NYCRR is amended to read as follows:

(a) The rate of payment shall consist of an operating cost per diem and a capital cost per diem, computed from allowable costs and subject to cost category standards. The rate year shall be the 12-month period from July 1st through June 30th. The rate of payment effective July 1, 1995 through June 30, 1996 shall be a continuance of the rate of payment effective July 1, 1994 through June 30, 1995. *The rate of payment effective July 1, 2011 through June 30, 2012 shall be a continuance of the rate of payment in effect on June 30, 2011, except to the extent necessary to adjust such payments pursuant to the provisions of subdivision (o) of Section 578.14 of this Part.*

2. Subdivision (o) of Section 578.14 of Title 14 NYCRR is amended to read as follows:

(o) Effective on or after January 1, 2011, and contingent upon federal approval, allowable operating costs shall not include the costs of pharmaceuticals listed on the New York State Medicaid formulary, *except for such costs incurred during the first 90 days after admission to the residential treatment facility or until Medicaid eligibility is established for the recipient, whichever comes first.* [Such costs] *Pharmaceuticals for which the cost is so excluded* may be reimbursed, as appropriate, on a fee-for-service basis by the Medicaid program.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 28, 2011.

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

Regulatory Impact Statement

1. Statutory Authority: Section 7.09 of the Mental Hygiene Law grants 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 or her jurisdiction.

Section 43.02 of the Mental Hygiene Law provides that the Commissioner has the power 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 residential treatment facilities for children and youth licensed by the Office of Mental Health (Office).

2. Legislative Objectives: Article 7 of the Mental Hygiene Law reflects the Commissioner's authority to establish regulations regarding mental health programs. Allowable operating costs are subject to the review and approval of the Office, including eligible pharmaceutical costs. The rule provides for a change in the reimbursement methodology for eligible pharmaceutical costs for Residential Treatment Facilities (RTF) for children and youth. In addition, this rule provides consistency with the enacted State budget by freezing the rate of payments received by RTF providers for the year July 1, 2011 through June 30, 2012.

3. Needs and Benefits: This rulemaking addresses two separate provisions within 14 NYCRR Part 578. The first amendment reflects a freeze of the rates paid to RTF providers for the year July 1, 2011 through June 30, 2012. 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.

The other amendment concerns costs of pharmaceuticals for residents of an RTF. On February 2, 2011, the Office adopted as final amendments to this Part which specified that, on or after January 1, 2011, and contingent upon federal approval, allowable operating costs for RTFs for children and youth licensed by the Office shall not include the costs of pharmaceuticals listed on the New York State Medicaid formulary. The regulation further stated that, "Such costs may be reimbursed, as appropriate, on a fee-for-service basis by the Medicaid program." After this rule was promulgated, it was determined that a change is necessary due to the fact that when children are admitted to an RTF, there may be a significant lag of up to 90 days before they are deemed to be Medicaid eligible. In or-

der to ensure that children receive their necessary medications, the Office is amending this regulation to provide that allowable operating costs for the RTFs will include pharmaceutical costs incurred during the first 90 days after a child's admission to an RTF or until Medicaid eligibility is established for the individual, whichever comes first. It is important to note that this provision is effective upon federal approval.

4. Costs:

(a) cost to State government: These regulatory amendments will not result in any additional costs to State government. It is anticipated that the rate freeze will result in a full annual savings to State government in the amount of $1,169,951, and that the pharmaceutical carve out will result in a full annual savings to State government in the amount of $375,000.

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

(c) cost to regulated parties: The gross estimated reimbursable costs to providers for the lag in Medicaid eligibility could be as much as $1,000,000. Providers will be reimbursed for all but approximately $350,000 of this increase through adjustments to their reimbursement rates.

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 substantially increase the paperwork requirements of affected providers.

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

8. Alternatives: As noted above, this rulemaking serves two purposes. The first amendment serves to freeze the rates paid to providers for the period July 1, 2011 through June 30, 2012. This amendment is consistent with the enacted State budget and is a reflection of the serious fiscal condition of the State. The second amendment provides, upon federal approval, for an exception to the exclusion of the costs of pharmaceuticals from the allowable operating costs of providers for 90 days after an individual's admission to an RTF or until Medicaid eligibility is established, whichever occurs first. This amendment will serve to ensure that children who have been admitted to an RTF will continue to have a means for having their medications reimbursed while their Medicaid eligibility is being established. While providers will initially incur the costs associated with these medications, those costs will be reimbursed by a subsequent adjustment in their rate of payment over the following two years, assuming the providers' overall administration maintenance and support costs do not surpass allowable amounts. Currently, it is anticipated that four providers may exceed these amounts, thereby resulting in the $350,000 amount in the "cost to regulated parties" section above. No other alternative was 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: The regulatory amendments would become effective immediately upon adoption.

Regulatory Flexibility Analysis

The rule provides consistency with the 2011-2012 enacted State budget by freezing the rate of payments received by residential treatment facilities for children and youth, effective July 1, 2011. The rule also amends the reimbursement methodology for eligible pharmaceutical costs by permitting an exemption to the exclusion of the costs of pharmaceuticals from the allowable operating costs of RTF providers for 90 days after an individual's admission to an RTF, or until Medicaid eligibility is established, whichever comes first. While providers will initially incur costs associated with these medications, those costs will be reimbursed by a subsequent adjustment in their rate of payment over the following two years, assuming the providers' overall administration maintenance and support costs do not surpass allowable amounts. It is expected that the majority of RTF providers will not exceed allowable amounts; therefore, it is anticipated that the majority of providers will be reimbursed for the pharmaceutical costs by a rate adjustment over the subsequent two years. As no adverse economic impact upon small businesses or local governments is anticipated, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

The purpose of this rulemaking is twofold. The rule freezes the rate of payments received by residential treatment facilities for children and youth, effective July 1, 2011. This amendment is consistent with the 2011-2012 enacted State budget and reflects the serious fiscal condition of the State. The rule also amends the reimbursement methodology for eligible pharmaceutical costs by permitting an exemption to the exclusion of the costs of pharmaceuticals from the allowable operating costs of RTF providers for 90 days after an individual's admission to an RTF, or until Medicaid eligibility is established, whichever comes first. While providers will initially incur costs associated with these medications, those costs will be reimbursed by a subsequent adjustment in their rate of payment over the following two years, assuming the providers' overall administration maintenance and support costs do not surpass allowable amounts. It is expected that the majority of RTF providers will not exceed allowable amounts; therefore, it is anticipated that the majority of providers will be reimbursed for the pharmaceutical costs by a rate adjustment over the subsequent two years. As there is not expected to be an adverse economic impact upon rural areas, a rural area flexibility analysis is not included in this rulemaking.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it is evident from the subject matter of the rulemaking that there will be no impact upon jobs and employment opportunities. The rule serves two purposes. First, it provides consistency with the enacted State budget by freezing rates of payments to providers of residential treatment facilities (RTF) for children and youth, effective July 1, 2011. Secondly, it amends the reimbursement methodology for eligible pharmaceutical costs for RTFS, effective on or after January 1, 2011 and pending federal approval.

Office for People with Developmental Disabilites

EMERGENCY RULE MAKING

Provider Allocation of OPWDD Funding

I.D. No. PDD-29-11-00006-E
Filing No. 618
Filing Date: 2011-07-01
Effective Date: 2011-07-01

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

Action taken: Amendment of sections 635-10.5, 671.7 and 681.14 of Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: This emergency rule is being promulgated on July 1, 2011 to delay from July 1, 2011 to September 30, 2011 implementation of a specific provision in various rules concerning efficiency adjustments in rate setting methodologies that are being adopted on July 1, 2011.

The rules concerning efficiency adjustments reduce the operating components of reimbursement to providers of supervised residential habilitation services, group day habilitation and supplemental group day habilitation services, prevocational services, and under 31-bed ICF/DDs.

These rules concerning efficiency adjustments contain a stipulation that would restrict providers from allocating funds to administrative expenses if they were not designated for administrative costs in the price or rate. Subsequent to publication of the proposed regulations, providers indicated that, in the context of the various July 1, 2011 price and rate reductions, such restrictions could have a severe impact on those providers already demonstrating the greatest level of administrative efficiencies in their operations. For some providers, the restriction could compound and/or exacerbate the effects of the administrative aspects of reductions.

OPWDD is temporarily suspending this provision because it could potentially severely hamper a provider's ability to sustain necessary administrative aspects of operations, and the restriction, if left intact could potentially cripple a provider's ability to provide services and continue operations. OPWDD will use the delay in order to conduct an analysis of the possible negative impacts of this restriction on providers and to deliberate on whether to proceed with adoption, revocation or modification of this restriction. OPWDD is opting to err on the side of caution and to examine the feasibility of alternatives before imposing this restriction. Thus, it is necessary for the health, welfare and safety of individuals these providers serve to delay the effective date of the restriction.

Subject: Provider allocation of OPWDD funding.

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

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 these proposed state plan amendments.

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), 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 hereby gives notice that it is proposing to amend its Medicaid State Plan to reflect the continuation of the 2010-2011 rates for the 2011-2012 rate year for Residential Treatment Facilities for Children and Youth, effective July 1, 2011.

PUBLIC NOTICE
New York State Association of Counties (NYSAC)

NYSAC is soliciting proposals from administrative service agencies relating to trust service, managed accounts, administration and/or funding of a Deferred Compensation Plan for the employees of NYSAC. They must meet the requirements of section 457 of the Internal Revenue Code and Section 5 of the State Finance Law, including all rules and regulations issued pursuant thereto.

A copy of the proposal questionnaire may be obtained from: NYSAC, Attn: Karen Catalfamo, Fiscal/Office Manager, 540 Broadway, Albany, NY 12207

All proposals must be received no later than 30 days from the date of publication in the New York *State Register*.

PUBLIC NOTICE
Oneida-Herkimer Solid Waste Authority
FINAL REQUEST FOR PROPOSALS (RFP)
TRANSPORTATION OF SOLID WASTE TO THE ONEIDA-HERKIMER LANDFILL FOR ONEIDA-HERKIMER SOLID WASTE MANAGEMENT AUTHORITY

Pursuant to New York State General Municipal Law, Section 120-w, the Oneida-Herkimer Solid Waste Authority hereby gives notice of the following:

The Oneida-Herkimer Solid Waste Authority (OHSWA) desires to procure an agreement for 5 years beginning 10/24/11 for transportation of non-recyclable waste from 2 transfer stations to the Oneida-Herkimer Landfill, Ava, NY. Responses to the Final RFP must be received by 1:00 p.m. 7/13/2011.

Copies of the Final RFP may be obtained at www.ohswa.org or through the contact below: James V. Biamonte, Contracting Officer, 1600 Genesee St., Utica, NY 13502

SALE OF FOREST PRODUCTS
Cortland Reforestation Area No. 6
Contract No. X007946

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

Sealed bids for 68.4 MBF more or less of sawtimber and 45 cords more or less of hardwood/pulpwood/firewood, located on Cortland Reforestation Area No. 6, Cuyler Hill State Forest, Stand E-13.1, will be accepted at the Department of Environmental Conservation, Contract Unit, 625 Broadway, 10th Fl., Albany, NY 12233-5027 until 11:00 a.m., Thursday, July 7, 2011.

For further information, contact: Mark Zubal, Senior Forester, Department of Environmental Conservation, Division of Lands and Forests, Region 7, 1285 Fisher Ave., Cortland, NY 13045-1090, (607) 753-3095 x217

SALE OF FOREST PRODUCTS
Delaware Reforestation Area No. 7
Contract No. X008228

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

Sealed bids for 425.7 MBF more or less of softwood sawtimber and 1.5 MBF more or less of misc. hardwood sawtimber, located on Delaware Reforestation Area No. 7, Stand A-20, will be accepted at the Department of Environmental Conservation, Bureau of Procurement & Expenditure Services, 625 Broadway, 10th Fl., Albany, NY 12233-5027 until 11:00 a.m., Thursday, July 7, 2011.

For further information, contact: Ben Peters, Senior Forester, Department of Environmental Conservation, Division of Lands and Forests, Region 4, 65561 State Hwy. 10, Suite 1, Stamford, NY 12167-9503, (607) 652-7365

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

NON-INSTITUTIONAL SERVICES
State Plan Amendment #11-88

CMS Standard Funding Questions

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

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

   Response: The total annual Medicaid reimbursement for all nineteen RTFs is approximately $92.8 million. Five of the nineteen Residential Treatment Facilities (RTFs) covered under this proposed Plan Amendment currently have capital construction bonds outstanding that were issued by the Dormitory Authority of the State of New York (DASNY). A portion of the Medicaid payments for these five facilities (i.e. an amount equal to the debt service on the bonds) is paid directly to the OMH. The OMH acts as an agent and forwards these funds to DASNY which makes the debt service payments on the bonds for these providers. The entire balance of Medicaid payments that is paid directly to the RTFs 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 through an IGT or CPE. In this case, please identify the agency to which the funds are appropriated. Please provide an estimate of total expenditure and State share amounts for each type of Medicaid payment. If any of the non-federal share is being provided using IGTs or CPEs, please fully describe the matching arrangement including when the state agency receives the transferred amounts from the local governmental entity transferring the funds. If CPEs are used, please describe the methodology used by the state to verify that the total expenditures being certified are eligible for Federal matching funds in accordance with 42 CFR 433.51(b). For any payment funded by CPEs or IGTs, please provide the following:

(i) a complete list of the names of entities transferring or certifying funds;

(ii) the operational nature of the entity (state, county, city, other);

(iii) the total amounts transferred or certified by each entity;

(iv) clarify whether the certifying or transferring entity has general taxing authority: and,

(v) whether the certifying or transferring entity received appropriations (identify level of appropriations).

Response: The entire non-Federal share of Medicaid payments for inpatient hospital services under the State plan provided by RTFs is paid by State funds provided by appropriations enacted by the State legislature. There is no local share for RTFs.

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 RTFs.

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 RTFs .

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 Stated 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 Residential Treatment 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.**

   Response: All RTFs fall into the category of psychiatric residential treatment facilities, which are defined in Federal regulation as facilities "other than a hospital that provides psychiatric services...to individuals under age 21, in an inpatient setting." 42 C.F.R. § 483.352. They do not fall within the hospital classification for the purposes of determining the hospital UPL, and are not a class of provider to which a UPL applies. Accordingly, this question is not applicable.

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: There are no governmental providers providing RTF services in New York State. All providers are private, not-for-profit corporations.

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

Appendix VI
2011 Title XIX State Plan
Third Quarter Amendment
Non-Institutional Services
Responses to Standard Access Questions

NON-INSTITUTIONAL SERVICES
State Plan Amendment #11-88

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 Residential Treatment Facilities for Children and Youth established the framework for setting Medicaid rates for the 19 providers licensed by the Office of Mental Health. In doing so, eligible children and youths 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? Jay changed this to the following**

   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 have been adequate to ensure access to RTF 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.