

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**MEDICAID RATES FOR RESIDENTIAL  
HABILITATION SERVICES PROVIDED AT  
NEW YORK STATE-OPERATED  
RESIDENCES ARE EXCESSIVE**

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**Daniel R. Levinson  
Inspector General**

March 2014  
A-02-13-01008

# *Office of Inspector General*

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## EXECUTIVE SUMMARY

*New York State's Medicaid payment rates for certain residential habilitation services did not meet the Federal requirement that payment for services be consistent with efficiency and economy. New York claimed Medicaid reimbursement of approximately \$320 million in excess of its actual costs.*

### WHY WE DID THIS REVIEW

During previous Office of Inspector General (OIG) reviews of services under New York State's (New York) Office for People With Developmental Disabilities (OPWDD) waiver program, we observed that Medicaid reimbursement rates for residential habilitation services provided at State-operated residences were significantly higher than those provided at privately operated residences. A recent OIG review also found that Medicaid rates for New York's State-operated developmental centers may be excessive.

The objective of this review was to determine whether payment rates for residential habilitation services provided at State-operated residences under New York's developmental disabilities waiver program met the Federal requirement that payment for services be consistent with efficiency and economy.

### BACKGROUND

A State may obtain a waiver that allows it to furnish an array of services to Medicaid beneficiaries so that they can live in the community and avoid institutionalization. States have broad discretion to design waiver programs to address the needs of target populations; however, the Centers for Medicare & Medicaid Services (CMS) must approve each waiver.

In New York, the Department of Health (DOH) administers the Medicaid program. Under a memorandum of understanding with DOH, OPWDD provides home and community-based services to individuals with developmental disabilities under a 1915(c) waiver that covers a variety of services, including residential habilitation services to assist individuals in acquiring and retaining skills related to living in the community. Residential habilitation services are provided at two levels of care—supervised and supportive—and reimbursed using two separate payment rates that are based on the levels of care. These services are provided in both State-operated and privately operated residences.

Methodologies for setting the payment rates for all OPWDD waiver services, including residential habilitation services, are approved by CMS as part of its waiver-approval process. Using these CMS-approved methodologies, OPWDD establishes payment rates for waiver services.

Under the current payment rate methodology for residential habilitation services provided at State-operated residences, OPWDD starts with base rates for the two levels of care (i.e., supervised and supported) that were calculated in State fiscal year (SFY) 1992. To calculate the

following year's payment rates, New York adjusted the base rates for various factors, such as inflation and additional staffing and indirect costs related to new program enrollees. Each year since, New York has used the previous year's adjusted payment rates as the starting point for its calculations to determine current-year payment rates. Services provided by State-operated residences are reimbursed using statewide rates. Privately operated residences are reimbursed using provider-specific payment rates.

Payment for services must be consistent with efficiency, economy, and quality of care.

## **HOW WE CONDUCTED THIS REVIEW**

We compared the total Medicaid payments for both supervised and supportive residential habilitation services at State-operated residences to New York's actual costs during SFY 2010. In addition, we compared payment rates for supervised residential habilitation services provided at State-operated and privately operated residences during SFY 2011. Finally, we calculated SFY 2011 payment rates for both services provided at State-operated residences using the prior year's actual costs.

## **WHAT WE FOUND**

Payment rates for residential habilitation services provided at State-operated residences did not meet the Federal requirement that payment for services be consistent with efficiency and economy. Specifically, for SFY 2010, Federal Medicaid payments exceeded actual costs for providing these services by approximately \$320 million (57 percent more than actual costs). Further, the payment rate for supervised residential habilitation services at State-operated residences was more than double the average rate for privately operated residences that offered the same services.

We also determined that if New York had used the prior year's actual costs in calculating payment rates for residential habilitation services, its SFY 2011 total reimbursement would have been approximately \$692 million (\$346 million Federal share) less than what it claimed.

Payment rates for residential habilitation services were significantly higher because CMS did not adequately consider the appropriateness of OPWDD's rate-setting methodology when it approved New York's waiver agreement. Specifically, CMS approved DOH's application for its waiver even though the application did not describe in detail the methodology that DOH used to calculate payment rates for State-operated residences. According to New York officials, that methodology used the prior year's adjusted payment rates, which were calculated using reimbursable costs rather than actual costs, to determine payment rates for the current year.

## **WHAT WE RECOMMEND**

We recommend that CMS work with New York to ensure that the methodology used to set payment rates for State-operated residences meets the Federal requirement that payment for services be consistent with efficiency and economy. Use of payment rates based on actual costs

would have saved the Federal Medicaid program approximately \$346 million in SFY 2011 and may result in similar savings annually.

#### **DEPARTMENT OF HEALTH COMMENTS**

In written comments on our draft report, DOH stated that it, along with OPWDD, has taken aggressive actions to address the issues we raised. Specifically, DOH stated that it has submitted a methodology to CMS that is consistent with all Federal requirements and that DOH is engaged in discussions to finalize this methodology, which will be retroactive to April 1, 2013.

#### **CENTERS FOR MEDICARE & MEDICAID SERVICES COMMENTS**

In written comments on our draft report, CMS concurred with our recommendation.

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## INTRODUCTION

### WHY WE DID THIS REVIEW

During a previous Office of Inspector General (OIG) review of services under New York State's (New York) Office for People With Developmental Disabilities (OPWDD) waiver program, we observed that Medicaid reimbursement rates for residential habilitation services provided at State-operated residences were significantly higher than those provided at privately operated residences.<sup>1</sup> Another OIG review found that Medicaid payment rates for New York's State-operated developmental centers were more than nine times the average payment rates for all of New York's other State-operated and privately operated intermediate care facilities (ICFs) for the same period.<sup>2</sup> In addition, if New York had used actual costs in its payment rate calculation for its developmental centers, the Federal Government could have saved \$701 million in State fiscal year (SFY) 2009.

### OBJECTIVE

Our objective was to determine whether payment rates for residential habilitation services provided at State-operated residences under New York's developmental disabilities waiver program met the Federal requirement that payment for services be consistent with efficiency and economy.

### BACKGROUND

#### The Medicaid Program

The Medicaid program provides medical assistance to low-income individuals and those with disabilities (Title XIX of the Social Security Act (the Act)). The Federal and State Governments jointly fund and administer Medicaid. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although a State has considerable flexibility in designing and operating its Medicaid program, it must comply with Federal requirements.

A State may obtain a waiver that allows it to furnish an array of services to Medicaid beneficiaries so that they can live in the community and avoid institutionalization (section 1915(c) of the Act). States have broad discretion to design waiver programs to address the needs of target populations; however, CMS must approve each waiver.

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<sup>1</sup> *New York Claimed Some Unallowable Costs for Services by New York City Providers Under the State's Developmental Disabilities Waiver Program* (A-02-10-01027, issued August 14, 2012).

<sup>2</sup> *Medicaid Rates for New York State-Operated Developmental Centers May Be Excessive* (A-02-11-01029, issued May 17, 2012).

## **New York’s Office for People With Developmental Disabilities Waiver Program**

In New York, the Department of Health (DOH) administers the Medicaid program. Under a memorandum of understanding with DOH, OPWDD provides home and community-based services to individuals with developmental disabilities under a 1915(c) waiver (waiver program).<sup>3</sup> The waiver program has been in operation and approved by CMS since SFY 1992, and on September 24, 2009, CMS approved the waiver for a 5-year renewal period, through September 30, 2014.

### **Waiver Program Residential Habilitation Services**

New York’s waiver program covers a variety of services, including residential habilitation services to assist individuals in acquiring and retaining skills related to living in the community.<sup>4</sup> Residential habilitation services are provided in State-operated and privately operated residences, both of which offer assistance with activities of daily living; community inclusion and relationship-building; development of social skills, leisure skills, self-advocacy, and informed-choice skills; and appropriate behavior development to help individuals live successfully in their communities. Most residential habilitation services are provided at residences known as individualized residential alternatives (IRAs), which may be State-operated or privately operated.<sup>5</sup>

Residential habilitation services are provided at two levels of care—supervised and supportive—and reimbursed using two separate payment rates that are based on the levels of care. For the supervised level of care, provider staff are onsite or available whenever waiver program enrollees are present. For the supportive level of care, provider staff are generally not onsite or always available. The unit of service for both supervised and supportive residential habilitation services is a calendar month, which may be billed in increments of a full month or a half-month.

In SFYs 2010 and 2011, DOH claimed \$1.77 billion (\$883 million Federal share) and \$1.81 billion (\$906 million Federal share), respectively, in Medicaid reimbursement for waiver program residential habilitation services provided at State-operated residences.

### **Methodology for Setting Payment Rates for State-Operated Residences**

Methodologies for setting payment rates for all waiver services, including residential habilitation services, are approved by CMS as part of its waiver-approval process. Using these

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<sup>3</sup> The waiver program is formally known as the New York State Office of Mental Retardation and Developmental Disabilities waiver program. However, in July 2010, the Office of Mental Retardation and Developmental Disabilities was renamed the Office for People With Developmental Disabilities.

<sup>4</sup> Other services offered under the waiver program include day habilitation (assistance with improvement in self-help, socialization, and adaptive skills in a nonresidential setting); supported employment (support to perform in a paid work setting); prevocational services; respite services (short periods of rest or relief for caregivers); adaptive technologies; assistive technology; plan-of-care support services; family education and training; consolidated supports and services; and transitional supports services.

<sup>5</sup> Services are also available to individuals who live in their own homes or residences or in family-care homes.

CMS-approved methodologies, OPWDD establishes payment rates for waiver services.<sup>6</sup> Under the current payment rate methodology for residential habilitation services provided at State-operated residences, OPWDD establishes separate payment rates for supervised and supportive services for the current SFY by (1) adjusting the prior year's payment rates for changes in both staffing levels and indirect costs for new program enrollees, which are calculated using budgeted costs, and (2) adjusting for inflation.<sup>7</sup>

Initial payment rates (base rates) for residential habilitation services in State-operated residences were calculated in SFY 1992 using cost data from State-operated ICFs.<sup>8</sup> Payment rates were, and still are, composed of three components—direct staff personal service costs, clinical staff personal service costs, and indirect costs.<sup>9</sup> Services provided by State-operated residences are reimbursed using these rates, but privately operated residences are reimbursed using provider-specific rates for the two levels of care.

## **Federal Requirements**

Payments for services must be consistent with efficiency, economy, and quality of care (section 1902(a)(30)(A) of the Act).

## **HOW WE CONDUCTED THIS REVIEW**

We compared the total Medicaid payments for both supervised and supportive residential habilitation services at State-operated residences to New York's actual costs during SFY 2010. In addition, we compared payment rates for supervised residential habilitation services provided at State-operated and privately operated residences during SFY 2011.<sup>10</sup> Finally, we calculated SFY 2011 payment rates for both services provided at State-operated residences using the prior year's actual costs.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>6</sup> In addition to residential habilitation services, OPWDD establishes payment rates for day habilitation, supported employment, prevocational, and respite services.

<sup>7</sup> The adjustment for inflation, which New York calls a "trend factor," is to be within 1.25 percent of the Medical Care Consumer Price Index published by the U.S. Department of Labor's Bureau of Labor Statistics.

<sup>8</sup> When New York began operating the waiver program, there were no cost reports to reflect new services; therefore, OPWDD used the most recent cost information from certain State-operated ICFs to establish payment rates.

<sup>9</sup> To establish the initial residential habilitation payment rates, OPWDD used State-operated ICFs' costs for SFY 1991 for direct and clinical staff personal service costs and ICFs' costs for SFY 1990 for indirect costs.

<sup>10</sup> We did not compare the supportive services payment rate for State-operated and privately operated residences because these services represented less than one-half of one percent of total Medicaid dollars claimed for residential habilitation services.

Appendix A contains the details of our audit scope and methodology.

## FINDINGS

Payment rates for residential habilitation services provided at State-operated residences did not meet the Federal requirement that payment for services be consistent with efficiency and economy. Specifically, for SFY 2010, Federal Medicaid payments exceeded actual costs for providing these services by \$320 million (57 percent more than actual costs). Further, the payment rate for supervised residential habilitation services at State-operated residences was more than double the average rate for privately operated residences that offered the same services.

We also determined that if DOH had used the prior year's actual costs in calculating payment rates for residential habilitation services, its SFY 2011 total reimbursement would have been approximately \$692 million (\$346 million Federal share) less than what it claimed.

Payment rates for State-operated residences were significantly higher because CMS did not adequately consider the appropriateness of OPWDD's rate-setting methodology when it approved the waiver agreement. Specifically, CMS approved DOH's application for its waiver even though the application did not describe in detail the methodology that DOH used to calculate payment rates for State-operated residences. According to the State officials, that methodology used the prior year's adjusted payment rates, which were calculated using reimbursable costs rather than actual costs, to determine payment rates for the current year.

### **THE DEPARTMENT OF HEALTH CLAIMED MEDICAID REIMBURSEMENT THAT WAS SIGNIFICANTLY HIGHER THAN ITS ACTUAL COSTS**

In SFY 2010, DOH claimed \$1,765,038,444 (\$882,519,222 Federal share)<sup>11</sup> in Medicaid reimbursement for residential habilitation services provided at State-operated residences. DOH's *actual* costs for providing these services totaled \$1,125,691,488, a difference of \$639,346,956 (\$319,673,478 Federal share).<sup>12</sup>

### **A PAYMENT RATE FOR STATE-OPERATED RESIDENCES WAS MORE THAN DOUBLE THE AVERAGE RATE FOR PRIVATELY OPERATED RESIDENCES**

For supervised residential habilitation services, the payment rate for State-operated residences was more than double the average payment rate for privately operated residences in SFY 2011. For this period, the average payment rate for supervised services at State-operated residences

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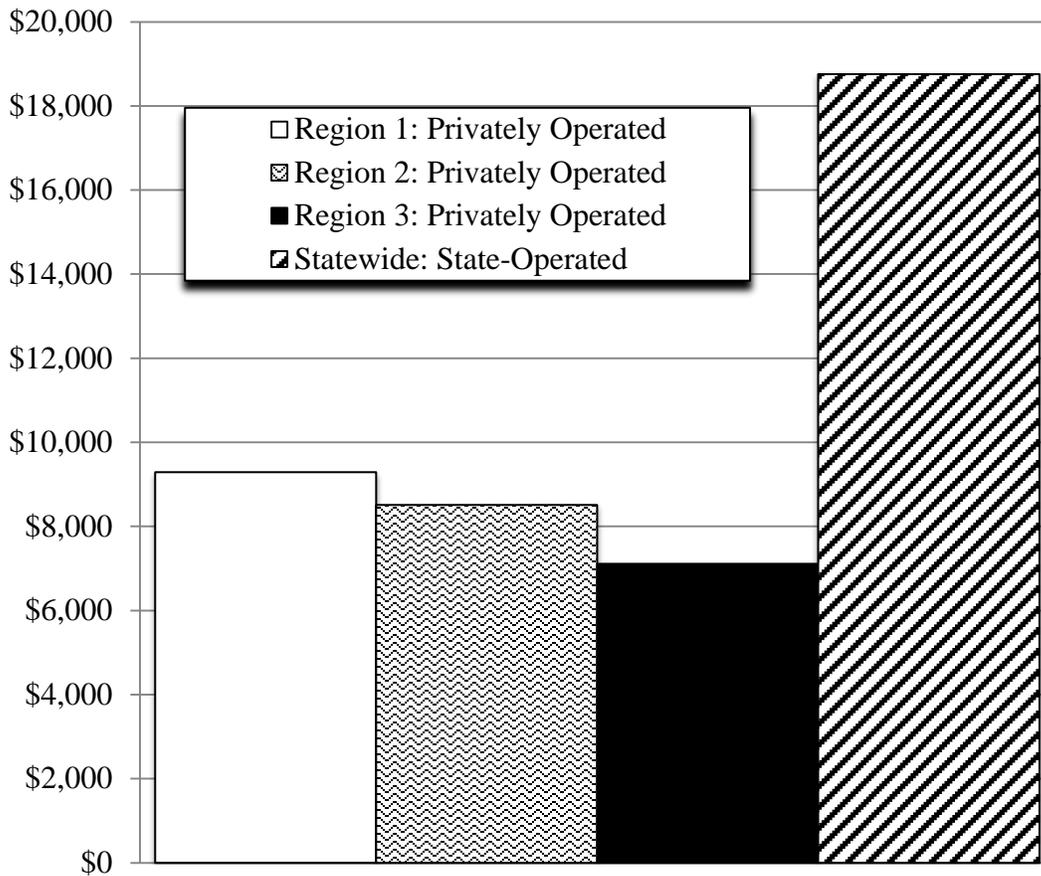
<sup>11</sup> This amount includes reimbursement of \$253,212,670 (\$126,606,335 Federal share) for residential habilitation services provided through subcontracted providers.

<sup>12</sup> We relied on cost information provided by DOH. We did not verify the accuracy of the cost information. We excluded room-and-board costs totaling \$94,366,505 from New York's reported actual costs because these costs are not allowable for Federal reimbursement (42 CFR § 441.310(a)(2)).

was \$18,759.<sup>13</sup> In comparison, the average rate for supervised services at privately operated residences that offered the same services in the three geographic regions defined by OPWDD was \$8,302.<sup>14</sup>

As illustrated in the exhibit, the average payment rate for supervised services in State-operated residences was more than double the average rate for those services in privately operated residences throughout New York.

**Exhibit: Average Payment Rates for Supervised Residential Habilitation Services in State-Operated and Privately Operated Residences in SFY 2011**



For a detailed comparison of these payment rates, see Appendix B.

<sup>13</sup>The payment rate for State-operated residences was \$18,982 from April through September 2010 and \$18,535 from October 2010 through March 2011.

<sup>14</sup> OPWDD groups privately operated residences into three regions. Region 1 is New York City (New York, Bronx, Kings, Queens, and Richmond counties); Region 2 is the New York City “suburban area,” which is Putnam, Rockland, Westchester, Nassau, and Suffolk counties; and Region 3 is the rest of the State. For SFY 2011, the average payment rate for private residences was \$9,288 in Region 1, \$8,510 in Region 2, and \$7,110 in Region 3.

## **RATE-SETTING METHODOLOGY SIGNIFICANTLY INFLATED PAYMENT RATES FOR STATE-OPERATED RESIDENCES**

DOH claimed \$1,814,268,278 (\$906,479,040 Federal share)<sup>15</sup> in Medicaid reimbursement for both supervised and supportive residential habilitation services in State-operated residences in SFY 2011. If DOH had used the prior year's *actual* costs—rather than the prior year's reimbursable costs—to calculate payment rates, its total reimbursement would have been \$692,388,818 (\$345,904,944 Federal share) less.

If DOH had used the prior year's actual costs as the starting point, SFY 2011 payment rates would have been \$10,447 instead of \$18,759 for supervised services and \$4,397 instead of \$8,694 for supportive services at State-operated residences. However, payment rates for residential habilitation services provided at State-operated residences were based on State-operated ICF cost data from SFYs 1990 and 1991. DOH used the prior year's reimbursable costs as the starting point for each year's calculations and adjusted that figure to establish reimbursement rates for the current SFY. As a result, the total reimbursable costs used to set rates did not reflect DOH's actual costs. For a detailed calculation of DOH's SFY 2011 payment rates based on the prior year's actual costs, see Appendix C.

## **POTENTIAL COST SAVINGS**

If CMS had ensured that New York's rate-setting methodology for State-owned residences resulted in payment rates that were based on actual costs and were consistent with efficiency and economy, the Federal Government would have saved approximately \$346 million in SFY 2011.

## **CAUSE OF SIGNIFICANT DIFFERENCE IN PAYMENT RATES**

Payment rates for State-operated residential habilitation services were significantly higher because CMS did not adequately consider the appropriateness of OPWDD's rate-setting methodology when it approved the waiver agreement. Specifically, before approving the waiver agreement, CMS reviewed only the brief description of the payment rate methodology included in DOH's waiver application. The application did not describe in detail the methodology that DOH used to calculate payment rates for State-operated residences. After we requested a detailed description of the methodology, DOH gave us the information, and we gave it to CMS. That methodology used the prior year's reimbursable costs—not the actual costs—as the starting point to determine payment rates for the current year. CMS officials stated that they had not received this information from DOH.

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<sup>15</sup> This amount includes reimbursement of \$249,711,343 (\$124,855,672 Federal share) for residential habilitation services provided through subcontracted providers.

## **RECOMMENDATION**

We recommend that CMS work with DOH to ensure that the methodology for setting payment rates for State-operated residences meets the Federal requirement that payment for services be consistent with efficiency and economy. Use of payment rates based on actual costs would have saved the Federal Medicaid program approximately \$346 million in SFY 2011 and may result in similar annual savings.

## **DEPARTMENT OF HEALTH COMMENTS**

In written comments on our draft report, DOH stated that it, along with OPWDD, has taken aggressive actions to address the issues we raised. Specifically, DOH stated that it has submitted a methodology to CMS that is consistent with all Federal requirements and that DOH is engaged in discussions to finalize this methodology, which will be retroactive to April 1, 2013.

DOH's comments are included in their entirety as Appendix D.

## **CENTERS FOR MEDICARE & MEDICAID SERVICES COMMENTS**

In written comments on our draft report, CMS concurred with our recommendation. CMS's comments are included in their entirety as Appendix E.

## **APPENDIX A: AUDIT SCOPE AND METHODOLOGY**

### **SCOPE**

We reviewed payment rates for supervised and supportive residential habilitation services under the waiver program provided at State-operated residences from April 1, 2009, through March 31, 2011 (SFYs 2010 and 2011). Payments for services at State-operated residences totaled \$1,765,038,444 and \$1,814,268,278 (\$882,519,222 and \$906,479,040 Federal share) for SFYs 2010 and 2011, respectively.

We plan to issue a separate report on DOH's claims for Medicaid reimbursement for residential habilitation services provided under OPWDD's Options for People Through Services (OPTS) program.

We did not review the overall internal control structure of CMS, DOH, OPWDD, or Medicaid. Rather, we reviewed only those controls related to our objective. We did not verify the accuracy of the actual-cost information provided by the State.

We performed fieldwork at CMS's, DOH's, and OPWDD's offices in Albany, New York, and at CMS's regional office in New York, New York, from July 2012 through January 2013.

### **METHODOLOGY**

To accomplish our objective, we:

- reviewed applicable Federal requirements;
- held discussions with CMS officials to gain an understanding of CMS's waiver-approval process, including its process for reviewing rate methodologies;
- held discussions with DOH and OPWDD officials to gain an understanding of New York's rate-setting methodology for waiver program residential habilitation services;
- obtained from DOH's Medicaid Management Information System all payments for residential habilitation services provided at State-operated residences during SFYs 2010 and 2011;
- obtained cost data for State-operated ICFs for SFYs 1990 and 1991 used to set base reimbursement rates for residential habilitation services at State-operated residences;
- obtained DOH's actual-cost information for residential habilitation services provided by State-operated residences for SFY 2010;
- compared DOH's total actual costs for residential habilitation services at State-operated residences for SFY 2010 to the total payments in the Medicaid Management Information System for the same period;

- compared the payment rate for supervised residential habilitation services at State-operated residences to payment rates for privately operated residences providing similar services in SFY 2011, as detailed in Appendix B; and
- determined potential Medicaid cost savings for SFY 2011 using reimbursement rates based on actual costs by:
  - calculating SFY 2011 payment rates for State-operated residential habilitation services using SFY 2010 actual costs provided by New York and
  - applying the calculated payment rates to claims submitted by DOH for residential habilitation services in State-operated residences in SFY 2011.

See Appendix C for our calculation of SFY 2011 payment rates based on SFY 2010 actual costs.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**APPENDIX B: COMPARISON OF PAYMENT RATES FOR STATE-OPERATED  
AND PRIVATELY OPERATED RESIDENCES FOR STATE FISCAL YEAR 2011**

**Table 1: Supervised Residential Habilitation Services  
Average Payment Rates**

	<b>State-Operated Residences</b>	<b>Privately Operated Residences</b>			
<b>Location</b>	Statewide	Region 1	Region 2	Region 3	Regional Average
<b>Average Payment Rate</b>	\$18,758.62	\$9,288.29	\$8,509.57	\$7,109.55	\$8,302.47

**Table 2: Supervised Residential Habilitation Services  
Range of Average Payment Rates in Privately Operated Residences**

	<b>Region 1</b>	<b>Region 2</b>	<b>Region 3</b>
<b>Highest Payment Rate</b>	\$14,834.27	\$14,763.69	\$13,641.29
<b>Lowest Payment Rate</b>	\$3,624.18	\$4,015.58	\$2,160.44
<b>Average Payment Rate</b>	\$9,288.29	\$8,509.57	\$7,109.55

**APPENDIX C: OFFICE OF INSPECTOR GENERAL CALCULATION OF  
STATE FISCAL YEAR 2011 PAYMENT RATES BASED ON  
PRIOR YEAR'S ACTUAL COSTS**

**Table 3: State-Operated Residences**

<b>Rate Component</b>	<b>State Calculation<sup>16</sup></b>		<b>OIG Calculation<sup>17</sup></b>	
	<b>Supervised Services</b>	<b>Supportive Services</b>	<b>Supervised Services</b>	<b>Supportive Services</b>
Direct Staff Personal Services and Fringe Benefits Rate	\$11,002	\$3,479	\$8,099	\$2,912 <sup>18</sup>
Clinical Staff Personal Services and Fringe Benefits Rate	\$1,856	\$190	\$960	\$98 <sup>18</sup>
Indirect Costs Rate	\$5,677	\$4,766	\$1,388	\$1,388 <sup>19</sup>
<b>SFY 2011 Payment Rate</b>	\$18,535	\$8,436	\$10,447	\$4,397

Note: Some columns do not add correctly because of rounding.

<sup>16</sup> We extracted rate calculation information from New York's residential habilitation rate sheets for supervised and supportive services for October 1, 2010, through March 31, 2011.

<sup>17</sup> We excluded OPTS contract costs from our calculation of actual costs because OPTS services were provided at privately operated residences and were therefore not part of the rates for State-operated residences.

<sup>18</sup> We allocated direct staff and clinical staff personal services and fringe benefits costs from OPWDD's SFY 2010 cost report to supervised and supportive IRAs using weighted average full-time equivalents for each type of residential habilitation services provided by OPWDD.

<sup>19</sup> We derived indirect costs from OPWDD's SFY 2010 cost report and allocated them using a weighted average number of beds for supervised and supportive IRAs that OPWDD provided. We excluded room-and-board costs from the indirect costs calculation because they are not allowable for Federal financial participation.

## APPENDIX D: DEPARTMENT OF HEALTH COMMENTS



July 26, 2013

Mr. James P. Edert  
Regional Inspector General for Audit Services  
Department of Health and Human Services - Region II  
Jacob K. Javitz Federal Building  
26 Federal Plaza, Room 3900  
New York, New York 10278

Ref. No: A-02-13-01008

Dear Mr. Edert:

Enclosed are the New York State Department of Health's comments on the U.S. Department of Health and Human Services, Office of Inspector General's Draft Audit Report A-02-13-01008 entitled, "Medicaid Rates for Residential Habilitation Services Provided at New York State-Operated Residences are Excessive."

Thank you for the opportunity to comment.

Sincerely,

**Michael J. Nazarko**

Michael J. Nazarko  
Deputy Commissioner  
for Administration

Enclosure

cc: Jason A. Helgerson  
James C. Cox  
Robert W. LoCicero, Esq.  
Diane Christensen  
Lori Conway  
Ronald Farrell  
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**New York State Department of Health  
Comments on the  
Department of Health and Human Services  
Office of Inspector General  
Draft Audit Report A-02-13-01008 entitled,  
Medicaid Rates for Residential Habilitation Services  
Provided at New York State-Operated Residences are Excessive**

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The following are the New York State Department of Health's (Department) comments in response to the Department of Health and Human Services, Office of Inspector General (OIG) Draft Audit Report A-02-13-01008 entitled, "Medicaid Rates for Residential Habilitation Services Provided at New York-Operated Residences are Excessive."

**Recommendation:**

We recommend that CMS work with DOH to ensure that the methodology for setting the payment rates for State-operated residences meets the Federal requirement that payment for services be consistent with efficiency and economy. Use of payment rates based on actual costs would have saved the Federal Medicaid program approximately \$346 million in SFY 2011 and may result in similar annual savings.

**Response:**

The New York State Department of Health and the Office for People With Developmental Disabilities have taken aggressive actions to address the issues raised in this audit. Earlier this year, the State submitted a methodology to the federal Centers for Medicare & Medicaid Services (CMS) which is consistent with all federal requirements. The State and CMS are engaged in active discussions to finalize this methodology, which will be retroactive to April 1, 2013. New York State has a strong track record of lowering Medicaid spending and is committed to resolving this long standing issue once and for all in the coming weeks.

## APPENDIX E: CENTERS FOR MEDICARE & MEDICAID SERVICES COMMENTS

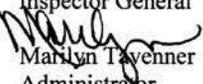
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DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

*Administrator*  
Washington, DC 20201

**DATE:** JAN 15 2014  
**TO:** Daniel R. Levinson  
Inspector General  
**FROM:**   
Marilyn Tavenner  
Administrator  
**SUBJECT:** Office of Inspector General (OIG) Draft Report: "Medicaid Rates for Residential Habilitation Services Provided at New York State-Operated Residences Are Excessive" (A-02-13-01008)

Thank you for the opportunity to review and comment on the above-referenced draft report. The purpose of this report was to determine whether the payment rates for residential habilitation services provided at state-operated residences under New York's developmental disabilities waiver program met the federal requirement that payment for services be consistent with efficiency and economy.

Your report found that the payment rates for residential habilitation services provided at state-operated residences did not meet the federal requirement that payment for services be consistent with efficiency and economy. Specifically, for state fiscal year 2010, federal Medicaid reimbursement exceeded the state's actual costs for providing these services by \$320 million.

The OIG found that payment rates were significantly higher because the rate-setting methodology used by New York's Office for People with Developmental Disabilities was not appropriately developed.

### **OIG Recommendation**

The OIG recommends that CMS work with New York State Department of Health to ensure that the methodology for setting the payment rates for state-operated residences meets the federal requirement that payment for services be consistent with efficiency and economy.

### **CMS Response**

We concur with OIG's recommendation. We are actively working with the state to update its methodology.

The CMS would like to thank OIG for their continued support in reviewing the states' compliance with the requirements of Medicaid for proper rates and rate methodologies.