

**Summary of Assessment of Public Comment**  
**Proposed 14 NYCRR Subpart 641-2 – Rate Setting for Non-State Providers:**  
**Intermediate Care Facilities for Persons with Developmental Disabilities**

OPWDD received numerous comments from providers, provider associations and a consultant. Below is a summary of the comments received and OPWDD's responses. A more detailed assessment of the Public Comments received is available on the OPWDD website at [www.opwdd.ny.gov](http://www.opwdd.ny.gov).

**1. Values for Budget Neutrality Adjustment and Regional Averages**

COMMENTS: The values of the Budget Neutrality Adjustment and regional averages, as well as the method for calculating the regional averages, should be published as part of the regulations.

RESPONSE: These values will not be included in the regulation text. The regional averages will be posted on the Department of Health's (DOH) website.

**2. Implementation Date**

COMMENT: Rates should not be implemented July 1, 2014 because providers have not yet been provided with their rates.

RESPONSE: The methodology will be implemented on July 1, 2014.

**3. State operated providers**

COMMENT: The rate methodology should include the cost of State operated community residences and day habilitation programs in the development of regional rates.

RESPONSE: The methodology will not be changed to include State operated programs in the development of regional rates.

**4. DOH Regions**

COMMENT: OPWDD regions should be used rather than DOH regions.

RESPONSE: The Department of Health feels that the DOH regions are closely aligned with OPWDD regions and are appropriate for use in the methodology.

## **Summary of Assessment of Public Comment Rate Setting for ICFs/DD**

COMMENT: The use of DOH regions does not group similar wage and cost structures and economies on a rational basis, and fails to address the regional cost differences which exist across upstate New York. Use of these regions will create rate distortions which will lead to significant health, safety and quality issues.

RESPONSE: OPWDD and DOH consider that the DOH regions are appropriate for use in this methodology.

### **5. Region 1 Providers**

COMMENT: The methodology unfairly discriminates against OPWDD Region One providers.

RESPONSE: OPWDD believes the methodology does not discriminate against any group of providers.

### **6. CFR data**

COMMENT: The CFR database may be flawed.

RESPONSE: OPWDD and DOH are not changing the methodology in response to this comment.

### **8. Facility Cost Component and State Wide Budget Neutrality Adjustment**

COMMENT: The regulation should state that this value of the Budget Neutrality Adjustment will be revised annually to include the value of services expansion and other funding increases added after June 30, 2014.

RESPONSE: OPWDD and DOH have decided that no change to the regulation is necessary at this time in response to the comment. However, the comment will be taken into consideration when subsequent amendments are made to the regulation.

### **9. Capital Component**

COMMENT: The capital thresholds included in the proposed regulations are more than 6 years old and should be made current.

RESPONSE: OPWDD and DOH will not change the regulation at this time, but will consider

## Summary of Assessment of Public Comment Rate Setting for ICFs/DD

the comment when subsequent amendments are made to the regulation.

COMMENT: The short term interest time limit should be increased from 12 months to 18 months without limitation between acquisition or renovation phases.

RESPONSE: OPWDD and DOH are not changing the regulation at this time, but will take this comment into consideration.

COMMENT: The regulations should state that the property reimbursement section only applies to PPAs issued on or after the July 1, 2014.

RESPONSE: OPWDD and DOH are not changing the regulation at this time, but will take this comment into consideration.

### 10. Trend Factor

COMMENT: The regulation fails to describe the use of a trend factor when the base year is being updated.

RESPONSE: The language as stated is correct. Trend factors will not be applied in years in which the methodology is rebased.

### 11. Initial Period

COMMENT: The definition of “initial period” (7/1/14- 12/31/14 for calendar year providers and 7/1/14-6/30/15 for fiscal year providers) is not needed, because rebasing will occur on 7/1/15 for all providers, minimal changes will occur on 1/1/15, and the first year of transition is 7/1/14-6/30/15 for all providers. In 641-1-6 (Transition Period and reimbursement), there is no reference to the “initial period” but rather to the “base operating rate” which as defined in 641-1.2(d) has a different meaning.

RESPONSE: The “initial period” will be July 1, 2014 through June 30, 2015 and refers to the first year of operation under the new methodology, while the “base operating rate” refers to the reimbursement amount calculated by dividing the annual reimbursement by applicable annual units of service in effect on June 30, 2014. No change to the regulation is necessary at this time in response to the comment. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

**Summary of Assessment of Public Comment  
Rate Setting for ICFs/DD**

**14. Appeals and Corrections to Rates**

COMMENT: There should be an appeal process, and a 90 day correction period from the beginning of the rate period for either provider or State error.

RESPONSE: OPWDD and DOH are not changing the regulation at this time, but will take this comment into consideration.

**15. Template Funding**

COMMENT: Template funding should be addressed in the regulations.

RESPONSE: OPWDD and DOH are not making any changes to the regulation at this time, but will take this comment into consideration.

**16. Base rate vs. base operating rate**

COMMENT: The ICF regulations should use the term “base operating rate” in both the definition and transition sections.

RESPONSE: OPWDD and DOH are not changing the regulation at this time but will take this comment into consideration.

**17. Day Program Services Component in ICF regulation**

COMMENT: The language is confusing. The provider association suggested different language.

RESPONSE: OPWDD and DOH are not changing the regulation at this time, but will take this comment into consideration.