



**Amendments to Costs of Real Property
Amendments to 14 NYCRR Sections 635-6.3 and 635-6.4**

**FINAL REGULATIONS
Effective Date: May 20, 2015
Permanently Adopted on August 12, 2015**

• **Paragraph 635-6.3(a)(5) is amended to read as follows:**

- (5) The commissioner may, upon application from a provider, allow lease costs in an amount equal to contract rent and greater than fair market rent if all of the [following] conditions in subparagraph (i) or (ii) are met.
- (i) The commissioner will allow such lease costs only for as long as it is necessary for the provider to relocate the program or services located on the lease property[.]; and
- [(i)](a) [T]the lease is a renewal [which] that is not pursuant to an option to renew;
- [(ii)](b) [T]the lease is a renewal of a lease for an existing program or services[.]; and
- [(iii)](c) [T]the provider has shown that:
- [(a)](1) the provider has made diligent efforts to negotiate a lease renewal for fair market rent or less;
- [(b)](2) the provider has been unable to negotiate a lease renewal for less than the current rent;
- [(c)](3) the parties to the lease renewal are not related; and
- [(d)](4) allowance of lease costs in the amount of contract rent is necessary to ensure the continued operation of the program [of] or services[.]; or

Note: New material is underlined and deleted material is in [brackets].

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(ii) A substitute provider (see subdivision 635-99(bp) of this Part) is designated to operate the program at the same physical location, and OPWDD determines that allowing such lease costs:

(a) is an economic and efficient use of resources; and

(b) is necessary to protect the health, safety, or welfare of the persons who are receiving or will receive services at the facility or program in question.

• **Paragraph 635-6.4(h)(4) is amended to read as follows:**

(4) Where the previous owner of the real property had the costs of such property funded, in whole or in part, by OPWDD,

(i) the historical cost of the property shall be the least of:

[i](a) the acquisition cost of the property to the new owner;

[ii](b) the seller's net book value (see glossary, section 635-99 of this Part)[,]; or

[iii](c) fair market value[.]; or

(ii) notwithstanding the provisions of subparagraph (i) of this paragraph, where the previous owner of the real property had its costs of ownership of the real property approved by OPWDD, and a substitute provider is designated to operate the program at the same physical location, the substitute provider may take the place of the previous owner under the terms of OPWDD's approval of the previous owner's costs.

• **Subdivision 635-6.4(h) is amended with the addition of a new paragraph (9) as follows:**

(9) Alternative historical cost for a substitute provider. Where the previous owner of the real property had the costs of the property funded, in whole or

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in part, by OPWDD, and a substitute provider is designated to continue operation of a program at the same physical location, OPWDD may allow an alternative historical cost of the property to exceed the seller's net book value (see glossary, section 635-99 of this Part). The alternative historical cost may not exceed the acquisition cost of the property to the new provider as approved and determined to be reasonable by OPWDD. The alternative historical cost allowed under this paragraph is only available if OPWDD determines that allowing such alternative historical cost:

- (i) is an economic and efficient use of resources; and
- (ii) is necessary to protect the health, safety, or welfare of the persons who are receiving or will receive services at the facility or program in question.

- **Subdivision 635-99(bp) is amended as follows:**

(bp) Provider. For the purpose of this Part:

- (1) Provider. Someone or an organization licensed or otherwise approved by OMRDD to provide goods, services, or property to [consumers] individuals receiving services.
- (2) Provider, Substitute. A provider designated by OPWDD or a court, or designated by another entity and approved by OPWDD, to take the place of another provider.

Note: New material is underlined and deleted material is in [brackets].