

Pursuant to the authority vested in the Commissioner of Health by section 363-a of the Social Services Law and section 201(1)(v) of the Public Health Law, Subpart 86-11 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

The section title and subparagraph (ii) of paragraph (3) of subdivision (b) of Section 86-11.6 are amended to read as follows:

86-11.6 Trend Factor,[and] Increases to Compensation and Other Adjustments

- (ii) April 1, 2015 Increase. In addition to the compensation funding effective January 1, 2015, providers that operate ICFs/DD will receive a compensation increase targeted to direct support professional and clinical employees to be effective April 1, 2015. The compensation increase funding will be inclusive of associated fringe benefits. The April 1, 2015 direct support professionals compensation funding will be [the same, on an annualized basis, as that] compounded on the amount which was calculated for the January 1, 2015 compensation increase and will be an augmentation to the January 1, 2015 increase.

Subdivision (c) of Section 86-11.6 is added to read as follows:

(c) Occupancy Adjustment

- (1) Definitions. As used in this section, the following terms shall have the following meanings:

- (i) Occupancy Adjustment – An adjustment to the calculated daily rate of a Provider operating an ICF/DD to account for days when Medicaid billing cannot occur because an individual has passed away or has moved to another site.
- (2) For the initial rate period beginning July 1, 2014 and thereafter, providers will receive an occupancy adjustment to the operating component of their rate for vacancy days. The occupancy adjustment percentage is calculated by dividing the agency's rate period service days by one-hundred percent of the agency's certified capacity. The certified capacity is calculated taking into account capacity changes throughout the year, multiplied by one-hundred percent of the year's days. This adjustment will begin on July 1, 2016 and be recalculated on an annual basis based on the previous year's experience. The occupancy adjustment calculation will be agency specific and will be the higher of the agency's actual occupancy percentage or at 95% occupancy. The occupancy percentage will be used to adjust the operating component of the rate for the rate year.

Subdivision (d) of Section 86-11.9 is amended to read as follows:

- (d) April 1, 2015 increase. In addition to compensation funding effective January 1, 2015, the fees for specialized template population funding will be revised to incorporate funding for a compensation increase to direct support professional and clinical employees to be effective April 1, 2015. The April 1, 2015 direct support compensation funding will be [the same, on an annualized basis, as that] compounded on the amount which was

calculated for the January 1, 2015 compensation increase and will be an augmentation to the January 1, 2015 increase.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law (PHL) section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objective:

These proposed amendments further the legislative objectives embodied in section 363-a of the Social Services Law and section 201(1)(v) of the Public Health Law. The proposed amendment concerns the rate methodology for Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD). The amendment includes the addition of an occupancy adjustment, effective July 1, 2016 and revision to the calculation of the April 1, 2015 compensation funding for direct support professionals and clinical employees.

Needs and Benefits:

The amendment complies with changes required by the federal Centers for Medicare and Medicaid Services (CMS) subsequent to the adoption of the regulation. The amendment ensures ICF/DD providers have adequate resources to render quality services to individuals with developmental disabilities.

Costs:

There are no additional costs associated with this amendment. Rates are recalculated to account for days when providers are unable to bill due to vacancy (e.g., death of an individual, etc.).

Costs to the Agency and to the State and its Local Governments:

The proposed regulations will result in no additional costs to the State.

The amendment does not apply to the state as a provider of services.

There will be no savings or costs to local governments as a result of this amendment because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services.

Costs to Private Regulated Parties:

This amendment is not expected to affect costs to private regulated parties.

Local Government Mandates:

There are no new requirements imposed by the rule on any county, city, town, village, school, fire or other special district.

Paperwork:

The amendment will not increase paperwork to be completed by providers.

Duplication:

The amendment does not duplicate any existing State or federal requirements that are applicable to services for persons with developmental disabilities.

Alternatives:

Since the change is mandated by Federal law, the Department did not consider any

alternatives. Without this provision, providers would experience shortfall in their reimbursement level.

Federal Standards:

The amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The amendment to the regulation is effective July 1, 2016. DOH expects to permanently adopt the regulations at the end of the public comment period.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

**STATEMENT IN LIEU OF
RURAL AREA FLEXIBILITY ANALYSIS**

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

JOB IMPACT STATEMENT

A Job Impact Statement is not being submitted for this proposed amendment because this amendment will not have a substantial adverse impact on jobs or employment opportunities.

The proposed amendment to the regulations amends the rate-setting methodology that was adopted in July 2014 and is in conformance with changes mandated by CMS after July 1, 2014. The proposed amendment changes the calculation of April 1, 2015 compensation funding for direct support professionals and clinical employees. In addition, an occupancy adjustment will be applied to the rate effective July 1, 2016.

The amendments are not expected to have any significant adverse impact on jobs and employment opportunities with providers.