

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**NEW YORK CLAIMED UNALLOWABLE  
ROOM-AND-BOARD COSTS UNDER ITS  
DEVELOPMENTAL DISABILITIES  
WAIVER PROGRAM**

*Inquiries about this report may be addressed to the Office of Public Affairs at  
[Public.Affairs@oig.hhs.gov](mailto:Public.Affairs@oig.hhs.gov).*



**Daniel R. Levinson**  
Inspector General

May 2014  
A-02-12-01031

# *Office of Inspector General*

<https://oig.hhs.gov>

---

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

## *Office of Audit Services*

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

## *Office of Evaluation and Inspections*

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

## *Office of Investigations*

The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

## *Office of Counsel to the Inspector General*

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

# *Notices*

---

## **THIS REPORT IS AVAILABLE TO THE PUBLIC**

at <https://oig.hhs.gov>

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

## **OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS**

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

## EXECUTIVE SUMMARY

*New York claimed approximately \$60.8 million in Federal Medicaid reimbursement for unallowable room-and-board costs over a 3-year period.*

### WHY WE DID THIS REVIEW

Medicaid does not generally cover room-and-board costs incurred by community residential facilities under a State's home and community-based services (HCBS) Medicaid waiver program. During an Office of Inspector General review of payment rates for residential habilitation services provided under a New York State (New York) developmental disabilities waiver program (a Medicaid HCBS waiver program), we observed that New York may be claiming such costs.

The objective of this review was to determine whether New York claimed Medicaid reimbursement for unallowable room-and-board costs for residential habilitation services provided at State-operated residences under its developmental disabilities waiver program.

### BACKGROUND

Section 1915(c) of the Social Security Act (the Act) authorizes Medicaid HCBS waiver programs. A State's HCBS waiver program must be approved by the Centers for Medicare & Medicaid Services and allows a State to claim Federal reimbursement for services not usually covered by Medicaid.

In New York, the Department of Health (DOH) administers the Medicaid program. Under a memorandum of understanding with DOH, the Office for People With Developmental Disabilities (OPWDD) administers New York's developmental disabilities HCBS waiver program, which covers a variety of services, including residential habilitation services tailored to assist individuals in acquiring and retaining skills related to living in the community. These services are provided in both State-operated and privately operated residences.

OPWDD establishes payment rates for waiver services, including residential habilitation services provided at State-operated residences, which are reimbursed using statewide rates. Section 1915(c) of the Act allows for payment of the cost of HCBS that are provided to individuals in need of the services. Certain room-and-board costs are not allowable under such a waiver.

### HOW WE CONDUCTED THIS REVIEW

We reviewed the costs included in OPWDD's calculation of Medicaid payment rates for residential habilitation services provided at State-operated residences during State fiscal years (SFYs) 2009 through 2011.

## **WHAT WE FOUND**

DOH claimed Federal Medicaid reimbursement for unallowable room-and-board costs for residential habilitation services provided at State-operated residences under New York’s developmental disabilities waiver program. Specifically, certain unallowable room-and-board costs, such as repairs, maintenance, utilities, and property-related costs, were included in the indirect costs used to calculate the residential habilitation services payment rates. As a result, DOH claimed \$60,763,536 (Federal share) in unallowable Medicaid reimbursement.

## **WHAT WE RECOMMEND**

We recommend that DOH:

- refund \$60,763,536 to the Federal Government and
- ensure that OPWDD excludes all unallowable room-and-board costs from indirect costs used in payment rate calculations for residential habilitation services.

## **DEPARTMENT OF HEALTH COMMENTS AND OUR RESPONSE**

In written comments on our draft report, DOH disagreed with our first recommendation (financial disallowance) and did not indicate concurrence or nonconcurrence with our second recommendation. Specifically, DOH stated that it was reasonable for DOH to conclude that its rate-setting methodology in place since 1998 complied with the Federal requirement to exclude room-and-board costs from waiver services. Nonetheless, DOH indicated that, out of an abundance of caution, it revised its rate-setting methodology to exclude the “disputed costs” as of October 1, 2010, following a Departmental Appeals Board decision.

After reviewing DOH’s comments, we maintain that our finding and recommendations are valid. DOH’s rate-setting methodology did not comply with the Federal requirement to exclude room-and-board costs. These costs should not have been included in the methodology. Therefore, we continue to recommend that DOH refund the disputed costs to the Federal Government and ensure that OPWDD excludes *all* unallowable room-and-board costs from its payment rate calculations.

## TABLE OF CONTENTS

|  |    |
|--|----|
| <b>INTRODUCTION</b> .....  | 1  |
| Why We Did This Review .....   | 1  |
| Objective .....  | 1  |
| Background .....   | 1  |
| The Medicaid Program .....   | 1  |
| New York’s Office for People With Developmental Disabilities Waiver<br>Program .....   | 2  |
| Residential Habilitation Services Covered Under the Waiver Program.....  | 2  |
| Methodology for Setting Payment Rates for Residential Habilitation<br>Services .....   | 2  |
| How We Conducted This Review.....  | 3  |
| <b>FINDING</b> .....   | 3  |
| The Department of Health Claimed Unallowable Room-and-Board Costs<br>for Residential Habilitation Services Provided at State-Operated Residences ..... | 3  |
| <b>RECOMMENDATIONS</b> .....   | 4  |
| <b>DEPARTMENT OF HEALTH COMMENTS</b> .....   | 4  |
| <b>OFFICE OF INSPECTOR GENERAL RESPONSE</b> .....  | 5  |
| <b>APPENDIXES</b>  |    |
| A: Audit Scope and Methodology .....   | 6  |
| B: OIG Recalculation of the Indirect Rate Component of the Medicaid Monthly<br>Payment Rates per Individual .....                                      | 8  |
| C: Unallowable Room-and-Board Costs .....  | 9  |
| D: Department of Health Comments .....   | 10 |

## INTRODUCTION

### WHY WE DID THIS REVIEW

Medicaid does not generally cover room-and-board costs incurred by community residential facilities under a State's home and community-based services (HCBS) Medicaid waiver program. During an Office of Inspector General (OIG) review of payment rates for residential habilitation services provided under a New York State (New York) developmental disabilities waiver program (a Medicaid HCBS waiver program), we observed that New York may be claiming such costs.<sup>1</sup>

### OBJECTIVE

Our objective was to determine whether New York claimed Medicaid reimbursement for unallowable room-and-board costs for residential habilitation services provided at State-operated residences under its developmental disabilities waiver program.

### BACKGROUND

#### The Medicaid Program

The Medicaid program provides medical assistance to low income individuals and individuals with disabilities (Title XIX of the Social Security Act (the Act)). The Federal and State Governments jointly fund and administer the Medicaid program. 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). Certain room-and-board<sup>2</sup> costs are not allowable under such a waiver (42 CFR § 441.310(a)(2)).<sup>3</sup>

---

<sup>1</sup> *Medicaid Rates for Residential Habilitation Services Provided at New York State-Operated Residences Are Excessive* (A-02-13-01008), issued March 11, 2014.

<sup>2</sup> CMS's *State Medicaid Manual* § 4442.3.B.12 defines "room" as hotel or shelter-type expenses, including all property-related costs (e.g., such as rental or purchase of real estate and furnishings, maintenance, utilities, and related administrative services) and defines "board" as three meals a day or any other full nutritional regimen.

<sup>3</sup> The cost of room and board is allowable as part of respite care services in a facility approved by the State that is not a private residence or for waivers that allow personal caregivers as providers of approved waiver services.

## **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, the Office for People With Developmental Disabilities (OPWDD) provides HCBS to individuals with developmental disabilities under a 1915(c) waiver (waiver program).<sup>4</sup> The waiver program has been in operation since State fiscal year<sup>5</sup> (SFY) 1992, and on September 24, 2009, CMS approved the waiver for a 5-year renewal period, through September 30, 2014. DOH’s approved waiver program agreement states that “payment is not made for the cost of room and board, including the cost of building maintenance, upkeep, and improvement.”<sup>6</sup>

### **Residential Habilitation Services Covered Under the Waiver Program**

New York’s waiver program covers a variety of services, including residential habilitation services tailored to assist individuals in acquiring and retaining skills related to living in the community.<sup>7</sup> Residential habilitation services are provided in State-operated and privately operated residences.

Residential habilitation services are provided and reimbursed at two levels of care—supervised and supportive. For the supervised level of care, provider staff are onsite or available at all times when individuals enrolled in the program are present. For the supportive level of care, provider staff are generally not onsite or available at all times. The unit of service for both supervised and supportive residential habilitation services is a calendar month, which may be billed as a full month or a half month.

In SFYs 2009 through 2011, DOH claimed approximately \$5.3 billion (\$2.6 billion Federal share) for residential habilitation services provided at State-operated residences.

### **Methodology for Setting Payment Rates for Residential Habilitation Services**

The methodologies for setting the payment rates for all 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. The monthly payment rates for residential habilitation services comprise three components—the

---

<sup>4</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>5</sup> New York’s State fiscal year is April 1 through March 31.

<sup>6</sup> OPWDD waiver program agreement, page 56.

<sup>7</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 a caregiver); adaptive technologies; assistive technology; plan of care support services; family education and training; consolidated supports and services; and community transition supports and services.

direct staff service rate, the clinical staff service rate, and the indirect rate.<sup>8</sup>

The direct staff service rate is based on the costs of salaries and fringe benefits for developmental aides, treatment team leaders, nursing staff, and program administration. The clinical staff service rate is based on the costs of salaries and fringe benefits for clinical physicians, dieticians, habilitation specialists, therapists, and speech language pathologists. The indirect rate is based on the average indirect costs per individual.<sup>9</sup> Room-and-board costs, such as repairs, maintenance, utilities, and property-related costs, are considered indirect costs;<sup>10</sup> however, these costs are excluded from Federal Medicaid reimbursement.

## **HOW WE CONDUCTED THIS REVIEW**

We reviewed the costs included in OPWDD's calculation of the Medicaid monthly payment rates for residential habilitation services provided at State-operated residences during SFYs 2009 through 2011. We identified unallowable room-and-board costs that were included in the indirect rate component of the payment rates for supervised and supportive residential habilitation services. We then recalculated the indirect rate component of the monthly payment rates with the unallowable room-and-board costs excluded. We applied the adjusted payment rates to claims for residential habilitation services in State-operated residences during the period April 1, 2008, through September 30, 2010.<sup>11</sup>

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 A contains the details of our audit scope and methodology.

## **FINDING**

### **THE DEPARTMENT OF HEALTH CLAIMED UNALLOWABLE ROOM-AND-BOARD COSTS FOR RESIDENTIAL HABILITATION SERVICES PROVIDED AT STATE-OPERATED RESIDENCES**

Section 1915(c) of the Act allows payment for the cost of HCBS under a State's waiver program. Federal regulations (42 CFR § 441.310(a)(2)) state that Federal financial participation for HCBS

---

<sup>8</sup> Payment rates are developed using cost data from a base year (SFY 1990 for indirect costs and SFY 1991 for staff service costs) that are adjusted each year ("trended forward to the current year").

<sup>9</sup> The indirect costs are derived by subtracting direct and clinical staff costs from total residential habilitation costs.

<sup>10</sup> Other indirect costs include costs associated with other New York agencies.

<sup>11</sup> DOH officials stated that, beginning October 1, 2010, DOH no longer billed for services using a rate that included room-and-board costs. Although we did not audit all of DOH's indirect costs, we noted that as of October 1, 2010, these costs no longer appeared in DOH's descriptions of its indirect rate component.

is not available for the cost of room and board. DOH's approved waiver program agreement states that "payment is not made for the cost of room and board, including the cost of building maintenance, upkeep, and improvement."

DOH claimed Federal Medicaid reimbursement for unallowable room-and-board costs for residential habilitation services provided at State-operated residences under New York's developmental disabilities waiver program. Specifically, certain unallowable room-and-board costs, such as repairs, maintenance, utilities, and property-related costs, were included in the indirect costs used to calculate the residential habilitation services payment rates.

According to DOH officials, DOH began including certain room-and-board costs in the payment rates following an SFY 1998 OPWDD analysis of the percentage of floor space used to provide residential habilitation services. On the basis of its analysis, OPWDD determined that kitchen, bathroom, and bedroom areas accounted for 41.95 percent of residences' square footage. OPWDD classified the remaining 58.05 percent as the "non-room and board percentage" of the residences' square footage. On the basis of this determination, in SFY 1999, OPWDD began allocating 58.05 percent of costs for repairs, maintenance, utilities, and property and 60 percent of telephone costs<sup>12</sup> to the indirect rate component of the payment rate calculation, using cost data from SFY 1995 cost reports. OPWDD included these unallowable room-and-board costs as "additional residential habilitation costs" in the indirect rate component of the Medicaid monthly payment rate calculation.

As a result of including the "additional residential habilitation costs" in the indirect rate component of the monthly payment rates, DOH claimed \$121,527,072 (\$60,763,536 Federal share) for unallowable room-and-board costs during SFYs 2009 through 2011.

Appendix B contains our recalculation of the indirect rate component of the Medicaid monthly rates for supervised and supportive residential habilitation services, and Appendix C contains details of the unallowable room-and-board costs by SFY.

## **RECOMMENDATIONS**

We recommend that the DOH:

- refund \$60,763,536 to the Federal Government and
- ensure that OPWDD excludes all unallowable room-and-board costs from indirect costs used in payment rate calculations for residential habilitation services.

## **DEPARTMENT OF HEALTH COMMENTS**

In written comments on our draft report, DOH disagreed with our first recommendation (financial disallowance) and did not indicate concurrence or nonconcurrence with our second recommendation. Specifically, DOH stated that it was reasonable for DOH to conclude that its rate-setting methodology in place since 1998 complied with the Federal requirement to exclude

---

<sup>12</sup> We did not audit DOH's telephone cost allocations.

room-and-board costs from waiver services. Nonetheless, DOH indicated that, out of an abundance of caution, it revised its rate-setting methodology to exclude the “disputed costs” as of October 1, 2010, following a Departmental Appeals Board decision.<sup>13</sup>

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

### **OFFICE OF INSPECTOR GENERAL RESPONSE**

After reviewing DOH’s comments, we maintain that our finding and recommendations are valid. DOH’s rate-setting methodology did not comply with the Federal requirement to exclude room-and-board costs. These costs should not have been included in the methodology.<sup>14</sup> Therefore, we continue to recommend that DOH refund the disputed costs to the Federal Government and ensure that OPWDD excludes *all* unallowable room-and-board costs from its payment rate calculations.

---

<sup>13</sup> Pennsylvania Department of Public Welfare, DAB No. 2152 (2008).

<sup>14</sup> In upholding the DAB decision cited by DOH, the United States Court of Appeals, Third Circuit, stated that “... the plain meaning of the statute leaves no doubt that the [room-and-board] costs at issue ... were meant to be excluded from reimbursement” (Commonwealth of Pennsylvania, Department of Public Welfare v. U.S. Department of Health and Human Services, 3rd Cir., No. 10-2409, June 13, 2011).

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

### **SCOPE**

We reviewed the costs included in the Medicaid payment rate methodology for residential habilitation services under the OPWDD program provided at State-operated residences during SFYs 2009 to 2011. For this period, Medicaid payments for State-operated residential habilitation services totaled \$5,256,475,671 (\$2,626,533,668 Federal share).

Our review enabled us to establish reasonable assurance of the authenticity and accuracy of the data obtained from the Medicaid Management Information file for our audit period, but we did not assess the completeness of the file.

We did not review the overall internal control structure of DOH, OPWDD, or the New York Medicaid program. Rather, we reviewed only those controls related to our objective. We did not verify the accuracy of the indirect costs information provided by DOH.

We performed fieldwork at CMS's, DOH's, and OPWDD's offices in Albany, New York, and at the CMS Regional Office (Region II) in New York, New York, from July through December 2012.

### **METHODOLOGY**

To accomplish our objective, we:

- reviewed applicable Federal laws and regulations;
- held discussions with CMS officials to gain an understanding of CMS's waiver approval process, including the rate-methodology review process;
- reviewed New York's CMS-approved waiver program agreement;
- held discussions with DOH and OPWDD officials to gain an understanding of OPWDD's rate-setting methodology for residential habilitation services under the waiver program and the way in which OPWDD determined the cost of waiver services in the residential setting and segregated them from unallowable waiver costs (including room and board);
- obtained from DOH's Medicaid Management Information System all payments for residential habilitation services provided at State-operated residences during SFYs 2009 through 2011;
- identified unallowable room-and-board costs that were added as "additional residential habilitation costs" to the indirect rate component of the residential habilitation services payment rates;

- recalculated the indirect rate component of the monthly residential habilitation payment rates with the unallowable room-and-board costs excluded;
- applied the adjusted payment rates to claims for residential habilitation services in State-operated residences during the period April 1, 2008 through September 30, 2010;
- determined the amount of Federal reimbursement claimed for unallowable room-and-board costs; and
- discussed our audit results with DOH and OPWDD officials.

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: OIG RECALCULATION OF THE INDIRECT RATE COMPONENT OF THE MEDICAID MONTHLY PAYMENT RATES PER INDIVIDUAL**

**Table 1: Unallowable Room-and-Board Costs per Claim for Supervised Residential Habilitation Services**

|   | <b>SFY 2009</b> | <b>SFY 2010</b> | <b>SFY 2011</b> |
|---|-----------------|-----------------|-----------------|
| <b>OPWDD Indirect Rate<sup>15</sup></b>                           | <b>\$5,001</b>  | <b>\$5,557</b>  | <b>\$6,124</b>  |
| Total Indirect Costs per Individual (Annual)                      | 40,286          | 40,162          | 40,219          |
| Less Unallowable Room-and-Board Costs                             | (5,234)         | (5,288)         | (5,150)         |
| OIG Revised Indirect Costs per Individual (Annual)                | 35,052          | 34,874          | 35,069          |
| OIG Revised Indirect Costs per Individual <sup>16</sup> (Monthly) | 3,081           | 3,062           | 3,048           |
| Health Care Enhancement <sup>17</sup>                             | 1,464           | 2,031           | 2,633           |
| <b>OIG Recalculated Indirect Rate</b>                             | <b>4,545</b>    | <b>5,093</b>    | <b>5,681</b>    |
| <b>Total Unallowable Room-and-Board Costs per Claim</b>           | <b>\$456</b>    | <b>\$464</b>    | <b>\$443</b>    |

**Table 2: Unallowable Room-and-Board Costs per Claim for Supportive Residential Habilitation Services**

|   | <b>SFY 2009</b> | <b>SFY 2010</b> | <b>SFY 2011</b> |
|---|-----------------|-----------------|-----------------|
| <b>OPWDD Indirect Rate</b>  | <b>\$3,839</b>  | <b>\$4,407</b>  | <b>\$5,283</b>  |
| Total Indirect Costs per Individual (Annual)                      | 39,965          | 41,116          | 41,996          |
| Less Unallowable Room-and-Board Costs                             | (5,176)         | (5,288)         | (5,288)         |
| OIG Revised Indirect Costs per Individual (Annual)                | 34,789          | 35,828          | 36,708          |
| OIG Revised Indirect Costs per Individual <sup>18</sup> (Monthly) | 2,957           | 3,046           | 3,591           |
| Health Care Enhancement <sup>13</sup>                             | 442             | 912             | 1,175           |
| <b>OIG Recalculated Indirect Rate</b>                             | <b>3,399</b>    | <b>3,958</b>    | <b>4,766</b>    |
| <b>Total Unallowable Room-and-Board Costs per Claim</b>           | <b>\$440</b>    | <b>\$449</b>    | <b>\$517</b>    |

<sup>15</sup> OPWDD indirect rates information was extracted from New York's residential habilitation rate sheets for SFYs 2009 through 2011.

<sup>16</sup> We determined this amount by dividing our revised annual indirect costs per individual by a utilization factor (the number of days utilized per year, per person), then multiplying by 365 days, and then dividing by 12 months. The utilization factor is 346, 346.4, and 350 for SFYs 2009, 2010, and 2011, respectively.

<sup>17</sup> These costs represented additional employee health care benefits included in the rate provided by OPWDD. We did not adjust these costs.

<sup>18</sup> We determined this amount by dividing our revised annual indirect costs per individual by a utilization factor (the number of days utilized per year, per person), and then multiplying by 365 days and dividing by 12 months. The utilization factor is 357.81, 357.81, and 310.93 for SFYs 2009, 2010, and 2011 respectively.

## APPENDIX C: UNALLOWABLE ROOM-AND-BOARD COSTS

**Table 3: Total Unallowable Room-and-Board Costs**

| <b>State Fiscal Year</b> | <b>Total Unallowable Room-and-Board Costs Claimed<sup>19</sup></b> | <b>Federal Share of Unallowable Room-and-Board Costs Claimed</b> |
|--------------------------|--|--|
| 2009                     | \$46,652,845   | \$23,326,423   |
| 2010                     | 47,985,110   | 23,992,555   |
| 2011                     | 26,889,117   | 13,444,558   |
| <b>Total</b>             | <b>\$121,527,072</b>   | <b>\$60,763,536</b>  |

---

<sup>19</sup> Unallowable amounts were calculated by applying the adjusted payment rates to claims submitted by DOH for residential habilitation services in State-operated residences in SFYs 2009 through 2011. Claims data were obtained from the DOH's Medicaid Management Information System.

**APPENDIX D: DEPARTMENT OF HEALTH COMMENTS**



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

Sue Kelly  
Executive Deputy Commissioner

February 10, 2014

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

Ref. No: A-02-12-01031

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-02-12-01031 entitled, "New York Claimed Unallowable Room-and-Board Costs Under its Developmental Disabilities Waiver Program."

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Nazarko".

Michael J. Nazarko  
Deputy Commissioner  
for Administration

enclosure

cc: Jason Helgerson  
James C. Cox  
Diane Christensen  
Lori Conway  
Vincent Sleasman  
Robert Loftus  
Joan Kewley  
Ronald Farrell  
Brian Kiernan  
Elizabeth Misa  
OHIP Audit BML

HEALTH.NY.GOV  
facebook.com/NYSDOH  
twitter.com/HealthNYGov

**NYS Department of Health  
Comments on the  
US Department of Health and Human Services  
Office of Inspector General  
Draft Audit Report A-02-12-01031 Entitled  
New York Claimed Unallowable Room-and-Board  
Costs Under its Developmental Disabilities Program**

---

The following are the New York State Department of Health's (Department) comments in response to the U.S. Department of Health and Human Services, Office of Inspector General's (OIG) draft audit report A-02-12-01031 entitled, "New York Claimed Unallowable Room-and-Board Costs Under its Developmental Disabilities Program."

**Recommendation #1:**

The Department of Health and Human Services, Office of Inspector General found that for State Fiscal Years 2009-2011, included in the state's residential habilitation rates were unallowable room and board costs of \$60,763,536 (federal funds) which need to be refunded to the Federal Government.

**Response #1:**

The Department of Health (the Department) disagrees with the Department of Health and Human Services, Office of Inspector General's recommendation that the Department owes the Federal Government \$60,763,536. It was reasonable for the Department to conclude that the methodology in place since 1998 complied with the requirement to exclude "room" and "board" costs from waiver services. Nonetheless, out of an abundance of caution following Developmental Appeals Board Decision #2152 (Pennsylvania), the Department determined to revise its reimbursement rate. The revised rate went into effect on October 1, 2010.

**Recommendation #2:**

Ensure that the Office for People with Developmental Disabilities excludes all unallowable room-and-board costs from indirect costs used in payment rate calculations for residential habilitation services.

**Response #2:**

The Department agrees that unallowable room and board costs must be excluded from the rate for waiver services. Although the Department believes that its prior methodology was a reasonable application of the prohibition, it has already modified it to exclude the disputed costs as of October 1, 2010.