

*Medicaid Rates for New York
State Developmental Centers*

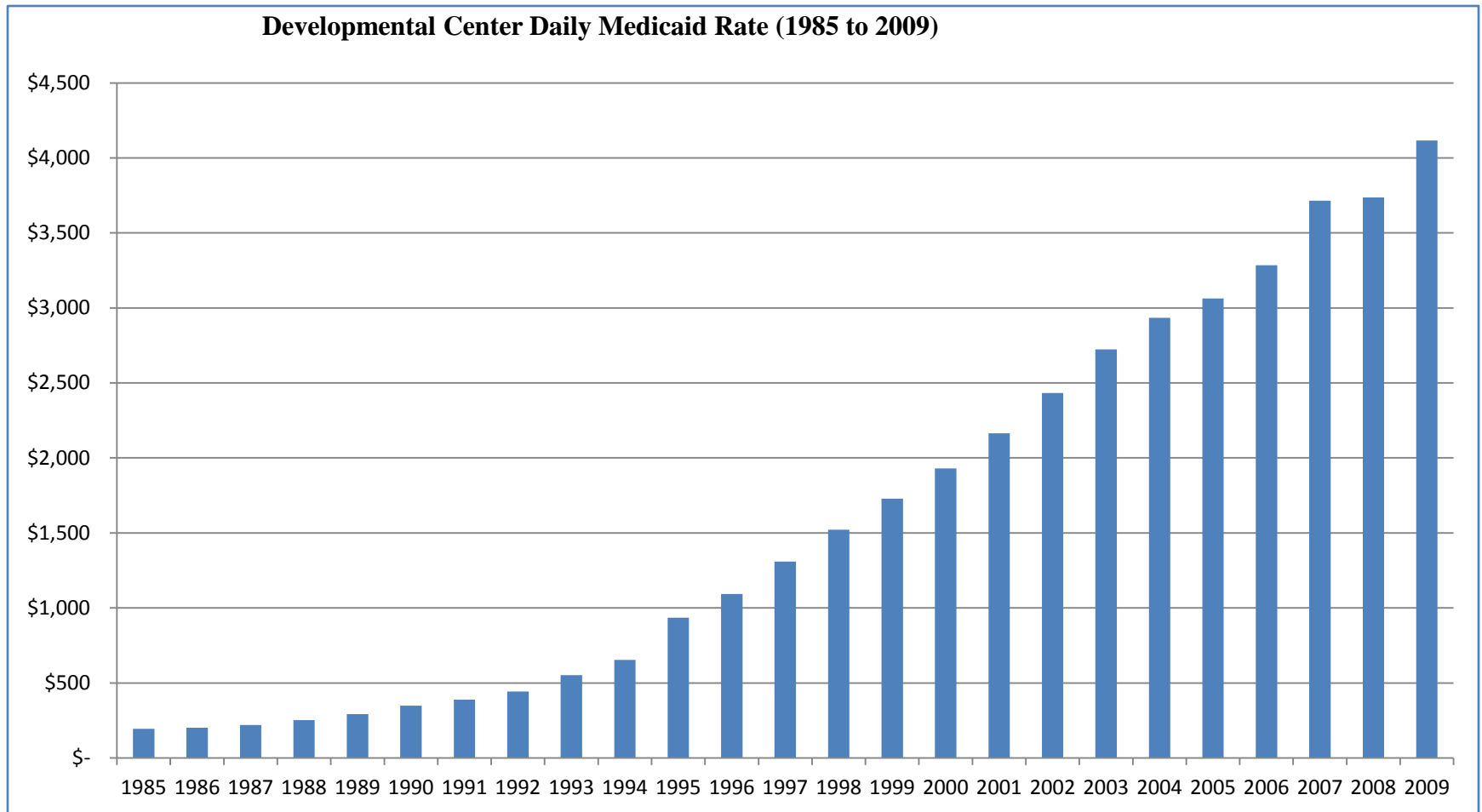
What is This Audit About?



What is This Audit About?

- The daily rate for a Medicaid beneficiary to reside in a developmental center grew from \$195 in State fiscal year 1985 to \$4,116 in State fiscal year 2009—the equivalent of \$1.5 million per year for one Medicaid beneficiary.
- The rate rose to over \$5,000/day in 2012.

What is This Audit About?



What is This Audit About?

- For SFY 2009, NYS claimed Medicaid reimbursement on behalf of 1,688 beneficiaries at its 13 developmental centers totaling \$2.3 Billion (\$1.2 Billion Federal share).

What is a Developmental Center?

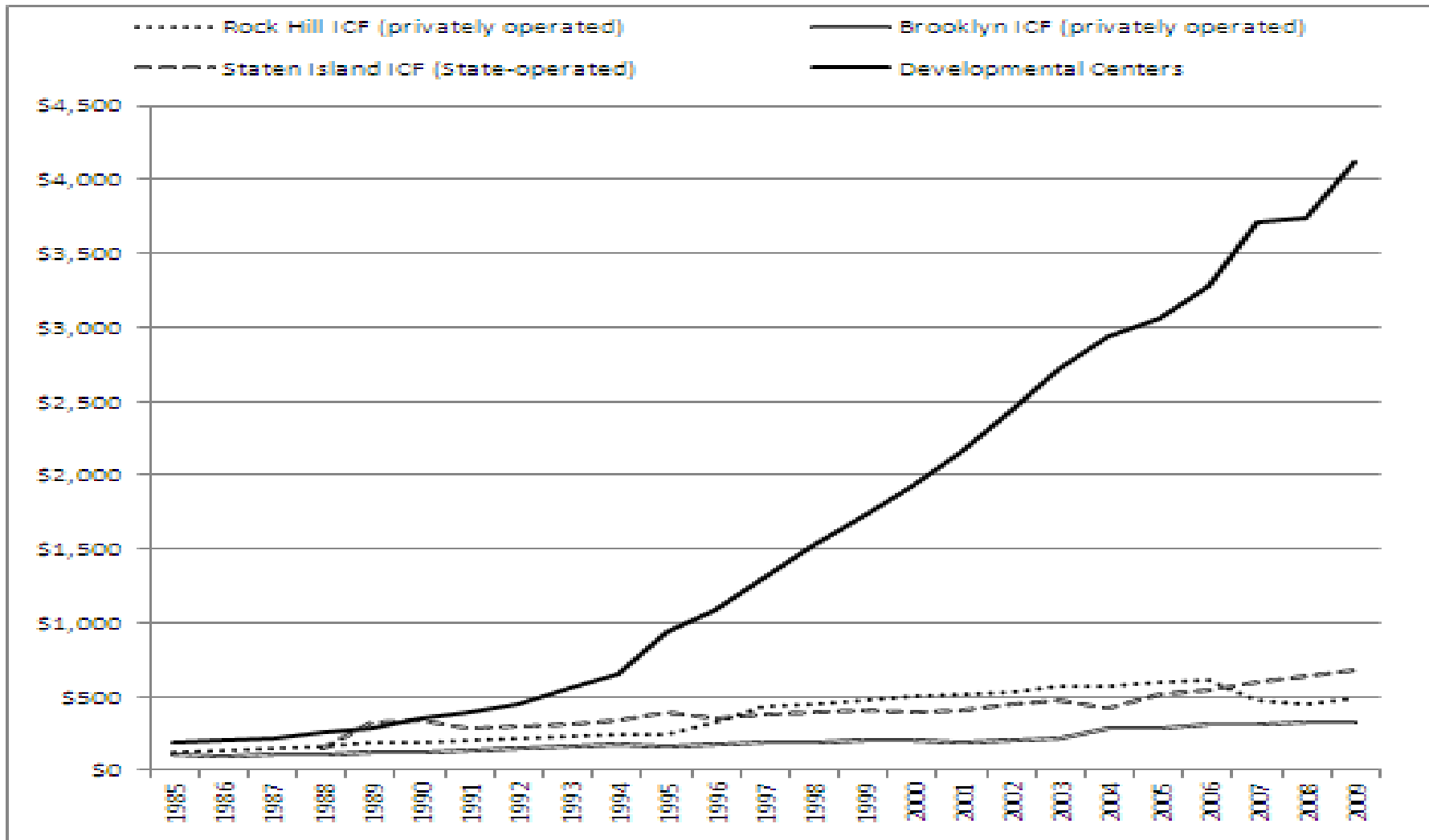
- A type of Intermediate Care Facility (ICF) for the Developmentally Disabled operated by NYS with at least 30 beds.
- ICFs are residential treatment options that provide 24-hour on-site assistance and training, intensive clinical and direct-care services, supervised activities and a variety of therapies.
- In 2009 there were 13 of these type facilities scattered across NYS.

Other ICFs in NYS

- State operated under 30 bed facilities – 37 facilities with rates between \$476 and \$902 per day.
- Privately operated under 30 bed facilities – 519 facilities with rates between \$257 and \$776 per day.

What Was This Audit About?

[Graph: Medicaid Daily Rate for Selected Intermediate Care Facilities (1985-2009)]



How This Audit Started

MONEY PIT

MONEYMAKER

DEVELOPMENTAL CENTERS AND THE MEDICAID MATCH

**JOURNAL
EXCLUSIVE
REPORT**

\$4G PER PERSON PER DAY: N.Y. DISABLED CARE NO. 1 IN NATION

FEE TO WASSAIC, OTHER CENTERS FAR EXCEED PATIENT-CARE COSTS

Mary Beth Pfeiffer
Poughkeepsie Journal

Call it the Rolls-Royce of institutions for the mentally disabled. Call it the pot of gold at the end of the Medicaid rainbow. Call it anything, but don't call it cheap.

Because the state and federal government pay \$4,556 per day for each of 152 residents at the former Wassaic Developmental Center in eastern Dutchess County, as well as for the 1,265 residents of eight other aging and inefficient campuses around the state. That's \$1.7 million a year per person — the highest Medicaid rate in the nation by one university study and four times the next-highest facility cost.

State officials admit the actual cost of care is about one-third of the rate and that the hundreds of millions in leftover cash underwrite other state programs for the developmentally disabled. That Medicaid largesse, they say, has turned a system that was plagued by scandal in the 1970s into perhaps the best in the country today.



Spencer Alinsky/Poughkeepsie Journal
The old hospital, which houses a dental clinic and pharmacy, appears at the center of this aerial photograph of the Wassaic campus of the Taconic Developmental Disabilities Service Organization, home to 152 developmentally disabled adults. The campus once housed 4,500. **Below left**, The campus power plant, which received a \$7.1 million rehabilitation in 2006, among \$36 million in upgrades since 2000.

5 teens charged in brawl at school

Poughkeepsie High fight escalates; educator and police officers hurt

John W. Barry
Poughkeepsie Journal

Five Poughkeepsie High School students must appear in Dutchess County Family Court to answer charges filed against them after a fight broke out at Poughkeepsie High School on Thursday, resulting in injuries to police officers and an assistant principal.

One student — all five were ages 13-15 — was charged with assault on a police officer and attempting to take an officer's gun, City of Poughkeepsie police said. Four of the five students were male.

According to police:

- One of the males was charged with inciting a riot, obstruction of governmental administration and resisting arrest.

- A second male was charged with inciting a riot, obstruction of governmental administration, re-

SEE FIGHT, 5A

The Big Meeting

- Centers for Medicare & Medicaid Services (CMS)
- HHS/OAS/OIG
- New York State
 - ✓ Department of Health (DOH)
 - ✓ Office For People With Developmental Disabilities (OPWDD)

New York's Position

- “The State is confident that the payments to developmental centers are in compliance with its state plan and with CMS's regulations.”



Result

CMS requests that OAS/OIG perform an Audit.

Planning Phase

Significant Issues

- Criteria
 - ❖ Hard to Prove
- Recommendations
 - ❖ What Type
 - ❖ To Whom

Agreement

Criteria

- Social Security Act § 1902(a)(30) - payments for services must be consistent with economy and efficiency.

Problems Faced

How do we determine economy and efficiency and a reasonable cost standard?

Comparisons

- Compare State Operated Developmental Centers to Non-State Operated ICFs.

❖ Rates

❖ Services

Comparisons – Who & Why

State Operated

Brooklyn Developmental Center (BDC)

Largest developmental center as ranked by:

Medicaid reimbursement

Number of Billings

Number of Recipients

Non State Operated

Block Institute - Brooklyn

- Proximity – Within 10 miles of BDC (\$322 to \$405)

The Center for Discovery - Monticello

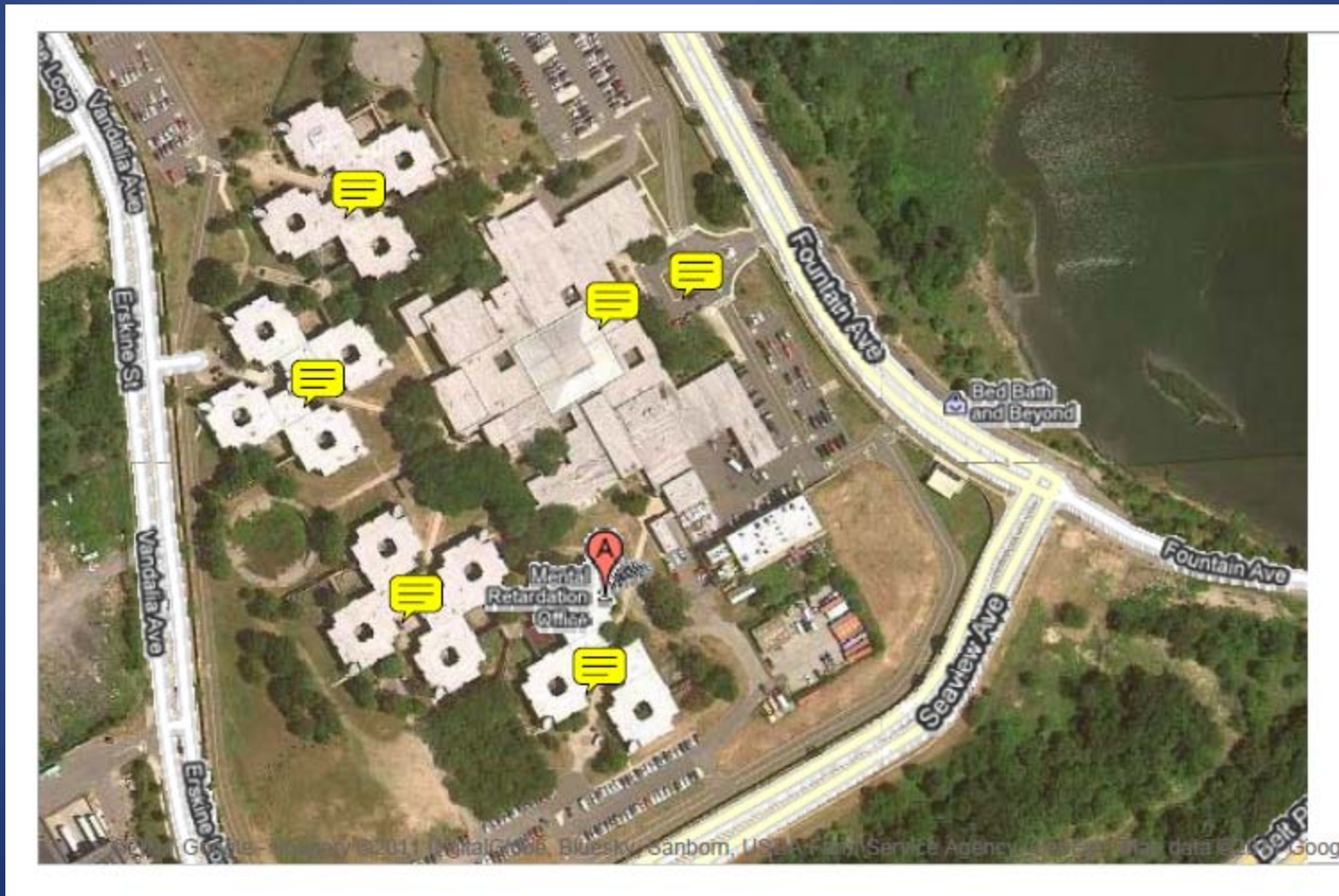
- Highest current Medicaid reimbursement rate for a Non-State Operated ICF (\$776)

Site Visits

- Unannounced Visits
 - Brooklyn DC
 - Block Institute
- Announced Visit
 - Center for Discovery
- Asked Questions and Gathered Information
- Toured the campus and facilities

Brooklyn Developmental Center

888 Fountain Avenue



Block Institute – Bay 44th Street Brooklyn



The Center For Discovery – Monticello



Survey Results

- Services

Type and Range of Services appeared comparable at all locations.

- Rates

The Center for Discovery's higher rate determined to be an anomaly. Included years of retroactive capital costs. Adjusted for this, the rate was not significantly different than Block Institute.

Narrow Our Focus

- Compare BDC to Block
 - ❖ Rates – How calculated????
 - ❖ Services – Billing histories for 10 randomly selected beneficiaries from each.

Service Comparison

	State-Operated Developmental Center	Non-State Operated Intermediate Care Facility
Reimbursement Rate(s)	\$4,116 per day	\$322 to \$405 per day
Therapies Included in Residential Rate	Occupational therapy Physical therapy Psychologist services Speech and language pathology Social work Dietetics and nutrition Rehabilitation counseling Nursing services	Occupational therapy Physical therapy Psychologist services Speech and language pathology Social work Dietetics and nutrition Rehabilitation counseling Nursing services
Day Treatment Services	Included in rate	Billed separately
Annual Billings per Resident^s	Low - \$1,489,623 High - \$1,502,172	Low - \$99,120 High - \$149,670

Rate Calculation – Non-State Operated

The State's rate-setting methodology for non-State-operated ICFs ties reimbursement rates to reported costs for a 12-month "base period" and a 12-month "subsequent period"; in other words a two year cycle with a rebasing every third year.

In effect, rates are tied closer to actual costs.

Rate Calculation – Non-State Operated

Block Institute's Rates

- Rate for SFY2009 ranges from \$322 to \$405 per day plus an additional \$99 to \$130 per day for day treatment services.

Rate Calculation - State Operated Developmental Centers

The reimbursement rate for developmental centers is based on costs in the “base period” trended forward—not on current cost reports.

In effect, the methodology separates reimbursement rates from the development centers’ actual reported costs.

Rate Calculation – State Operated Developmental Centers

The starting point of the developmental centers' reimbursement rate is the “total reimbursable operating costs” contained in the payment rate in effect for the preceding SFY.

Rate Calculation – SFY2009

DEVELOPMENTAL CENTER RATE

April 1, 2008 - March 31, 2009

\$1,905,498,278

(5,424,122)
1,900,074,156
66,882,610
4,092,608
(3,704,481)
1,967,344,894
182,425,990
2,149,770,884
30,173,772
2,179,944,656
119,896,956
2,299,841,612
4,753,984
2,304,595,596
559,974
\$4,115.54

Total Reimbursable Operating Costs as of 3/31/08 Excluding any Education

adjustment for volume decrease per day @ 36% of variable costs removed
after adjustment
trend factor
newcip
other adjustments/accruals
revised operating after rate period adjustments
health care enhancement
Total Reimbursable Operating
capital
Estimated gross receipts OMRDD cost
Tax Assessment at 5.5%
OMRDD reimbursable cost
education - SED
Total Reimbursable cost
Days
Rate

Rate Calculation – SFY2008

DEVELOPMENTAL CENTER RATE

January 1, 2008 - March 31, 2008

\$1,848,248,987	Total Reimbursable Operating Costs as of 3/31/07 Excluding any Education
<u>2,288,332</u>	adjustment for volume increase / decrease per day @ 36% of variable costs removed
1,850,537,319	after adjustment
54,960,958	trend factor
0 (none)	newcip
<u>(2,683,793)</u>	other adjustments/accruals
1,902,814,485	revised operating after rate period adjustments
<u>115,881,402</u>	health care enhancement
2,018,695,887	Total Reimbursable Operating
<u>25,842,277</u>	capital
2,044,538,163	Estimated gross receipts OMRDD cost
<u>112,449,599</u>	Tax Assessment at 5.5%
2,156,987,762	OMRDD reimbursable cost
<u>4,753,984</u>	education - SED
2,161,741,746	Total Reimbursable cost
<u>578,554</u>	Days
<u>\$3,736.46</u>	Rate

Issues

- Major component of the rate calculation (total reimbursable operating costs contained in the payment rate for the prior SFY) appears to be a purely mathematical exercise.
- How does this relate to the actual reported costs of operating these centers?

New York's Position

While the approved rate methodology does result in institutional payments that exceed the costs of operating the facilities, CMS has never, through rule or regulation, interpreted the “efficiency” and “economy” factors as requiring states to conduct cost finding or to set rates according to a provider’s costs.

Cost Comparison

Table 1: Starting Point of Annual Rate-Setting Calculation

Fiscal Year	Reimbursable Operating Costs (Starting Point)	Prior Year Reported Operating Costs	Percent Difference
2007	\$ 1,797,537,033	\$ 518,641,250	347%
2008	\$ 1,848,248,987	\$ 547,242,147	338%
2009	\$ 1,905,498,278	\$ 580,689,833	328%

What Caused This

- SPA 84-10 provides for a “volume variance” of 64 percent fixed/36 percent variable costs in calculating operating costs of State-operated developmental centers (approved in 1986 retroactive to 1984).

What Caused This

- SPA 90-12 provided that reimbursable operating costs included in the prospective rate would be determined by trending forward the costs contained in the payment rate as of the end of the last SFY.

What Caused This

- SPA 06-14 provides for a health care enhancement payment for providers that meet certain benchmark requirements for staff recruitment and retention (\$182 million in 2009).
- Applies to all OPWDD employees, not just Developmental Center employees.

Recalculated Rate

Rate Component	State Calculation	OIG Recalculation
Total Reimbursable Operating Costs as of 3/31/08 Excluding any Education	1,905,498,278	
Total Reported Developmental Center Costs - 3/31/08 (SFY2008)		580,689,833
"Volume variance" adjustment (Decrease per day @ 36 percent variable costs removed)	(5,424,122)	(5,424,122)
Subtotal (Post-Adjustment)	1,900,074,156	575,265,711
Trend Factor (3.52 percent)	66,882,610	20,249,353
"Closure Incentive Plan" Payment Adjustment	4,092,608	4,092,608
Other Adjustments/Accruals	(3,704,481)	(3,704,481)
Revised Operating After Rate Period Adjustments	1,967,344,893	595,903,191
Health Care Enhancement	182,425,990	182,425,990
Total Reimbursable Operating Capital	2,149,770,883	778,329,181
	30,173,772	30,173,772
Estimated Gross Receipts (OPWDD Costs)	2,179,944,655	808,502,953
Tax Assessment (5.5 percent)	119,896,956	44,467,662
OPWDD Reimbursable Operating Costs	2,299,841,611	852,970,615
Education Costs (provided by State Education Department)	4,753,984	4,753,984
Total Reimbursable Costs	2,304,595,595	857,724,599
Days	559,974	559,974
SFY 2009 Medicaid Daily Rate	\$4,116	\$1,532

Result

We recalculated the SFY 2009 daily rate using actual reported operating costs, resulting in a daily rate of \$1,532, a 63 percent decrease.

Finding

The Medicaid daily rate for New York's development centers may not be economical, efficient, and reasonable.

Potential Cost Savings

In SFY 2009, the State claimed nearly \$2.27 billion (\$1.13 billion Federal share) in Medicaid reimbursement for developmental center services. If the State used actual reported operating costs to determine its Medicaid daily rate, its reimbursement would have totaled \$858 million (\$429 million Federal share), a difference of \$1.41 billion (\$701 million Federal share).

If the State used a more economical, efficient, and reasonable calculation, the Federal government could potentially save approximately \$700 million per year.

Cause

CMS did not adequately monitor the State's rate-setting methodology.

DOH received CMS approval for more than 35 SPAs related to ICF rates, including some that only pertained to State-operated developmental centers.

However, CMS did not adequately account for the impact that some of these SPAs would have on the reimbursement rate for developmental centers.

Recommendation

We recommended that CMS work with NYS to ensure the rate-setting methodology for State-operated developmental centers is consistent with economy and efficiency.

This could potentially save the Federal Medicaid program approximately \$700 million per year.

CMS and State Response

- Both agreed to work together to develop a revised payment methodology that will result in a payment rate that is consistent with efficiency and economy.
- The State looked at implementing a new rate over the next 5 years.

Final Report Issued May 17, 2012



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



MAY 17 2012

TO: Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services

FROM: Daniel R. Levinson *Daniel R. Levinson*
Inspector General

SUBJECT: Medicaid Rates for New York State-Operated Developmental Centers May Be Excessive (A-02-11-01029)

The attached final report provides the results of our review of Medicaid payment rates for New York State developmental centers.

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that the Office of Inspector General (OIG) post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Brian P. Ritchie, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or through email at Brian.Ritchie@oig.hhs.gov. We look forward to receiving your final management decision within 6 months. Please refer to report number A-02-11-01029 in all correspondence.

Attachment

OIG Works With Media

The New York Times

May 18, 2012

Report Details Medicaid Overpayments to New York State

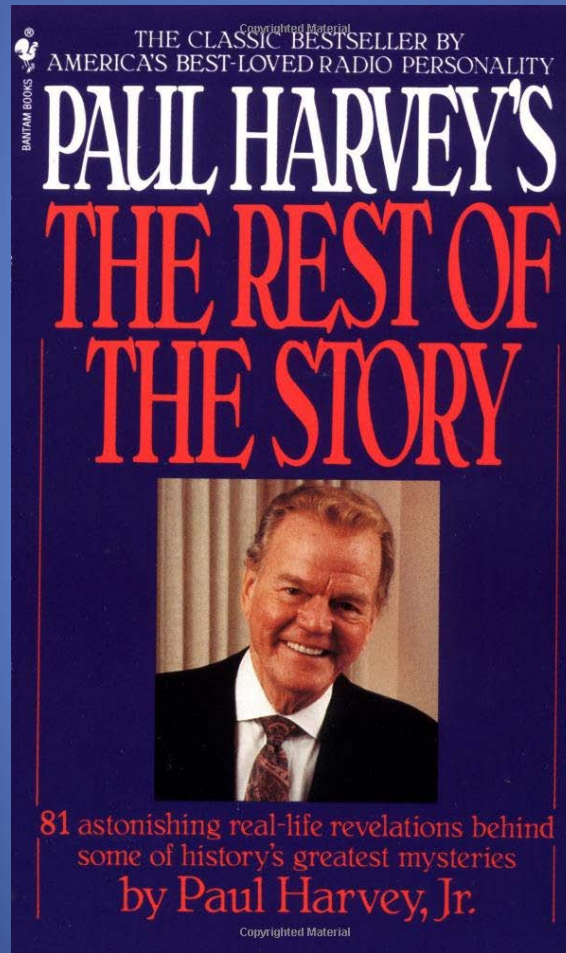
OIG Works With Media



poughkeepsiejournal.com

**N.Y., feds share
blame on billions in
Medicaid cost**

And Now.....

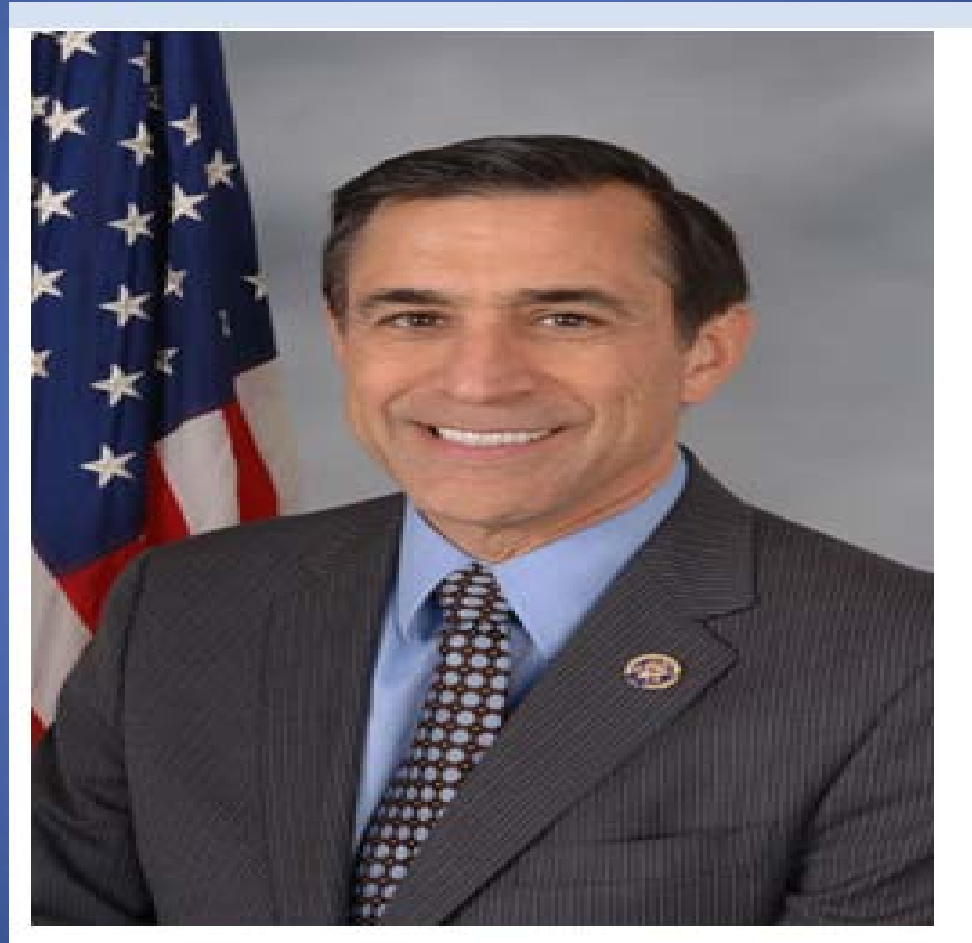


Report Gets Attention of Congress



Committee on Oversight and Government Reform

Chairman – Darrell Issa (R-Calif.)



June 4, 2012

Congress Contacts OIG

- OAS Fields First of Many Congressional Committee Questions regarding NYS's claiming for Developmental Centers.

June 18, 2012

Congress Contacts CMS About OIG Report

CONNIE MACK, FLORIDA
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JAMES LANKFORD, OKLAHOMA
JUSTIN AMASH, MICHIGAN
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June 18, 2012

Ms. Cynthia Mann
Director, Center for Medicaid and State Operations
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington D.C. 20201

Dear Ms. Mann:

June 18, 2012 Letter from Congress to CMS continued...

- Asks CMS 11 specific questions regarding:
 - SPA approval process;
 - Plan for a new rate; and
 - Penalties/collections of past amounts.

June 28, 2012 CMS Briefs Congressional Staffers

- On-going negotiations between CMS and NYS to develop a corrective action plan.
- Plan allows the State to continue to receive billions over the next 5 years as NYS has grown dependent on the funds.

July 11, 2012

Congress Responds to CMS Corrective Action Plan

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Ms. Marilyn Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Ms. Tavenner:

Congressional Quotes Within the Response

- “CMS is going to continue to allow New York to overcharge federal taxpayers for at least another five years because the State has grown dependent on the excess federal funds for developmental centers. ...This is unacceptable.”

Congressional Quotes Within the Response

- “We doubt that if you caught someone deliberately overcharging you, that you would allow them to continue overcharging you as long as they gradually overcharged less over time.”

Congressional Quotes Within the Response

- “The Committee requests that you act in accordance with the law to ensure that state Medicaid payment rates are consistent with efficiency, economy and quality of care...”

July 19, 2012

Congress Contacts NYS About OIG Report

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July 19, 2012

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Dr. Nirav Shah
Commissioner
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, New York 12237

Dear Commissioner Shah:

July 19, 2012 Letter from Congress to NYS

- Similar in scope to letter sent to CMS asking for an explanation of the rate and a corrective action plan.

Congress Calls for a Hearing



Thursday, September 20, 2012

Committee on
Oversight &
Government
Reform

Room 2154

The image is a composite graphic. On the left, the white dome of the U.S. Capitol building is shown against a dark background. To the right, a large, dense crowd of people is visible, many holding up red signs. In the background, a document with the words 'We the People' in cursive script is visible. The text 'Thursday, September 20, 2012' is at the top left, and 'Committee on Oversight & Government Reform' and 'Room 2154' are in large, bold, yellow-green letters on the right. A small red 'B-116' is visible in the top right corner.

Dr. Paul Gosar - (R) Arizona



OIG and CMS Testify



OIG Uses Opportunity

To Push for Payments Limited to Costs

- For over a decade, OIG has recommended that payments to public providers be limited to the actual cost of providing services. This would help ensure that in New York and other States, Medicaid payment methodologies for public providers are reasonable and economical.

Testimony of Penny Thompson

- CMS has dropped plans for a five-year transition.
- "You can expect to see a rate that's about one-fifth of its current level."

Post Hearing Press Coverage

Medicaid Official Defends Work to Limit Overpayments in New York

By Rebecca Adams, **CQ HealthBeat** Associate Editor

(New York) State Accused of \$15 Billion (Medicaid) Fraud Scheme

Wall Street Journal

By Jacob Gershman

September 21, 2012

GOP Slams \$15 Billion in Medicaid Overpayments

The Hill

By Sam Baker

September 21, 2012

HHS To Correct New York's Overbilling for Medicaid Patients

Gannett News

By Brian Tumulty

September 20, 2012

Post Hearing Press Coverage

Feds cut Medicaid reimbursements for disabled New Yorkers by 80%
Rochester NY Democrat and Chronicle

1:33 AM, Sep 21, 2012 | [Comments](#)

Publication: **Albany Times Union**; Date: Sep 22, 2012; Section: News; Page: A1

Report faults patient cost

Medicaid pays \$1.9 million a year for each resident at state's residential centers

Editorial: (NY) Medicaid Abuse Has Lingered For Too Long
Poughkeepsie Journal

September 24, 2012

Wait, We're Not Done.....

CMS and OAS Join Together

- OAS to assist CMS in their review of actual costs submitted by NYS for Developmental Centers for SFY 2011 (April 1, 2010 to March 31, 2011).
- Goal is to develop a rate that is tied to actual costs that NYS can support.

NYS Provides Data For Review

- Originally, data supplied was for SFY 2009, then 2010, but the State did not have documentation on-hand to support the numbers in those reports.
- To speed up the process, the State provided us with data for SFY 2011.

Meetings, Meetings and More Meetings

- Numerous meetings between NYS, CMS, and OAS officials to go over the State's supplied data.
- Cost data for all 9 remaining Developmental Centers is supplied.

3 Surprise Visits Made by OAS/CMS

- O D Heck Developmental Center (near Albany)
- Brooklyn Developmental Center
- Broome County Developmental Center (near Binghamton – Southwest part of State)

3 Surprise Visits

- Tour of the grounds to see what space is being utilized and for what purpose.
- Interview staff to determine functions performed.
- Focus on Personal Services Costs.

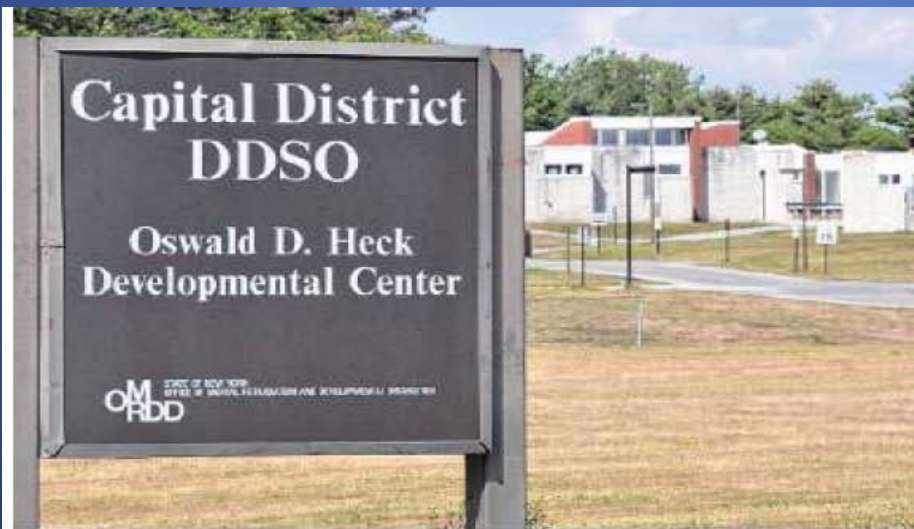
Shortly After Our Visits....

Publication: Albany Times Union; Date: Jul 27, 2013; Section: News; Page: A1

State to close O.D. Heck

Facility is one of four residential institutions, four prisons to be shut

By Matthe Hamilton



John Carl D'Annibale/Times Union archive Closure of the O.D. Heck center on Balltown Road in Niskayuna, announced on Friday, is planned for March 2015.

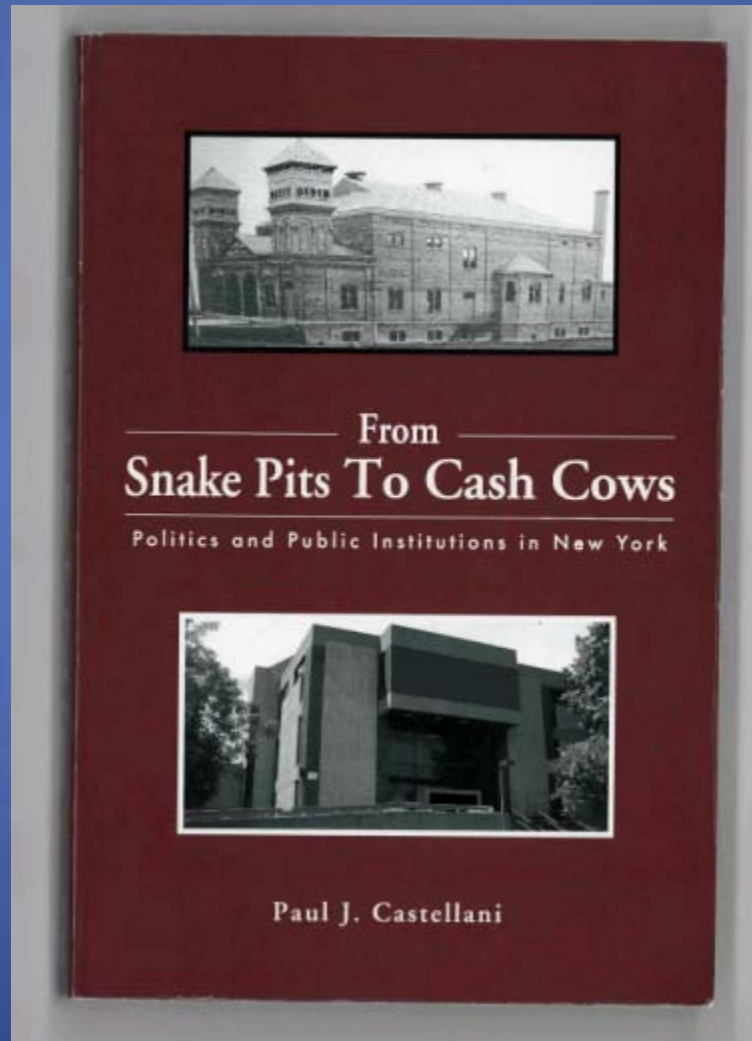
Also Closing.....

- Brooklyn Developmental Center
- Broome County Developmental Center, and
- Bernard M. Fineson Developmental Center
(Queens)

Time To Wrap It Up

- CMS should be issuing a report shortly to the State with our findings.
- The new rate will be ????????????????

*For Further Information
Read the Book*



Questions??

- Hopefully I have the answers!!!!!!!!!!!!!!

THANK YOU!