Rate Adjustment for Financially Disadvantaged RHCFs

(a) The Commissioner of Health shall[, within amounts appropriated for the purposes of this section,] adjust medical assistance rates of payment for services provided on and after October 1, 2004 through December 31, 2004 and annually thereafter for services provided on and after January 1, 2005, to include a rate adjustment to assist qualifying [r]Residential [h]Health [c]Care [f]Facilities (RHCFs) pursuant to this section, provided that public RHCFs shall not be eligible for rate adjustments pursuant to this subdivision for rate periods on and after April 1, 2009.

(b) Eligibility for such rate adjustments shall be determined on the basis of each RHCF's operating margin over the most recent three-year period for which financial data are available from the RHCF-4 cost report or the institutional cost report. For purposes of the adjustments made for the period October 1, 2004 through December 31, 2004, financial information for the calendar years 2000 through 2002 shall be utilized. For each subsequent rate year, the financial data for the three-year period ending two years prior to the applicable rate year shall be utilized for this purpose.

(c) Each facility's operating margin for the three-year period shall be calculated by subtracting total operating expenses for the three-year period from total operating revenues for the three-year period, and dividing the result by the total operating revenues for the three-year period, with the result expressed as a percentage. For hospital-based RHCF's, for which an operating margin cannot be calculated on the basis of the submitted cost reports, the sponsoring hospital's overall three-year operating margin, as reported in the institutional cost report, shall be utilized for this purpose. All facilities with negative operating margins calculated in this way over the three-year period shall be arrayed into quartiles based on the magnitude of the operating margin. Any facility with a positive operating margin for the most recent three-year period, a negative operating margin that places the facility in the quartile of facilities with the smallest negative operating margins, a positive total margin in the most recent year of the three-year period or an average Medicaid utilization percentage of 50% or less during the most recent year of the three-year period shall be disqualified from receiving an adjustment pursuant to this section, provided that for rate periods on and after April 1, 2009, such disqualification:

i. shall not be applied solely on the basis of a facility's having a positive total margin in the most recent year of such three-year period;
ii. shall be extended to those facilities in the quartile of facilities with the second smallest negative operating margins; and
iii. shall also be extended to those facilities with an average Medicaid utilization percentage of less than 70% during the most recent year of the three-year period.

(d) For each facility remaining after the exclusions made pursuant to paragraph (c) of this section, the Commissioner of Health shall calculate the average annual operating loss for the three-year period by subtracting total operating expenses for the three-year period from

total operating revenues for the three-year period, and dividing the result by three, provided, that for periods on and after April 1, 2009, the amount of such average annual operating loss shall be reduced by an amount equal to the amount received through per diem add-on amounts received in the 2007 and 2008 rate periods. For this purpose, for hospital-based RHCFs for which the average annual operating loss cannot be calculated on the basis of submitted cost reports, the sponsoring hospital's overall average annual operating loss for the three-year period shall be apportioned to the RHCF based on the proportion the RHCF's total revenues for the period bears to the total revenues reported by the sponsoring hospital, and such apportioned average annual operating loss shall then be reduced by an amount equal to the amount received through per diem add-on amounts received in the 2007 and 2008 rate periods.

(e) [Each] For periods prior to April 1, 2009, each such facility's qualifying operating loss shall be determined by multiplying the facility's average annual operating loss for the three-year period as calculated pursuant to paragraph (d) of this section by the applicable percentage shown in the tables below for the quartile in which the facility's negative operating margin for the three-year period is assigned.

i. For a facility located in a county with a total population of 200,000 or more as determined by the 2000 U.S. Census:

First Quartile (lowest operating margins):	30 percent
Second Quartile	15 percent
Third Quartile	7.5 percent

ii. For a facility located in a county with a total population of fewer than 200,000 as determined by the 2000 U.S. Census:

First Quartile (lowest operating margins):	35 percent
Second Quartile	20 percent
Third Quartile	12.5 percent

(f) The amount of any facility's financially disadvantaged RHCF distribution calculated in accordance with this section shall be reduced by the facility's rate year benefit of the 2001 update to the regional input price adjustment factors[, if any] provided that such reduction shall not be applied with regard to rate periods on and after April 1, 2009. After all other adjustments to a facility's financially disadvantaged RHCF distribution have been made in accordance with this section, the amount of each facility's distribution shall be limited to no more than $400,000 during the period October 1, 2004 through December 31, 2004, and [during any subsequent] on an annualized basis, for rate periods through March 31, 2009, and no more than one million dollars for the period April 1, 2009 through December 31, 2009, and for each annual rate period thereafter.

(g) The adjustment made to each qualifying facility's Medicaid rate of payment determined pursuant to the section shall be calculated by dividing the facility's financially disadvantaged RHCF distribution calculated in accordance with this section by the facility's total Medicaid patient days reported in the cost report submitted two years prior to the rate year, provided however, that such rate adjustments for the period October 1, 2004 through December 31, 2004, shall be calculated based on [twenty-five percent] 25% of each facility's reported total Medicaid patient days as reported in the applicable 2002 cost report. Such amounts will not be reconciled to reflect changes in medical assistance utilization between the year two years prior to the rate year and the rate year.

(h) The total amount of funds to be allocated and distributed as medical assistance for financially disadvantaged RHCF rate adjustments to eligible facilities for a rate period in accordance with this section shall be thirty million dollars for the period October 1, 2004 through December 31, 2004, and [thirty million dollars] $30 million on an annualized basis for [annual] rate periods on and after January 1, 2005 through December 31, 2008, and $30 million on an annualized basis on and after January 1, 2009. In the event the statewide total of the annual rate adjustments determined pursuant to paragraph (g) of this section varies from [thirty million dollars] the amounts set forth in this paragraph, [for the period October 1, 2004 through December 31, 2004, or for any annual period thereafter,] each qualifying facility's rate adjustment shall be proportionately increased or decreased such that the total of the annual rate adjustments made pursuant to this section is equal to [thirty million dollars] the amounts set forth in this paragraph on a statewide basis.

(i) For periods on and after April 1, 2009, Residential Health Care Facilities (RHCFs), which are otherwise eligible for rate adjustments pursuant to this subdivision shall also, as a condition for receipt of such rate adjustments, submit to the Commissioner a written restructuring plan that is acceptable to the Commissioner and which is in accord with the following:

i. Such an acceptable plan shall be submitted to the Commissioner within sixty days of the facility's receipt of rate adjustments pursuant to this subdivision for a rate period subsequent to March 31, 2008, provided that facilities which are allocated $400,000 or less on an annualized basis shall be required to submit such plans within 120 days, and further provided that these periods may be extended by the Commissioner by no more than thirty days, for good cause shown; and

ii. Such plan shall provide a detailed description of the steps the facility will take to improve operational efficiency and align its expenditures with its revenues, and shall include a projected schedule of quantifiable benchmarks to be achieved in the implementation of the plan; and

iii. Such plan shall require periodic reports to the Commissioner, in accordance with a schedule acceptable to the Commissioner, setting forth the progress the facility has made in implementing its plan; and

iv. Such plan may include the facility's retention of a qualified chief restructuring officer to assist in the implementation of the plan, provided that this requirement may be waived by the Commissioner, for good cause shown, upon written application by the facility.

(j) If a facility fails to submit an acceptable restructuring plan in accordance with the provisions of paragraph (i) of this subdivision, the facility shall, from that time forward, be precluded from receipt of all further rate adjustments made pursuant to this subdivision and shall be deemed ineligible from any future re-application for such adjustments. The Commissioner will annually review each facility's efforts in achieving substantial progress in implementing its plan or achieving the benchmarks set forth in such plan. Further, if the Commissioner determines that a facility has failed to make a good faith effort in achieving substantial progress in implementing its plan or in achieving the benchmarks set forth in such plan, then the Commissioner will, upon thirty days notice to that facility, disqualify the facility from further participation in the rate adjustments authorized by this subdivision and the Commissioner will require the facility to repay some or all of the previous rate adjustments. During such thirty-day notification period, a facility may submit to the Commissioner additional information which may be used by the Commissioner to reconsider his or her determination that the facility be disqualified from further participation and required to repay some or all of the rate adjustments. The amount required to be repaid from such a facility shall be commensurate with the degree to which a facility has not made progress in implementing its plan or achieving the benchmarks set forth in such plan. Rate adjustments applicable to distributions made for periods prior to 2009 shall not be subject to repayment.