

Rate Adjustment for Financially Disadvantaged RHCFS

- (a) The Commissioner of Health shall 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 through April 30, 2011, and on and after May 1, 2012 to include a rate adjustment to assist qualifying Residential Health Care 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.

Facilities that receive a rate adjustment for the period May 1, 2010 through April 30, 2011, will have their rates reduced for the rate period December 1, 2011 through December 31, 2011, by an amount equal to the payment generated by the May 1, 2010 through April 30, 2011, rate adjustment.

- (b) Eligibility for such rate adjustments shall be determined on the basis of each RHCFS's operating margin over the most recent three-year period for which financial data are available from the RHCFS-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 RHCFS'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;

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- 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) 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

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