§ 43.04 Provider of services assessments.

1. For purposes of this section, provider of services shall refer to (i) those providers as defined by subdivision five of section 1.03 of this chapter which are licensed by the office for people with developmental disabilities pursuant to article sixteen of this chapter as intermediate care facilities for individuals with developmental disabilities, providers of day treatment services or specialty hospitals, except that on and after December first, nineteen hundred ninety-seven, provider of services shall not include specialty hospitals, and (ii), for purposes of paragraph (c) of subdivision two of this section only, the term provider of services, shall mean, and for purposes of this subdivision shall include, the office for people with developmental disabilities as the operator of intermediate care facilities for individuals with developmental disabilities. Providers of services are charged assessments on their gross receipts received from services and care related to intermediate care facilities, day treatment services, or specialty hospitals until November thirtieth, nineteen hundred ninety-seven, for individuals with developmental disabilities and other operating income, less personal needs allowances and refunds, on a cash basis in the percentage amounts and for the periods specified in subdivision two of this section. Such assessments shall be submitted by or on behalf of such providers of services to the commissioner of the office for people with developmental disabilities or his or her designee.

2. (a) (i) For each provider of services in the categories of services set forth in subdivision one of this section located in Regions II and III, as defined in the methodology established pursuant to paragraph (ii) of subdivision (c) of section 43.02 of this article, the assessment shall be six-tenths of one percent of each such provider of services' gross receipts received for all services rendered within such service categories on a cash basis beginning January first, nineteen hundred ninety-one.

(ii) For each provider of services in the categories of services set forth in subdivision one of this section, excluding, on and after April first, nineteen hundred ninety-four, providers of day treatment

services, located in Regions II and III, as defined in the methodology established pursuant to paragraph (ii) of subdivision (c) of section 43.02 of this article, an additional assessment shall be two and four-tenths percent of each such provider of services' gross receipts received for all services rendered within such service categories on a cash basis beginning April first, nineteen hundred ninety-two; provided, however, such additional assessment shall be five and four-tenths percent of each such provider of services' gross receipts received for all services rendered within such service categories on a cash basis beginning April first, nineteen hundred ninety-six and ending March thirty-first, nineteen hundred ninety-seven.

(iii) For each provider of services in the categories of services set forth in subdivision one of this section, excluding, on and after April first, nineteen hundred ninety-four, providers of day treatment services, located in Regions II and III, as defined in the methodology established pursuant to paragraph (ii) of subdivision (c) of section 43.02 of this article, notwithstanding any other provision of this paragraph, the total assessment shall be six percent of each such provider's gross receipts received on a cash basis for all services rendered, beginning April first, nineteen hundred ninety-seven, and five and five-tenths percent of each such provider's gross receipts received on a cash basis for all services rendered, beginning January first, two thousand eight.

(b) (i) For each provider of services in the categories of services set forth in subdivision one of this section located in Region I, as defined in the methodology established pursuant to paragraph (ii) of subdivision (c) of section 43.02 of this article, the assessment shall be six-tenths of one percent of each such provider of services' gross receipts received for all services rendered within such service categories on a cash basis beginning July first, nineteen hundred ninety-one.

(ii) For each provider of services in the categories of services set forth in subdivision one of this section, excluding, on and after April first, nineteen hundred ninety-four, providers of day treatment services, located in Region I, as defined in the methodology established pursuant to paragraph (ii) of subdivision (c) of section 43.02 of this article, an additional assessment shall be two and four-tenths percent

of each such provider of services' gross receipts received for all services rendered within such service categories on a cash basis beginning April first, nineteen hundred ninety-two; provided, however, such additional assessment shall be five and four-tenths percent of each such provider of services' gross receipts received for all services rendered within such service categories on a cash basis beginning April first, nineteen hundred ninety-six and ending March thirty-first, nineteen hundred ninety-seven.

(iii) For each provider of services in the categories of services set forth in subdivision one of this section, excluding, on and after April first, nineteen hundred ninety-four, providers of day treatment services, located in Region I, as defined in the methodology established pursuant to paragraph (ii) of subdivision (c) of section 43.02 of this article, notwithstanding any other provision of this paragraph, the total assessment shall be six percent of each such provider's gross receipts received on a cash basis for all services rendered, beginning April first, nineteen hundred ninety-seven, and five and five-tenths percent of each such provider's gross receipts received on a cash basis for all services rendered, beginning January first, two thousand eight.

(c) (i) For the provider of services as set forth in clause (ii) of subdivision one of this section in the category of intermediate care facilities for individuals with developmental disabilities operated by the office for people with developmental disabilities, the assessment shall be six-tenths of one percent of the gross receipts received for all services rendered within such service category on a cash basis beginning April first, nineteen hundred ninety-five and ending March thirty-first, two thousand one.

(ii) For the provider of services as set forth in clause (ii) of subdivision one of this section in the category of intermediate care facilities for individuals with developmental disabilities operated by the office for people with developmental disabilities, an additional assessment shall be two and four-tenths percent of the gross receipts for all services rendered within such service category on a cash basis beginning April first, nineteen hundred ninety-five; provided, however, such additional assessment shall be five and four-tenths percent of the gross receipts received for all services rendered within such service category on a cash basis beginning April first, nineteen hundred

ninety-six and ending March thirty-first, two thousand one.

(iii) For each provider of services as set forth in clause (ii) of subdivision one of this section in the category of intermediate care facilities for individuals with developmental disabilities operated by the office for people with developmental disabilities, notwithstanding any other provision of this paragraph, the total assessment shall be six percent of the provider's gross receipts received on a cash basis for all services rendered, beginning April first, two thousand one, and five and five-tenths percent of the provider's gross receipts received on a cash basis for all services rendered, beginning January first, two thousand eight.

(d) Notwithstanding any other provisions of law to the contrary, for each provider of day treatment services, the assessment on each such provider's gross receipts for all services rendered on a cash basis shall be as follows: (i) for all such gross receipts received on or after April first, nineteen hundred ninety-nine, such assessment shall be two-tenths of one percent; (ii) for all gross receipts received on or after April first, two thousand, such assessment shall expire and be of no further effect.

3. The commissioner is authorized to contract with the article forty-three insurance law plans, or such other administrators as the commissioner shall designate, to receive and distribute provider of services assessment funds. In the event contracts with the article forty-three insurance law plans or other commissioner's designees are effectuated, the commissioner shall conduct annual audits of the receipt and distribution of the assessment funds. The reasonable cost and expenses of such administrators as approved by the commissioner, not to exceed for personnel services on an annual basis one hundred thousand dollars for all assessments established pursuant to this section, shall be paid from the assessment funds.

4. Gross receipts received from all services rendered within the service categories set forth in subdivision one of this section shall include, without limitation, all monies received on account of such services pursuant to rates of reimbursement established by the office for people with developmental disabilities and paid by the state, and

shall not include, subject to the provisions of subdivision twelve of this section, charitable contributions, grants, donations, bequests and income from non-service related fund raising activities and governmental deficit financing.

5. Estimated payments by or on behalf of providers of services to the commissioner of the office for people with developmental disabilities of funds due from the assessments pursuant to subdivision two of this section shall be made on a monthly basis. Estimated payments shall be due on or before the fifteenth day following the end of a calendar month to which an assessment applies.

6. (a) If an estimated payment made for a month to which an assessment applies is less than seventy percent of an amount the commissioner of the office for people with developmental disabilities determines is due, based on evidence of prior period moneys received by a provider of services or evidence of moneys received by such provider of services for that month, such commissioner may estimate the amount due from such provider of services and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(b) If an estimated payment made for a month to which an assessment applies is less than ninety percent of an amount the commissioner of the office for people with developmental disabilities determines is due, based on evidence of prior period moneys received by a provider of service or evidence of monies received by such provider of services for that month, and at least two previous estimated payments within the preceding six months were less than ninety percent of the amount due, based on similar evidence, such commissioner may estimate the amount due from such provider of services and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(c) Upon receipt of notification from the commissioner of the office for people with developmental disabilities of a provider of service's delinquency under this section, the comptroller or a fiscal intermediary designated by the director of the budget, or the commissioner of social services, shall withhold from the amount of any payment to be made by the state to a provider of services the amount of the deficiency determined under paragraph (a) or (b) of this subdivision or paragraph

(d) of subdivision seven of this section. Upon withholding such amount, the comptroller or a designated fiscal intermediary, or the commissioner of social services, shall pay the commissioner of the office for people with developmental disabilities, or his designee, such amount withheld on behalf of the provider of services.

(d) The commissioner of the office for people with developmental disabilities shall provide a provider of services with notice of any estimate of an amount due for an assessment pursuant to paragraph (a) or (b) of this subdivision or paragraph (d) of subdivision seven of this section at least three days prior to collection of such amount by such commissioner. Such notice shall contain the financial basis for such commissioner's estimate.

(e) In the event a provider of services objects to an estimate by the commissioner of the office for people with developmental disabilities pursuant to paragraph (a) or (b) of this subdivision or paragraph (d) of subdivision seven of this section of the amount due for an assessment, the provider of services, within sixty days of notice of an amount due, may request a hearing. If a hearing is requested, such commissioner shall provide the provider of services an opportunity to be heard and to present evidence bearing on the amount due for an assessment within thirty days after collection of an amount due or receipt of a request for a hearing, whichever is later. An administrative hearing is not a prerequisite to seeking judicial relief.

(f) The commissioner of the office for people with developmental disabilities may direct that a hearing be held without any request by a provider of services.

7. (a) Every provider of services shall submit reports on a cash basis of actual gross receipts received from all services rendered within the services categories set forth in subdivision one of this section to persons with developmental disabilities and operating income for each month as follows:

(i) for the period January first, nineteen hundred ninety-one through January thirtieth, nineteen hundred ninety-one, the report shall be filed on or before March fifteenth, nineteen hundred ninety-one.

(ii) for the period January first, nineteen hundred ninety-one through March thirty-first, nineteen hundred ninety-one and each quarter

thereafter, the report shall be filed on or before the forty-fifth day after the end of the quarter.

(b) Every provider of services shall submit a certified annual report on a cash basis of gross receipts received in such calendar year from all services to persons with developmental disabilities and operating income. The reports shall be in such form as may be prescribed by the commissioner of the office for people with developmental disabilities to accurately disclose information required to implement this section.

(c) Final payments shall be due for all providers of services for the assessments pursuant to subdivision two of this section upon the due date for submission of the applicable quarterly report.

(d) The commissioner of the office for people with developmental disabilities may recoup deficiencies in final payments pursuant to paragraph (c) of subdivision six of this section.

8. (a) If an estimated payment made for a month to which an assessment applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner of the office for people with developmental disabilities on the difference between the amount paid and the amount due from the day of the month the estimated payment was due until the date of payment. The rate of interest shall be twelve percent per annum or at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus four percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest, if not paid by the due date of the following month's estimated payment, may be collected by the commissioner of the office for people with developmental disabilities pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

(b) If an estimated payment made for a month to which an assessment applies is less than seventy percent of the actual amount due for such month, a penalty shall be due and payable to the commissioner of the office for people with developmental disabilities of five percent of the difference between the amount paid and the amount due for such month when the failure to pay is for a duration of not more than one month

after the due date of the payment with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. A penalty may be collected by such commissioner pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

(c) Overpayment by a provider of services of an estimated payment shall be applied to any other payment due from the provider of services pursuant to this section, or, if no payment is due, at the election of the provider of services shall be applied to future estimated payments or refunded to the provider of services. Interest shall be paid on overpayments from the date of overpayment to the date of crediting or refund at the rate determined in accordance with paragraph (a) of this subdivision if the overpayment was made at the direction of the commissioner. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar.

9. Funds accumulated, including income from invested funds, from the assessments specified in this section, including interest and penalties, shall be deposited by the commissioner of the office for people with developmental disabilities and credited to the general fund.

10. Notwithstanding any inconsistent provision of law or regulation to the contrary:

(a) the assessments pursuant to this section shall not be an allowable cost in the determination of reimbursement rates pursuant to this article:

(b) provided, however, that for purposes of determining rates of payment pursuant to this article for providers, the additional assessment imposed pursuant to the provisions of subparagraph (ii) of paragraph (a), subparagraph (ii) of paragraph (b) and subparagraph (ii) of paragraph (c) of subdivision two of this section shall be a reimbursable cost to be reflected as timely as practicable in rates of payment applicable within the assessment period, contingent, for payments by governmental agencies, on all federal approvals necessary by federal law and regulation for federal financial participation in payments made for beneficiaries eligible for medical assistance under

title XIX of the federal social security act.

(c) provided, however, that for purposes of determining rates of payment pursuant to this article for providers, three-tenths of one percent of the assessment imposed pursuant to this section on the gross receipts of intermediate care facilities received on or after April first, nineteen hundred ninety-nine shall be a reimbursable cost to be reflected as timely as practicable in rates of payment applicable within the assessment period, contingent, for payments by governmental agencies, on all federal approvals necessary by federal law and regulation for federal financial participation in payments made for beneficiaries eligible for medical assistance under title XIX of the federal social security act.

(d) provided, however, that for purposes of determining rates of payment pursuant to this article for providers, the assessment imposed pursuant to this section on the gross receipts of intermediate care facilities received on or after April first, two thousand shall be a reimbursable cost to be reflected as timely as practicable in rates of payment applicable within the assessment period, contingent, for payments by governmental agencies, on all federal approvals necessary by federal law and regulation for federal financial participation in payments made for beneficiaries eligible for medical assistance under title XIX of the federal social security act.

11. (a) The assessment shall not be collected in excess of six million two hundred thousand dollars from providers of services specified in subdivision two of this section for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the assessment collected pursuant to subdivision two of this section in excess of six million two hundred thousand dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded to providers of services by the commissioner of the office for people with developmental disabilities based on the ratio which a provider of services' assessment for such period bears to the total of the assessments for such period paid by such providers of services.

(b) The additional assessment shall not be collected in excess of

thirty-six million one hundred thousand dollars from providers of services specified in subdivision two of this section for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the additional assessment collected pursuant to subdivision two of this section in excess of thirty-six million one hundred thousand dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded to providers of services by the commissioner of the office for people with developmental disabilities based on the ratio which a provider of services' additional assessment for such period bears to the total of the additional assessments for such period paid by such providers of services.

12. Each exclusion of sources of gross receipts received from the assessments effective on or after April first, nineteen hundred ninety-two established pursuant to this section shall be contingent upon either: (a) qualification of the assessments for waiver pursuant to federal law and regulation; or (b) consistent with federal law and regulation, not requiring a waiver by the secretary of the department of health and human services related to such exclusion; in order for the assessments under this section to be qualified as a broad-based health care related tax for purposes of the revenues received by the state pursuant to the assessments not reducing the amount expended by the state as medical assistance for purposes of federal financial participation. The commissioner of the office for people with developmental disabilities shall collect the assessments relying on such exclusions, pending any contrary action by the secretary of the department of health and human services. In the event the secretary of the department of health and human services determines that the assessments do not so qualify based on any such exclusion, then the exclusion shall be deemed to have been null and void as of April first, nineteen hundred ninety-two, and the commissioner of the office for people with developmental disabilities shall collect any retroactive amount due as a result, without interest or penalty provided the provider of services pays the retroactive amount due within ninety days of notice from the commissioner of the office for people with developmental disabilities to the provider of services that an exclusion

is null and void. Interest and penalties shall be measured from the due date of ninety days following notice from the commissioner of the office for people with developmental disabilities to the provider of services.