

Association for Community Living
Alliance of Long Island Agencies
Cerebral Palsy Associations of NYS
Citizen's Committee for Children
Coalition of Medication-Assisted Providers and Advocates
Community Health Care Association of New York State
Community Pharmacy Association of New York State
Developmental Disabilities Alliance of WNY
Families Together of NYS
Federation of Mental Health Services
Home Care Association of New York State
Interagency Council of Developmental Disabilities Agencies
Legal Action Center
Medical Society of the State of New York
Mental Health Association in NYS
NAMI New York State
New York Alliance for Inclusion and Innovation
New York Association of Emerging & Multicultural Providers, Inc.
New York Association of Psychiatric Rehabilitation Services
New York Chapter American College of Physicians Services, Inc.
New York State Academy of Family Physicians
New York State Association of Alcoholism and Substance Use Providers
New York State Association of Health Care Providers
New York State Care Management Coalition
New York State Neurosurgical Society
New York Providers Alliance
New York State American Academy of Pediatrics, Chapters 1, 2 and 3
New York State Coalition for Children's Behavioral Health
New York State Council for Community Behavioral Healthcare
New York State Society of Dermatology & Dermatological Surgery
NYS Ophthalmological Society
NYS Osteopathic Medical Society
NYS Society of Anesthesiologists
NYS Society of Otolaryngology-Head and Neck Surgery
New York State Society of Plastic Surgeons
New York State Psychiatric Association
PEGI Solutions
Pharmacists Society of the State of New York
Planned Parenthood Empire State Acts
Primary Care Development Corporation
Therapeutic Communities Association NY
The ARC of New York
The Addiction Treatment Providers of New York
The Coalition for Behavioral Health
The Drug Policy Alliance
The New York State Neurological Society
VOCAL NY

May 31, 2023

To: Senate Majority Leader Andrea Stewart Cousins and Assembly Speaker Carl Heastie

Re: S.5329-A (Harckham)/A.6813 (Paulin)

Dear Majority Leader Stewart-Cousins and Speaker Heastie:

The above-listed organizations, representing thousands of Medicaid providers and consumers across New York State's health and mental hygiene service delivery systems, write today to urge the Senate and Assembly to pass **S.5329-A (Harckham)/A.6813 (Paulin)** before the end of the legislative session.

For too long, Medicaid audits conducted by the NYS Office of the Medicaid Inspector General (OMIG) have relied on tactics that are unnecessarily punitive. Providers who have operated in good faith and delivered high quality care live in fear of these OMIG audits because they can be punished severely for technical errors that are not material to whether the Medicaid recipient received the service, or the quality of care provided to the individual. Current OMIG audit practices include application of extrapolation to clerical errors, which has resulted in disproportionate findings and enormous fines that can shut down the entire program or impacted Medicaid provider. This practice is crippling and risks the continued viability of New York's safety net system.

Last year, associations worked in partnership with legislative leaders to pass common-sense legislation that both balanced protecting the safety net with OMIG's important role in assuring the Medicaid program's integrity. As such, it was a great disappointment and concern that Governor Hochul vetoed the bill.

Recently a new OMIG reform bill – S.5329-A (Harckham)/A.6813 (Paulin) – was introduced. We believe that S.5329-A/A.6813 addresses the Governor's concerns regarding the state's continued ability to collect overpayments and the resulting state liability for any federal share of those overpayments, while also assuring that an already stretched and understaffed Medicaid provider community is not inappropriately burdened or unfairly punished.

Best practices in S.5329-A/A.6813 include:

- **Definition of Overpayments and Limitation on Extrapolation:** Includes a definition for overpayment and includes standards for when extrapolation may be used for

overpayments consistent with federal CMS standards including a “sustained or high level of payment error of 50% or greater,” identical payment errors were found in a prior audit, provider was previously sanctioned for identical or similar payment errors.

- **Notice and Recovery Timeline:** Requires that recovery of an overpayment must not take place until at least 60 days after issuance of a final audit report or, if a provider requests a hearing within 60 days of receiving final audit report, not until a final determination is made.
- **Repeat Audits:** Prohibits the repeating of a review or audit within the last three years of the same contracts, cost reports, claims, bills, or expenditures unless OMIG has new information, good cause to believe the previous audit was erroneous, or a significantly different scope of investigation.
- **Regulations in Place of Time of Claim/Conduct:** Requires OMIG to apply the laws, regulations, policies, guidelines, standards, and interpretations of the appropriate agency that were in place at the time the claim or conduct occurred.
- **Correction of Administrative or Technical Defects:** Requires OMIG to inform the provider of an error and gives 60 days from notice of the mistake or 6 years from the date of service for provider to correct it and resubmit claim, as long as certain standards are met by provider.
- **Draft Audit Findings:** Requires OMIG to provide a detailed written explanation of the extrapolation method used, at the exit conference or in a detailed written explanation of any draft audit findings given, to the provider.
- **Statistically Valid Extrapolation Method:** Requires that OMIG may only use statistically, reasonably valid extrapolation methods for audits where extrapolation is permitted. Such method shall be established in regulations of the OMIG.
- **Compliance Programs:** Requires the OMIG to notify a provider if their compliance program is not satisfactory and allows the provider 60 days to submit a proposal for a satisfactory program and adopt expeditiously.
- **Annual Report to Consider Audit Impacts on Medical Services:** Requires the OMIG to consult with the Commissioner of the New York State Department of Health (DOH) when preparing and filing its annual report on the impacts that all civil and administrative enforcement actions, taken in the prior year, have had or will have on the quality and availability of Medicaid services. The report shall also address the fiscal solvency of the providers subject to enforcement actions.
- **Applicability to All Medicaid Audits and those Conducting Audits:** Applies standards to audits under both Medicaid fee for service and managed care and applies to anyone lawfully authorized to conduct an audit.
- **Federal Audits:** Includes a clause that the provisions of the bill will be interpreted consistent with federal requirements.

To be clear, the provisions in this bill identify solutions to the serious and ongoing concerns of healthcare and mental hygiene providers across the Medicaid service delivery system that have yet to be addressed by the Administration. Over the years, OMIG audits have resulted in an uneven impact on provider agencies when technical or human errors occur, when contradictory state guidance creates unavoidable audit disallowances, and slow or out of date state information and technology results in claims processing failures. This bill would address these issues and offer protections to bring greater transparency to the auditing process and ensure fairness for providers

Medicaid providers across the continuum of care are facing severe financial crisis and, in many instances, stopping intake due to workforce shortages. Our job is to provide effective and efficient services in a manner that is consistent with all current laws and regulations. OMIG's job is to root out fraud and abuse wherever it finds it. However, this should not mean that OMIG should have the ability to wipe out whole programs and/or services based on technical errors, state system issues or discrepancies, when the service was delivered appropriately.

For all these reasons, the organizations listed above believe that this legislation is necessary to ensure fairness and balance in the medical assistance audit program, and to provide critical transparency in the auditing process which is lacking today. **We urge the Legislature to pass this bill and send it on to the Governor's desk with a strong signal of unanimous support for fairness and balance in the OMIG audit process.**

For more information please contact:

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cc: Senator Pete Harckham
Assemblywoman Amy Paulin