



Memorandum in Support

[S.04486A](#) Harckham/[A.7889](#) Gottfried

This bill amends provisions relating to audit and review of medical assistance program funds by the Medicaid inspector general; prohibits additional review without error or added information; requires application of rules in place at the time funds were paid to providers and requires notice to recipients of medical assistance funds of certain investigations.

This bill requires the Medicaid inspector general to follow common-sense procedures and practices in conducting audits of providers such as:

- Recoveries of overpayments may not be collected until 60 days after the issuance of a final audit or final agency action. The OMIG must provide a minimum of 10 days written notice to the provider.
- Contracts, cost reports, claims, bills, or expenditures that were the subject of a **previous** audit or review within the last 3 years may not be used for a new audit, unless there is new information that the previous audit was in error, or the new audit is significantly different in scope.
- In conducting audits or reviews, the inspector shall apply the laws, regulations, policies, guidelines, etc. of the appropriate agency, including temporary or emergency regulations that were in place at the time the subject claim arose, or other conduct took place.

Most importantly, the bill prohibits OMIG from making a recovery based on an administrative or technical defect in procedure or documentation made **without intent to falsify or defraud**, affords the

provider an opportunity to correct the defect and resubmit the claim. **This bill prohibits the use of extrapolation methodology where there is an administrative or technical defect in procedure or documentation made without intent to falsify or defraud.**

The mission of the OMIG is to identify fraud and waste in the Medicaid system. However, the authorizing legislation for the OMIG was missing provisions necessary to ensure fairness and procedural clarity. Over the years, OMIG audits have resulted in uneven impact upon provider agencies when technical or human errors occur, when contradictory state guidance creates improper practices and slow or out of date state information and technology results in claims processing failures.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 ensure fairness for providers.

In their [2020 annual report](#), OMIG states that the \$3 billion in recoveries from Medicaid providers, an increase of *“nearly \$100 million, or three percent (3%) over the prior year”* was accomplished, *“despite the impact of the COVID-19 pandemic, and without unnecessarily impacting providers or the availability of critical health care services and supports.”*

An example of OMIG’s compliance audit extrapolation methodology resulted in the imposition of over \$7 million in disallowances for only 12 audit findings worth a grand total of \$407.90. OMIG’s over-zealous pursuit of recoveries from providers for technical errors led to program closure, the disruption of patient care and reduced access to critical health care services, without regard to the impact of the COVID-19 pandemic.

OMIG’s unfair audits have a chilling effect on the ability and willingness of reputable, high-quality providers to serve Medicaid patients. OMIG’s actions increase healthcare disparities among New York’s most vulnerable patient populations including communities of color, women, children, and rural communities. New York’s Medicaid patients pay the high cost for OMIG’s short-sighted tactics.

Behavioral health providers 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 relevant laws and regulations. OMIG’s job is to root out fraud and abuse wherever it finds it. However,

this does not mean OMIG should have the ability to wipe out whole programs and/or services based on technical errors when the service was delivered appropriately.

Behavioral Health Advocates believes that this legislation is necessary to protect health care providers and recipients in the medical assistance program. **We therefore strongly support this bill, A.07889 (Gottfried)/ S.04486-A (Harckham) which relates to the functions of the Medicaid inspector general with respect to audit and review of medical assistance program funds and requires notice of certain investigations.**

About Behavioral Health Advocates

Behavioral Health Advocates is comprised of eleven statewide organizations that have come together representing adult and children service providers, families, peers and other stakeholders to achieve common goals within the behavioral health sector.

The 11 organizations that comprise this group of advocates are:

- Association for Community Living
- Coalition of Medication-Assisted Treatment Providers and Advocates of New York State
- Families Together in New York State
- Mental Health Association in New York State
- National Alliance on Mental Illness New York State (NAMI-NYS)
- New York Association of Alcoholism and Substance Abuse Providers, Inc. (ASAP)
- New York State Care Management Coalition
- New York State Council for Community Behavioral Health Care
- New York Association of Psychiatric Rehabilitation Services
- Supportive Housing Network of New York
- The Coalition for Behavioral Health

