

Association for Community Living
Alliance of Long Island Agencies
Cerebral Palsy Association 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
Legal Action Center
Medical Society of New York State
Mental Health Association in NYS
National Alliance for Mental Illness – NYS
New York Alliance for Inclusion and Innovation
New York Association of Emerging & Multicultural Providers, Inc.
New York Association of Psychiatric Rehabilitation Services
New York State Academy of Family Physicians
New York State Association of Alcoholism and Substance Use Providers
The New York State Association of Health Care Providers, Inc.
New York State Care Management Coalition
New York Chapter American College of Physicians Services, Inc.
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 Psychiatric Association
New York State Society of Anesthesiologists
New York State Society of Dermatology & Dermatological Surgery
New York State Society of Plastic Surgeons
NYS Ophthalmological Society
NYS Osteopathic Medical Society
NYS Society of Otolaryngology-Head and Neck Surgery
Pharmacists Society of the State of New York
PEGI Solutions
Primary Care Development Corporation
Supportive Housing Network of New York
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
The New York State Neurosurgical Society
VOCAL NY

August 15, 2022

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Approval of A7889A, Gottfried/ S4486B, Harckham

Dear Governor Hochul,

The above-listed organizations, representing providers and consumers across New York State's health and mental hygiene services continuum, write to you today to urge your approval of **A7889A/ S4486B**, to provide protections for Medicaid providers and consumers related to audits performed by the Office of the Medicaid Inspector General (OMIG).

For too long, audits conducted by the OMIG have included the use of tactics that fail to take a transparent, or fair and balanced approach to the audit and recovery process. As a result, providers who have operated in good faith and delivered high quality care to clients, but who may have made human errors in the process, have been punished as if they had intentionally and maliciously defrauded the state.

Provider protections in this legislation include:

- Requiring that recovery of an overpayment must not take place until at least 60 days after issuance of a final audit report and OMIG must provide a minimum of 10 days advance written notice to the affected provider;
- Prohibiting repeating 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;
- Requiring OMIG to apply all laws, regulations, policies, guidelines, standards, and interpretations that were in place at the time the claim or conduct occurred;
- Prohibiting OMIG from making a recovery from a provider based solely on an administrative or technical defect, except where OMIG has informed the provider of the error and given 30 days to correct it. If not corrected OMIG may take a recovery. Further, where a claim for a service provided over 2 years prior to the audit, the provider may resubmit the claim or accept the disallowance;
- Requiring OMIG to provide an exit conference or detailed written explanation of any draft audit findings to the provider;
- Requiring that OMIG may only use statistically valid extrapolation methods for audits where extrapolation is permitted;
- Requiring OMIG to notify a provider if their compliance program is not satisfactory, and to allow the provider 60 days to submit a proposal for a satisfactory program; and
- Requiring OMIG to consult with the Commissioner of the State Department of Health (DOH) when preparing and filing an annual report on the impacts that all civil and administrative

enforcement actions taken in the prior year had or will have on the quality and availability of medical services.

While all these provisions are essential to finally provide transparency and due process in the OMIG audits of New York providers, the provision which prohibits OMIG from making a recovery based on an administrative or technical defect in procedure or documentation made **without intent to falsify or defraud**, is critical to afford the provider an opportunity to correct the defect and resubmit the claim. In fact, we believe the bill should go farther by also prohibiting the use of extrapolation in these instances, but it was amended due to objections by OMIG to enable its continued use.

Current auditing practices are crippling providers and have led many providers to close or discontinue/reduce services. In these instances, there is no fraud or waste, merely administrative errors, or other minor oversights, which are often the result of a lack of clear regulatory guidance. Our health care system is in a very fragile state. We are faced with significant health, behavioral health and human service worker shortages, the continued challenges and effects from the COVID-19 pandemic, and worsening opioid, suicides, and gun violence epidemics. As a state, New York should be taking all necessary steps to invest in and “shore up” its system of care (its providers), not breaking them down with unfair and excessive auditing practices.

The mission of the OMIG is to identify fraud and waste in the Medicaid system. However, the authorizing legislation for the OMIG lacked 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 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.

In their [2020 annual report](#), OMIG stated 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, in 2020, without regard to the impact of the COVID-19 pandemic.

OMIG’s unfair audits have a chilling effect on the willingness of reputable providers to serve Medicaid patients. OMIG’s actions increase healthcare disparities among New York’s BIPOC and rural communities.

Healthcare 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 therefore strongly support this bill, A.7889-A (Gottfried)/ S.4486-B (Harckham) and urge you to sign it as soon as possible.**

Sincerely,

Allegra Schorr

Allegra Schorr, MS, President
Coalition of Medication-Assisted Treatment Providers and Advocates

Lauri Cole

Lauri Cole, MSW, Executive Director
New York State Council for Community Behavioral Healthcare