

May 22, 2023 05:30 AM 3 HOURS AGO, CRAIN'S HEALTH PULSE

## **Advocates push revised Medicaid audit reform bill to combat excessive fines**

### ***Plus:***

- Nurses at Brooklyn Methodist Hospital vote to authorize strike over staffing concerns
- Judge denies Brooklyn diagnostics firm's bid to dismiss part of Covid supplies payment lawsuit
- Meet more of this year's Notable Health Care Leaders

[AMANDA D'AMBROSIO](#)

[JACQUELINE NEBER](#)

Ahead of the end of this year's legislative session, lawmakers and Medicaid providers are pushing a bill to reform the audit process by the Office of the Medicaid Inspector General, claiming that current audit protocols for administrative claim errors subject them to large—and in some cases clinic-shuttering—fines.

The legislation, S.05329-A/A.06813, aims to prevent providers from incurring excessive financial penalties for clerical or administrative errors within their Medicaid claims. These errors, such as an incorrect date or provider identification number, could subject Medicaid providers to millions of dollars in penalties under the current system.

Hospitals, nursing homes, substance use and mental health providers and others who take Medicaid are subject to audits by the Office of the Medicaid Inspector General. If the office detects fraud or abuse, or other errors that violate state and federal Medicaid laws, it can take back reimbursements previously paid to providers.

Providers say that as it stands, the audit process for administrative Medicaid errors is unfair.

"We believe that fraud and abuse should be rooted out," said Lauri Cole, executive director of the New York State Council for Community Behavioral Healthcare. "But at the end of the day, many Medicaid providers live in fear of OMIG audits, because they know that the process is unbalanced."

Last year 49 health organizations, including the NYS Council for Community Behavioral Healthcare, signed a letter urging the state to pass a law to protect providers during the Medicaid audit process. The old version of the bill passed in both houses, but was [struck down](#) by Gov. Kathy Hochul in December.

In a memo to the Assembly after the veto, Hochul said that the legislation would restrict auditors' ability to enforce Medicaid rules and detect fraud. But without reform, providers say it leaves them at risk of shutting down due to exorbitant fines.

Some providers have closed because of Medicaid audits. An opioid treatment program at Mount Sinai Beth Israel was [shut down](#) in 2020 after it incurred nearly \$8 million in penalties from an audit.

The governor's office did not respond to a request for comment as of publication time.

This legislative session, lawmakers have introduced an amended bill to reform the Medicaid audit process. The new bill would prevent auditors from imposing large fines and extend the timeline for providers to correct any clerical errors before losing out on reimbursements.

One of the main contentions of the bill is extrapolation, a statistical practice used by the Medicaid inspector general that predicts the number of errors across all claims. Auditors sample a smaller number of claims, identify clerical errors and then apply a percentage of error across all claims submitted.

This practice could result in fines that are multiples higher than the actual cost of errors, said Linda Clark, leader of the health care controversies team and partner at Midtown law firm Barclay Damon. She called extrapolation "inherently imprecise" and "draconian."

"New York is an outlier in terms of how aggressive it is as an auditor," Clark said. "It's hard for us to understand why the state would be auditing in a more aggressive way than the federal government would be."

The new bill aims to bring New York's Medicaid audit process in alignment with practices used by the federal government to audit Medicare providers, Clark said. It would prevent the office from using extrapolation unless it found a "sustained and high payment error" from providers—defined as a payment error rate of 50% or more.

The legislation, introduced earlier this year, also includes some reforms consistent with last year's version of the bill. It will still give providers 60 days from when they receive an audit to make changes before the inspector general can start to recoup reimbursements, but includes an exception for when fraud or abuse is involved.

Senator Peter Harckham, who represents parts of Westchester County, and Assemblywoman Amy Paulin, who represents parts of the Bronx, Scarsdale and White Plains, sponsored the legislation.

Advocates are pushing to pass this bill before the end of the legislative session on June 8.

"This can become the difference between an agency being able to stand or or close," Cole said. "Why are we trying to decimate and cripple safety-net providers?" —Amanda D'Ambrosio.