

**Alliance for Rights and Recovery (formerly NYAPRS)**  
**Association for Community Living**  
**Alliance of Long Island Agencies**  
**Cerebral Palsy Associations of NYS (CP State)**  
**Citizens' Committee for Children**  
**Coalition of Downstate Union Home Care Agencies**  
**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**  
**Healthcare Association of New York State (HANYS)**  
**Home Care Association of New York State**  
**Inter-Agency Council of Developmental Disabilities, Inc.**  
**InUnity Alliance**  
**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 Disability Advocates**  
**New York State Academy of Family Physicians**  
**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 New York**  
**The Addiction Treatment Providers of New York**  
**The Alliance of TBI and NHTD Waiver Providers**  
**The Drug Policy Alliance**  
**The New York State Neurological Society**  
**The New York State Neurosurgical Society**  
**VOCAL NY**

March 27, 2024

To: Governor Kathy Hochul, Senate Majority Leader Andrea Stewart Cousins, Assembly Speaker Carl Heastie and Members of the NYS Senate and Assembly

**Re: Include OMIG Audit Reform (S.5329-D (Harckham)/A.6813-B (Paulin)) in Final SFY 2025 Budget**

Dear Governor Hochul, Majority Leader Stewart-Cousins, Speaker Heastie and Members of the NYS Senate and Assembly:

The above-listed organizations, representing thousands of Medicaid providers and consumers across New York State's health and mental hygiene service delivery systems, were very pleased to see support for Office of the Medicaid Inspector General (OMIG) audit reform consistent with S.5329-D (Harckham)/A.6813-B (Paulin) in the one house budget bills. **We write to respectfully ask for the inclusion of these long overdue and critical reforms to protect patient care and services in Medicaid in the Final State Budget.**

For too long, Medicaid audits conducted by the NYS 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.

In 2022, associations worked in partnership with the Legislature 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 the bill was vetoed.

This session, a new OMIG reform bill with amendments – S.5329-D (Harckham)/A.6813-B (Paulin) – was introduced. This legislation addresses the concerns raised in the veto message regarding the need to ensure the state's continued ability to address fraud and abuse and meeting all federal requirements and auditing expectations of the State, while also assuring that an already stretched and understaffed Medicaid provider community is not inappropriately burdened or unfairly punished.

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

- **Definition of Fraud, Overpayments, Administrative or Technical Errors, and Adoption of Federal Standards on Extrapolation:** Includes a definition for fraud, overpayment, administrative or technical errors and includes standards for when extrapolation may be used for overpayments consistent with federal CMS standards.
- **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.
- **Audit Protocols:** Requires OMIG audit protocols be publicly posted utilized in any audit or review.
- **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.
- **Hearing Rights:** States that until a provider has waived its right to a hearing, or if a provider requests a hearing and until the hearing determination is issued, the provider shall have the right to pay the lower confidence limit offer in audit, plus interest.
- **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 OMIG. 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 respectfully urge you to include the provisions in this bill in the final State Budget to bring fairness and balance in the OMIG audit process.**

Thank you for your consideration of this important request on behalf of Medicaid providers across New York State and the millions of New Yorkers they serve.

For more information please contact:

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cc: Senator Pete Harckham  
Assemblywoman Amy Paulin