NYS Council for Community Behavioral Healthcare

Memo of Support: S4955A (Harckham) / A1069A (Paulin)

The New York State Council for Community Behavioral Healthcare vigorously supports **S4955A/A1069A, (**a bill that will infuse badly needed balance, fairness, and transparency into the Office of the Medicaid Inspector General (OMIG) Medicaid audit process.

OMIG audits play a critical role in eradicating fraud, waste, and abuse within New York's Medicaid program. Currently, however, these audits utilize tactics that are excessively punitive without provisions to ensure fairness and procedural clarity. For too long, providers have been penalized for making non-fraudulent technical or human errors, often leading to enormous fines that have shut down entire programs. These practices pose a significant threat to financially vulnerable Medicaid providers who are already experiencing challenges such as unprecedented workforce shortages, and increased demand for care, thereby exacerbating New York's already strained safety net system.

A1069A/S4955A Includes provisions that will bring greater transparency to the auditing process and establish safeguards for Medicaid service providers while allowing OMIG to continue to perform its central mission of rooting out fraud and abuse. Key provisions of the bill include

Summary of A1069A (Paulin) / S4955A (Harckham)

- **Definitions:** Changes definition of "overpayment" and adds new definitions for "applicable standards" and "clerical or minor error or omission." The definitions for overpayment and applicable standards were taken from existing regulations and the definition of clerical or minor error or omission is nearly identical to a definition used in the Medicare claims processing manual.
- **Applicable Standards:** Requires OMIG to apply applicable standards as defined, to all audits/ reviews and requires OMIG to publish the applicable protocols they are using in audits/reviews.
- **Considerations when Determining Overpayment:** Requires OMIG to include certain considerations when determining the amount of an overpayment a provider must repay as outlined in the bill. These include consideration for whether there is a sustained or high level of payment error, if the error is clerical or minor, the impact of the overpayment on provider solvency and the impact on access to services.
- **Extrapolation:** Requires the extrapolation method used by OMIG in audits to be consistent with accepted standards of sound auditing practices, requires draft audit reports to include a detailed explanation of extrapolation method used, and does not allow extrapolation to be used for clerical or minor errors as defined if there are three or less in a sample (OMIG can still recoup payment for those individual claims).
- **Supporting Documentation:** Requires OMIG to consider supporting documentation submitted by a provider prior to issuance of a final audit report.
- **Right to Hearing:** OMIG shall still allow provider repayment at the lower confidence limit plus applicable interest if they request a hearing.

- **Timing for Recoupment to Begin:** States that recoupment may not commence until at least 60 days from issuance of final audit report or hearing determination, if one is requested.
- **Federal Deference:** Includes a provision that nothing in the bill shall prevent OMIG from complying with federal requirements.
- **Annual Report:** Expands what is required to be included in the OMIG Annual Report.
- **Effective Date:** Sets an effective date of 4/1/26 (next fiscal year).

This legislation will align OMIG's mission and intent of identifying fraud and waste with the need for a fair and balanced approach to audits in situations where no fraud or abuse was identified by the Office. In these instances, New York State should utilize a collaborative approach in which providers are not living in fear of having their programs shut down due to honest mistakes that in no way constitute fraud or abuse, have no impact on whether the service was provided, and have had no impact on the quality of the care provided to the service recipient.

The NYS Council urges the New York State Legislature to include this legislation in the Assembly and Senate one house budget bills, and to pass it as part of the SFY26 enacted state budget to ensure that OMIG can perform its essential functions while creating protections and procedures that allow Medicaid service providers to continue delivering high-quality, life-saving care throughout New York.

About the NYS Council: The NYS Council is a statewide association representing over 165 mental health and/or substance use disorder providers located in local communities across New York. NYS Council members operate a wide range of programs and services in a variety of settings including freestanding nonprofit agencies, general hospitals, federally qualified health centers, and counties that operate programs in their local communities. For more information contact Lauri Cole, Executive Director at 518 461-8200.