

MEMORANDUM

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY CLIENT PRIVILEGE/
ATTORNEY WORK PRODUCT**

TO: Lauri Cole, Executive Director of NYS Council for Community Behavioral Healthcare

FROM: Linda Clark

DATE: August 22, 2025

RE: OMIG Lower Confidence Limit Policy Change

The New York Office of the Medicaid Inspector General (“OMIG”) has revised its policy on the use of statistical confidence intervals in audit findings to give providers greater flexibility when responding to audits.

OMIG relies on statistical sampling to extrapolate the results of a reviewed sample across the full universe of claims. Extrapolation is a method of estimating the total alleged overpayment based on that sample data. Within this framework, the lower confidence limit (“LCL”) is the conservative figure, representing the amount that OMIG is confident the actual overpayment exceeds at a stated confidence level, typically 90 or 95 percent. In practical terms, the LCL serves as the “floor” of the estimate and is generally smaller than the point estimate that OMIG might otherwise seek to recover.

Under the prior approach, providers were given only twenty days after the issuance of a final audit report to accept settlement at the lower confidence limit. If that settlement was not accepted during the limited period, OMIG’s position was that it could pursue recovery of the full extrapolated overpayment, known as the point estimate, at the administrative hearing. This framework left providers with a difficult decision. They could accept the lower confidence limit immediately or proceed to hearing with the risk of a significantly higher liability. In many cases, OMIG would also begin interim recoupments once the twenty-day period expired, increasing financial strain while the appeal was still pending.

OMIG has now confirmed in conversations with attorneys at Barclay Damon LLP that the lower confidence limit remains available as a settlement option until the day of the hearing itself. This represents a meaningful change from past practice. Providers that request a hearing are no longer forced to abandon the opportunity to resolve the matter at the lower confidence limit once the twenty-day period has passed. Instead, the option to settle for the lower amount, with interest added, remains available until just before the hearing convenes.

Recent final audit reports have begun to reflect this less restrictive language, and an OMIG representative has indicated that while the revised approach is in place for new audits, providers may wish to request that the same flexibility be applied to older audits as well.

The practical effect of this policy shift is that providers now have more time and flexibility to evaluate their cases. They can proceed with appeals and pre-hearing preparations while retaining the safety net of resolving the case at the lower confidence limit. If evidence or rulings obtained during the appeal suggest that the likelihood of prevailing on the merits is low, the provider may still choose to settle for the reduced amount prior to the hearing. Providers should keep in mind that interest continues to accrue on the lower confidence limit during this period, and the longer the decision is delayed, the larger the final settlement will be.

This change gives providers additional room to make informed strategic choices in the audit process. It reduces the pressure of having to decide within twenty days of a final audit report and provides a measure of financial predictability by ensuring that the lower confidence limit remains an option until the last possible stage before hearing. Providers with pending audits should take note: while the revised language is appearing in new final audit reports, those involved in older audits should affirmatively request that the lower confidence limit settlement option remain available through the hearing date. Doing so can preserve a valuable off-ramp and reduce exposure if an appeal becomes unfavorable.