

S T A T E O F N E W Y O R K

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I N A S S E M B L Y

April 13, 2010

Introduced by M. of A. GOTTFRIED, PAULIN, PHEFFER, PEOPLES-STOKES, LIFTON, GIANARIS, DESTITO, BROOK-KRASNY, ALESSI, JOHN, TOWNS, GIBSON, GUNTHER, JACOBS, JAFFEE, KOON, LANCMAN, ORTIZ, J. RIVERA, ROSENTHAL, LAVINE, HIKIND, SKARTADOS, MAYERSOHN, CRESPO, SCHIMEL, MAISEL, CYMBROWITZ, DINOWITZ, HOYT, MENG, TITONE, COLTON -- Multi-Sponsored by -- M. of A. AMEDORE, BENEDETTO, BENJAMIN, BOYLAND, BRENNAN, BURLING, CALHOUN, CANESTRARI, CHRISTENSEN, CROUCH, CUSICK, DUPREY, ENGLEBRIGHT, FARRELL, FIELDS, JEFFRIES, V. LOPEZ, MCENENY, McKEVITT, MILLMAN, MONTESANO, PRETLOW, RAIA, REILLY, P. RIVERA, ROBINSON, SCARBOROUGH, SCOZZAFAVA, SPANO, STIRPE, SWEENEY, THIELE, TOWNSEND, D. WEPRIN, WRIGHT -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the social services law, in relation to fair procedures, practices and standards for actions by the office of medicaid inspector general and social services districts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 30 of the public health law, as added by chapter
2 442 of the laws of 2006, is amended to read as follows:
3 S 30. Legislative intent. This title establishes an independent office
4 of Medicaid inspector general within the department to consolidate staff
5 and other Medicaid fraud detection, prevention and recovery functions
6 from the relevant governmental entities into a single office, and grants
7 such office new powers and responsibilities. As such, this title is
8 intended to create a more efficient and accountable structure, dramat-
9 ically reorganize and streamline the state's process of detecting and
10 combating Medicaid fraud and abuse and maximize the recoupment of
11 improper Medicaid payments.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 THE LEGISLATURE RECOGNIZES THE NEED TO BALANCE THE ABILITY OF THE
2 STATE TO ENSURE THE INTEGRITY OF THE MEDICAL ASSISTANCE PROGRAM WITH THE
3 NEED TO AFFORD DUE PROCESS TO PROVIDERS AND RECIPIENTS WHO ARE INVESTI-
4 GATED, AUDITED OR SUBJECT TO OTHER ACTIONS, IN ORDER TO ENSURE THAT SUCH
5 ACTIONS ARE CONDUCTED IN A FAIR AND CONSISTENT MANNER. THE LEGISLATURE
6 ALSO RECOGNIZES THE NEED FOR ESTABLISHED STATUTORY STANDARDS REGARDING
7 THE CONDUCT OF INVESTIGATIONS, AUDITS AND RECOVERY OF PAYMENTS AND OTHER
8 ACTIONS.

9 S 2. Section 30-a of the public health law is amended by adding four
10 new subdivisions 4, 5, 6 and 7 to read as follows:

11 4. "PROVIDER" MEANS ANY PERSON OR ENTITY ENROLLED AS A PROVIDER IN THE
12 MEDICAL ASSISTANCE PROGRAM.

13 5. "RECIPIENT" MEANS AN INDIVIDUAL WHO IS ENROLLED IN THE MEDICAL
14 ASSISTANCE PROGRAM, INCLUDING AN INDIVIDUAL WHO WAS PREVIOUSLY A RECIPI-
15 ENT AND, IN AN APPROPRIATE CASE, AN INDIVIDUAL WHO IS LEGALLY RESPONSIBI-
16 BLE FOR THE RECIPIENT.

17 6. "MEDICAL ASSISTANCE" AND "MEDICAID" MEANS TITLE ELEVEN OF ARTICLE
18 FIVE OF THE SOCIAL SERVICES LAW AND THE PROGRAM THEREUNDER.

19 7. "DRAFT AUDIT REPORT", "INITIAL AUDIT REPORT", "PROPOSED NOTICE OF
20 AGENCY ACTION" AND "FINAL NOTICE OF AGENCY ACTION" MEANS THOSE DOCUMENTS
21 PREPARED AND ISSUED BY THE INSPECTOR UNDER THIS TITLE AND CORRESPONDING
22 REGULATIONS.

23 S 3. Subdivision 20 of section 32 of the public health law, as added
24 by chapter 442 of the laws of 2006, is amended to read as follows:

25 20. to, consistent with provisions of this title AND OTHER APPLICABLE
26 FEDERAL AND STATE LAWS, REGULATIONS, POLICIES, GUIDELINES AND STANDARDS,
27 implement and amend, as needed, rules and regulations relating to the
28 prevention, detection, investigation and referral of fraud and abuse
29 within the medical assistance program and the recovery of improperly
30 expended medical assistance program funds;

31 S 4. The public health law is amended by adding a new section 37 to
32 read as follows:

33 S 37. FAIR PROCEDURES, PRACTICES AND STANDARDS. 1. NO RECOVERY OF AN
34 OVERPAYMENT RESULTING FROM THE ISSUANCE OF A FINAL AUDIT REPORT OR FINAL
35 NOTICE OF AGENCY ACTION RELATING TO A MONETARY PENALTY BY THE INSPECTOR
36 SHALL COMMENCE UNTIL SIXTY DAYS AFTER THE ISSUANCE OF THE FINAL AUDIT
37 REPORT OR FINAL NOTICE OF AGENCY ACTION OR, WHERE AN ADMINISTRATIVE
38 HEARING HAS BEEN TIMELY REQUESTED BY A PROVIDER, UNTIL AFTER ISSUANCE OF
39 A DECISION AFTER THE ADMINISTRATIVE HEARING. THE INSPECTOR SHALL NOT
40 COMMENCE ANY RECOVERY UNDER THIS SUBDIVISION WITHOUT PROVIDING A MINIMUM
41 OF THIRTY DAYS ADVANCE WRITTEN NOTICE TO THE PROVIDER.

42 2. A RECOVERY OF AN OVERPAYMENT UNDER SUBDIVISION ONE OF THIS SECTION
43 SHALL BE MADE AT A RATE NOT TO EXCEED TEN PERCENT OF A PROVIDER'S
44 MEDICAL ASSISTANCE CLAIMS DUE AND PAYABLE FOR EACH BILLING CYCLE DURING
45 WHICH THE RECOVERY IS SOUGHT, OR SUCH OTHER AMOUNT AGREED ON BY THE
46 INSPECTOR AND THE PROVIDER. IF ANOTHER EXISTING RECOVERY AGAINST THE
47 PROVIDER IS CURRENTLY IN EFFECT, THE TOTAL OF ALL SUCH RECOVERIES MAY
48 NOT EXCEED TEN PERCENT OF A PROVIDER'S MEDICAL ASSISTANCE CLAIMS DUE AND
49 PAYABLE FOR THE BILLING CYCLE FOR WHICH THE RECOVERIES ARE SOUGHT, OR
50 SUCH OTHER AMOUNT AGREED ON BY THE INSPECTOR AND THE PROVIDER. THE
51 INSPECTOR MAY SEEK INTEREST AT A RATE SPECIFIED IN REGULATION THAT SHALL
52 NOT EXCEED NINE PERCENT ON ANY OUTSTANDING OVERPAYMENT REMAINING ONE
53 HUNDRED TWENTY DAYS AFTER THE DATE ON WHICH WRITTEN NOTICE IS SENT TO
54 THE PROVIDER. THIS SUBDIVISION SHALL NOT APPLY IN THE CASE OF FRAUD.

55 3. THE INSPECTOR SHALL NOT HAVE AUTHORITY TO CONDUCT ANY REVIEWS OR
56 AUDITS OF CONTRACTS, COST REPORTS, CLAIMS, BILLS, OR EXPENDITURES OF

1 MEDICAL ASSISTANCE PROGRAM FUNDS THAT WERE THE SUBJECT MATTER OF A
2 PREVIOUS AUDIT OR REVIEW BY OR ON BEHALF OF THE INSPECTOR, ANY OTHER
3 STATE OR LOCAL GOVERNMENTAL AGENCY OR OFFICE OR CONTRACTOR OR AGENT
4 THEREOF AUTHORIZED TO CONDUCT SUCH REVIEWS OR AUDITS IF SUCH AUDIT OR
5 REVIEW WAS COMPLETED WITHIN THE LAST THREE YEARS, EXCEPT: ON THE BASIS
6 OF NEW INFORMATION, FOR GOOD CAUSE TO BELIEVE THAT THE PREVIOUS REVIEW
7 OR AUDIT WAS ERRONEOUS, OR WHERE THE SCOPE OF THE INSPECTOR'S REVIEW OR
8 AUDIT IS SIGNIFICANTLY DIFFERENT FROM THE SCOPE OF THE PREVIOUS REVIEW
9 OR AUDIT.

10 4. THE PERIOD OF ANY AUDIT CONDUCTED BY THE INSPECTOR SHALL NOT EXCEED
11 THREE YEARS UNLESS A FINDING OF FRAUD OR INTENTIONAL MISCONDUCT IS
12 ALLEGED IN THE DRAFT AUDIT REPORT OR DRAFT NOTICE OF AGENCY ACTION.

13 5. (A) IN CONDUCTING AUDITS OR TAKING OTHER ACTIONS BASED ON LAWS,
14 REGULATIONS, POLICIES, GUIDELINES, STANDARDS, OR INTERPRETATIONS ESTAB-
15 LISHED OR ENFORCED BY A FEDERAL OR STATE AGENCY, INCLUDING THE INSPEC-
16 TOR, THE INSPECTOR SHALL APPLY THE LAWS, REGULATIONS, POLICIES, GUIDE-
17 LINES, STANDARDS, AND INTERPRETATIONS OF THAT AGENCY THAT WERE IN PLACE
18 AT THE TIME THE SUBJECT CLAIM AROSE OR OTHER CONDUCT TOOK PLACE. DISAL-
19 LOWANCES MAY BE IMPOSED OR OTHER ACTION TAKEN ONLY FOR NON-COMPLIANCE
20 WITH THOSE LAWS, REGULATIONS, POLICIES, GUIDELINES, OR STANDARDS. FOR
21 PURPOSES OF THIS SUBDIVISION, ANY CHANGE IN SUCH LAWS, REGULATIONS,
22 POLICIES, GUIDELINES, STANDARDS, OR INTERPRETATIONS SHALL ONLY BE
23 APPLIED PROSPECTIVELY AND UPON REASONABLE NOTICE.

24 (B) TO THE EXTENT THAT THE INSPECTOR SANCTIONS A PROVIDER BASED SOLELY
25 ON LAWS, REGULATIONS, POLICIES, GUIDELINES, STANDARDS, OR INTERPRETA-
26 TIONS ENFORCED BY A FEDERAL OR STATE AGENCY OTHER THAN THE INSPECTOR,
27 THE INSPECTOR MAY ONLY IMPOSE A SANCTION CONTEMPORANEOUS WITH, AND NO
28 LONGER IN DURATION THAN, ANY SUCH SANCTION IMPOSED BY SUCH OTHER AGENCY.
29 UPON THE EXPIRATION OF ANY SUCH SANCTION BY SUCH OTHER AGENCY, THE
30 INSPECTOR SHALL IMMEDIATELY REMOVE HIS OR HER SANCTION OF THAT PROVIDER,
31 WITHOUT NEED BY THE PROVIDER TO REAPPLY TO THE MEDICAL ASSISTANCE
32 PROGRAM TO BECOME REINSTATED AS A PROVIDER.

33 (C) IN ANY ACTION UNDER THIS TITLE, THE INSPECTOR SHALL ACCEPT ANY
34 DETERMINATION OF COMPLIANCE MADE BY A GOVERNMENTAL AGENCY WITH JURISDIC-
35 TION TO MAKE SUCH A DETERMINATION, UNLESS THE INSPECTOR FINDS THAT SUCH
36 DETERMINATION OF COMPLIANCE WAS BASED ON MISINFORMATION, WAS CLEARLY
37 ERRONEOUS, OR WAS AFFECTED BY FRAUD OR OTHER INTENTIONAL MISCONDUCT.

38 6. AT LEAST TEN DAYS PRIOR TO AN ADMINISTRATIVE HEARING UNDER THIS
39 TITLE, EACH PARTY TO THE HEARING SHALL MAKE A GOOD FAITH EFFORT TO
40 DISCLOSE AT A PRE-HEARING CONFERENCE THE EVIDENCE IT INTENDS TO INTRO-
41 DUCE AND A LIST OF WITNESSES IT INTENDS TO PRODUCE AT THE HEARING. THIS
42 SUBDIVISION SHALL NOT PROHIBIT EITHER THE INSPECTOR OR THE PROVIDER FROM
43 INTRODUCING ANY EVIDENCE INCLUDING DOCUMENTARY EVIDENCE OR THE TESTIMONY
44 FROM A WITNESS THAT WAS NOT DISCLOSED PRIOR TO OR AT THE PRE-HEARING
45 CONFERENCE. THE INSPECTOR SHALL IMMEDIATELY PROVIDE TO THE PROVIDER ANY
46 EVIDENCE THAT THE INSPECTOR MAY POSSESS OR ACQUIRE THAT WOULD SUPPORT
47 THE ALLOWABILITY OR PROPRIETY OF THE PROVIDER'S COST REPORTING, BILLING
48 OR OTHER PRACTICE OR PRACTICES AT ISSUE IN THE HEARING OR IS OTHERWISE
49 EXCULPATORY. UNLESS ANY EVIDENCE IS DETERMINED BY THE ADMINISTRATIVE LAW
50 JUDGE TO BE IRRELEVANT OR IMMATERIAL OR ANY TESTIMONY UNDULY REPETI-
51 TIOUS, ALL EVIDENCE, INCLUDING BUT NOT LIMITED TO NON CONTEMPORANEOUSLY
52 PREPARED DOCUMENTARY EVIDENCE, AND ALL TESTIMONY FROM WITNESSES, SHALL
53 BE ADMITTED BY THE ADMINISTRATIVE LAW JUDGE WHO SHALL GIVE SUCH EVIDENCE
54 OR TESTIMONY APPROPRIATE WEIGHT IN RENDERING A RECOMMENDATION OR DECI-
55 SION.

1 7. THE INSPECTOR SHALL MAKE NO RECOVERY FROM A PROVIDER FOR FINDINGS
2 THAT ARE BASED ON THE ACTIONS OR THE RESPONSIBILITY OF ANOTHER PROVIDER
3 OR GOVERNMENTAL AGENCY, UNLESS THE PROVIDER KNEW OR REASONABLY SHOULD
4 HAVE KNOWN THAT IT WAS CLAIMING PAYMENT TO WHICH IT WAS NOT ENTITLED. IN
5 ANY RECOVERY SUBJECT TO THIS SUBDIVISION, THE INSPECTOR SHALL SEEK
6 RECOVERY PRIMARILY FROM THE PROVIDER BEARING THE PRIMARY RESPONSIBILITY
7 FOR THE OVERPAYMENT OR IMPROPER PAYMENT.

8 8. (A) THE INSPECTOR SHALL MAKE NO RECOVERY FROM A PROVIDER, BASED ON
9 AN ADMINISTRATIVE OR TECHNICAL DEFECT IN PROCEDURE OR DOCUMENTATION MADE
10 WITHOUT INTENT TO FALSIFY OR DEFRAUD, IN CONNECTION WITH CLAIMS FOR
11 PAYMENT FOR MEDICALLY NECESSARY CARE, SERVICES AND SUPPLIES OR THE COST
12 THEREOF AS SPECIFIED IN SUBDIVISION TWO OF SECTION THREE HUNDRED SIXTY-
13 FIVE-A OF THE SOCIAL SERVICES LAW PROVIDED IN OTHER RESPECTS APPROPRI-
14 ATELY TO A BENEFICIARY OF THE MEDICAL ASSISTANCE PROGRAM, EXCEPT AS
15 PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION.

16 (B) WHERE THE BASIS FOR RECOVERY IS AN ADMINISTRATIVE OR TECHNICAL
17 DEFECT IN PROCEDURE OR DOCUMENTATION WITHOUT INTENT TO FALSIFY OR
18 DEFRAUD, THE INSPECTOR SHALL AFFORD THE PROVIDER AN OPPORTUNITY TO
19 CORRECT THE DEFECT AND RESUBMIT THE CLAIM WITHIN SIXTY DAYS OF NOTICE OF
20 THE DEFECT. IF A SATISFACTORY CLAIM IS NOT RESUBMITTED UNDER THIS PARA-
21 GRAPH, THE INSPECTOR MAY SEEK TO RECOVER UP TO TEN PERCENT OF THE AMOUNT
22 THAT WOULD OTHERWISE BE RECOVERABLE, EXCEPT THAT WHERE THE DEFECT DETER-
23 MINED THE QUANTITY OR VALUE OF PAYMENT CLAIMED, THEN THE RECOVERY MAY BE
24 THE DIFFERENCE BETWEEN THE AMOUNT RECEIVED BY THE PROVIDER AND THE
25 AMOUNT THAT SHOULD HAVE BEEN RECEIVED IF THE CLAIM HAD BEEN SUBMITTED
26 PROPERLY.

27 9. (A) THE INSPECTOR SHALL NOT APPLY ANY EXTRAPOLATION METHOD TO A
28 CATEGORY OF ERROR OR DEFECT WITHIN A SAMPLE UNLESS THE INSPECTOR SHALL
29 FIRST DETERMINE THAT THE CATEGORY OF ERROR OR DEFECT IN THE BILLING OR
30 OTHER PRACTICE IDENTIFIED BY THE INSPECTOR IN THE SAMPLE OF CLAIMS
31 EXCEEDS A RATE OF FIVE PERCENT WITHIN THE SAMPLE OF CLAIMS, AFTER THE
32 INSPECTOR AFFORDS THE PROVIDER REASONABLE OPPORTUNITY TO RESPOND TO THE
33 INSPECTOR'S INITIAL FINDINGS. HOWEVER, NOTWITHSTANDING THE PRECEDING
34 SENTENCE, THE INSPECTOR AND THE PROVIDER MAY AGREE TO THE USE OF EXTRAP-
35 OLATION.

36 (B) THE INSPECTOR SHALL FURNISH TO THE PROVIDER AT AN AUDIT ENTRANCE
37 CONFERENCE OR IN ANY DRAFT AUDIT FINDINGS ISSUED OR TO BE ISSUED TO THE
38 PROVIDER, A DETAILED WRITTEN EXPLANATION OF THE EXTRAPOLATION METHOD
39 EMPLOYED, INCLUDING THE SIZE OF THE SAMPLE, THE SAMPLING METHODOLOGY,
40 THE DEFINED UNIVERSE OF CLAIMS, THE SPECIFIC CLAIMS INCLUDED IN THE
41 SAMPLE, THE RESULTS OF THE SAMPLE, THE ASSUMPTIONS MADE ABOUT THE ACCU-
42 RACY AND RELIABILITY OF THE SAMPLE AND THE LEVEL OF CONFIDENCE IN THE
43 SAMPLE RESULTS, AND THE STEPS UNDERTAKEN AND STATISTICS UTILIZED TO
44 CALCULATE THE ALLEGED OVERPAYMENT AND ANY APPLICABLE OFFSET BASED ON THE
45 SAMPLE RESULTS. THIS WRITTEN INFORMATION SHALL INCLUDE A DESCRIPTION OF
46 THE SAMPLING AND EXTRAPOLATION METHODOLOGY, IN SUFFICIENT DETAIL TO
47 PERMIT THE PROVIDER TO TEST AND RECREATE THE METHODOLOGY IN ORDER TO
48 PROPERLY AND FULLY DEFEND ANY DETERMINATION OF OVERPAYMENT WHICH IS
49 BASED ON THIS PROCESS.

50 (C) THE SAMPLING AND EXTRAPOLATION METHODOLOGIES USED BY THE INSPECTOR
51 SHALL BE STATISTICALLY REASONABLY VALID FOR THE INTENDED USE AND SHALL
52 BE ESTABLISHED IN REGULATIONS OF THE INSPECTOR.

53 10. ANY FUNDS AND INTEREST THEREON DETERMINED BY THE INSPECTOR, THE
54 COMMISSIONER OR HIS OR HER DESIGNEE, ADMINISTRATIVE PROCEEDING, OR COURT
55 TO HAVE BEEN IMPROPERLY WITHHELD OR RECOUPED FROM A PROVIDER SHALL BE
56 REFUNDED TO THE PROVIDER, WITH INTEREST ON THE AMOUNT OF THE WITHHELD OR

1 RECOUPED FUNDS FROM THE DATE OF WITHHOLDING OR RECOUPMENT THROUGH THE
2 DATE OF REFUND PAYABLE AT THE SAME RATE AS ANY INTEREST ASSESSED BY THE
3 STATE ON RECOUPED FUNDS, TO BE REFUNDED AND PAID TO THE PROVIDER AS SOON
4 AS PRACTICABLE BUT IN NO EVENT MORE THAN NINETY DAYS AFTER THE DETERMI-
5 NATION.

6 11. WHERE ANY AUDIT OR CIVIL OR ADMINISTRATIVE ENFORCEMENT ACTION
7 UNDER THIS TITLE WOULD EITHER (A) RECOUP FROM THE PROVIDER AN AMOUNT
8 GREATER THAN TEN PERCENT OF THE AMOUNT IT WOULD OTHERWISE RECEIVE FROM
9 THE MEDICAL ASSISTANCE PROGRAM DURING THE PERIOD IN WHICH THE RECOUPMENT
10 WOULD OCCUR, OR (B) SUSPEND OR TERMINATE THE PROVIDER'S PARTICIPATION IN
11 THE MEDICAL ASSISTANCE PROGRAM, THE INSPECTOR SHALL DEMONSTRATE THAT THE
12 ENFORCEMENT ACTION WILL NOT UNDULY JEOPARDIZE THE QUALITY AND AVAILABIL-
13 ITY OF MEDICAL CARE AND SERVICES IN THE AREA SERVED BY A PROVIDER,
14 INCLUDING ALTERNATIVES TO THE CARE, SERVICES AND SUPPLIES PROVIDED BY
15 THE PROVIDER AND THE ABILITY OF A PROVIDER TO CONTINUE PROVIDING CARE,
16 SERVICES AND SUPPLIES AND THE BEST INTEREST OF THE MEDICAL ASSISTANCE
17 PROGRAM AND MEDICAL ASSISTANCE RECIPIENTS.

18 12. IN CARRYING OUT HIS OR HER DUTIES UNDER THIS TITLE, THE INSPECTOR
19 SHALL ASSIGN PERSONNEL, AGENTS AND CONTRACTORS WITH APPROPRIATE TRAIN-
20 ING, EDUCATION, OR EXPERTISE (INCLUDING CLINICAL EXPERTISE WHERE THE
21 MATTER IN DISPUTE CONCERNS THE VALIDITY OF THE PROVIDER'S CLINICAL
22 OBSERVATION, DIAGNOSIS, TREATMENT, OR DOCUMENTATION) AND SHALL NOT
23 ASSIGN ANY PERSON, AGENT OR CONTRACTOR TO CONDUCT, REVIEW, OR PARTIC-
24 IPATE, DIRECTLY OR INDIRECTLY IN AN AUDIT, REVIEW, EXAMINATION OR INVES-
25 TIGATION OF AN ENTITY WITH WHICH SUCH PERSON, AGENT OR CONTRACTOR WAS
26 EMPLOYED OR ASSOCIATED OR HAD A CONTRACTUAL RELATIONSHIP OR OTHER
27 ENGAGEMENT WITH AT ANY TIME PRIOR TO THE COMMENCEMENT OF SUCH AUDIT,
28 REVIEW, EXAMINATION OR INVESTIGATION.

29 13. FOR THE PURPOSES OF THIS TITLE, THERE SHALL BE A REBUTTABLE
30 PRESUMPTION THAT THE CLINICAL OBSERVATION, DIAGNOSIS, TREATMENT, AND
31 DOCUMENTATION BY A PROVIDER ARE VALID. THE INSPECTOR MAY NOT DISALLOW,
32 RECOVER, OR WITHHOLD A MEDICAL ASSISTANCE PAYMENT ON THE BASIS OF
33 MEDICAL NECESSITY OR CLINICAL JUDGMENT OR STANDARDS WITHOUT AFFIRMATIVE-
34 LY FINDING IN WRITING THAT THE PROVIDER'S CLINICAL OBSERVATION, DIAGNO-
35 SIS, TREATMENT, OR DOCUMENTATION IS NOT VALID. SUCH A FINDING MAY NOT BE
36 RELIED UPON OR USED AS THE BASIS FOR ANY EXTRAPOLATION.

37 14. IN CONDUCTING AUDITS, REVIEWS, INVESTIGATIONS, AND CIVIL OR ADMIN-
38 ISTRACTIVE ACTIONS, THE INSPECTOR SHALL CONSIDER ALL DOCUMENTS AND OTHER
39 INFORMATION, IN ANY MEDIUM AND IN ANY FORM, SUBMITTED BY A PROVIDER OR
40 SUPPLIER THAT ARE RELEVANT TO DETERMINE WHETHER MEDICALLY NECESSARY
41 COVERED CARE, SERVICES OR SUPPLIES WERE PROVIDED TO AN ELIGIBLE RECIPI-
42 ENT.

43 15. IN CONDUCTING AUDITS, REVIEWS, INVESTIGATIONS, AND CIVIL OR ADMIN-
44 ISTRACTIVE ACTIONS, THE INSPECTOR SHALL DETERMINE IN WRITING WHICH BOOKS,
45 PAPERS, RECORDS, AND DOCUMENTS THAT ARE NECESSARY, RELEVANT, AND MATERI-
46 AL TO A SPECIFIC ACTION THAT THE INSPECTOR MAY SEEK TO INSPECT, COPY, OR
47 OBTAIN. THE INSPECTOR SHALL GIVE THE PROVIDER REASONABLE WRITTEN NOTICE
48 OF THE WRITTEN DETERMINATION PRIOR TO SEEKING TO INSPECT, COPY, OR
49 OBTAIN THE BOOKS, PAPERS, RECORDS OR DOCUMENTS.

50 16. NOTWITHSTANDING ANY LAW OR REGULATION TO THE CONTRARY, THE INSPEC-
51 TOR SHALL MAKE NO RECOVERY BASED ON THE FAILURE OF THE PROVIDER TO
52 SUBMIT A CLAIM FOR PAYMENT FOR MEDICAL CARE, SERVICES, OR SUPPLIES WITH-
53 IN NINETY DAYS OF THE DATE THE MEDICAL CARE, SERVICES, OR SUPPLIES WERE
54 FURNISHED, PROVIDED THAT SUCH CLAIM IS SUBMITTED WITHIN TWO YEARS OF THE
55 DATE FURNISHED.

1 S 5. The public health law is amended by adding a new section 38 to
2 read as follows:

3 S 38. FAIR PROCEDURES, PRACTICES AND STANDARDS FOR RECIPIENTS. 1.
4 THIS SECTION APPLIES TO ANY ADJUSTMENT OR RECOVERY OF A MEDICAL ASSIST-
5 ANCE PAYMENT FROM A RECIPIENT, AND ANY INVESTIGATION OR OTHER PROCEEDING
6 RELATING THERETO. NO ADJUSTMENT OR RECOVERY SUBJECT TO THIS SECTION
7 SHALL OCCUR UNLESS THE RECIPIENT HAS BEEN AFFORDED THE PROTECTIONS OF
8 THE PROCEDURES, PRACTICES AND STANDARDS UNDER THIS SECTION, INCLUDING
9 NOTICE AND HEARING RIGHTS.

10 2. AT LEAST TEN DAYS PRIOR TO COMMENCEMENT OF ANY INTERVIEW WITH A
11 RECIPIENT AS PART OF AN INVESTIGATION, THE INSPECTOR OR OTHER INVESTI-
12 GATING ENTITY SHALL PROVIDE THE RECIPIENT WITH WRITTEN NOTICE OF THE
13 INVESTIGATION. THE NOTICE OF THE INVESTIGATION SHALL SET FORTH THE BASIS
14 FOR THE INVESTIGATION; THE POTENTIAL FOR REFERRAL FOR CRIMINAL INVESTI-
15 GATION; THE INDIVIDUAL'S RIGHT TO BE ACCOMPANIED BY A RELATIVE, FRIEND,
16 ADVOCATE OR ATTORNEY DURING QUESTIONING; CONTACT INFORMATION FOR LOCAL
17 LEGAL SERVICES OFFICES; THE INDIVIDUAL'S RIGHT TO DECLINE TO BE INTER-
18 VIEWED OR PARTICIPATE IN AN INTERVIEW BUT TERMINATE THE QUESTIONING AT
19 ANY TIME WITHOUT LOSS OF BENEFITS; AND THE RIGHT TO A FAIR HEARING IN
20 THE EVENT THAT THE INVESTIGATION RESULTS IN A DETERMINATION OF INCORRECT
21 PAYMENT.

22 3. THE PERIOD THAT IS THE SUBJECT OF AN INVESTIGATION SHALL NOT EXCEED
23 THREE YEARS, UNLESS THE INITIAL NOTICE OF INVESTIGATION UNDER SUBDIVI-
24 SION TWO OF THIS SECTION INCLUDES ALLEGATIONS OF FRAUD OR INTENTIONAL
25 MISREPRESENTATION. DURING THE INVESTIGATION, THE INSPECTOR OR OTHER
26 INVESTIGATING ENTITY MAY REQUEST DOCUMENTATION THAT IS RELEVANT TO THE
27 ISSUE OF INELIGIBILITY, AND MAY ENTER INTO AN AGREEMENT WITH THE RECIPI-
28 ENT SUBJECT TO THE INVESTIGATION FOR VOLUNTARY REPAYMENTS. HOWEVER, NO
29 SUCH AGREEMENT SHALL BE ENTERED INTO PRIOR TO THE RECIPIENT HAVING
30 ACCESS TO PROOF OF THE ALLEGATION OF INELIGIBILITY AND THE AMOUNT OF
31 MEDICAL ASSISTANCE PAYMENT AT ISSUE. IN CASES INVOLVING FINANCIAL HARD-
32 SHIP, THE RATE OF REPAYMENT SHALL NOT BE IN EXCESS OF TEN PERCENT OF THE
33 RECIPIENT'S HOUSEHOLD INCOME, UNLESS THE INSPECTOR OR INVESTIGATING
34 ENTITY AND THE RECIPIENT AGREE TO ANOTHER AMOUNT.

35 4. FOLLOWING COMPLETION OF THE INVESTIGATION AND AT LEAST SIXTY DAYS
36 PRIOR TO COMMENCING A RECOVERY OR ADJUSTMENT ACTION OR REQUESTING VOLUN-
37 TARY REPAYMENT, THE INSPECTOR OR OTHER INVESTIGATING ENTITY SHALL
38 PROVIDE THE RECIPIENT WITH WRITTEN NOTICE OF THE DETERMINATION OF INCOR-
39 RECT PAYMENT TO BE RECOVERED OR ADJUSTED. THE NOTICE OF DETERMINATION
40 SHALL IDENTIFY THE EVIDENCE RELIED UPON, SET FORTH THE FACTUAL CONCLU-
41 SIONS OF THE INVESTIGATION, AND EXPLAIN THE RECIPIENT'S RIGHT TO REQUEST
42 A FAIR HEARING IN ORDER TO CONTEST THE OUTCOME OF THE INVESTIGATION. THE
43 EXPLANATION OF THE RIGHT TO A FAIR HEARING SHALL CONFORM TO THE REQUIRE-
44 MENTS OF SUBDIVISION TWELVE OF SECTION TWENTY-TWO OF THE SOCIAL SERVICES
45 LAW AND REGULATIONS THEREUNDER.

46 5. A FAIR HEARING UNDER SECTION TWENTY-TWO OF THE SOCIAL SERVICES LAW
47 SHALL BE AVAILABLE TO ANY RECIPIENT WHO RECEIVES A NOTICE OF DETERMI-
48 NATION UNDER SUBDIVISION FOUR OF THIS SECTION, REGARDLESS OF WHETHER THE
49 RECIPIENT IS STILL ENROLLED IN THE MEDICAL ASSISTANCE PROGRAM. IF A FAIR
50 HEARING IS REQUESTED, NO RECOVERY OR ADJUSTMENT ACTION SHALL BE
51 COMMENCED UNLESS THE REQUEST FOR A FAIR HEARING HAS BEEN WITHDRAWN OR
52 THE FAIR HEARING HAS BEEN HELD AND RESULTED IN AN UNFAVORABLE DECISION
53 TO THE RECIPIENT.

54 S 6. Paragraph (b) of subdivision 3 of section 363-d of the social
55 services law, as amended by section 44 of part C of chapter 58 of the

1 laws of 2007, is amended and a new subdivision 5 is added to read as
2 follows:

3 (b) In the event that the commissioner of health or the Medicaid
4 inspector general finds that the provider does not have a satisfactory
5 program [within ninety days after the effective date of the regulations
6 issued pursuant to subdivision four of this section, the] UNDER THIS
7 SECTION, THE COMMISSIONER OR MEDICAID INSPECTOR GENERAL SHALL SO NOTIFY
8 THE PROVIDER, INCLUDING SPECIFICATION OF BASIS OF THE FINDING SUFFICIENT
9 TO ENABLE THE PROVIDER TO ADOPT A SATISFACTORY COMPLIANCE PROGRAM. THE
10 provider SHALL SUBMIT TO THE COMMISSIONER OR MEDICAID INSPECTOR GENERAL
11 A PROPOSED SATISFACTORY COMPLIANCE PROGRAM WITHIN SIXTY DAYS OF THE
12 NOTICE AND SHALL ADOPT THE PROGRAM AS EXPEDITIOUSLY AS POSSIBLE. IF THE
13 PROVIDER DOES NOT PROPOSE AND ADOPT A SATISFACTORY PROGRAM IN SUCH TIME
14 PERIOD, THE PROVIDER may be subject to any sanctions or penalties
15 permitted by federal or state laws and regulations, including revocation
16 of the provider's agreement to participate in the medical assistance
17 program.

18 5. ANY REGULATION, DETERMINATION, OR FINDING OF THE COMMISSIONER OR
19 THE MEDICAID INSPECTOR GENERAL RELATING TO A COMPLIANCE PROGRAM UNDER
20 THIS SECTION SHALL BE SUBJECT TO AND CONSISTENT WITH SUBDIVISION THREE
21 OF THIS SECTION.

22 S 7. Subdivision 2 of section 369 of the social services law is
23 amended by adding a new paragraph (e) to read as follows:

24 (E)(I) MEDICAL ASSISTANCE SHALL BE CONSIDERED INCORRECTLY PAID WHEN AN
25 INDIVIDUAL HAS RECEIVED AN ADEQUATE EXPLANATION OF HIS OR HER DUTY TO
26 PROVIDE OR REPORT INFORMATION RELEVANT TO AN ELIGIBILITY DETERMINATION,
27 AND, EITHER FAILED TO PROVIDE OR REPORT RELEVANT INFORMATION THAT WAS
28 KNOWN, OR UNDER THE CIRCUMSTANCES REASONABLY SHOULD HAVE BEEN KNOWN, BY
29 THE INDIVIDUAL, OR THE INDIVIDUAL WAS RESPONSIBLE FOR INTENTIONAL
30 MISREPRESENTATIONS OR FRAUD DURING THE APPLICATION OR RECERTIFICATION
31 PROCESS.

32 (II) NO ADJUSTMENT OR RECOVERY, INCLUDING A REQUEST FOR VOLUNTARY
33 REPAYMENT, MAY BE MADE AGAINST THE PROPERTY OF ANY INDIVIDUAL ON ACCOUNT
34 OF ANY MEDICAL ASSISTANCE INCORRECTLY PAID TO OR ON BEHALF OF AN INDI-
35 VIDUAL UNDER THIS TITLE, EXCEPT AFTER AN INVESTIGATION HAS BEEN
36 COMPLETED BY A SOCIAL SERVICES DISTRICT OR APPROPRIATE STATE AGENCY,
37 SUBJECT TO SECTION THIRTY-EIGHT OF THE PUBLIC HEALTH LAW.

38 S 8. This act shall take effect on the ninetieth day after it shall
39 have become a law and shall apply to any matter commenced or pending on
40 or after such date. However with respect to any matter pending on or
41 after such date, this act shall not invalidate any actions or steps
42 taken or commenced prior to such date and shall only apply to actions or
43 steps commenced on or after such date.