

STATE OF NEW YORK

7889

2021-2022 Regular Sessions

IN ASSEMBLY

May 28, 2021

Introduced by M. of A. GOTTFRIED, L. ROSENTHAL -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the social services law, in relation to the functions of the Medicaid inspector general with respect to audit and review of medical assistance program funds and requiring notice of certain investigations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 30-a of the public health law is amended by adding four new subdivisions 4, 5, 6 and 7 to read as follows:

4. "Provider" means any person or entity enrolled as a provider in the medical assistance program.

5. "Recipient" means an individual who is enrolled in the medical assistance program, including an individual who was previously a recipient and, in an appropriate case, an individual who is legally responsible for the recipient.

6. "Medical assistance" and "Medicaid" means title eleven of article five of the social services law and the program thereunder.

7. "Draft audit report", "initial audit report", "proposed notice of agency action" and "final notice of agency action" means those documents prepared and issued by the inspector under this title and corresponding regulations.

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

20. to, consistent with [~~provisions of~~] this title and applicable federal and state laws, regulations, policies, guidelines and standards, implement and amend, as needed, rules and regulations relating to the prevention, detection, investigation and referral of fraud and abuse within the medical assistance program and the recovery of improperly expended medical assistance program funds;

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

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1 § 3. The public health law is amended by adding two new sections 37
2 and 38 to read as follows:

3 § 37. Procedures, practices and standards. 1. Subject to federal law
4 or regulation, recovery of an overpayment resulting from the issuance of
5 a final audit report or final notice of agency action by the inspector
6 shall commence not less than sixty days after the issuance of the final
7 audit report or final notice of agency action. The inspector shall not
8 commence any recovery under this subdivision without providing a minimum
9 of ten days advance written notice to the provider.

10 2. Contracts, cost reports, claims, bills or expenditures of medical
11 assistance funds that were the subject matter of a previous audit or
12 review by or on behalf of the inspector, within the last three years,
13 shall not be subject again to review or audit except on the basis of new
14 information, for good cause to believe that the previous review or audit
15 was erroneous, or where the scope of the inspector's review or audit is
16 significantly different from the scope of the previous review or audit.

17 3. In conducting reviews or audits, the inspector shall apply the
18 laws, regulations, policies, guidelines, standards and interpretations
19 of the appropriate agency, including temporary or emergency regulations,
20 policies, guidelines, standards and interpretations, that were in place
21 at the time the subject claim arose or other conduct took place. Disal-
22 lowances may be imposed or other action taken only for non-compliance
23 with those laws, regulations, policies, guidelines or standards. For
24 purposes of this subdivision, any change in those laws, regulations,
25 policies, guidelines, standards or interpretations shall only be applied
26 prospectively and upon reasonable notice.

27 4. (a) The inspector shall make no recovery from a provider, based on
28 an administrative or technical defect in procedure or documentation made
29 without intent to falsify or defraud, in connection with claims for
30 payment for medically necessary care, services and supplies or the cost
31 thereof as specified in subdivision two of section three hundred sixty-
32 five-a of the social services law provided in other respects appropri-
33 ately to a beneficiary of the medical assistance program, except as
34 provided in paragraphs (b) and (c) of this subdivision.

35 (b) Where there is an administrative or technical defect in procedure
36 or documentation without intent to falsify or defraud, the inspector
37 shall afford the provider an opportunity to correct the defect and
38 resubmit the claim within thirty days of notice of the defect.

39 (c) Where a claim relates to a service that was provided more than two
40 years prior to the commencement of the audit, the provider may submit or
41 resubmit the claim or accept the disallowance of the amount of the
42 claim.

43 (d) The inspector shall not use extrapolation in recoveries made under
44 this subdivision.

45 5. (a) The inspector shall furnish to the provider at an audit exit
46 conference or in any draft audit findings issued or to be issued to the
47 provider, a detailed written explanation of the extrapolation method
48 employed, including the size of the sample, the sampling methodology,
49 the defined universe of claims, the specific claims included in the
50 sample, the results of the sample, the assumptions made about the accu-
51 racy and reliability of the sample and the level of confidence in the
52 sample results, and the steps undertaken and statistics utilized to
53 calculate the alleged overpayment and any applicable offset based on the
54 sample results. This written information shall include a description of
55 the sampling and extrapolation methodology.

1 (b) The sampling and extrapolation methodologies used by the inspector
2 shall be statistically reasonably valid for the intended use and shall
3 be established in regulations of the inspector.

4 § 38. Procedures, practices and standards for recipients. 1. This
5 section applies to any adjustment or recovery of a medical assistance
6 payment from a recipient, and any investigation or other proceeding
7 relating thereto.

8 2. At least five business days prior to commencement of any interview
9 with a recipient as part of an investigation, the inspector or other
10 investigating entity shall provide the recipient with written notice of
11 the investigation. The notice of the investigation shall set forth the
12 basis for the investigation; the potential for referral for criminal
13 investigation; the individual's right to be accompanied by a relative,
14 friend, advocate or attorney during questioning; contact information for
15 local legal services offices; the individual's right to decline to be
16 interviewed or participate in an interview but terminate the questioning
17 at any time without loss of benefits; and the right to a fair hearing in
18 the event that the investigation results in a determination of incorrect
19 payment.

20 3. Following completion of the investigation and at least thirty days
21 prior to commencing a recovery or adjustment action or requesting volun-
22 tary repayment, the inspector or other investigating entity shall
23 provide the recipient with written notice of the determination of incor-
24 rect payment to be recovered or adjusted. The notice of determination
25 shall identify the evidence relied upon, set forth the factual conclu-
26 sions of the investigation, and explain the recipient's right to request
27 a fair hearing in order to contest the outcome of the investigation. The
28 explanation of the right to a fair hearing shall conform to the require-
29 ments of subdivision twelve of section twenty-two of the social services
30 law and regulations thereunder.

31 4. A fair hearing under section twenty-two of the social services law
32 shall be available to any recipient who receives a notice of determi-
33 nation under subdivision three of this section, regardless of whether
34 the recipient is still enrolled in the medical assistance program.

35 § 4. Paragraph (c) of subdivision 3 of section 363-d of the social
36 services law, as amended by section 4 of part V of chapter 57 of the
37 laws of 2019, is amended and a new subdivision 8 is added to read as
38 follows:

39 (c) In the event that the commissioner of health or the Medicaid
40 inspector general finds that the provider does not have a satisfactory
41 program [~~within ninety days after the effective date of the regulations~~
42 ~~issued pursuant to subdivision four of this section~~], the commissioner
43 or Medicaid inspector general shall so notify the provider, including
44 specification of the basis of the finding sufficient to enable the
45 provider to adopt a satisfactory compliance program. The provider shall
46 submit to the commissioner or Medicaid inspector general a proposed
47 satisfactory compliance program within sixty days of the notice and
48 shall adopt the program as expeditiously as possible. If the provider
49 does not propose and adopt a satisfactory program in such time period,
50 the provider may be subject to any sanctions or penalties permitted by
51 federal or state laws and regulations, including revocation of the
52 provider's agreement to participate in the medical assistance program.

53 8. Any regulation, determination or finding of the commissioner or the
54 Medicaid inspector general relating to a compliance program under this
55 section shall be subject to and consistent with subdivision three of
56 this section.

1 § 5. Section 32 of the public health law is amended by adding a new
2 subdivision 6-b to read as follows:

3 6-b. to file an annual report on or before the first day of July to
4 the governor, the temporary president of the senate, the speaker of the
5 assembly, the minority leader of the senate, the minority leader of the
6 assembly, the commissioner, the commissioner of the office of addiction
7 services and supports, and the commissioner of the office of mental
8 health on the impacts that all civil and administrative enforcement
9 actions taken under subdivision six of this section in the previous
10 calendar year will have and have had on the quality and availability of
11 medical care and services, the best interests of both the medical
12 assistance program and its recipients, and fiscal solvency of the
13 providers who were subject to the civil or administrative enforcement
14 action;

15 § 6. This act shall take effect immediately.