

# STATE OF NEW YORK

4486--A

2021-2022 Regular Sessions

## IN SENATE

February 5, 2021

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, 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 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:

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

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

5 5. "Recipient" means an individual who is enrolled in the medical  
6 assistance program, including an individual who was previously a recipi-  
7 ent and, in an appropriate case, an individual who is legally responsi-  
8 ble for the recipient.

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

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

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

17 20. to, consistent with [~~provisions of~~] this title and applicable  
18 federal and state laws, regulations, policies, guidelines and standards,  
19 implement and amend, as needed, rules and regulations relating to the  
20 prevention, detection, investigation and referral of fraud and abuse

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

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1 within the medical assistance program and the recovery of improperly  
2 expended medical assistance program funds;

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

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

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

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

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

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

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

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

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

1 sample results. This written information shall include a description of  
2 the sampling and extrapolation methodology.

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

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

10 2. At least five business days prior to commencement of any interview  
11 with a recipient as part of an investigation, the inspector or other  
12 investigating entity shall provide the recipient with written notice of  
13 the investigation. The notice of the investigation shall set forth the  
14 basis for the investigation; the potential for referral for criminal  
15 investigation; the individual's right to be accompanied by a relative,  
16 friend, advocate or attorney during questioning; contact information for  
17 local legal services offices; the individual's right to decline to be  
18 interviewed or participate in an interview but terminate the questioning  
19 at 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. Following completion of the investigation and at least thirty days  
23 prior to commencing a recovery or adjustment action or requesting volun-  
24 tary repayment, the inspector or other investigating entity shall  
25 provide the recipient with written notice of the determination of incor-  
26 rect payment to be recovered or adjusted. The notice of determination  
27 shall identify the evidence relied upon, set forth the factual conclu-  
28 sions of the investigation, and explain the recipient's right to request  
29 a fair hearing in order to contest the outcome of the investigation. The  
30 explanation of the right to a fair hearing shall conform to the require-  
31 ments of subdivision twelve of section twenty-two of the social services  
32 law and regulations thereunder.

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

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

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

55 8. Any regulation, determination or finding of the commissioner or the  
56 Medicaid inspector general relating to a compliance program under this

1 section shall be subject to and consistent with subdivision three of  
2 this section.

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

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

17 § 6. This act shall take effect immediately.