

STATE OF NEW YORK

4955

2025-2026 Regular Sessions

IN SENATE

February 14, 2025

Introduced by Sens. HARCKHAM, BORRELLO, FERNANDEZ, GALLIVAN, MAY, MAYER, ROLISON, SEPULVEDA, WEBB -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. Section 30-a of the public health law, as added by chapter
2 442 of the laws of 2006, is amended to read as follows:

3 § 30-a. Definitions. For the purposes of this title, the following
4 definitions shall apply:

5 1. "Abuse" means provider practices that are inconsistent with sound
6 fiscal, business or medical practices, and result in an unnecessary cost
7 to the Medicaid program, or in reimbursement for services that are not
8 medically necessary or that fail to meet professionally recognized stan-
9 dards for health care. It also includes beneficiary practices that
10 result in unnecessary cost to the Medicaid program.

11 2. "Creditable allegation of fraud" (a) means an allegation which has
12 been verified by the inspector, from any source, including but not
13 limited to the following:

14 i. fraud hotlines tips verified by further evidence;

15 ii. claims data mining; and

16 iii. patterns identified through provider audits, civil false claims
17 cases, and law enforcement investigations.

18 (b) Allegations are considered to be credible when they have an indi-
19 cia of reliability and the inspector has reviewed all allegations, facts
20 and evidence carefully and acts judiciously on a case-by-case basis.

21 3. "Fraud" means an intentional deception or misrepresentation made by
22 a person with the knowledge that the deception or misrepresentation

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

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1 could result in some unauthorized benefit to the person or some other
2 person. It includes any act that constitutes fraud under applicable
3 federal or state law.

4 4. "Inspector" means the Medicaid inspector general created by this
5 title.

6 [~~2-~~] 5. "Investigation" means investigations of fraud, abuse, or illegal
7 acts perpetrated within the medical assistance program, by providers
8 or recipients of medical assistance care, services and supplies.

9 6. "Medical assistance," "Medicaid," and "recipient" shall have the
10 same meaning as those terms in title eleven of article five of the
11 social services law and shall include any payments to providers under
12 any Medicaid managed care program.

13 [~~3-~~] 7. "Office" means the office of the Medicaid inspector general
14 created by this title.

15 8. "Overpayment" means any funds that a provider receives or retains,
16 to which the provider is not, after applicable reconciliation, entitled
17 under the medical assistance program.

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

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

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

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

30 § 37. Audit and recovery of medical assistance payments to providers.
31 Any audit or review of any provider contracts, cost reports, claims,
32 bills, or medical assistance payments by the inspector, anyone desig-
33 nated by the inspector or otherwise lawfully authorized to conduct such
34 audit or review, or any other agency with jurisdiction to conduct such
35 audit or review, shall comply with the following standards:

36 1. Recovery of any overpayment resulting from any audit or review of
37 provider contracts, cost reports, claims, bills, or medical assistance
38 payments shall not commence prior to sixty days after delivery to the
39 provider of a final audit report or final notice of agency action, or
40 where the provider requests a hearing or appeal within sixty days of
41 delivery of the final audit report or final notice of agency action,
42 until a final determination of such hearing or appeal is made.

43 2. Provider contracts, cost reports, claims, bills or medical assist-
44 ance payments that were the subject matter of a previous audit or review
45 within the last three years shall not be subject to review or audit
46 again except on the basis of new information, for good cause to believe
47 that the previous review or audit was erroneous, or where the scope of
48 the inspector's review or audit is significantly different from the
49 scope of the previous review or audit.

50 3. Any reviews or audits of provider contracts, cost reports, claims,
51 bills or medical assistance payments shall apply the state laws, regu-
52 lations and the applicable, duly promulgated policies, guidelines, stan-
53 dards, protocols and interpretations of state agencies with jurisdiction
54 and in effect at the time the provider engaged in the applicable regu-
55 lated conduct or provision of services. For the purpose of this subdivi-
56 vision, the state law, regulation or the applicable promulgated agency

1 policy, guideline, standard, protocol or interpretation shall not be
2 deemed in effect if federal governmental approval is pending or denied.
3 The inspector shall publish protocols applicable to and governing any
4 audit or review of a provider or provider contracts, cost reports,
5 claims, bills or medical assistance payments on the office of Medicaid
6 inspector general website.

7 4. (a) In the event of any overpayment based upon a provider's admin-
8 istrative or technical error, the provider shall have the longer of
9 sixty days from notice of the mistake or six years from the date of
10 service to submit a corrected claim provided (i) the error was a genuine
11 error without intent to falsify or defraud, (ii) the provider maintained
12 contemporaneous documentation to substantiate the correct claims infor-
13 mation, (iii) such error is the sole basis for the finding of an over-
14 payment, and (iv) there is no finding of any overpayment for such error
15 by a federal agency or official.

16 (b) No overpayment shall be calculated for any administrative or tech-
17 nical error corrected as required in paragraph (a) of this subdivision.

18 (c) "Administrative or technical error" shall include any error that
19 constitutes either a (i) minor error or omission or (ii) clerical error
20 or omission under the Medicare modernization act or centers for Medicaid
21 and Medicaid service regulations, and shall include human and clerical
22 errors that result in errors as to form or content of a claim.

23 5. (a) In determining the amount of any overpayment to a provider, the
24 inspector shall utilize sampling and extrapolation consistent with the
25 Centers for Medicare and Medicaid services policies as described in the
26 Centers for Medicare and Medicaid program integrity manual.

27 (b) The final audit report or final notice of agency action shall
28 include a statement of the specific factual and legal basis for utiliz-
29 ing extrapolation and the inappropriate use of extrapolation shall be a
30 basis for appeal. This subdivision shall not be construed to limit the
31 recoupment of an overpayment identified without the use of extrapo-
32 lation.

33 (c) If the provider has waived its right to a hearing, or if a provid-
34 er requests a hearing, until the hearing determination is issued, the
35 provider shall have the right to pay the lower confidence limit plus
36 applicable interest in fulfillment of this paragraph, the applicable
37 lower confidence limit shall be calculated using at least a ninety
38 percent confidence level.

39 6. (a) The provider shall be provided as part of the draft audit find-
40 ings a detailed written explanation of the extrapolation method
41 employed, including the size of the sample, the sampling methodology,
42 the defined universe of claims, the specific claims included in the
43 sample, the results of the sample, the assumptions made about the accu-
44 racy and reliability of the sample and the level of confidence in the
45 sample results, and the steps undertaken and statistical methodology
46 utilized to calculate the alleged overpayment and any applicable offset
47 based on the sample results. This written information shall include a
48 description of the sampling and extrapolation methodology.

49 (b) The sampling and extrapolation methodologies utilized by the
50 inspector shall be consistent with accepted standards of sound auditing
51 practice and statistical analysis.

52 7. The requirements of this section shall be interpreted consistent
53 with and subject to any applicable federal law, rules and regulations,
54 or binding federal agency guidance and directives. The requirements of
55 this section shall not apply to any investigation by the inspector where
56 there is credible allegations of fraud or where there is a finding that

1 the provider has engaged in deliberate abuse of the medical assistance
2 program.

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

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

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

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

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

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

52 8. Any regulation, determination or finding of the commissioner or the
53 Medicaid inspector general relating to a compliance program under this
54 section shall be subject to and consistent with subdivision three of
55 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 consult with the commissioner on the preparation of an annual
4 report, to be made and filed by the commissioner on or before the first
5 day of July to the governor, the temporary president of the senate, the
6 speaker of the assembly, the minority leader of the senate, the minority
7 leader of the assembly, the commissioner, the commissioner of the office
8 of addiction services and supports, and the commissioner of the office
9 of mental health on the impacts that all civil and administrative
10 enforcement actions taken under subdivision six of this section in the
11 previous calendar year will have and have had on the quality and avail-
12 ability of medical care and services, the best interests of both the
13 medical assistance program and its recipients, and fiscal solvency of
14 the providers who were subject to the civil or administrative enforce-
15 ment action;

16 § 6. This act shall take effect January 1, 2028.