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Dear Governor Hochul,

The Arc New York is pleased to provide its strong endorsement of S.4486-A (Harckham) and A.7889 (Gottfried), which have both passed their respective houses and will await your signature. This bill would amend the public health law in relation to the functions of the Office of Medicaid Inspector General (OMIG) with respect to audit and review of medical assistance program funds and requiring notice of certain investigations. The legislation supports your pledge for greater transparency and accountability in the operations of New York State agencies, such as the OMIG.

The Arc New York is a family-led organization that advocates and provides supports and services to people with intellectual, developmental, and other disabilities, emphasizing choice and community engagement. With 36 Chapters across New York state, our organization supports more than 60,000 individuals and families and employs more than 30,000 people statewide.

As stated in the Assembly sponsor memo, "When the OMIG was created in 2007, the emphasis of the legislature and the concern of the public was on fraud and waste in the Medicaid system." It goes on to state that, "OMIG audits that punish providers for technical errors, not fraud, do not help anyone in the Medicaid system, especially when those errors are the result of contradictory guidance provided by different state agencies....extrapolating millions of dollars of claims from a small sample of technical errors has been forcing already stretched-thin health care providers..."to make difficult programmatic changes and closures, which negatively affect access to services for Medicaid beneficiaries.

Specifically, S.4486-A/A.7889 requires the OMIG to follow common-sense procedures and practices in provider audit or reviews including:

- Recoveries of overpayments may not be collected until 60 days after

the issuance of a final audit report or final notice of agency action. The OMIG must provide a minimum of 10 days written notice to the provider.

- Contracts, cost reports, claims, bills, or expenditures that were the subject of a previous audit or review within the last 3 years may not be used for a new audit, unless there is new information, for good cause that the previous audit or review was in error, or the new audit or review is significantly different in scope.
- In conducting audits or reviews, the OMIG shall apply the laws, regulations, policies, guidelines, etc. of the appropriate agency, including those that were in effect on a temporary or emergency basis, that were in place at the time the subject claim arose, or other conduct took place.

As recently as April 2020, amendments to Social Services Law 363-d expanded the OMIG's authority to impose monetary penalties and recoup Medicaid payments for failure to meet compliance program requirements. This legislation is timely and will restore more sensible balance and oversight between the state and providers. Most importantly, it will limit the OMIG practice of recovering claims for basic administrative or technical defect in procedure or documentation without intent to falsify or defraud, while affording the provider an opportunity to correct the defect and resubmit the claim.

The OMIG should not be a means of extracting unwarranted additional funds from an already underfunded system. The non-profit, voluntary providers of supports of services for people with I/DD, such as The Arc New York, have done an exemplary job of supporting our most vulnerable citizens despite lacking funding and economic downturns. Sustaining duplicative and contradicting rules for audits and arbitrary penalties is unconscionable and contrary to the intent of the OMIG

Governor Hochul, you have proven yourself to treat people with I/DD with the same fairness as every resident of New York state and committed to state agency transparency, accountability, and the right to due process for all. We look to you to make the necessary and rational changes to bring fairness and equity to providers who support people with I/DD. We ask that you please sign into law S.4486-A (Harckham) and A.7889 (Gottfried) and do so with a favorable report.

Sincerely,



Erik Geizer
Chief Executive Officer

ⁱ https://nyassembly.gov/leg/?default_fld=%0D%0A&leg_video=&bn=A07889&term=2021&Summary=Y&Memo=Y&Text=Y