NEW YORK STATE | Office of the Medicaid Inspector General

OMIG AUDIT PROTOCOL
Hospice
Revised 08/07/2025

(For Service Dates 08/31/2016 through 07/31/2025)

Audit protocols assist the Medicaid provider community in developing programs to evaluate compliance with Medicaid requirements under federal and state statutory and regulatory law. Audit protocols are intended solely as guidance in this effort. This guidance does not constitute rulemaking by the New York State Office of the Medicaid Inspector General (OMIG) and may not be relied on to create a substantive or procedural right or benefit enforceable, at law or in equity, by any person. Furthermore, nothing in the audit protocols alters any statutory or regulatory requirement and the absence of any statutory or regulatory requirement from a protocol does not preclude OMIG from enforcing the requirement. In the event of a conflict between statements in the protocols and either statutory or regulatory requirements, the requirements of the statutes and regulations govern.

A Medicaid provider's legal obligations are determined by the applicable federal and state statutory and regulatory law. Audit protocols do not encompass all the current requirements for payment of Medicaid claims for a particular category of service or provider type and, therefore, are not a substitute for a review of the statutory and regulatory law. OMIG cannot provide individual advice or counseling, whether medical, legal, or otherwise. If you are seeking specific advice or counseling, you should contact an attorney, a licensed practitioner or professional, a social services agency representative, or an organization in your local community.

Audit protocols are applied to a specific provider type or category of service in the course of an audit and involve OMIG's application of articulated Medicaid agency policy and the exercise of agency discretion. Audit protocols are used as a guide in the course of an audit to evaluate a provider's compliance with Medicaid requirements and to determine the propriety of Medicaid expended funds. In this effort, OMIG will review and consider any relevant contemporaneous documentation maintained and available in the provider's records to substantiate a claim.

OMIG, consistent with state and federal law, can pursue civil and administrative enforcement actions against any individual or entity that engages in fraud, abuse, or illegal or improper acts or unacceptable practices perpetrated within the medical assistance program. Furthermore, audit protocols do not limit or diminish OMIG's authority to recover improperly expended Medicaid funds and OMIG may amend audit protocols as necessary to address identified issues of non-compliance. Additional reasons for amending protocols include, but are not limited to, responding to a hearing decision, litigation decision, or statutory or regulatory change.

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Public Health Emergency (PHE)

Services provided and billed in accordance with COVID-19 PHE guidance issued by the NYS Department of Health (DOH) and/or Centers for Medicare and Medicaid Services (CMS) will not be subject to disallowance, provided all other programmatic and billing requirements not altered or waived by the PHE guidance were met.

This includes the following guidance:

Agency	Guidance Title	Date Issued	Date(s) Revised
NYSDOH	DAL: DHCBS 24-03: Updated Telehealth in Home Health Care and Hospice	09/12/24	
NYSDOH	DAL: DHCBS 23-04: Telehealth in Adult Day Health Care, Home Health Care, Hospice, and Adult Care Facilities	10/02/23	
NYSDOH	COVID-19 Home Care and Hospice Infection Prevention and Control FAQ	08/28/23	
NYSDOH	DAL: DHCBS 22-15: Notification of Hospice Non-Covered Items, Services, and Drugs	11/10/22	
NYSDOH	DAL: DHCBS 22-13: COVID-19 Screening of Home Care and Hospice Personnel	08/02/22	
NYSDOH	DAL: DHCBS 22-06: Hospice Residences and Inpatient Bed Use	04/07/22	
NYSDOH	DAL: DHCBS 22-03: Hospice Personnel Entry to Nursing Homes	02/18/22	
NYSDOH	Health Advisory: Nursing Home Staff and Visitation Requirements	01/12/22	
NYSDOH	DAL: DHCBS 21-02: In-Service Requirements for Personal Care Aides and Home Health Aides	01/21/21	
NYSDOH	DAL: DHCBS 20-10: Home Care and Hospice Guidance Pertaining to In-Service, Orientation, and Supervision Requirements	10/13/20	
NYSDOH	DAL: DHCBS 20-08: COVID-19 Guidance for Home Health Care Agencies and Hospice Providers	03/14/20	03/22/20

The Federal Government announced that the PHE expired at the end of the day on May 11, 2023. On the date the PHE ended, the flexibilities afforded providers regarding minimum billing standards and documentation requirements also ended, unless otherwise specified by DOH through formal regulatory waivers.

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1.	**Missing Patient / Family Record**
OMIG Audit Criteria	If the patient or family record is unavailable for review, the claim associated with the patient or family record will be disallowed.
Regulatory References	10 NYCRR § 794.4(b)

2.	**Missing Notice of Election**
OMIG Audit Criteria	If the Informed Consent or Notice of Election voluntarily electing hospice is missing or incomplete, the claim will be disallowed.
Regulatory References	10 NYCRR § 793.2(d) 10 NYCRR § 794.4(b)(4)

3.	**Initial Assessment Was Not Completed Within 48 Hours of Election to Hospice**
OMIG Audit Criteria	If the initial assessment was not completed by a registered nurse within 48 hours after the election of hospice care, the claim for services provided after 48 hours from the election of hospice care and until completion of the initial assessment, will be disallowed.
Regulatory References	10 NYCRR § 793.3(a) 10 NYCRR § 794.4(b)(1)

4.	**Missing Authorizing Practitioner Initial Certification of Terminal Illness**
OMIG Audit Criteria	If the physician initial certification is missing or incomplete, the claim will be disallowed.
Regulatory References	10 NYCRR § 793.2(c) 10 NYCRR § 794.4(b)(7) NYS Medicaid Program, Hospice Program, Policy Guidelines Versions 2008-1 through 2024-1, Section I

5.	**Initial Certification of Terminal Illness Not Obtained Within Required Timeframe**
OMIG Audit Criteria	If the provider did not obtain the written initial certification before submitting a claim for payment, the claim prior to the initial certification being obtained will be disallowed.
Regulatory References	10 NYCRR § 793.2(c) 10 NYCRR § 793.2(d)(4)

6.	**Missing Authorizing Practitioner Recertification of Terminal Illness**
OMIG Audit Criteria	If the physician recertification is missing or incomplete, the claim will be disallowed.
Regulatory References	10 NYCRR § 793.2(c) 10 NYCRR § 794.4(b)(7) NYS Medicaid Program, Hospice Program, Policy Guidelines Versions 2008-1 through 2024-1, Section I

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7.	**Recertification of Terminal Illness Not Obtained Within Required Timeframe**
OMIG Audit Criteria	Recertifications for either a 60 or 90-day period must be obtained prior to submitting a claim for payment. Any claims for services performed after the previous certification's expiration and before the new recertification's effective date will be disallowed.
Regulatory References	10 NYCRR § 793.2(c) 10 NYCRR § 793.2(d)(4)

8.	**Comprehensive Assessment Was Not Completed Within Five Calendar Days After the Election to Hospice**
OMIG Audit Criteria	If the comprehensive assessment was not completed by the interdisciplinary group and attending physician (if any) within 5 calendar days after the election of hospice, the claim for services provided beyond 5 days after the election of hospice and until the comprehensive assessment is completed by the interdisciplinary group, will be disallowed.
Regulatory References	10 NYCRR § 793.3(b) 10 NYCRR § 794.4(b)(1)

9.	**Comprehensive Assessment Not Updated as Required**
OMIG Audit Criteria	If the comprehensive assessment was not updated as needed or at minimum every 15 days, the claim will be disallowed.
Regulatory References	10 NYCRR § 793.3(e) 10 NYCRR § 794.4(b)(1)

10.	**Missing Plan of Care**
OMIG Audit Criteria	If the plan of care was not completed by the interdisciplinary group and the attending physician (if any) prior to services, or the plan of care is missing, the claim will be disallowed.
Regulatory References	10 NYCRR § 793.4(c) 10 NYCRR § 794.4(b)(2) **For Services 03/01/23 and After:** NYS Medicaid Program, Hospice Program, Policy Guidelines Versions 2023-1 through 2024-1, Section I

11.	**Plan of Care Not Updated as Required**
OMIG Audit Criteria	If the interdisciplinary group did not review / revise the plan of care at least every 15 days, the claim for services provided after that 15 days and until the plan of care is reviewed / revised, will be disallowed.
Regulatory References	10 NYCRR § 793.4(g) 10 NYCRR § 794.4(b)(2)

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12.	**Missing Documentation of Supervision Visit**
OMIG Audit Criteria	If the record fails to document that a registered nurse made an on-site visit to the patient's home to assess the hospice aide's services no less than every 14 days, the claim will be disallowed.
Regulatory References	10 NYCRR § 793.7(n)

13.	**Aide Not Present at Nursing Supervision Visit**
OMIG Audit Criteria	The aide is required to be present and assessed at least every 90 days during the registered nurse's on-site visit. If the documentation does not indicate that the aide was present during the nursing supervision visit, the claim will be disallowed.
Regulatory References	10 NYCRR § 793.7(n)

14.	**Failure to Provide Form DOH-5778 "Entity / Facility Notification of Hospice Non-Covered Items, Services, and Drugs"**
OMIG Audit Criteria	If the provider failed to provide at audit form DOH-5778 containing non-covered items, services, and drugs with other medical providers / facilities who provide services to the patient, all claims relating to non-covered items, services, and drugs will be disallowed.
Regulatory References	**For Services 11/10/22 and After:** NYS Medicaid Program, Hospice Program, Policy Guidelines Version 2024-1, Section I NYS DOH DAL: DHCBS 22-15

15.	**Billed for Hospice Non-Covered Items, Services, or Drugs That Are Not Included on Form DOH-5778**
OMIG Audit Criteria	If the provider billed for items, services, or drugs not identified on form DOH-5778 as acceptable, the amount billed will be disallowed.
Regulatory References	**For Services 11/10/22 and After:** NYS Medicaid Program, Hospice Program, Policy Guidelines Version 2024-1, Section I NYS DOH DAL: DHCBS 22-15

16.	**Billed for Incompatible Services During Respite Care**
OMIG Audit Criteria	If incompatible services (not related to terminal illness) are performed at an inpatient facility during a period of respite care, the claim will be disallowed.
Regulatory References	10 NYCRR § 86-6.1(h) 10 NYCRR § 86-6.2(a)(1) 10 NYCRR § 794.5(b) 10 NYCRR § 794.5(c)

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17.	Billed Service Included in Hospice All-Inclusive Rate
OMIG Audit Criteria	Any claim that is billed for services that are included in the Hospice All-Inclusive rate will be disallowed.
Regulatory References	18 NYCRR § 504.3(h) and (i) 18 NYCRR § 518.1(c) NYS Medicaid Program, Hospice Program, Policy Guidelines Versions 2008-1 through 2024-1, Section I

18.	Billed for Unfurnished Services After the Patient's Death
OMIG Audit Criteria	Any claim that is billed after the patient is deceased (date of death), will be disallowed.
Regulatory References	18 NYCRR § 504.3(e), (h), and (i) 18 NYCRR § 518.1(c)

19.	Minimum Licensure Requirements Not Met for Hospice Personnel
OMIG Audit Criteria	If minimum licensure requirements were not met for hospice personnel, claims provided by unlicensed personnel will be disallowed.
Regulatory References	10 NYCRR § 700.2(b)(9) 10 NYCRR § 700.2(b)(15) 10 NYCRR § 700.2(b)(47)-(49) 10 NYCRR § 793.7(h)-(k) 10 NYCRR § 794.3(b) 18 NYCRR § 504.1(c) **For Services 12/12/18 and After:** 10 NYCRR § 700.2(b)(54)

20.	Services Provided by Unqualified Individual
OMIG Audit Criteria	If the individual providing service on the sampled claim was not qualified to provide services, all claims will be disallowed.
Regulatory References	18 NYCRR § 504.1(c) 18 NYCRR § 504.3(i)

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21.	**Services Ordered / Prescribed / Referred / Attended by Individual Not Enrolled in NYS Medicaid**
OMIG Audit Criteria	Claims for services ordered, prescribed, referred, or attended by an individual not enrolled in the New York State Medicaid Program when the services were ordered, prescribed, referred, or attended, as required, will be disallowed.
Regulatory References	42 C.F.R. § 455.410(b) 42 C.F.R. § 455.440 18 NYCRR § 504.1(b) 18 NYCRR § 504.3(i) 18 NYCRR § 504.6(b)-(d) 18 NYCRR § 504.9(a) 18 NYCRR § 513.1(d), (e), and (g) NYS DOH Medicaid Update, Special Edition December 2013, Vol. 29, No. 13 NYS DOH Medicaid Update, July 2013, Vol. 29, No. 8 NYS DOH Medicaid Update, March 2013, Vol. 29, No. 4 NYS DOH Medicaid Update, June 2012, Vol. 28, No. 7 NYS DOH Medicaid Update, April 2011, Vol. 27, No. 5 **For Services 07/16/24 and After:** NYS DOH Medicaid Update, June 2024, Vol. 40, No. 6 **For Services 01/01/18 and After:** NYS DOH Medicaid Update, May 2017, Vol. 33, No. 5

22.	**Services Ordered / Prescribed / Referred / Attended by Excluded Individual**
OMIG Audit Criteria	Claims for services ordered, prescribed, referred, or attended by an individual excluded from the New York State Medicaid program at the time of service will be disallowed.
Regulatory References	18 NYCRR § 504.3(i) 18 NYCRR § 504.7(d)(1) 18 NYCRR § 513.1(d), (e), and (g) 18 NYCRR § 515.1(b)(6) and (10) 18 NYCRR § 515.5(a)-(c) and (e) NYS DOH Medicaid Update, Special Edition December 2013, Vol. 29, No. 13 NYS DOH Medicaid Update, April 2010, Vol. 26, No. 6

23.	**Improper Medicaid Billings for a Medicare Eligible Patient**
OMIG Audit Criteria	Any claim that is billed for services to a patient who elected enrollment in Medicare hospice will be disallowed.
Regulatory References	18 NYCRR § 360-7.2 18 NYCRR § 540.6(e)(1) and (2) 18 NYCRR § 540.6(e)(3) NYS Medicaid Program, Information for All Providers, General Policy Versions 2006-1 through 2022-2, Section I and II

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24.	**Improper Medicaid Billings for Third Party Health Insurance (TPHI) Recipients (Excluding Medicare)**
OMIG Audit Criteria	Medicaid providers must take reasonable measures to determine legal liability to pay for medical care and services. No claim for reimbursement shall be submitted without provider investigation of the existence of such third parties. When it is determined that a sample service was covered or reimbursed by third party insurance in whole or in part, the amount incorrectly billed to Medicaid will be disallowed.
Regulatory References	18 NYCRR § 360-7.2 18 NYCRR § 540.6(e)(1) and (2) 18 NYCRR § 540.6(e)(3) NYS Medicaid Program, Information for All Providers, General Policy Versions 2006-1 through 2022-2, Section I and II

25.	**Patient Excess Income ("Spenddown") Not Applied Prior to Billing Medicaid**
OMIG Audit Criteria	The spenddown amount should be applied beginning with the first service rendered in the month and each service thereafter until the spenddown is exhausted. Each sampled claim subject to spenddown application billed to Medicaid before the spenddown is met will be disallowed. Note: This finding only applies where the relevant county has assigned responsibility for the spenddown to the provider and the sampled claim must be impacted by the spenddown.
Regulatory References	18 NYCRR § 360-4.8(c)(1) 18 NYCRR § 360-4.8(c)(2)(ii)

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