

HCA MEMORANDUM OF SUPPORT



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HCA, New York State's premier home care association, represents more than 400 providers, individuals and associate members who collectively serve thousands of New Yorkers.

Home care encompasses a broad spectrum of services delivered at home to patients who are disabled, chronically ill, recovering from an illness, or have other health-related needs that can be met in the home setting.

"Helping New Yorkers Feel Right at Home"

TO: Members of the New York State Legislature

RE: A.5686-A (Assemblyman Richard Gottfried), S.3184-A (Senator Elizabeth Little): AN ACT to amend the Public Health Law and the Social Services Law, in relation to fair procedures, practices and standards for actions by the Office of Medicaid Inspector General and Social Services Districts

Date: June 20, 2011

The Home Care Association of New York State, Inc. (HCA) strongly supports reforms such as those contained in the above-referenced legislation, A.5686-A by Assemblyman Richard Gottfried and S.3184-A by Senator Elizabeth Little in relation to fair procedures, practices and standards for actions by the Office of Medicaid Inspector General (OMIG) and Social Services Districts.

Chapter 442 of the Laws of 2006 was enacted to strengthen the state's efforts in preventing and eliminating fraud and abuse in the Medicaid program and, among its provisions, established the OMIG for this purpose. Unfortunately, Chapter 442 has since been revealed to contain critical gaps and a lack of basic protections for providers in the audit procedures conducted on behalf of the state. For example, the breadth and a lack of parameters in this law have allowed for misdirection from its basic intent, whereby OMIG has focused the preponderance of its audits on recouping legitimate Medicaid payments based on technicalities and often minor documentation errors, instead of targeting fraud. Again, without parameters, OMIG then applies extrapolation methodologies to magnify these disallowances, when there is no question as to the medical necessity or quality of the care that was provided. As presently constructed, Chapter 442 affords providers little due process protection throughout the audit process, and then fails to provide a means of appropriately contesting OMIG interpretations and actions, some of which are in conflict with the policies, surveillance and enforcement practices of the jurisdictional state regulatory agencies (such as the Department of Health). The administrative burdens of this unchecked audit process on providers have also been costly and excessive in the diversion of clinical personnel.

These and many additional concerns about the nature, conduct and effects of the audits under the present statute have been raised in Legislative and Administrative venues by HCA and others throughout the health care continuum. These concerns and the practices to which they relate underscore the need for amendment to Chapter 442. This legislation addresses many of these concerns in a constructive attempt to establish a proper balance in these audit policies and practices – ensuring that the state's audit process and governing laws provide for integrity and effectiveness without undue and unintended harm to health care access and delivery in the state.

Specifically, A.5686-A/S.3184-A limits recoveries based on technical defects; requires the OMIG to provide detailed information about extrapolation formulas and methods; limits recoveries while administrative remedies are pursued; prevents the retroactive application of new

regulatory interpretations; prevents re-auditing of claims previously audited by or on behalf of OMIG; allows providers an opportunity to correct compliance program deficiencies before sanctions may be imposed; and establishes fair procedures regarding beneficiary investigations and recoveries.

HCA supports this important legislation and looks forward to working toward the enactment of these and additionally needed, critical state audit reforms.