



## MEMORANDUM IN SUPPORT

A.7448-A Schimminger, S.4218-A Stachowski

*Places due process standards on OMIG's withholding of payment to a medical assistance program provider*

This legislation amends the Public Health Law to provide critical due process standards for Medicaid providers subject to audit by the Office of the Medicaid Inspector General (OMIG).

**The Home Care Association of New York State (HCA) supports this critical public integrity legislation and urges its enactment.**

This legislation amends the auditing standards and procedures of the OMIG by prohibiting the State Department of Health from withholding Medicaid provider payments on the basis of a preliminary finding of the pending audit, unless the OMIG has made a made written finding, based on probable cause, that the provider committed fraud or other criminal conduct involving the claims subject to the audit.

The legislation further requires that, prior to the withholding of payment, the OMIG must provide the finding to the Commissioner of Health and the provider, and provide a written statement of the basis for the finding to the Commissioner.

The OMIG was established by Chapter 442 of 2006 in an effort to actively identify and sanction fraudulent actors within the Medicaid program. The law sought to establish a strong Office with sweeping authority. However, in pursuit of this goal, this sweeping legislative language failed to protect due process in many ways, posing great and inappropriate risk to providers and to patient care.

One such area of inadequate due process involves the withholding of payment from Medicaid providers. Medicaid payments, especially for providers with high concentrations of service to the poor, constitute a vital (sometimes nearly complete) proportion of the provider's revenue base. The withholding of Medicaid payments therefore carries profound implications for the stability of the provider and, consequently, the provider's ability to continue to meet operating and staffing expenses, remain accessible and deliver quality care. With so much at stake, due process is essential to both public integrity and to the public health. The withhold mechanism must therefore be employed only in the context of just cause, carefully drawn parameters and due process.

Current law regrettably lacks such parameters and protections – and ultimately lacks the appropriate checks on authority. This law must therefore be corrected, as provided for in A.7488-A/S.4218-A

By requiring probable cause, written findings and other due process provisions for the provider – and hence for its patients and patient care staff – the inadequacy of the present law would begin to be addressed.

HCA urges the Legislature and Governor to enact this critical public health and integrity measure.