



NEW YORK STATE SENATOR

Dean G. Skelos

Senate Approves Bill to Strengthen Due Process Provision of Medicaid Law

DEAN G. SKELOS June 20, 2011

The State Senate today approved legislation (S.3184), sponsored by Senator Betty Little (R-C-I, Queensbury), to ensure appropriate due process protections for providers and recipients of Medicaid who come under the scrutiny of the Office of the Medicaid Inspector General (OMIG).

The legislation adds to the law which created the OMIG in 2007, to assure fairness and procedural clarity when audits are conducted.

“I’ve heard from a lot of providers, especially small, community based ones, who have felt victimized by the aggressive actions of the OMIG,” said Senator Betty Little. “Fighting Medicaid fraud and abuse is critically important and I agree wholeheartedly with the spirit of the law enacted in 2007. However, the process of auditing and recovering funds needs to be refined to ensure that it is done fairly. A clerical error doesn’t rise to the level of willful intent to abuse or defraud Medicaid and shouldn’t be treated as such.”

Among the bill's provisions, it would: allow for recovery of payments only after notice, and not less than 60 days after final agency action; prohibit the OMIG from re-auditing something audited by another agency unless for good cause; and, protect providers from penalty if they complied with agency policies or interpretations, which may not be changed retroactively.

"The Senate Republican Majority has a strong record of cracking down on Medicaid fraud and rooting out real, intentional, fraud, waste and abuse," Senate Majority Leader Dean G. Skelos said. "This bill would ensure that those providing health and mental health services aren't unfairly penalized for simple clerical errors."

Where a recovery is claimed for a technical or administrative error, the provider would have a chance to correct the defect and resubmit the claim within 60 days of being notified. The legislation also would require the OMIG give the provider a detailed written explanation of the extrapolation method used when calculating a Medicaid overpayment.

The legislation also establishes a Medicaid recipient due process, including notice of rights, including right to counsel and a fair hearing and a notice of findings before any recovery can be made.

The act would take effect October 1, 2011. It was delivered to the Assembly where it is sponsored by Assemblyman Richard Gottfried.