NEW YORK STATE

Office of the Medicaid Inspector General

Audit Protocol
Hospice Services

For Service Dates 8/31/16 through 2/17/26 (Revised 3/24/26)

MAY 7, 2026

“Our mission is to enhance the integrity of the New York State Medicaid program by preventing and detecting fraudulent, abusive, and wasteful practices within the Medicaid program and recovering improperly expended Medicaid funds while promoting high-quality patient care.”

OFFICE OF THE MEDICAID INSPECTOR GENERAL MISSION STATEMENT

Overview of Changes: Hospice Protocols 2019 vs 2026

Finding Number Updated and Protocol Title Remained the Same

- 5→3 Initial Assessment Not Completed Within 48 Hours
- 6→8 Comprehensive Assessment Not Within 5 Calendar Days
- 10→12 Missing Documentation of Supervision Visit
- 13→19 Minimum Licensure Requirements Not Met for Hospice Personnel
- 12→25 Patient Excess Income ("Spenddown") Not Applied Prior to Billing Medicaid

Overview of Changes: 2019 vs 2026 Hospice Protocols

Finding Number Updated and Protocol Title Revised

- 4→2 ~~Informed Consent or Notice of Election Missing~~ → Missing Election Statement
- 7→9 ~~Comprehensive Assessment Not Timely Updated~~ → Comprehensive Assessment Not Updated as Required
- 8→10 ~~Plan of Care Untimely or Missing~~ → Missing Plan of Care
- 9→11 ~~Plan of Care Not Timely Updated~~ → Plan of Care Not Updated as Required
- 15→18 ~~Provider Incorrectly Billed Medicaid for Unfurnished Services After the Patient is Deceased~~ → Billed for Unfurnished Services After Patient's Death

Overview of Changes: Hospice Protocols 2019 vs 2026

Two Protocols (2019)

2. Physician Admission Certification or Recertification of Terminal Illness is Missing

Missing Initial Certification
Missing Recertification

3. Certification or Recertification of Terminal Illness Not Obtained Within Required Timeframe

Late Initial Certification
Late Recertification

Became Four (2026)

4. Missing Authorizing Practitioner Initial Certification

Missing Initial Certification

5. Initial Certification Not Obtained Within Required Timeframe

Late Initial Certification

6. Missing Authorizing Practitioner Recertification

Missing Recertification

7. Recertification Not Obtained Within Required Timeframe

Late Recertification

Overview of Changes: Hospice Protocols 2019 vs 2026

One Protocol (2019)	Became Two (2026)
11. Failed to Maximize Third Party/Medicare Benefit	23. Improper Medicaid Billings for a Medicare Eligible Patient 24. Improper Medicaid Billings for Third Party Health Insurance (TPHI) Recipients (Excluding Medicare)

New To 2026 Hospice Protocols: Public Health Emergency (PHE)

During the 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) pertaining to Hospice services will not be subject to disallowance, provided all other programmatic and billing requirements not altered or waived by the PHE guidance were met.

Agency	Guidance Title	Date Issued	Date(s) Revised
NYSDOH	DAL: DHCBS 20-08: COVID-19 Guidance for Home Health Care Agencies and Hospice Providers	03/14/20	03/22/20
CMS	COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers	03/30/20	05/24/21 10/13/22
NYSDOH	DAL: April 10, 2020	04/10/20	
NYSDOH	DAL: DHCBS 20-10: Home Care and Hospice Guidance Pertaining to In-Service, Orientation, and Supervision Requirements	10/13/20	
NYSDOH	DAL: DHCBS 21-02: In-Service Requirements for Personal Care Aides and Home Health Aides	01/21/21	
NYSDOH	DAL: DHCBS 21-11: State Regulatory Waivers Relating to Home Care and Hospice Agencies	08/23/21	
NYSDOH	Health Advisory: Nursing Home Staff and Visitation Requirements	01/12/22	
NYSDOH	DAL: DHCBS 22-03: Hospice Personnel Entry to Nursing Homes	02/18/22	
NYSDOH	DAL: DHCBS 22-06: Hospice Residences and Inpatient Bed Use	04/07/22	
NYSDOH	DAL: DHCBS 22-13: COVID-19 Screening of Home Care and Hospice Personnel	08/02/22	
NYSDOH	DAL: DHCBS 22-15: Notification of Hospice Non-Covered Items, Services, and Drugs	11/10/22	
NYSDOH	COVID-19 Home Care and Hospice Infection Prevention and Control FAQ	08/28/23	
NYSDOH	DAL: DHCBS 23-04: Telehealth in Adult Day Health Care, Home Health Care, Hospice, and Adult Care Facilities	10/02/23	
NYSDOH	DAL: DHCBS 24-03: Updated Telehealth in Home Health Care and Hospice	09/12/24	

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.

New To 2026 Hospice Protocols

13 Aide Not Present at Nursing Supervision Visit

14 Failure to Provide Form DOH-5778
"Entity / Facility Notification of Hospice Non-Covered Items, Services, and Drugs"

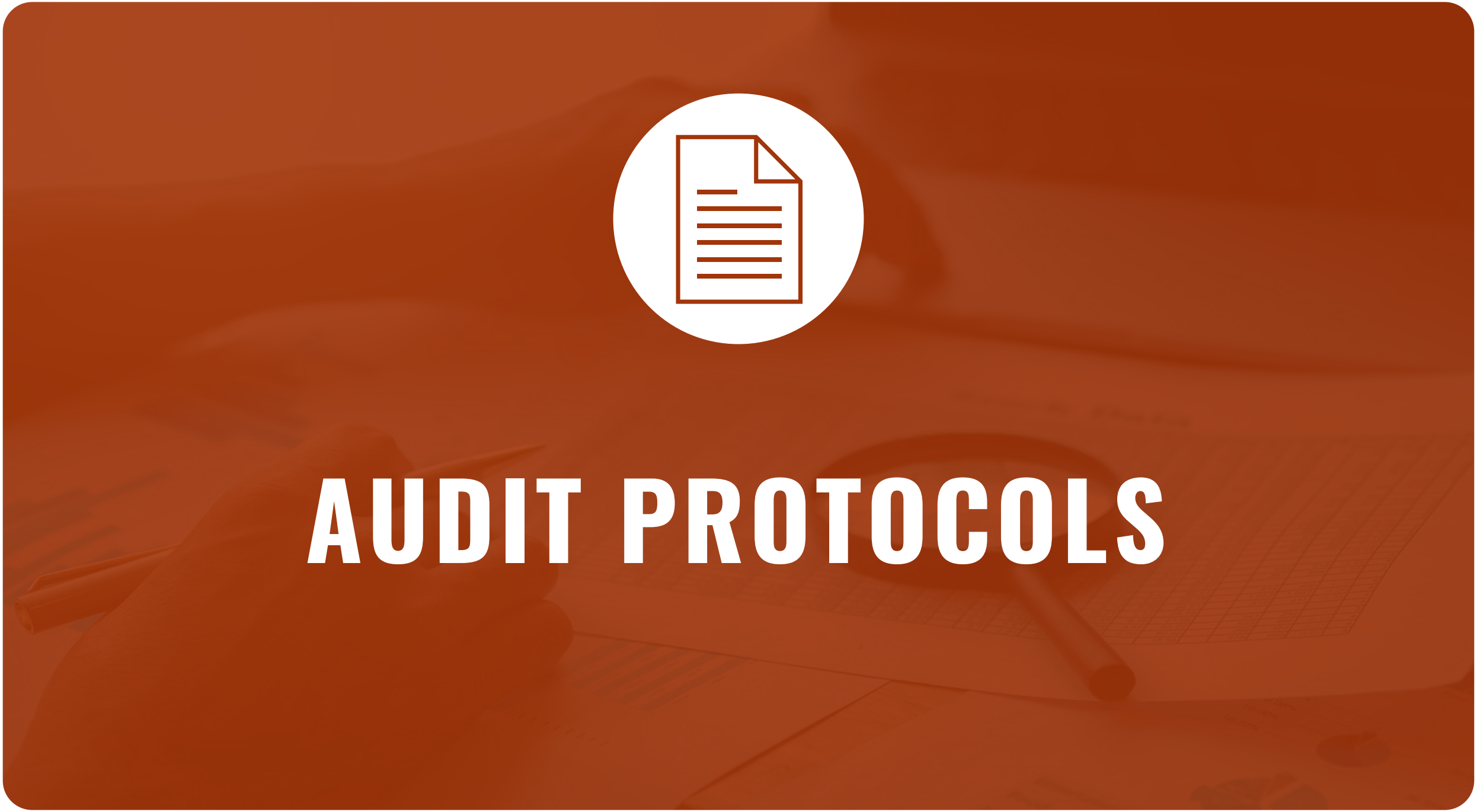
15 Billed for Hospice Non-Covered Items, Services, or Drugs That Are Not Included on Form DOH-5778

16 Incorrect Rate Code Billed

17 Billed Service Included in Hospice All-Inclusive Rate

New To 2026 Hospice Protocols: Personnel Findings (Not Hospice Specific)

20	Services Provided by Unqualified Individual
21	Services Ordered / Prescribed / Referred / Attended by Individual Not Enrolled in NYS Medicaid
22	Services Ordered / Prescribed / Referred / Attended by Excluded Individual


AUDIT PROTOCOLS

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)

NEW YORK STATE | Office of the Medicaid Inspector General

2. MISSING ELECTION STATEMENT

OMIG Audit Criteria	If the Election Statement Form (otherwise known as Notice of Election Form, Benefit Election Form, or Hospice Election Form) 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)

NEW YORK STATE | Office of the Medicaid Inspector General

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)

NEW YORK STATE | Office of the Medicaid Inspector General

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)

NEW YORK STATE | Office of the Medicaid Inspector General

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

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)

NEW YORK STATE | Office of the Medicaid Inspector General

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)

NEW YORK STATE | Office of the Medicaid Inspector General

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)

NEW YORK STATE | Office of the Medicaid Inspector General

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)

NEW YORK STATE | Office of the Medicaid Inspector General

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	Form DOH-5778 must be completed by the hospice provider and shared with other medical providers and/or facilities who provide services to the patient. If the provider failed to distribute form DOH-5778 to other medical providers, facilities, and managed care organizations also servicing the patient, all hospice claims relating to non covered items, services, and drugs will be disallowed.
Regulatory References	**For Services 02/10/26 and After:** NYS DOH DAL: DHCBS 26-03 **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 **For Services 10/20/23 and After:** NYS DOH Medicaid Update, September 2023, Vol. 39, No. 14 **For Services 06/15/23 and After:** OHIP Managed Long Term Care Policy 23.02: Coordination of Hospice Services

15. BILLED FOR HOSPICE NON-COVERED ITEMS, SERVICES, OR DRUGS THAT ARE NOT INCLUDED ON FORM DOH-5778

OMIG Audit Criteria	If another provider bills for items, services, or drugs not identified on form DOH-5778 as acceptable, the amount billed will be disallowed.
Regulatory References	**For Services 02/10/26 and After:** NYS DOH DAL: DHCBS 26-03 **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 **For Services 10/20/23 and After:** NYS DOH Medicaid Update, September 2023, Vol. 39, No. 14 **For Services 06/15/23 and After:** OHIP Managed Long Term Care Policy 23.02: Coordination of Hospice Services

16. INCORRECT RATE CODE BILLED

OMIG Audit Criteria	If the rate code billed is not the correct rate code for the services provided, the difference between the appropriate claim amount and the paid claim amount will be disallowed.
Regulatory References	10 NYCRR § 86-6.1(h) 10 NYCRR § 86-6.2(a) and (c) 10 NYCRR § 794.5(b) 10 NYCRR § 794.5(c) 18 NYCRR § 504.3(e), (h), and (i) NYS Medicaid General Billing Guidelines, Institutional, Version 2015-01, Section 2.4.2 NYS Medicaid Program, Hospice Program, Policy Guidelines Versions 2008-1 through 2024-1, Section I

17. BILLED SERVICE INCLUDED IN HOSPICE ALL-INCLUSIVE RATE

OMIG Audit Criteria	Any non-Hospice claim that is billed for services that are included in the Hospice All Inclusive rate, as identified on Form DOH-5778 as related to the terminal illness, will be considered duplicative. Duplicative services are not permitted. Hospice claims submitted for services received concurrently with Private Duty Nursing (PDN), Long-Term Home Health Care (LTHHC), Certified Home Health Agency (CHHA), or Adult Day Health Care (ADHC) services will be disallowed.
Regulatory References	18 NYCRR § 504.3(e), (h), and (i) 18 NYCRR § 518.1(c) 18 NYCRR § 518.3(b) NYS Medicaid Program, Hospice Program, Policy Guidelines, Versions 2008-1 through 2024-1, Section I NYS Medicaid Program, Information for All Providers, General Policy, Versions 2008-1 through 2022-2, Sections II and VI NYS DOH Medicaid Update, May 2007, Vol. 23, No. 5 **For Services 06/15/23 and After:** OHIP Managed Long Term Care Policy 23.02: Coordination of Hospice Services **For Services 10/20/23 and After:** NYS DOH Medicaid Update, September 2023, Vol. 39, No. 14 **For Services 11/10/22 and After:** NYS DOH DAL: DHCBS 22-15

18. BILLED FOR UNFURNISHED SERVICES AFTER THE PATIENT'S DEATH

OMIG Audit Criteria	Any claim for services furnished 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)

NEW YORK STATE | Office of the Medicaid Inspector General

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)

NEW YORK STATE | Office of the Medicaid Inspector General

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)

NEW YORK STATE | Office of the Medicaid Inspector General

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	2 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, 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 when the services were ordered, prescribed, referred, or attended 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	Claims billed for Medicare enrollees that do not maximize the Medicare benefit will be disallowed. The amount disallowed will be the difference between the paid claim amount and the appropriate amount had the correct Medicare payment been applied.
Regulatory References	18 NYCRR § 360-7.2 18 NYCRR § 540.6(e)(1) and (2) 18 NYCRR § 540.6(e)(3) New York State UB04 Billing Guidelines, Hospice, Version 2011-01, Section 2.3 NYS Medicaid Program, Information for All Providers, General Policy Versions 2006-1 through 2022-2, Sections I and II

NEW YORK STATE | Office of the Medicaid Inspector General

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 claim 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) New York State UB04 Billing Guidelines, Hospice, Version 2011-01, Section 2.3 NYS Medicaid Program, Information for All Providers, General Policy Versions 2006-1 through 2022-2, Sections 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)

AGENCY CONTACT & RESOURCE INFORMATION

- OMIG main office phone: 518-473-3782
- Website: www.omig.ny.gov
- Bureau of Medicaid Fraud Allegations: Medicaid Fraud Hotline: 877-873-7283; email: bmfa@omig.ny.gov
- Division of Medicaid Audit email: audit@omig.ny.gov
- Bureau of Compliance email: compliance@omig.ny.gov; phone: (518) 408-0401
- Self-Disclosure Unit email: selfdisclosures@omig.ny.gov; phone: (518) 402-7030
- Join our listserv
- Follow us on Twitter: @NYSOMIG
- Like us on Facebook
- Dedicated e-mail: information@omig.ny.gov

NEW YORK STATE | Office of the Medicaid Inspector General

NEW YORK STATE

Office of the Medicaid Inspector General