NEW YORK STATE OF OPPORTUNITY. | Office of the Medicaid Inspector General

# OMIG AUDIT PROTOCOL
# DMEPOS
# Revised 06/17/2020

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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.

| 1. | **No Fiscal Order** |
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| **OMIG Audit Criteria** | If the original, signed fiscal order supporting the claim is missing, the paid claim is disallowed.<br><br>Written fiscal orders, electronically transmitted fiscal orders (practitioner's computer to DME provider's computer or fax), and faxed DMEPOS orders on an Official NYS Serialized Prescription forms are all considered original fiscal orders.<br><br>A fiscal order is not required for repairs, replacement parts, components and labor under the following conditions: the equipment was sold by the provider and the original order is on file; the equipment is less than 5 years old and the cost of repair is less than 50% of replacement cost of the equipment. |
| **Regulatory References** | 18 NYCRR § 505.5(b)(1)<br>18 NYCRR § 505.5(c)(2)<br>NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Versions 2013-1 through 2019-1, Sections I through III |

| 2. | **Missing Documentation Confirming Receipt/Delivery of Billed Service** |
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| **OMIG Audit Criteria** | The provider must prepare and maintain contemporaneous records demonstrating its right to receive payment under the medical assistance program. The records must be kept for a period of six years. If the service cannot be documented, the paid claim is disallowed. |
| **Regulatory References** | 18 NYCRR § 504.3(a)<br>18 NYCRR § 517.3(b)(2)<br>18 NYCRR § 540.7(a)(8)<br>NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Version 2013-1, Section I<br>NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Versions 2016-1 and 2019-1, Section II |

| **3.** | **Billed in Excess of the Maximum Payment Allowance** |
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| **OMIG Audit Criteria** | If the paid claim exceeds the maximum payment allowance for the item, the amount exceeding the maximum is disallowed. This includes claims for durable medical equipment, medical/surgical supplies, orthotic and prosthetic appliances and devices, orthopedic footwear, oxygen, hearing aid batteries, and enteral therapy. |
| **Regulatory References** | **When payment is for durable medical equipment:**<br>18 NYCRR § 505.5(d)(2)(i), (ii), and (iv)<br>**When payment is for medical/surgical supplies:**<br>18 NYCRR § 505.5(d)(3)(i)<br>**When payment is for orthotic and prosthetic appliances and devices:**<br>18 NYCRR § 505.5(d)(4)(i) and (ii)<br>**When payment is for orthopedic footwear:**<br>18 NYCRR § 505.5(d)(5)(i)<br>**When payment is for oxygen:**<br>18 NYCRR § 505.5(d)(6)<br>**When payment is for hearing aid batteries:**<br>18 NYCRR § 505.5(d)(7)<br>**When payment is for enteral therapy:**<br>18 NYCRR § 505.5(d)(8)<br>**When payment is for unlisted items:**<br>18 NYCRR § 505.5(d)(1)(vi) |

| 4. | Billed in Excess of Quantity Ordered and/or Medicaid Limits |
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| **OMIG Audit Criteria** | If the paid claim is for a quantity exceeding what was ordered and/or the Medicaid quantity/service limit, the difference between the claimed quantity and the ordered quantity and/or the quantity/service limit is disallowed. Exception is made for an excess quantity allowed by prior approval/authorization.<br><br>For medical/surgical supplies listed in Section 4.1 of the Procedure Manual, the quantities listed are the maximum allowed per 30 days, unless otherwise specified. If the fiscal order exceeds this amount, the provider must obtain prior approval.<br><br>DMEPOS have limits on the frequency that items can be dispensed. If a beneficiary exceeds the limit on an item, prior approval must be requested with accompanying medical documentation as to why the limit needs to be exceeded. |
| **Regulatory References** | 18 NYCRR § 505.5(b)(3)<br>18 NYCRR § 505.5(e)(1)<br>NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Versions 2013-1 through 2019-1, Section III<br>NYS Medicaid Program Durable Medical Equipment, Orthotics, Prosthetics, and Supplies, Procedure Codes and Coverage Guidelines,<br>Versions 2013-1 through 2019-1, Section 4.0 |

| 5. | Item Billed Does Not Match Ordered Item |
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| **OMIG Audit Criteria** | If the paid claim is for a different item than ordered, the paid claim is disallowed.<br>If the paid claim is for the wrong <u>size</u> of the ordered item, the difference in cost between the size paid and size ordered is disallowed. |
| **Regulatory References** | 18 NYCRR § 505.5(b)(3)<br>NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Versions 2013-1 through 2019-1, Section III |

| 6. | Ordering Practitioner's Signature Missing on Fiscal Order |
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| **OMIG Audit Criteria** | If the original signature of the ordering practitioner is missing on a fiscal order, the paid claim is disallowed. |
| **Regulatory References** | 18 NYCRR § 505.5(a)(6)<br>18 NYCRR § 505.5(a)(8)<br>18 NYCRR § 505.5(b)(3)<br>NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Versions 2013-1 through 2019-1, Section III |

| **7.** | **Missing Information on Fiscal Order** |
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| **OMIG Audit Criteria** | Paid claim is disallowed if the fiscal order is missing any of the following information:<br>• Patient name<br>• Item name<br>• Item size (if applicable)<br>• Quantity<br>• Length of Need |
| **Regulatory References** | 18 NYCRR § 505.5(b)(2)<br>18 NYCRR § 505.5(b)(3)<br>NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Versions 2013-1 through 2019-1, Section III |

| **8.** | **Refilled in Excess of the Number of Refills Indicated on the Fiscal Order** |
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| **OMIG Audit Criteria** | Any paid claim which exceeds the ordered number of refills is disallowed.<br>• Refills must be appropriately referenced to the original order by the DMEPOS provider.<br>• An order for medical/surgical supplies will not be refilled unless the beneficiary (or representative) has requested the refill. Automatic refilling for medical/surgical supplies is an unacceptable practice.<br><br>Generally, DME providers continue to dispense/rent items pending a renewal order so as not to impact patient continuity of care or needs. If there is documentation in the provider's files supporting practitioner contact specific to the necessary renewal order then the auditors must assess, on a case by case basis, whether a time frame exception is warranted. |
| **Regulatory References** | 18 NYCRR § 505.5(b)(3)<br>18 NYCRR § 505.5(b)(4)(i)<br>NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Versions 2013-1 through 2019-1, Section III |

| **9.** | **Original Order Filled Beyond Allowed Timeframe** |
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| **OMIG Audit Criteria** | Paid claim is disallowed if the original fiscal order for medical surgical supplies is filled more than 60 days after it has been initiated by the ordering practitioner, unless prior approval is required.<br><br>If an item is not dispensed within the timeframe listed on its prior approval the paid claim is disallowed. |
| **Regulatory References** | 18 NYCRR § 505.5(b)(4)<br>NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Versions 2013-1 through 2019-1, Section III |

| 10. | Order Refilled More Than 180 Days from the Original Date Ordered |
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| **OMIG Audit Criteria** | Paid claim is disallowed if a fiscal order is refilled more than 180 days from the original date ordered.<br><br>Exception is oxygen therapy (see Protocol #11) |
| **Regulatory References** | 18 NYCRR § 505.5(b)(4)(iii)<br>NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Versions 2013-1 through 2019-1, Section III |

| 11. | Oxygen Therapy Refilled More Than 365 Days from the Original Date Ordered |
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| **OMIG Audit Criteria** | Paid claim for oxygen therapy or related supply is disallowed if the fiscal order is refilled more than 365 days from the original date ordered.<br><br>Oxygen therapy must be re-ordered once every 365 days or more frequently if the patient's need for oxygen changes, as well as all medical documentation to substantiate coverage criteria.<br><br>Exception is claim paid by Medicare as primary insurance and Medicaid as payer of last resort. Medicare has no time limits on oxygen therapy orders. |
| **Regulatory References** | NYS Medicaid Program Durable Medical Equipment, Orthotics, Prosthetics, and Supplies, Procedure Codes and Coverage Guidelines,<br>Versions 2013-1through 2019-1, Section 4.4 |

| 12. | Billing of Item/Service Prior to Delivery |
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| **OMIG Audit Criteria** | A disallowance is taken if an item/service (including refills) is billed prior to being furnished. |
| **Regulatory References** | NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Versions 2013-1 through 2019-1, Section III |

| 13. | No Explanation of Benefits (EOB) Documentation for Medicare/Other Insurance Covered Items |
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| **OMIG Audit Criteria** | If the recipient is Medicare/other insurance eligible and there is no EOB documentation for an item covered by Medicare/other insurance, the paid claim is disallowed.<br><br>EOB documentation substantiates that Medicaid paid the correct amount as payor of last resort. |
| **Regulatory References** | 18 NYCRR § 540.6(e) |

| 14. | **Other Insurance Payments Not Applied** |
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| **OMIG Audit Criteria** | If the amount paid by third party insurance **including Medicare** (as indicated on the EOB) is not applied to the claim, the difference between the paid claim amount and the appropriate claim amount had the insurance payment been applied, is disallowed. |
| **Regulatory References** | 18 NYCRR § 360-7.2<br>18 NYCRR § 505.5(d)(1)(v)<br>NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Versions 2013-1 through 2019-1, Section III |

| 15. | **Billed Item Included in the Facility's Rate** |
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| **OMIG Audit Criteria** | If the billed item is included in the facility's Medicaid rate, the FFS paid claim is disallowed.<br><br>It is the dispensing provider's responsibility to verify with the facility of the recipient, whether the item is included in the facility's Medicaid rate. The provider should have written documentation on file that they were informed by the facility that the item(s) is not included in the facility's rate. |
| **Regulatory References** | 18 NYCRR § 505.35(h)(1)<br>18 NYCRR § 505.5(d)(1)(iii)<br>NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Versions 2013-1 through 2019-1, Section III |

| 16. | **Rental Amount Exceeds Purchase Price of DME Item** |
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| **OMIG Audit Criteria** | The total accumulated monthly rental charges may not exceed the actual purchase price of a DME item. If the paid claim results in the accumulated rental charges for durable medical equipment exceeding the purchase price of the item, the excess amount is disallowed.<br><br>Rental payment includes all necessary equipment, delivery, maintenance and repair costs, parts, supplies and services for equipment set-up, maintenance of worn essential accessories or parts.<br><br>This finding does not apply to oxygen rentals. |
| **Regulatory References** | 18 NYCRR § 505.5(d)(2)(iv)<br>NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Versions 2013-1 through 2019-1, Section III<br>NYS Medicaid Program Durable Medical Equipment, Orthotics, Prosthetics, and Supplies, Procedure Codes and Coverage Guidelines,<br>Versions 2013-1 through 2019-1, Section 4.0 |

| 17. | **Duplicate Payment** |
|---|---|
| **OMIG Audit Criteria** | If the paid claim is a duplicate payment it is disallowed. |
| **Regulatory References** | 18 NYCRR § 518.1(c)<br>NYS Medicaid Program Durable Medical Equipment Manual, Policy Guidelines, Version 2013-1, Section I<br>NYS Medicaid Program Durable Medical Equipment Manual, Policy Guidelines, Versions 2016-1 and 2019-1, Section II |

| 18. | **Unqualified Dispenser** |
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| **OMIG Audit Criteria** | If the item related to the paid claim was dispensed by an unqualified dispenser, the claim is disallowed.<br><br>Medical/surgical supplies, durable medical equipment, orthopedic footwear, prosthetic and orthotic appliances and devices must be dispensed by a provider who is licensed/registered by the appropriate authority, if existing, in the state in which the provider is located.<br><br>Orthopedic footwear must be dispensed by an employee who has certification from one of the following:<br>• The American Board for Certification on Orthotics, Prosthetics, and Pedorthics, Inc.<br>• The Board for Certification/Accreditation, International |
| **Regulatory References** | 18 NYCRR § 505.5(b)(1)(ii)<br>18 NYCRR § 505.5(d)(5)(ii)<br>NYS Medicaid Program Durable Medical Equipment Manual, Policy Guidelines, Version 2013-1, Section I<br>NYS Medicaid Program Durable Medical Equipment Manual, Policy Guidelines, Versions 2016-1 and 2019-1, Section II<br>NYS Medicaid Program Durable Medical Equipment Manual, Policy Guidelines, Versions 2013-1 through 2019-1, Section III |

| 19. | **Billed Service Date After Patient's Death** |
|---|---|
| **OMIG Audit Criteria** | If the paid claim was for a date of service after the patient's death it is disallowed.<br><br>Exception is made when work was initiated on custom equipment before a change in eligibility (including death). In this situation the claim is payable and the order date should be reported as the date of service. |
| **Regulatory References** | 18 NYCRR § 504.3(e)<br>NYS Medicaid Program Durable Medical Equipment Manual, Policy Guidelines, Versions 2013-1 through 2019-1, Section III |

| 20. | Ordering Practitioner Conflicts with Claim Practitioner |
|---|---|
| **OMIG Audit Criteria** | A claim identifies the ordering practitioner by the NPI number in the ordering provider ID field. A disallowance is taken when:<br>• The NPI used on the claim identifies a different ordering practitioner than the ordering practitioner on the fiscal order.<br>• The ordering practitioner name contained on a telephone order conflicts with the ordering practitioner identified on the claim.<br><br>If it is demonstrated through documentation that the ordering practitioner was working under the supervision of the claimed practitioner for a specified purpose, a disallowance will not be taken.<br><br>When the claim is for a restricted recipient, the ordering practitioner's and/or the referring provider's NPI number will be accepted by OMIG on the claim. |
| **Regulatory References** | 18 NYCRR § 504.3(f) and (h)<br>18 NYCRR § 505.5(c)(1)<br>NYS 150003 Billing Guidelines, Durable Medical Equipment, Medical Supplies, Orthopedic Footwear, Orthotic and Prosthetic Appliance, Version 2011-01, Section 2.3.1 |

| 21. | Unqualified Ordering Practitioner |
|---|---|
| **OMIG Audit Criteria** | Paid claim is disallowed if the ordering practitioner is excluded from the Medicaid program.<br><br>Practitioner means:<br>• Physician<br>• Dentist<br>• Podiatrist<br>• Physician Assistant<br>• Nurse Practitioner<br>• Midwife<br>• Optometrist |
| **Regulatory References** | 18 NYCRR § 505.5(b)(1)(ii)<br>18 NYCRR § 505.5(a)(6)<br>NYS Medicaid Program Durable Medical Equipment Manual, Policy Guidelines, Version 2013-1, Section II<br>NYS Medicaid Program Durable Medical Equipment Manual, Policy Guidelines, Versions 2016-1 and 2019-1, Section I |

| 22. | Original Signed Follow Up Order Not Received Within 30 Calendar Days |
|---|---|
| **OMIG Audit Criteria** | If an original signed fiscal order to follow up a telephoned or faxed order for DMEPOS is not received within 30 calendar days, the paid claim is disallowed.<br><br>A faxed Official NYS Serialized Prescription Form written for DMEPOS is considered an original order.<br><br>An electronically transmitted fiscal order for DMEPOS is considered an original fiscal order when the order originates from the practitioner's computer and is directly transmitted to the DME provider's computer or fax. |
| **Regulatory References** | NYS Medicaid Program Durable Medical Equipment Manual,<br>Policy Guidelines, Versions 2013-1 through 2019-1, Section I |

| 23. | Paid Service Did Not Meet Defined Benefit Limitations |
|---|---|
| **OMIG Audit Criteria** | Paid claim is disallowed if it did not meet the defined benefit limits for Medicaid coverage. |
| **Regulatory References** | **For Service prior to February 27, 2019:** 18 NYCRR § 505.5(g)(3)<br>**For Services after February 27, 2019:** 18 NYCRR § 505.5(g)<br>NYS Medicaid Program Durable Medical Equipment, Orthotics, Prosthetics, and Supplies, Procedure Codes and Coverage Guidelines,<br>Versions 2013-1 through 2019-1, Section 4.4 |