NEW YORK STATE | Office of the Medicaid Inspector General

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OMIG AUDIT PROTOCOL
INDEPENDENT PROVIDER FOR PRIVATE DUTY NURSING

REVISED 6/3/2016

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.

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1.	**Missing or Insufficient Documentation of Hours Billed**
OMIG Audit Criteria	If there is no chart, or the nurse failed to document the hours of service billed, that portion of the paid claim that was not documented will be disallowed.
Regulatory References	18 NYCRR Section 504.3(a) 18 NYCRR Section 504.3(h) 18 NYCRR Section 540.7(a)(8) 18 NYCRR Section 517.3(b)(1) New York State Medicaid Program, Private Duty Nursing Manual, Policy Guidelines, Version 2012-1, Section I

2.	**Missing Medical Order**
OMIG Audit Criteria	If there is no medical order in the record for the relevant date of service, the paid claim will be disallowed.
Regulatory References	18 NYCRR Section 540.1 18 NYCRR Section 505.8(f) 10 NYCRR Section 85.33(f) New York State Medicaid Program, Private Duty Nursing Manual, Policy Guidelines, Version 2012-1, Section I

3.	**Medical Orders Not Signed by an Authorized Practitioner**
OMIG Audit Criteria	If the practitioner was not authorized to sign the medical orders, the paid claim will be disallowed.
Regulatory References	18 NYCRR Section 540.1 10 NYCRR Section 85.33(f) New York State Medicaid Program, Private Duty Nursing Manual, Policy Guidelines, Version 2012-1, Section I

4.	**Billed For Services In Excess of Ordered Hours**
OMIG Audit Criteria	If the nurse billed more hours than medical orders authorized, the paid claim for the hours exceeding the order will be disallowed.
Regulatory References	18 NYCRR Section 540.1 10 NYCRR Section 85.33(f) 18 NYCRR Section 518.1(c) 18 NYCRR Section 518.3(a)&(b)

5.	**Nurse Providing Service Was Not Licensed**
OMIG Audit Criteria	If the nurse(s) providing service on the date of service was/were not licensed to practice nursing in the State of New York, the paid claim will be disallowed.
Regulatory References	10 NYCRR Section 85.33(b)(1) 18 NYCRR Section 505.8(b)(1) 42 CFR Section 440.80(a) 18 NYCRR Section 504.1(c) New York State Medicaid Program, Private Duty Nursing Manual, Policy Guidelines, Version 2012-1, Section I

6.	**Billed For Services Performed by Another Provider/Entity**
OMIG Audit Criteria	If the services billed by the nurse are duplicative, i.e., already paid for by Medicaid or by another entity, the paid claim will be disallowed. Specific case circumstance will be evaluated through review of the record. **Note:** Guidance will be sought from the appropriate program division as needed. Relevant program regulations will be cited as appropriate.
Regulatory References	18 NYCRR Section 505.23(a)(1)(i)

7.	**Failed to Maximize Third Party Benefit**
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 sample service was covered or reimbursed by third party insurance in whole or in part, the amount Medicaid incorrectly paid will be disallowed.
Regulatory References	18 NYCRR Section 540.6(e)(1)&(2) 18 NYCRR Section 360-7.2 NYS Medicaid Program, Information for all Providers Manual-General Policy, Versions 2011-1 & 2, Section I