



# **OMIG AUDIT PROTOCOL CONSUMER DIRECTED PERSONAL ASSISTANCE PROGRAM (CDPAP)**

**Revised 12/09/2020**

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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.

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<b>1.</b>	<b>Missing Documentation of Service</b>
<b>OMIG Audit Criteria</b>	If the recipient's record does not include time sheets or time records to document that a service was provided, the claim will be disallowed.
<b>Regulatory References</b>	18 NYCRR § 505.28(i)(1)(vi) 18 NYCRR § 505.28(j)(3) 18 NYCRR § 504.3(a) 18 NYCRR § 540.7(a)(8) 18 NYCRR § 517.3(b)(1)
<b>2.</b>	<b>Missing Recipient Record</b>
<b>OMIG Audit Criteria</b>	If the recipient record is not available for review, the claims for the sampled dates of service associated with the recipient record will be disallowed.
<b>Regulatory References</b>	18 NYCRR § 505.28(i)(1)(iv) 18 NYCRR § 504.3(a) 18 NYCRR § 540.7(a)(8) 18 NYCRR § 517.3(b)(1)
<b>3.</b>	<b>Billed More Units than Documented or Authorized</b>
<b>OMIG Audit Criteria</b>	If the recipient record does not support the total units billed, the difference between units billed and the documented or authorized units will be disallowed.
<b>Regulatory References</b>	18 NYCRR § 505.28(j)(3) NYS Medicaid Program Consumer Directed Personal Assistance Program Provider Manual, Policy Guidelines, Version 2011-1, Section III 18 NYCRR § 504.3(e) 18 NYCRR § 504.3(h)
<b>4.</b>	<b>Missing Authorization or Reauthorization</b>
<b>OMIG Audit Criteria</b>	If the recipient's record does not include authorization or reauthorization for the service, the claim will be disallowed.
<b>Regulatory References</b>	18 NYCRR § 505.28(i)(1)(iv) NYS Medicaid Program Consumer Directed Personal Assistance Program Provider Manual, Policy Guidelines, Version 2011-1, Section II

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<b>5.</b>	<b>Services Performed by a Precluded Individual</b>
<b>OMIG Audit Criteria</b>	<p><b>For Services Prior to 4/1/2016:</b>  If payment was made for services performed by the recipient's spouse, parent, or designated representative, the claim will be disallowed.</p> <p><b>For Services 4/1/2016 and After:</b>  If payment was made for services performed by the recipient's spouse, parent of the recipient that is under the age of 21, or designated representative, the claim will be disallowed.</p>
<b>Regulatory References</b>	<p><b>For Services Prior to 4/1/2016:</b>  18 NYCRR § 505.28(b)(3)  NYS Medicaid Program Consumer Directed Personal Assistance Program  Provider Manual, Policy Guidelines, Version 2011-1, Section III</p> <p><b>For Services 4/1/2016 and After:</b>  NY Social Services Law § 365-f(3)  NYS DOH Medicaid Update, March 2016, Vol. 32, No. 3</p>
<b>6.</b>	<b>Failure to Complete Required Health Assessment</b>
<b>OMIG Audit Criteria</b>	If the personnel record does not include documentation of an annual health assessment for the personal assistant, the claim will be disallowed.
<b>Regulatory References</b>	18 NYCRR § 505.28(i)(1)(ii) and (iii) 10 NYCRR § 766.11(c) 10 NYCRR § 766.11(d)(5)
<b>7.</b>	<b>Missing Certificate of Immunization</b>
<b>OMIG Audit Criteria</b>	If the personnel record does not include documentation of the required certification of immunizations, the claim will be disallowed.
<b>Regulatory References</b>	18 NYCRR § 505.28(i)(1)(ii) and (iii) 10 NYCRR § 766.11(d)
<b>8.</b>	<b>Missing Documentation of a PPD (Mantoux) Skin Test or Follow-Up</b>
<b>OMIG Audit Criteria</b>	<p>If the personnel record does not include documentation that the personal assistant received a complete PPD skin test within the required time frame, the claim will be disallowed.</p> <p>NOTE: This will include FDA approved blood assay or documentation of appropriate follow-up for positive test results.</p>
<b>Regulatory References</b>	18 NYCRR § 505.28(i)(1)(ii) and (iii) 10 NYCRR § 766.11(d)
<b>9.</b>	<b>Missing Personnel Record(s)</b>
<b>OMIG Audit Criteria</b>	If the personnel record for the personal assistant providing sampled services is missing, the claim will be disallowed.
<b>Regulatory</b>	18 NYCRR § 505.28(i)(1)(iii)

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<b>References</b>	
<b>10.</b>	<b>Failure to Process Consumer Directed Personal Assistant's Wages and Benefits</b>
<b>OMIG Audit Criteria</b>	If the fiscal intermediary did not process the consumer directed personal assistant's income tax and other required wage withholdings or comply with worker's compensation, disability and unemployment insurance requirements the claim will be disallowed.
<b>Regulatory References</b>	18 NYCRR § 505.28(i)(1)(i)

<b>11.</b>	<b>Continuous Service Provided by One Personal Assistant</b>
<b>OMIG Audit Criteria</b>	<p><b>For Services Prior to 3/6/2015:</b> Claims for continuous CDPAP service exceeding 16 hours by one personal assistant in a day will be disallowed.</p> <p><b>For Services 3/6/2015 and After:</b> Claims for continuous CDPAP service exceeding 16 hours by one personal assistant in a calendar day will be disallowed.</p> <p>This finding will be used for egregious situations, where there is a clear pattern of continuous and substantial excessive hours without any justification. This finding will not be taken for the occasional "one off" where an individual worked over 16 hours one time or under extenuating circumstances, such as weather-related emergencies.</p>
<b>Regulatory References</b>	18 NYCRR § 505.28(b)(4) 18 NYCRR § 505.28(i)(1)(vi)

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