

cc: Ms. Daniels Rivera by Scan
Ms. Mailloux by Scan
Ms. Champion by Scan
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SAPA File



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

October 9, 2026

CERTIFIED MAIL/RETURN RECEIPT

Daniel Weisbard, Esq.
NYS OMIG
800 North Pearl Street
Albany, New York 12204

Jeffrey Rose, Senior Vice President
Health System Services LTD
6867 Williams Road
Niagara Falls, New York 14304

RE: In the Matter of Health System Services LTD

Dear Parties:

Enclosed please find the Decision After Hearing in the above referenced matter.

If the appellant did not win this hearing, the appellant may appeal to the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If the appellant wishes to appeal this decision, the appellant may wish to seek advice from the legal resources available (e.g. the appellant's attorney, the County Bar Association, Legal Aid, OEO groups, etc.). Such an appeal must be commenced within four (4) months after the determination to be reviewed becomes final and binding.

Sincerely,

A handwritten signature in black ink that reads "Tina M. Champion". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tina M. Champion
Interim Chief Administrative Law Judge
Bureau of Adjudication

TMC:nm
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

COPY

In the Matter of the Appeal of

Health System Services LTD

Medicaid Provider #02995384

from a determination to recover Medicaid
Program overpayments.

**DECISION
AFTER
HEARING**

Audit No. 24-6722

Before: Jeanne T. Arnold
Administrative Law Judge

Hearing date: January 27, 2026
By WebEx Videoconference
Record closed February 27, 2026

Parties: NYS Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204
By: Daniel Weisbard, Esq.

Health Systems Services LTD
6867 Williams Road
Niagara Falls, New York 14304
By: Jeffrey Rose, Senior Vice President

JURISDICTION

The New York State Department of Health (Department) is the single state agency for the administration of the Medical Assistance (Medicaid) program in New York State. 42 USC § 1396a; Public Health Law (PHL) § 201(1)(v); Social Services Law (SSL) § 363-a. The New York State Office of the Medicaid Inspector General (OMIG), an independent office within the Department, is authorized to investigate and pursue civil and administrative enforcement actions to recover improperly expended Medicaid funds. PHL §§ 31-32.

The OMIG determined to recover Medicaid program overpayments from Health System

Services LTD (Appellant) for the Health Care and Mental Hygiene Worker Bonus (HWB) claims paid during the period October 1, 2021 through March 31, 2024. The Appellant requested this hearing pursuant to SSL § 145-a and former Department of Social Services regulations at 18 NYCRR 519.4 to review the overpayment determination.

HEARING RECORD

OMIG Witness: Matthew Epstein, Audit Supervisor

OMIG Exhibits: 1 - 23

Appellant Witnesses: Carol Ann Seiwel
Richard Minicucci

Appellant Exhibits: A-D

A transcript of the hearing was made. (T pages 1-127.) The record closed on February 27, 2026 when the parties submitted post-hearing written closings and briefs.

STATEMENT OF FACTS

1. The Appellant is a limited corporation, enrolled as a provider in the Medicaid program, that provides durable medical equipment (DME) and is located in Niagara Falls, New York.

2. The Appellant is an “employer” under the HWB program and was required to pay worker bonuses to employees pursuant to a vesting schedule issued by the Department. SSL § 367-w (2)(b), (4). The HWB program was implemented to attract talented people into professions of “essential front line health care” workers and to reward such workers because they “[saw] us through” the COVID-19 public health crisis. SSL § 367-w(1).

3. The Appellant was responsible for determining whether its employees were eligible for HWB program bonuses and for maintaining all records, data and information it relied on in deciding whether employees were eligible. SSL § 367-w(3)(c).

4. The Appellant paid bonuses to employees it believed qualified for the HWB program bonus, sought reimbursement, and was reimbursed for some of the bonuses by the Medicaid program.

5. In October 2024, the OMIG commenced an audit of 67 HWB program claims, totaling \$90,500, paid to the Appellant from October 1, 2021 through March 31, 2024. (Exhibits 1, 3.)

6. On May 28, 2025, the OMIG issued a draft audit report (DAR) which identified four categories of error in the claims paid to the Appellant: 1) bonuses incorrectly paid to ineligible employees; 2) incorrect amounts of worker bonuses paid to employees; 3) failure to maintain tracking records; and 4) failure to distribute the bonuses by the due date. The OMIG sought to recover a Medicaid overpayment of \$54,901.50. (Exhibit 3.)

7. The DAR advised the Appellant, pursuant to 18 NYCRR 517.5, that it was entitled to submit objections to the proposed action, and to include any additional material or documentation that the Appellant wished to be considered. (Exhibit 3.) The Appellant submitted objections to the DAR. (Exhibit 5.)

8. On August 26, 2025, the OMIG issued a final audit report (FAR) which advised the Appellant that, upon review of its objections, the overpayment was reduced to \$50,057.25, with three remaining categories of error in the claims paid to the Appellant: 1) 32 bonuses incorrectly paid to ineligible employees; 2) incorrect amounts of worker bonuses paid to 2 employees; and 3) failure to distribute the bonuses by the due date to 7 employees. (Exhibit 6.)

9. By letter dated September 4, 2025, the Appellant requested this hearing to review the determination and findings set forth in the FAR. (Exhibit 6A.) At the hearing, the Appellant indicated that it was contesting only the first finding regarding the 32 bonuses allegedly

incorrectly paid to ineligible employees. (T 5-6.)

ISSUE

Was the OMIG's determination to recover HWB bonus payments from the Appellant for 32 claims paid to 17 allegedly ineligible employees correct?

APPLICABLE LAW

Social Services Law § 367-w was enacted to recruit, retain, and reward health care and mental hygiene workers by awarding financial bonuses for certain front line health care and mental hygiene workers during the 2023 fiscal year. The statute lists employees by title and function who are eligible for bonuses during a series of six-month "vesting periods" between October 1, 2021 and March 31, 2024. SSL § 367-w(2)(d).

Social Services Law § 367-w(2) defines "Employee" for the purposes of HWB program eligibility:

(a) Employee means certain front line health care and mental hygiene practitioners, technicians, assistants and aides that provide hands on health or care services to individuals, without regard to whether the person works full-time, part-time, on a salaried, hourly, or temporary basis, or as an independent contractor, that received an annualized base salary of one hundred twenty-five thousand dollars or less, to include:

(i)&(ii) [job titles, including "**all other health care support workers**," are listed in (i) & job functions are listed in (ii)]; and

(iii) such titles as determined by the commissioner, or relevant agency commissioner as applicable, and approved by the director of the budget.

SSL § 367-w(2)(a)(i)(ii)&(iii).

Department informational documentation to assist providers in determining which of its employees were entitled to the bonus includes its NYS Healthcare Worker Bonus Program

Frequently Asked Questions (FAQs), Last Updated 2/12/2025¹ (Exhibit 4), and its New York State Health Care and Mental Hygiene Worker Bonus (HWB) Program brochure (Exhibit 4A).

The FAQs explain that most of the listed job titles in SSL § 367-w(2)(a)(i) were “pulled directly from the Bureau of Labor Statistics (BLS)” and “the definition of each BLS job title is available on O*Net Online.”² The SSL § 367-w(2)(a)(ii) category, on the other hand, is a list of job functions, taken from the title series in the Consolidated Fiscal Reporting and Claiming Manual which include descriptions. (Exhibit 4 p 50.)

“[A]ll other health care support workers” refers to workers that support the provision of health care services to patients in front-line settings for these titles. “Such workers *must provide patient-facing care provided within a patient care unit of a hospital or other institutional medical setting* in support of treating and caring for patients.” (Exhibit 4 p 48 [emphasis added].)

The FAQs clarified language to include frontline direct care health and mental hygiene workers and all other health care **support** workers including support services workers.

“Such workers *must support patient-facing care provided within a patient care unit of a hospital or other institutional medical setting* in support of treating and caring for patients.” (Exhibit 4A p 67 [emphasis added].)

Employers were required to determine employee eligibility for the HWB before paying bonuses and seeking reimbursement from the Department and to maintain and make available upon request all records, data and information relied upon in determining that an employee was eligible for the HWB. SSL § 367-w(3)(c). The HWB claim submission process also required qualified employers to electronically sign an attestation confirming that the employer determined each employee included in the claiming process was eligible for the bonus.

¹ https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/hwb_program_faq.htm

² <https://www.onetonline.org>

Employers shall maintain contemporaneous records for all tracking and claims related information and documents required to substantiate claims submitted for HWB payments for a period of no less than six years and shall furnish records and information, on request, to the OMIG. SSL § 367-w(3)(d). The OMIG is tasked, in coordination with the Commissioner of Health, with conducting audits, investigations and reviews of employers required to submit claims for the HWB. Inappropriately paid HWB claims constitute overpayments pursuant to 18 NYCRR §§ 518.1(b)-(c). SSL § 367-w(5). If the Department determines to recover an overpayment, a Medicaid provider has the right to an administrative hearing. 18 NYCRR 519.4. The Appellant has the burden of showing that the OMIG's determination was incorrect and that all claims submitted were due and payable. 18 NYCRR 519.18(d)(1).

DISCUSSION

At the hearing, the OMIG presented the audit file and summarized the case, as required by 18 NYCRR 519.17. The Appellant is contesting only the first category of findings of the FAR which disallowed 32 HWB reimbursement claims (sample numbers 1-4, 7-8, 12-13, 19-22, 26-29, 35-41, 51-52, 58-62, 65-66) pertaining to 17 employees. The OMIG determined that the employees were ineligible to receive the bonuses as they did not qualify as HWB program "employees" pursuant to Social Services Law § 367-(w)(2)(a) and the HWB program FAQs. (Exhibit 6 p 110.)

Social Services Law § 367-w(2)(a)(i)(ii) lists almost 100 employment functions and titles that qualify as "employee[s]" entitled to the bonus. This list includes a catch-all entitling "all other health care support workers" to the bonus. All the claims at issue here were submitted for reimbursement under the catch-all "healthcare support worker all other" category. (T 40-41.) After the audit began, the OMIG requested that the Appellant provide actual job titles and descriptions of the work entailed by the titles and the Appellant produced same. (Exhibits 8-21.) Audit

Supervisor Matthew Epstein testified that, after review of the information provided by the Appellant, he discerned that the employees at issue were ineligible based on *both* their job title and function. (T 33.) Mr. Epstein defined patient-facing care as providing medically necessary services “working directly with the patient face-to-face.” (T 34.)

OMIG contended through the testimony of Mr. Epstein, and as a last-ditch effort in its brief, that a DME provider is “not supposed to submit under” the “healthcare support worker all other” category. (T 32-33; OMIG Br p 4.) Yet OMIG conceded that HWB claims submitted under the catch-all category were appropriate for at least one of the Appellant’s employees, a medical delivery technician (Exhibit B), by allowing the claims for that employee in its FAR. (T 59-60; *compare* Exhibits 3 p 22, 6 p 110.)

“All other health care support workers” refers to workers who provide patient-facing care provided *within* a patient care unit of a hospital or other institutional medical setting in support of treating and caring for patients. Although the FAQs initially listed “all other patient facing care support workers in Article 28 facilities” (Exhibit 4 p 29), other information distributed by the Department explained that qualified employees included those that provide or **support** patient facing care workers located not only within hospitals but also nursing homes, psychiatric and addiction treatment centers, and residential programs including assisted living programs and hospice residences. (Exhibits 4 pp 48-49; 4A pp 67-69.) Furthermore, while OMIG repeatedly suggested that, as a DME corporation, the Appellant could not submit claims under the catch-all category because it is not a hospital or other facility, it is undisputed that some of the Appellant’s employees worked with patients face-to-face *within* (not necessarily employed by) such facilities.

Therefore, as testified to by the OMIG’s own auditor, it is necessary to review *both* job title and function to discern whether the Appellant’s employees performed patient facing care

entitling them to the bonus claims as qualified employees of a concededly qualified employer. (T 32-35.)

The disallowed claims

Mr. Epstein described that for purposes of the audit, the OMIG divided the claims into five groups based upon the titles provided by the Appellant. (T 40.) He grouped categories of employees together for efficiency reasons to avoid reports that “would be very, very long, you know, tens to hundreds of pages long if we went by - - claim by claim, by what each single person’s job title was.” (T 35.) The Appellant submitted job descriptions during the audit (Exhibits 8-20) and revised job descriptions (Exhibit 5 pp 79-97) in response to the DAR for its employees whose claims were submitted in the catch-all category.

The Appellant’s employees associated with the claims submitted attestation forms as required (Exhibits 22, D) and revised attestation forms completed for this appeal (Exhibit C). The general attestation forms signed by the employees at the time the HWB claims were submitted state that they performed work during the vesting periods, and their gross wages were below the maximum amount permitted by the program. (Exhibit 22.) The revised attestation forms were all completed in January 2026 in contemplation of this appeal. They include boxes that the employees checked indicating whether they performed work associated with “patient facing care” in front-line settings. All the 11 submitted re-attestation forms indicate that the employees did so without any specificity. (Exhibit C.) They are afforded little weight as the specificity of the work performed by job title is what law and regulations require for employees to be entitled to the HWB program bonuses.

1. OMIG categorized the first group of claims as those submitted by DME managers, the biggest grouping and a category that encompassed the following job titles: (a)

operations manager (claims 21, 22, 35, 36); (b) assistant operations manager (claims 1, 2); (c) hospital liaison (claims 7, 8, 28, 29); (d) care coordinator – Facility (claims 12, 13) and (e) project manager of home modification (claims 26, 27).

The Appellant submitted claims 21, 22, 35 and 36 for employees with the title **operations manager**. (Exhibits 5 p 78.) In general, the operations manager “is responsible for overseeing and optimizing. . . operations to ensure the seamless delivery of durable medical equipment, managing warehouse operations, and overseeing the ordering process to clients and facilities. They are responsible for implementing organizational policies, meeting corporate goals, and maintaining compliance with relevant regulations.” (Exhibit 15 p 149.) The revised job description, submitted in response to the DAR, is the same but adds additional language, including a direction that the “Operations Manager will fulfill Medical Delivery Technician responsibilities in addition to [] managerial responsibilities” and “other duties/responsibilities” involving interaction with clients not described previously mentioned in the original job description. (Exhibit 5 pp 88-89.) Simply adding tasks with patient interaction to an already established job description that has “manager” status is not enough for the Appellant to meet its burden to demonstrate that the operations managers associated with claims 21, 22, 35 and 36 were employees that qualified for the HWB program bonuses. The OMIG’s determination concerning these claims is affirmed.

On the contrary, the job description for **assistant operations manager** does demonstrate patient facing work within facilities. In response to the DAR, the Appellant submitted a summary table which indicated that claims 1 and 2 were paid to an employee with the job title of assistant operations manager. (Exhibit 5 p 78.) The job description submitted for assistant operations manager includes delivery, set-up and pick up of DME across a multitude of care settings, including hospitals, long term care facilities, group and patient homes. It also indicates that the

assistant operations manager must instruct, train and educate patients on the equipment. (Exhibit 5 p 79-80.) The attestation form of the specific employee who received the bonus for claims 1 and 2 details that during the periods in question he was the only employee working and did many late night oxygen setups and drop offs at bedsides in facilities. (Exhibit C.) Therefore, the employee with the title assistant operations manager qualified for a worker bonus and OMIG was incorrect in disallowing claims 1 and 2.

For claims 28-29, the title originally supplied by the Appellant was “**manager of hospital services, formerly - hospital liaison lead.**” (Exhibit 21 p 164.) The Appellant did not submit a job description for manager of hospital services either during the audit or in response to the DAR. However, during the audit, the Appellant did supply a job description for hospital liaison lead. (Exhibit 11 pp 137-139.) In response to the DAR, the Appellant detailed that the claims 28-29 were paid to an employee with the title **hospital liaison**. (Exhibit 5 p 78.) A revised job description mimics the original but details that hospital liaisons instruct patients concerning DME at their bedside. (Exhibit 5 p 84.)

The employee who received the HWB program bonus for claims 28-29, Carol Ann Seiwel (formerly Scammell), testified at the hearing. She described that she managed the team of hospital liaisons but also acted as a hospital liaison and was on site with the liaisons daily (T 80) and worked 40 hours per week in a hospital setting. (T 89.) The role of hospital liaison lead and hospital liaisons includes rotating between three hospitals and being involved with patient management and safe discharges. They “are bedside with patients all day coordinating, training, supporting, providing direct patient services and education” (T 81) and “doing setups right next to the patients during the most vulnerable and sick time. . . often having more one-on-one time than a lot of the hospital staff.” (T 93.) Ms. Seiwel’s direct testimonial description of her tasks within hospitals, in

addition to the job descriptions supplied by the Appellant during the audit, satisfied the Appellant's burden proving that the bonus was properly paid for claims 28-29.

Ms. Siewell testified that she worked directly with the employee who received the HWB program bonus for claims 7 and 8, with the title "**manager of outpatient services, formerly – hospital liaison**" (Exhibit 21 p 164) or **hospital liaison**. (Exhibit 5 p 78.) Hospital liaisons are described in detail as providing and coordinating patient care, specifically in a hospital setting. They assist social workers and discharge planners to create client DME for safe discharge, review patients' clinical charts and size and supply equipment to meet patients' needs. (Exhibit 5 p 84.) As the job description supplied involves direct contact with clients at their bedsides in facilities, this does qualify as an employee entitled to the bonuses paid for claims 7 and 8.

For claims 12-13, the employee title is **care coordinator facilities**. (Exhibits 5 p 82, 10 p 135.) The Appellant's job description changed from what was presented in the audit to what was submitted in response to the DAR -- but not significantly. Both descriptions indicate that the role is "customer-facing" requiring "exceptional customer service and care coordination support to nurses, patients, and additional staff associated with our skilled nursing clients." Both job descriptions state that in this role, the employee will provide face-to-face advice for facility clients, who are the patients of nursing homes. (Exhibits 5 p 82, 10 p 145.) The Appellant has met its burden to show that these claims were performed by an "employee" qualified to receive compensation for HWB claims 12 and 13.

For claims 26-27, the title is **project manager of home modifications**. The job duties listed in the description submitted during audit state that the "Home Modification Project Manager is responsible for overseeing and coordinating home modification projects in both the home and institutional setting, including managing Home Modification Technicians, ensuring timely and

efficient completion of tasks, and maintaining high standards of quality and customer satisfaction.” (Exhibit 16 p 152.) While the revised version of the job description prepared in response to the DAR states that “this role acts as primary point of contact for agency, facility and homecare clients, addressing their needs, concerns, and inquiries” this does not mean that such care is forward facing patient care to qualify for the HWB, as that is more likely performed by the home modification technicians. The Appellant has not proven that the OMIG erred in disallowing claims 26 and 27.

2. The second group categorized by OMIG comprised claims 3, 4, 19, 20 and 58 for the title warehouse technician. The Appellant submitted a job description for the title warehouse technician both during the audit process (Exhibit 20 pp 162-163) and in response to the DAR (Exhibit 5 pp 96-97). Both job descriptions indicate that warehouse technicians perform inventory and oversee the infection control process. While the job description indicates active participation in the delivery process to homes and facilities and that customer service may include “set up of oxygen and other medical equipment, and minor repair functions” this presupposes that the delivery team may occasionally need additional assistance. (Exhibit 20.) However, the role of the warehouse technician is generally limited to the warehouse and, for this reason, the Appellant did not prove that the job title and duties qualify the employees performing such duties for the HWB program bonuses. OMIG’s determination concerning claims 3, 4, 19, 20 and 58 is therefore affirmed.

3. For claims 38-39, 51-52, and 59-60, the OMIG determined that the title for the employees involved with the claims was warehouse supervisor/manager. (Exhibit 3 p 22.) In response to the DAR, the Appellant indicated that the employee associated with claims 38-39 acted as an **operations manager**. (Exhibit 5 p 78.) As detailed above, in the first DME manager category, the operations manager “is responsible for overseeing and optimizing. . . operations to

ensure the seamless delivery of durable medical equipment, managing warehouse operations, and overseeing the ordering process to clients and facilities” and is responsible for implementing organizational policies, meeting corporate goals, and maintaining compliance with relevant regulations (Exhibit 15 p 149), rather than engaging in face-to-face interactions with patients in facilities. Therefore, the OMIG was correct in disallowing claims 38-39. For claims 51-52 and 59-60, the employee titles at issue are **assistant operations manager** as detailed by the Appellant in response to the DAR. (Exhibit 5 p 78.) As also detailed previously, the job description for **assistant operations manager** demonstrates patient facing work within facilities. (Exhibit 5 p 79-80.) Therefore, while employees with the title operations manager do not qualify for a worker bonus, the job title assistant operations manager does. The OMIG was therefore incorrect to disallow claims 51, 52, 59, and 60 paid to employees performing the roles of assistant operations manager.

4. For the fourth category of claims 37, 40-41, and 61-62, the OMIG employed **the title of customer service**. However, in response to the DAR, the Appellant indicated that these claims were made to employees who served in the title **hospital liaison**. (Exhibit 5 p 78.) As previously explained, as hospital liaisons are directly in contact with clients at their bedsides in facilities, this does qualify as an employee entitled to the bonuses paid for claims 37, 40, 41, 61 and 62.

5. Finally, for the fifth category of claims 65-66, the employee title at issue is **respiratory sales manager**. (T 40.) First, the Appellant submitted a job title during audit which described managing a sales team and recruiting a team of sales representatives, as well as maintaining relationships with “key customers, including healthcare providers, hospitals, facilities, and distributors.” (Exhibit 13.) Then in response to the DAR, the Appellant submitted a revised

job description with a revised job title of “sales manager.” (Exhibit 5 pp 94-85.) In addition to the managerial role, the Appellant emphasized customer relationship tasks including a task to “visit patients, providers, care givers, and other health care employees in their care settings/residences, to instruct on equipment, supplies and other HSS offerings” (Exhibit 5 p 94) as well as to “provide ongoing training and support to the patients, caregivers, and referral sources to enhance their project and HSS service offering knowledge.” (Exhibit 5 p 95.) The revised job description, which added language detailing that the employee in this role had to have face-to-face contact with patients, was not proven accurate. Rather, the main task of the employee in this role is to meet with customers -- which equates to the facility employees -- not the patients -- and to recruit sales representatives. Contrary to those who perform hands-on medical demonstrations and work directly with patients, this title does not qualify as an employee and the claims 65 and 66 were properly disallowed by the OMIG.

SSL § 367-w(2)(a) sets forth a list of both titles and roles which are included in the definition of employee for purposes of the worker bonus. The list is not exhaustive, nor does it identify any titles or roles that are specifically excluded. SSL § 367-w(2)(a). While the HWB FAQs identify a list of “all other health care support workers” who work in institutional medical settings that would qualify for the HWB, that list also is not exhaustive or exclusive.

While boiler plate additions to job descriptions and re-attestations of employees do not all meet regulatory requirements for eligibility, the Appellant has submitted sufficient documentation to establish which employees were “forward-facing staff” providing “hands on health care services to individuals” and which were not. The Appellant met its burden to prove that certain employees, working under titles including assistant operations manager, hospital liaison - lead, hospital liaison, and care coordinator – facilities, qualified for the HWB program bonuses due to the actual job

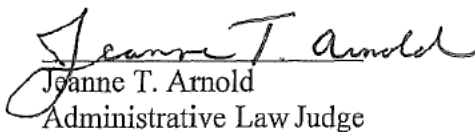
duties they performed.

DECISION

The OMIG's determination to disallow payments from the Appellant for HWB program bonuses for claims 1-2, 7-8, 12-13, 28-29, 37, 40-41, 51-52, 59-60, 61-62 made to ineligible employees was incorrect and is reversed.

The OMIG's determination to disallow payments from the Appellant for HWB program bonuses for claims 3-4, 19-20, 21-22, 26-27, 35-36, 38-39, 58, 65-66 made to ineligible employees was correct and is affirmed.

DATED: Rochester, New York
October 8, 2026


Jeanne T. Arnold
Administrative Law Judge

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