cc: Ms. Daniels Rivera by Scan
Ms. Mailloux by Scan
Ms. Bordeaux by Scan
Mr. Cohen by Scan
BOA by scan
SAPA File

NEW YORK STATE | Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

April 6, 2026

CERTIFIED MAIL/RETURN RECEIPT

Timothy Osho, Esq.
NYS Office of the Medicaid Inspector General
90 Church Street, 14th floor
New York, New York 10007

Ryan Tichenor, Operations Manager
Andrew Hunt, President
HTM Enterprises, Inc.
420 Old Mill Road
Vestal, New York 13850

RE: In the Matter of HTM Enterprises, Inc.

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,

Natalie J. Bordeaux

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB:nm
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

COPY

In the Matter of the Appeal of **HTM Enterprises, Inc.** Medicaid ID #04435750 from a determination by the NYS Office of the Medicaid Inspector General to recover Medicaid Program overpayments.	**Decision After Hearing** #24-6811

Before: John Harris Terepka
Administrative Law Judge

Held: March 17, 2026
By videoconference

Parties: New York State Office of the Medicaid Inspector General
90 Church Street 14th floor
New York, New York 10007
By: Timothy Osho, Esq.
Timothy.Osho@omig.ny.gov

HTM Enterprises, Inc.
420 Old Mill Road
Vestal, New York 13850
Ryan Tichenor, operations manager
ryan@htmmedtrans.com
By: Andrew Hunt, president
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JURISDICTION

The Department of Health acts as the single state agency to supervise the administration of the Medicaid Program in New York State. 42 USC 1396a; Public Health Law (PHL) 201(1)(v); Social Services Law (SSL) 363-a. The Office of the Medicaid Inspector General (OMIG), an independent office within the Department, has the authority to pursue administrative enforcement actions against any individual or entity to recover improperly expended Medicaid funds. PHL 30, 31 and 32.

The OMIG determined to seek restitution of payments made under the Medicaid Program to HTM Enterprises, Inc. (the Appellant). The Appellant requested a hearing pursuant to SSL 145-a and New York State regulations at 18 NYCRR 519.4 to review the determination. Regulations most pertinent to this hearing are at 18 NYCRR Parts 517 (provider audits) and 519 (provider hearings).

HEARING RECORD

OMIG witnesses:	Damian Myron, OMIG audit manager
OMIG exhibits:	1-4, 7, 8, 10
Appellant witnesses:	[redacted], driver
	[redacted], operations manager
Appellant exhibits:	A

A transcript of the hearing was made. (Transcript, pages 1-114.)

SUMMARY OF FACTS

1. During the period under review, Appellant HTM Enterprises, Inc. was enrolled as a provider in the New York State Medicaid Program. It provided Medicaid reimbursable transportation for Medicaid recipients, primarily between hospitals and other medical facilities in central New York under a contract with United Health Services Hospitals (UHSH). (Exhibit 8, bates pages 205-238; Transcript, page 74.)

2. By notice dated October 17, 2024, the OMIG initiated a review of the Appellant's records supporting its SSL 367-w Health Care and Mental Hygiene Worker Bonus (HWB) claims paid for the period October 1, 2021 through March 31, 2024. (Exhibit 1.)

3. For the period October 1, 2021 through March 31, 2024, the Appellant was paid $19,500 for seventeen HWB claims it submitted to the Medicaid Program for its employees. (Exhibit 4, bates page 75.)

4. The OMIG issued a draft audit report dated June 26, 2025, which preliminarily determined to seek restitution of Medicaid Program overpayments in the amount of $19,500, to which the OMIG added 7.65% FICA taxes in the amount of $1,491.75, for a total of $20,991.75. (Exhibit 2.) The draft audit report audit findings disallowed all seventeen HWB claims in two categories: "Bonus Incorrectly Paid to an Ineligible Employer," and "Bonus Incorrectly Paid to an Ineligible Employee."

5. The draft audit report afforded the Appellant the opportunity to submit documents and written arguments in response to the proposed action. The Appellant responded to the draft audit report on July 28, 2025. (Exhibit 3.)

6. By final audit report dated September 4, 2025, to which was attached details of its specific findings, the OMIG determined to seek restitution for the seventeen HWB claims in the total amount of $20,991.75. (Exhibit 4.)

ISSUE

Was the OMIG's determination to recover HWB payments from the Appellant correct?

APPLICABLE LAW

Medicaid providers are required, as a condition of their enrollment in the program, to prepare and to maintain contemporaneous records demonstrating their right to receive payment from the Medicaid Program and to furnish such records, upon request, to the Department. 18 NYCRR 504.3(a)&(h), 504.8, 517.3(b), 540.7(a)(8). When the Department has determined that claims have been submitted for which payment should not have been made, it may require repayment of the amount determined to have been overpaid. 18 NYCRR 518.1(b). Medicaid providers claiming and receiving HWB payments are subject to these requirements. SSL 367-w(3)(d)&(5)(a).

A person is entitled to a hearing to have the Department's determination reviewed if the Department requires repayment of an overpayment. 18 NYCRR 519.4. At the hearing, the Appellant has the burden of showing that the determination of the Department was incorrect and that all claims submitted and denied were due and payable under the Medicaid Program. 18 NYCRR 519.18(d).

Social Services Law 367-w was enacted in 2022 to codify the HWB program, the purpose of which was to recruit, retain, and reward health care workers by awarding financial bonuses for certain essential front line health care and mental hygiene workers. The statute defined "employer" and "employee" for the purposes of eligibility for Medicaid reimbursement for employee bonuses during a series of six-month "vesting periods" between October 1, 2021 and March 31, 2024. SSL 367-w(2)(d).

An employer seeking Medicaid reimbursement for HWB program claims was responsible for determining whether employees were eligible for bonuses and for maintaining all records, data and information it relied on in deciding whether employees

were eligible. SSL 367-w(3)(c). Qualified employers were required to apply for bonuses for their eligible employees and were subject to Medicaid Program penalties and sanctions up to and including exclusion from the Medicaid Program for failure to do so. SSL 367-w(5).

In order to administer the HWB program, the Department established an HWB website[1] and an online portal providing guidance to providers. (Exhibit 8, bates pages 195-200; Exhibit A.) It also issued "Frequently Asked Questions" (FAQs) explaining program policy. (Exhibit 7.)

DISCUSSION

HTM Enterprises, Inc. was a Medicaid transportation provider. It was not licensed as an EMS provider pursuant to PHL Article 30 or registered with the Department of Health as an ambulance service (18 NYCRR 505.10(b)(2)), and its drivers were not EMTs or otherwise certified or licensed to provide medical care. It was, however, in compliance with the New York State Medicaid Transportation Policy Manual provisions for ambulette providers:

> Only lawfully authorized ambulette services may receive reimbursement for the provision of ambulette transportation. Ambulettes must comply with all NYS Department of Transportation (NYSDOT) licensure, inspection and operational requirements, including those identified at Title 17 NYCRR §720.3(A). (Transportation Policy Manual, section 3.2.)[2]

The Appellant is no longer operating. (Transcript, page 68.)

The Appellant provided non-emergency transportation services that were authorized for wheelchair and stretcher bound Medicaid recipients pursuant to 18 NYCRR 505.10. It had a contractual arrangement with United Health Services Hospitals

[1] https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/

(UHSH), based in Broome County, to provide necessary transport of patients between UHSH facilities or to other providers for diagnostic and treatment procedures. This service included both wheelchair and stretcher transport, and additional attendants and riders when necessary for individual patient needs. The Appellant, as was required under its UHSH contract, had first aid equipment and supplies immediately available to its drivers, whose duties included using masks, gloves and gowns, providing assistance in dressing patients, using and disposing of patient linens, cleaning and disposal of medical waste, first aid and CPR procedures. (Exhibit 8, bates pages 202-238; Transcript, pages 15, 54-59.)

The OMIG determined that the Appellant was ineligible for the seventeen HWB bonuses it received and paid to its employee drivers for two reasons:

1. Bonus incorrectly paid to an ineligible employer. Seventeen claims.

According to the OMIG, the Appellant was not an HWB program "employer" as defined by SSL 367-w and so was not eligible to claim reimbursement for the seventeen bonuses paid to employees.

SSL 367-w(2)(b) defines "employer" for the purposes of the HWB program. The definition includes providers and facilities licensed or otherwise authorized under the public health, mental hygiene or social services law, pharmacies registered under the education law, and school based health centers. SSL 367-w(2)(b)(i). It also includes programs funded by the offices of mental health, addiction services, and developmental disabilities. SSL 367-w(2)(b)(ii). The Appellant, an independent contractor whose drivers were not UHSH employees, was not an employer under either of these categories.

[2]https://www.emedny.org/providermanuals/transportation/PDFS/Transportation_Manual_Policy_Section.pdf

No other applicable provider type has been determined by the commissioner and approved by the director of budget pursuant to SSL 367-w(2)(b)(iii) (Transcript, page 26), and it did not qualify under SSL 367-w(2)(c).

Even if a provider met one of the provisions of SSL 367-w(2)(b)(i),(ii) or (iii), it was also required to be either subject to a certificate of need (CON) process as a condition of state licensure, or that at least twenty percent of its persons served be Medicaid eligible. SSL 367-w(2)(b)(iv). Simply being a provider in the Medicaid Program, no matter the percentage of Medicaid recipients served, did not constitute "employer" status under SSL 367-w(2).

Ordinarily the analysis might end here. However, it will not be ignored that the Department issued guidance, as authorized by SSL 367-w(6), that explicitly advised providers that an "employer" for the purposes of the statute included a provider that either fit one of the categories in SSL 367-w(2)(b)(i-iii) or (c) or 367-w(2)(b)(iv):

> **Q. Please clarify the criteria necessary for an employer to be subject to the Healthcare Workforce Bonus (HWB) Program?**
> **A.** The HWB statute provides two separate definitions of qualified employers, both of which are subject to the requirements of the HWB program.
> - See SOS § 367-w(2)(b) and (c).
>
> Under paragraph (2)(b), an employer is subject to the HWB program if they meet all of the four following criteria:
> 1. They are a Medicaid enrolled provider;
> 2. They bill for Medicaid services (either through FFS, managed care, or a 1915(c) waiver);
> **3.** Employ at least one eligible employee;
> 4. **A. Are included in the list of provider and facility types in the statute,** OR **B. Are subject to a certificate of need (CON) process,** OR **C. The provider serves at least 20% Medicaid enrollees.**
>
> The Department of Health is not prescribing a specific methodology to determine the 20% Medicaid threshold criteria. Employers must determine whether their organization complies with this requirement as part of the employer attestation required for HWB claim submission.
>
> ...

> If the provider is subject to a certificate of need (CON) process OR the provider serves at least 20% Medicaid enrollees, they are not limited to this list defined in Paragraph(2)(b).
>
> (Exhibit 7, FAQs pages 4-5, *emphasis in original*; *see also* Department HWB Program Townhall Meeting, 8/26/22, page 6.[3])

The Appellant met these criteria. It was a Medicaid enrolled provider, billed for Medicaid services, and there is no dispute that far more than twenty percent of its services were provided to Medicaid enrollees. (Transcript, pages 77, 80.) It also reasonably and in good faith concluded, after receiving no response to its inquiries attempting to obtain guidance and confirmation from the Department, that it had eligible employees (Transcript, page 93), and this hearing decision agrees with that conclusion.

The Department issued FAQs and guidance had explicitly advised providers that under SSL 367-w(5) submitting HWB claims for eligible employees was mandatory for qualified employers, and further advised that failure to do so was subject to penalties or sanctions:

> If a qualified employer fails to identify, claim, or pay a bonus to an eligible employee they are subject to sanction, up to and including exclusion from the Medicaid program, and may be subject to penalty. See SOS 367-w(5). (Exhibit 7, FAQs page 29; *see also* Department HWB Program Townhall Meeting, 8/26/22, *supra,* page 16.)

Operations manager Tichenor was very aware of and concerned about these warnings. (Transcript, pages 82-83, 87; Exhibit A.) The dilemma, in unclear cases, was whether to apply and risk having to pay back bonuses that, pursuant to SSL 367-w(5)(d), could not be recovered from the recipient employee, or not to apply and risk penalties and sanctions including exclusion from the Medicaid Program.

The Appellant's July 28, 2025 response to the draft audit report detailed extensive

attempts to reach out to the Department for further guidance in order to verify its understanding of its responsibilities:

> HTM was initially contacted by DOH in regards to Healthcare Worker Bonus. We attempted to clarify our eligibility for the HCW with a DOH official to no avail. HTM navigated ambiguous guidelines from DOH under threat of fines and penalties.
>
> 1. DOH ListServ notified HTM Enterprises of it's *(sic)* requirement to provide Healthcare Worker Bonus via transportation provider list.
> 2. We asked for DOH clarification for our situation (Healthcare law compliance required for UHS Hospital support). NY DOH immediately auto-responded "Check the FAQs". No additional follow-up via direct response from NY DOH.
> 3. On Aug 24, 2022 we respectfully requested further assistance. The response was again and *(sic)* auto-response, "Check the portal and check the FAQs".
> 4. Attended Healthcare Worker Bonus Webinar and asked the specific question. No direct response during Q & A.
> 5. We did not receive any other specific clarification or interpretation after the initial Town Hall meetings.
> 6. At that point, we documented our review of the criteria with the UHS Hospital contract work that HTM Enterprises performed. Our best decision at the time was that our employees working in the hospital units and also providing intra-hospital transportation such as for MRI appointments did qualify our employees for the bonus. We were very aware that if our employees later determined they were eligible and they did not receive the bonus, our company could be subject to potential fines/penalties for non-compliance if HCW bonuses were not applied for, approved and remitted to employees.
> 7. Submitted our claim per available guidance using our Medicaid Provider Number and ETIN which identified our organization as Non-Emergency Medical Providers. DOH approved and remitted. 100% of HCW funds were passed forward to frontline healthcare support workers.
>
> (Exhibit 3, bates pages 27-28.)

Operations manager Tichenor, who handled the submission process for the Appellant, described and documented these significant efforts to reach out to the Department for assistance and to comply with the HWB obligations. (Transcript, pages 82-84, 88, 92; Exhibit A.)

It is true that in general estoppel will not lie against the government. However, in

[3] https://health.ny.gov/health_care/medicaid/providers/hwb_program/docs/2022-08-26_townhall.pdf

this case, the Department directly misled providers by issuing instructions that misrepresented the statute. The statute had placed responsibility on providers to correctly apply it at their peril, and the Department then issued FAQs and other guidance with explicit and incorrect instructions about how to apply it. This placed providers in a no-win position.

The Department issued FAQs and other guidance clearly gave incorrect and misleading information about the meaning of SSL 367-w(2)(b). The Appellant was reasonably entitled to rely on Department instructions that explicitly stated it was a qualified employer subject to the HWB program if it served at least twenty percent Medicaid enrollees and so was required at risk of penalties and sanctions to submit HWB claims for eligible employees. It accordingly applied for and received bonuses that it distributed to employees. Pursuant to SSL 367-w(5)(d), it cannot now recover those funds but is now expected to reimburse the Medicaid Program. Recovery of funds on the grounds that it was not a qualified employer is not appropriate under these circumstances. Bender v. NYC Health & Hospitals, 38 NY2d 662, 382 NYS2d 18 (1976) ("[W]here a governmental subdivision acts or comports itself wrongfully or negligently, inducing reliance by a party who is entitled to rely and who changes his position to his detriment or prejudice, that subdivision should be estopped from asserting a right or defense which it otherwise could have raised."); Rudey v. Landmarks Preservation Commission of NYC, 182 AD2d 61, 587 NYS2d 623 (1st Dept 1992), *affirmed*, 82 NY2d 832, 606 NYS 2d 588 (1993); Wustrau v. Accord Fire District, 200 AD3d 1395, 160 NYS2d 418 (3rd Dept 2021).

The audit findings in this category are reversed.

2. Bonus incorrectly paid to an ineligible employee. Seventeen claims.

Employers were responsible for determining employee eligibility for the HWB. SSL 367-w(3)(c). The OMIG audit determined that the seventeen claimed bonuses were for employees who were ineligible for them because they did not qualify as "employees" within the definition of SSL 367-w(2)(a).

The SSL 367-W(2)(a) definition of "employee" does not specify that an "employee" must work for an SSL 367-W(2)(b) employer. It includes a list of job titles at (2)(a)(ii) but also, at (2)(a)(i), includes a list of what OMIG audit manager Myron agreed was "more general" (Transcript, page 43) health care service functions, including "all other health care support workers." The OMIG audit limited eligibility to specific titles listed at SSL 367-w(2)(a)(ii) and in the Department's guidance without considering the more general categories listed at SSL 367-w(2)(a)(i) and in that same guidance.

The "all other health care support workers" category listed at SSL 367-w(2)(a)(i) was acknowledged and discussed in the FAQs. According to that guidance:

> "All 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 7, FAQs page 15.)

The FAQs then went on to provide a list of job titles that included, as approved "titles" for "all other health care support workers," the titles "service worker" and "support services worker." (Exhibit 7, FAQs pages 16-17.)

"All Other Health Care Support Workers" is how the Appellant categorized its drivers in its HWB claim submissions. (Transcript, page 27.) The Appellant concluded that its drivers, by delivering wheelchair and stretcher bound persons between, into and

out of health care facilities, qualified under this statutory category because they met both the statutory and the FAQ descriptions, and because the FAQs included both "service worker" and "support services worker" as approved among the "Eligible Worker Titles" included under "All Other Health Care Support Workers." (Exhibit 7, FAQs pages 15, 17; Exhibit 8, bates page 199.)

The Appellant did more than just rely on its understanding of the FAQs for guidance when it determined that it was required to submit its employees for the HWB bonuses. Operations manager Tichenor testified to his efforts to obtain clarification from the Department, including email requests for specific guidance on employee eligibility to which the Department simply responded by referring him back to the FAQs. (Transcript, pages 88-89, 91-92; Exhibit A; Exhibit 3, bates pages 27-28.)

The Appellant's drivers transported wheelchair and stretcher bound Medicaid recipients to, from and between health care facilities. Much of this transport was performed for UHSH, with which it had a contract to provide such services, including transfers within a UHSH facility. For this purpose, they possessed UHSH issued Hospital Staff badges giving access to patient units. (Exhibit 3, bates page 26.) They also received training and were required to comply with the UHSH Contracted Service Safety Manual for all Transportation Contractors. (Exhibit 8, bates pages 206, 229.) OMIG audit manager Myron conceded "there is face-to-face care and services being provided." (Transcript, pages 40-41.)

Just what the statute and FAQs consider to be "front-line," "patient facing care" is not obvious from the job titles specifically listed as eligible. SSL 367-w(2)(a) defines "employee" to mean "certain front line health care and mental hygiene practitioners,

technicians, assistants and aides that provide hands on health care services." The statute, the Department's FAQs, and the HWB website then go on to list approximately one hundred eligible worker titles, many of which have even less to do with hands on patient facing care than the work of ambulette drivers in transporting wheelchair and stretcher bound persons between medical facilities.

The difficulty is that the statute lists nearly fifty functional categories including "all other health care support workers" at SSL 367-w(2)(a)(i), and then separately lists nearly fifty more specific job titles that also include "other direct care staff" at SSL 367-w(2)(a)(ii), without explaining the distinction. The FAQs then go on to add another forty-five very specific job titles included in the category "all other health care support workers," such as admitting clerk (listed twice), front desk clerk, ward clerk (listed three times), food prep/service worker (listed twice), unit secretary, building attendant, building service worker, custodian, floor maintenance worker (listed twice), maintenance/physical plant worker (listed twice), sanitation worker, security guard, and peace officer, but then also include "service worker" and "support services worker" among these "titles." (Exhibit 7, FAQs pages 15-17.)

The FAQs, then, are hardly more reliable or intelligible on the issue of "eligible employee" than they are on "eligible employer": It is noted, for example, that the Department's FAQs provide: "These titles are included... Security Guards," and then go on to provide: "Employees in titles such as... Security are not eligible." (Exhibit 7, FAQs, pages 16-18.)

The Appellant's submissions relied on the category "all other health care support workers." This statutorily recognized category is entirely consistent with "service

worker," "support services worker" and "other direct care staff" all of which are also listed as "job titles" in the statute and FAQs.

The New York State Medicaid Transportation Provider Policy Manual describes the service provided by the Appellant's employees in transporting wheelchair and stretcher bound persons in its vans:

> Ambulette or paratransit vehicle means a special-purpose vehicle, designed and equipped to provide nonemergency transport, that has wheelchair-carrying capacity, stretcher-carrying capacity, or the ability to carry disabled individuals. (Section 1, page 4 of 52.)
>
> ...
>
> Personal assistance by the staff of the transportation company is required by the Medicaid program and consists of the rendering of physical assistance to the ambulatory and non-ambulatory (wheelchair-bound) Medicaid enrollees. (Section 3.2, page 45 of 52.)
>
> ...
>
> Personal Assistance means the provision of physical assistance by a provider of transportation services to a Medicaid enrollee for the purpose of assuring safe access to and from the enrollee's place of residence, the transportation provider's vehicle, and the Medicaid-covered health service provider's place of business. Personal assistance is the rendering of physical assistance to the enrollee to enable walking, climbing or descending stairs, ramps, curbs, or other obstacles; opening or closing doors; accessing a vehicle; and the moving of wheelchairs or other items of medical equipment and the removal of obstacles as necessary to assure the safe movement of the enrollee. In providing personal assistance, the provider or the provider's employee will physically assist the enrollee which shall include touching, or, if the enrollee prefers not to be touched, guiding the enrollee in such close proximity that the provider of services will be able to prevent any potential injury due to a sudden loss of steadiness or balance. An enrollee who can walk to and from a vehicle to their home and place of medical services without such assistance is deemed not to require personal assistance. (Transportation Provider Policy Manual Section 1, page 7 of 52.)

The statute and the FAQs both explicitly state that their lists "include," not that they "are limited to" the listed items. (Transcript, page 100.) It is difficult to understand how a reasonable application of the statutory term "all other health care support workers" can lead the Department to specify in its FAQs that this category includes front desk clerks, unit secretaries, building attendants, building service workers, custodians, floor

maintenance, physical plant and sanitation workers, security guards, and peace officers as "other health care support workers" providing "front-line," "hands-on" "patient-facing" care, yet excludes ambulette drivers who transport wheelchair and stretcher bound patients between medical facilities, giving significant physical assistance involving direct physical contact.

The audit findings in this category are reversed.

DECISION: The OMIG's determination to recover HWB payments from the Appellant is reversed.

This decision is made by John Harris Terepka, who has been designated to make such decisions.

DATED: Rochester, New York
April 6, 2026

John Harris Terepka
Bureau of Adjudication