OMIG's New Compliance Program Assessment Form and How the Compliance Program Review Function Operates

Recording Date: November 14, 2012

New York State Office of the Medicaid Inspector General

Webinar #15

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The Purpose of Webinar #15

- The purpose of Webinar #15 is to:
  - Introduce OMIG's new Compliance Program Assessment Form.
  - Review the Bureau of Compliance's compliance program review process.
- If you find these slides useful, please use them.
- Compliance is a developing field so expect changes.
- We will be putting together questions and answers related to this webinar until Noon on November 15, 2012. They will be available on OMIG's website by November 30, 2012.

Today's Agenda

- Review of Statutory and Regulatory Compliance Obligations.
- Introduction of the New Compliance Program Assessment Form.
- How to Use the New Compliance Program Assessment Form.
- Summary of Compliance Program Review Process.
- Annual Certification Requirement Reminder.

REVIEW OF STATUTORY AND REGULATORY COMPLIANCE OBLIGATIONS

Requirement for Compliance Programs

NYS Social Services Law §Section 363-d subdivision 1.:

"The legislature finds that medical assistance [Medicaid] providers may be able to detect and correct payment and billing mistakes and fraud if required to develop and implement compliance programs. It is the purpose of such programs to organize provider resources to resolve payment discrepancies and detect inaccurate billings, among other things, as quickly and efficiently as possible, and to impose systemic checks and balances to prevent future recurrences. The legislature accordingly declares that it is in the public interest that providers within the medical assistance program implement compliance programs."

Requirement for Compliance Programs (Cont.)

18 NYCRR Section 521.1

"To be eligible to receive medical assistance payments for care, services, or supplies, or to be eligible to submit claims for care, services, or supplies for or on behalf of another person, the following persons shall adopt and implement effective compliance programs …"

Who Must Have a Compliance Program?

Providers:

- subject to Public Health Law Article 28 or 36;
  - Social Services Law §363-d subd. 4 and 18 NYCRR §521.1(a)
- subject to Mental Hygiene Law Article 16 or 31; or
  - Social Services Law §363-d subd. 4 and 18 NYCRR §521.1(b)
- for which Medicaid is a *substantial portion of their business operations*.
  - Social Services Law §363-d subd. 4 and 18 NYCRR §521.1(c)

Who Must Have a Compliance Program? (Cont.)

"Substantial portion of business operations" means any of the following:

- 18 NYCRR §521.2(b)

(1) Claims or orders, or has claimed or has ordered or should be reasonably expected to claim or order at least $500,000 in any consecutive 12 month period from Medicaid; or

(2) Receives or has received, or should be reasonably expected to receive at least $500,000 in any consecutive 12 month period, directly or indirectly from Medicaid; or

(3) Submits or has submitted claims for care, services or supplies to Medicaid on behalf of another person or persons in the aggregate of at least $500,000 in any consecutive 12 month period.

Compliance Oversight by OMIG

NYS Social Services Law Section 363-d subd. 3.:

"Upon enrollment in … [Medicaid], a provider shall certify to the [DOH] that the provider satisfactorily meets the requirements of this section. Additionally, the commissioner of health and the Medicaid inspector general shall have the authority to determine at any time if a provider has a compliance program that satisfactorily meets the requirements of this section."

(b)

"In the event that the commissioner of health or the Medicaid inspector general finds that the provider does not have a satisfactory program … the provider may be subject to any sanctions or penalties permitted by federal or state laws and regulations, including revocation of the provider's agreement to participate in the … [Medicaid] program."

Elements of Mandatory Compliance

Compliance Programs shall include the following eight elements:

New York State Social Services Law §363-d. sub 2 and 18 NYCRR § 521.3 (c)

- Element 1: Written Policies and Procedures - Code of Conduct/Ethics.
- Element 2: Designation of Compliance Officer – Employee vested w/ responsibility.
- Element 3: Training and Education.
- Element 4: Communication lines to the Compliance Officer/Function.

Elements of Mandatory Compliance (cont.)

- Element 5: Disciplinary Policies.
- Element 6: Identification of Compliance Risk Areas and non-compliance.
- Element 7: Responding to Compliance Issues.
- Element 8: Policy of Non-Intimidation and Non-Retaliation.

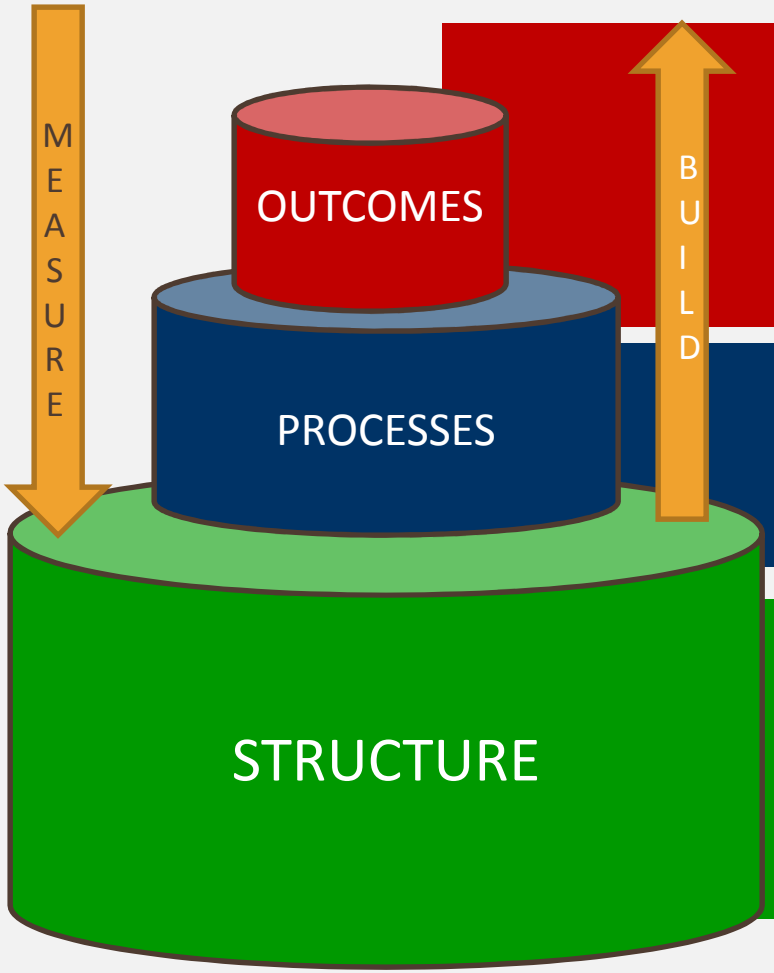
To What Shall Compliance Programs Apply?

18 NYCRR § 521.3 (a)

Compliance Programs shall be applicable to:

(1) billings;
(2) payments;
(3) medical necessity and quality of care;
(4) governance;
(5) mandatory reporting;
(6) credentialing; and
(7) other risk areas that are or should with due diligence be identified by the provider.

How to Build and Measure a Compliance Program for Effectiveness



Measures of effectiveness:
Certification history.
Self Disclosure/Hot line reviews.
Frequency of same audit issues/edits occurring.
Excluded parties and Quality of Care.
Deceased beneficiary billing.

Compliance connections to board & management.
Working Policies and Procedures.
Systems identifying risk areas, errors, PoC and monitoring-#6.
Implementation of corrections & improvement-#7.

Compliance plan document-#1.
Compliance Officer/Compliance Committees-#2.
Training and education programs-#3.
Communication lines to CO-#4.
Disciplinary policies and procedures-#5.
Non-retaliation/non-intimidation-#8.

INTRODUCTION OF THE NEW COMPLIANCE PROGRAM ASSESSMENT FORM

What is the Basis for the New Assessment Form?

- SSL §363-d subd. 2 (a) through (h).
- 18 NYCRR §521.3(c) (1) through (8).
- Lessons learned through use of the
  - Self Assessment Tool (Compliance Alert 2010-02)
  - Focused Review Form for Announced Reviews (Compliance Alert 2011-07, Document #3)
  - Focused Review – General Form (Issued 5/2/2011)
  - Focused Review – Pharmacy Form (Issued 5/3/2011)
  - Focused Review – Transportation Form (Issued 5/4/2011)

What is Different from the Self Assessment Tool?

Self Assessment Tool – Compliance Alert 2010-02

- Follows SSL §363-d's and 18 NYCRR §521.3's 8 elements;
- Includes some questions based upon Affordable Care Act;
- Included some questions thought to be helpful;
- Not used for compliance program assessments.

Compliance Program Assessment Form

- Follows SSL §363-d's and 18 NYCRR §521.3's 8 elements only;
- Simplifies the questions being posed; and
- To be used for compliance program assessments.

What Will Happen to Existing Tools on OMIG's Website?

- Compliance Alerts will be discontinued later in 2012:
  - 2010-02: Effectiveness of Medicaid Provider's Compliance Program,
  - 2011-02: Focused Review – General Form,
  - 2011-03: Focused Review – Pharmacy,
  - 2011-04: Focused Review – Transportation,
  - 2011-07: Effectiveness Review Process.
- Compliance Library Forms will be discontinued later in 2012:
  - Focused Review – General Form (Issued 5/2/2011)
  - Focused Review – Pharmacy Form (Issued 5/3/2011)
  - Focused Review – Transportation Form (Issued 5/4/2011)

How Can Providers Use the Compliance Program Assessment Form?

- Self Assessment Tool – feel free to make it your own.
- Inventory compliance program requirements.
- Use in development of compliance work plans.
- Report card for communicating to constituencies.
- Use in training.
- Due diligence assessments of business partner's/associate's compliance programs.
- Complete as requested during OMIG's compliance program review process.

HOW TO USE THE NEW COMPLIANCE PROGRAM ASSESSMENT FORM

Compliance Program Assessment Form

New York State Office of Medicaid Inspector General
Bureau of Compliance

COMPLIANCE PROGRAM ASSESSMENT FORM

INSTRUCTIONS

1. Electronically complete the Compliance Program Assessment Form using MS Word.

2. Insert responses in appropriate fields.

3. Collect copies of all documents referred to in responding to the questions that are posed.

4. When completing the "Evidence of Compliance" column in the chart on the following pages, responses should include specific citations to the documents and text that support any "Yes" response. Specifically include:
   a. document name,
   b. page number and
   c. section of the text that supports your "Yes" response.

   It is not sufficient just to list the document that provides the evidence.

5. *Do not send the completed Compliance Program Assessment Form to OMIG unless specifically requested by OMIG.*

COMPLIANCE PROGRAM ASSESSMENT FORM

Name of Medicaid Provider:

Medicaid Provider IDS(s) #: _

Federal Employee Identification Number

(FEIN) associated with Medicaid billings: _

Person Completing Assessment: _

Title of Person Completing Assessment: _

Date Assessment Completed: _

	Description	Provider Yes	Provider No	Provider's Evidence of Compliance or action required *Include specific citations to the documents and text that supports any "Yes" response*	OMIG Yes	OMIG No	Bureau of Compliance Conclusions Based upon Responses from Provider
	Element 1: Written policies and procedures						
1.1	Do you have written policies and procedures that describe compliance expectations in a code of conduct or code of ethics?						
1.2	Have you implemented the operation of the compliance program?						
1.3	Do you have written policies and procedures that provide guidance to *employees* on dealing with potential compliance issues?						

	Description	Provider Yes	Provider No	Provider's Evidence of Compliance or action required *Include specific citations to the documents and text that supports any "Yes" response*	OMIG Yes	OMIG No	Bureau of Compliance Conclusions Based upon Responses from Provider
1.4	Do you have written policies and procedures that provide guidance to *others* on dealing with potential compliance issues?			*Please define "others" as it relates to this Element.*			
1.5	Do you have written policies and procedures that provide guidance on how to communicate compliance issues to appropriate compliance personnel?						
1.6	Do you have written policies and procedures that provide guidance on how potential compliance problems are investigated and resolved?						

Element 2: Designate an employee vested with responsibility

2.1	Has a designated employee been vested with responsibility for the day-to-day operation of the compliance program?						
2.2	Are the designated employee's (referred to in 2.1) duties related solely to compliance? *If the answer to 2.2 is "Yes" indicate "NA" in 2.3 and continue on to 2.4. If the*						

	Description	Provider Yes	Provider No	Provider's Evidence of Compliance or action required *Include specific citations to the documents and text that supports any "Yes" response*	OMIG Yes	OMIG No	Bureau of Compliance Conclusions Based upon Responses from Provider
	answer to 2.2 is "No" answer 2.3.						
2.3	If the designated employee's (referred to in 2.1) compliance duties are combined with other duties, are the compliance responsibilities satisfactorily carried out?			*Provide details on what the designated employee's other duties are and how you assess if the compliance duties are being satisfactorily carried out.*			
2.4	Does the designated employee (referred to in 2.1) report directly to the entity's chief executive or other senior administrator?			*Specify the reporting relationship.*			
2.5	Does the designated employee (referred to in 2.1) periodically report directly to the governing body on the activities of the compliance program?			*Specify the reporting relationship, the basis for the reporting relationship and the frequency of the reporting.*			

Element 3: Training and education

3.1	Is training and education provided to *all affected employees* on compliance issues, expectations and the compliance program operation?			*Please define affected employees used for purposes of training in this Element.*			
3.2	Is training and education			*Please define "affected*			

	Description	Provider Yes	Provider No	Provider's Evidence of Compliance or action required *Include specific citations to the documents and text that supports any "Yes" response*	OMIG Yes	OMIG No	Bureau of Compliance Conclusions Based upon Responses from Provider
	provided to *all affected persons associated with the provider* on compliance issues, expectations and the compliance program operation?			*persons associated with the provider"used for purposes of training in this Element.*			
3.3	Is training and education provided to *all executives* on compliance issues, expectations and the compliance program operation?						
3.4	Is training and education provided to *all governing body members* on compliance issues, expectations and the compliance program operation?						
3.5	Does the compliance training occur periodically?			*Please define the timing of the periodic training and the audience for the periodic training.*			
3.6	Is compliance training part of the orientation for *new employees*?						
3.7	Is compliance training part of the orientation for *appointees or associates*?						
3.8	Is compliance training part of						

	Description	Provider Yes	Provider No	Provider's Evidence of Compliance or action required *Include specific citations to the documents and text that supports any "Yes" response*	OMIG Yes	OMIG No	Bureau of Compliance Conclusions Based upon Responses from Provider
	the orientation for *executives?*						
3.9	Is compliance training part of the orientation for *governing body members*?						

Element 4: Communication lines to the responsible compliance position

4.1	Are there communication lines to the designated employee referred to in item 2.1 that are accessible to *all employees* to allow compliance issues to be reported?						
4.2	Are there communication lines to the designated employee referred to in item 2.1 that are accessible to *all persons associated with the provider* to allow compliance issues to be reported?						
4.3	Are there communication lines to the designated employee referred to in item 2.1 that are accessible to *all executives* to allow compliance issues to be reported?						
4.4	Are there communication lines to the designated employee referred to in item						

	Description	Provider Yes	Provider No	Provider's Evidence of Compliance or action required *Include specific citations to the documents and text that supports any "Yes" response*	OMIG Yes	OMIG No	Bureau of Compliance Conclusions Based upon Responses from Provider
	2.1 that are accessible to *all governing body members* to allow compliance issues to be reported?						
4.5	Is there a method in place for *anonymous* good faith reporting of potential compliance issues as they are identified for each group noted in items 4.1 through 4.4?						
4.6	Is there a method in place for *confidential* good faith reporting of potential compliance issues as they are identified for each group noted in items 4.1 through 4.4?						

Element 5: Disciplinary policies to encourage good faith participation

5.1	Do disciplinary policies exist to encourage good faith participation in the compliance program by all affected individuals? *For purposes of Element 5, "affected individuals" shall mean those persons who are required to receive training and education under Element*						

	Description	Provider Yes	Provider No	Provider's Evidence of Compliance or action required *Include specific citations to the documents and text that supports any "Yes" response*	OMIG Yes	OMIG No	Bureau of Compliance Conclusions Based upon Responses from Provider
	3 above.						
5.2	Are there policies in effect that articulate expectations for reporting compliance issues for all affected individuals?						
5.3	Are there policies in effect that articulate expectations for assisting in the resolution of compliance issues for all affected individuals?						
5.4	Is there a policy in effect that outlines sanctions for failing to report suspected problems for all affected individuals?						
5.5	Is there a policy in effect that outlines sanctions for participating in non-compliant behavior for all affected individuals?						
5.6	Is there a policy in effect that outlines sanctions for encouraging, directing, facilitating or permitting non-compliant behavior for all affected individuals?						
5.7	Are all compliance-related disciplinary policies fairly and firmly enforced?						

	Description	Provider Yes	Provider No	Provider's Evidence of Compliance or action required *Include specific citations to the documents and text that supports any "Yes" response*	OMIG Yes	OMIG No	Bureau of Compliance Conclusions Based upon Responses from Provider
	Element 6: A system for routine identification of compliance risk areas						
6.1	Do you have a system in place for routine identification of compliance risk areas specific to your provider type?						
6.2	Do you have a system in place for self-evaluation of the risk areas identified in 6.1, including internal audits and as appropriate external audits?						
6.3	Do you have a system in place for evaluation of potential or actual non-compliance as a result of self-evaluations and audits identified in 6.2?						
	Element 7: A system for responding to compliance issues						
7.1	Is there a system in place for responding to compliance issues as they are raised?						
7.2	Is there a system in place for investigating potential compliance problems?						
7.3	Is there a system in place for responding to compliance problems as identified in the course of self-evaluations and						

	Description	Provider Yes	Provider No	Provider's Evidence of Compliance or action required *Include specific citations to the documents and text that supports any "Yes" response*	OMIG Yes	OMIG No	Bureau of Compliance Conclusions Based upon Responses from Provider
	audits?						
7.4	Is there a system in place for correcting compliance problems (as referred to in 7.3) promptly and thoroughly?						
7.5	Is there a system in place for implementing procedures, policies and systems as necessary to reduce the potential for recurrence?						
7.6	Is there a system in place for identifying and reporting compliance issues to the NYS Department of Health or the NYS Office of Medicaid Inspector General?						
7.7	Is there a system in place for refunding Medicaid overpayments?						

Element 8: A policy of non-intimidation and non-retaliation

8.1	Is there a policy of *non-intimidation* for good faith participation in the compliance program, including but not limited to reporting potential issues, investigating issues, self-evaluations, audits and remedial actions, and						

	Description	Provider Yes	Provider No	Provider's Evidence of Compliance or action required *Include specific citations to the documents and text that supports any "Yes" response*	OMIG Yes	OMIG No	Bureau of Compliance Conclusions Based upon Responses from Provider
	reporting to appropriate officials as provided in Sections 740 and 741 of the New York State Labor Law?						
8.2	Is there a policy of *non-retaliation* for good faith participation in the compliance program, including but not limited to reporting potential issues, investigating issues, self-evaluations, audits and remedial actions, and reporting to appropriate officials as provided in Sections 740 and 741 of the New York State Labor Law?						

18 NYCRR §521.3(a) requires compliance programs to be applicable to the areas listed below.
For each question below please identify documentation to support each "Yes" response.

	Description	Provider Yes	Provider No	Provider's Evidence of Compliance or action required *Include specific citations to the documents and text that supports any "Yes" response*	OMIG Yes	OMIG No	Bureau of Compliance Conclusions Based upon Responses from Provider
	Is your compliance program applicable to:						
(1)	Medicaid billings?						
(2)	Medicaid payments?						
(3)	the medical necessity and "quality of care" of the services provided to enrollees of the Medicaid program?						
(4)	governance of the provider, particularly as related to the Medicaid program?						
(5)	mandatory reporting requirements as related to the Medicaid program?						
(6)	credentialing for those who are providing covered services under the Medicaid program?						
(7)	other risk areas that are or should with due diligence be identified by the provider?						

SUMMARY OF COMPLIANCE PROGRAM REVIEW PROCESS

Compliance Program Reviews

- Goal of reviews
  - Assess Medicaid providers' compliance programs against the eight elements and statutory and regulatory requirements.
  - Assist Medicaid providers in meeting their mandatory compliance obligations.
  - Educate Medicaid providers on how they can improve their compliance programs
    - On a provider by provider basis; and
    - Through publication of Best Practices, Opportunities for Enhancement and Insufficiencies.

Compliance Program Reviews (Cont.)

- Authority for conducting Compliance Program Reviews

  Social Services Law §363-d subd. 3. and 18 NYCRR §521.4(a):

  Commissioner of Health and MIG has authority to determine at any time if a provider has a compliance program that satisfactorily meets the requirements of Social Services Law §363-d.

Compliance Program Reviews (Cont.)

- Impact of Failure on Assessment

  Social Services Law §363-d subd. 3(b) and 18 NYCRR §521.4(c):

  If Commissioner of Health and MIG determine that the provider does not have a satisfactory program, the provider may be subject to any sanctions or penalties permitted by state or federal law, including revocation of a provider's agreement to participate in the Medicaid program.

Compliance Program Reviews (Cont.)

- Types of Reviews
  - Desk Reviews;
  - Onsite Reviews – Announced and Unannounced;
  - Follow-up Onsite Reviews – Unannounced.
  - Corporate Integrity Agreement Compliance Program Reviews

Compliance Program Reviews (Cont.)

- Procedure:
  - Assessment Form completed and returned by Provider;
  - Additional information requested of Provider to be submitted;
  - Bureau reviews completed Form and all submitted documentation;
  - Bureau conducts interviews of the compliance officer (all reviews) & others within the Provider (primarily for onsite reviews);
  - Bureau prepares the OMIG portion of the Assessment Form.

Compliance Program Reviews (Cont.)

- Life Cycle of an Assessment:
  - "Discussion Draft Compliance Program Assessment" issued to Provider:
    - Provider has 10 business days to advise Bureau of any factual errors in the Discussion Draft Assessment made by the Bureau of Compliance.

Compliance Program Reviews (Cont.)

- Life Cycle of an Assessment: (Cont.)
  - "Draft Compliance Program Assessment" issued to Provider:
    - Provider has 60 calendar days to prepare and implement plans of correction to address Insufficiencies identified in the Provider's compliance program.
    - Provider's CEO and compliance officer must execute a certification statement that confirms the plans of correction have been implemented, the Insufficiencies are resolved and that the statements made by the provider are true.

Compliance Program Reviews (Cont.)

- Life Cycle of an Assessment: (Cont.)
  - "Final Compliance Program Assessment" issued to Provider:
    - OMIG, reviews the plans of correction, any supporting documentation submitted by the provider and the certification statements;
    - Relying upon the submitted plans of correction and the certification statements OMIG issues a final assessment to provider, DOH, provider's program agency and internally within OMIG;
    - OMIG reserves the right to conduct an unannounced site visit to:
      - Confirm implementation of the plans of correction;
      - Accuracy of the certification statements at the time made; and
      - Assess current status of provider's compliance program.

ANNUAL COMPLIANCE CERTIFICATION REQUIREMENT REMINDER

Requirement for Certification

- Social Services Law §363-d subd. 3

  a newly enrolling Medicaid provider shall certify that its compliance program satisfactorily meets the requirements of §363-d.

- 18 NYCRR §521.3(b)
  - upon applying for enrollment and
  - during December each year …

  a required Medicaid provider must certify that its compliance program meets the requirements of Part 521.

Key Certification Dates for 2012

- November 15, 2012
  - Webinar #16 on Certification form for 2012.
  - Sign-up through www.omig.ny.gov .
- December 1, 2012 through December 31, 2012
  - 2012 Certification form goes live and is available for Medicaid providers to certify.
  - Certification form will be posted under the Compliance tab at www.omig.ny.gov .

OMIG ONLINE RESOURCES

Available at www.omig.ny.gov

- *Compliance Alerts*
- Compliance Library – Best practices, enhancement opportunities and insufficiencies; forms; tools
- More than 4,000 provider audit reports, detailing findings in specific industries
- OMIG Webinars, annual work plans, and annual reports
- New York excluded provider list
- Self-Disclosure protocol
- Corporate Integrity Agreements
- Listserv and Twitter (#NYSOMIG)
- Bureau of Compliance dedicated e-mail address – compliance@omig.ny.gov
- Bureau of Compliance dedicated telephone number – 518-408-0401

THANK YOU