



New York State Office of Medicaid Inspector General

Compliance Alert

2014 - 02



Reminder of December 2014 Certification Obligations

New York State Social Services Law Requirement

May 8, 2014

New York State Social Services Law Requirement

THIS IS A REMINDER FROM THE NEW YORK STATE OFFICE OF THE MEDICAID INSPECTOR GENERAL (OMIG) FOR ALL MEDICAID PROVIDERS WHO ARE SUBJECT TO THE SSL §363-d¹ and Part 521² MANDATORY COMPLIANCE PROGRAM REQUIREMENT.

RECOMMENDATION

OMIG strongly recommends that all Medicaid providers conduct a self-assessment of their compliance programs annually. A self-assessment will maximize a provider's opportunity to make improvements, corrections or refinements to their compliance programs prior to the December 2014 certification period.

Providers may use OMIG's Compliance Program Assessment Form, or any other appropriate tool, to assist them in conducting a self-assessment of their compliance program. The Compliance Program Assessment Form may be found on OMIG's Web site within the Compliance Library on the Compliance landing page at <http://www.omig.ny.gov/compliance/compliance-library>.)

The results of the Medicaid provider's self-assessment, among other things, will assist the Medicaid provider determine if it can certify that its compliance program is effective or if its compliance program is not effective. If the self-assessment is completed mid-year and the provider's self-assessment identifies any element of the SSL § 363-d and Part 521 is not being

¹ New York State Social Services Law Section 363-d

² 18 New York Code of Rules and Regulations Part 521

met, the provider still has time to implement corrective action on a particular element in order to certify that its compliance program is meeting the all the requirements in December.

PLEASE NOTE that the mandatory compliance program obligation set out in SSL § 363-d and Part 521 is continuous for providers that must have a compliance program. It must be in place all year, not just in December.

PROVIDERS WHO MUST MEET THE MANDATORY COMPLIANCE PROGRAM OBLIGATION

The following identifies the Medicaid providers that must have compliance programs. If a Medicaid provider is required to have a compliance program, the Medicaid provider is also required to certify on OMIG's Web site (www.omig.ny.gov) that its compliance program meets the requirements of the applicable law and regulations. The certification must occur in December of each year.

SSL § 363-d and Part 521, both entitled "Provider Compliance Programs," have been actively enforced by the Office of the Medicaid Inspector General (OMIG) since 2009. This regulation requires all Medicaid providers who fall under the following categories to **certify in December of each year** that they have adopted, implemented and maintain an effective compliance program. SSL § 363-d and Part 521 apply to:

- *persons subject to the provisions of article 28 or 36 of the Public Health Law;*
- *persons subject to the provisions of article 16 or 31 of the Mental Hygiene Law;*
- *other persons, providers or affiliates who provide care, services or supplies under the ...[Medicaid] program, or persons who submit claims for care, services, or supplies for or on behalf of another person for which the ...[Medicaid] program is or should be reasonably expected by a provider to be a substantial portion of their business operations.*³

(Emphasis added)

Substantial portion of business operations means any of the following:

(1) when a person, provider, or affiliate 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 the...[Medicaid] program;

(2) when a person, provider, or affiliate 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 the...[Medicaid] program; or

*(3) when a person, provider, or affiliate who submits or has submitted claims for care, services, or supplies to the...[Medicaid] program on behalf of another person or persons in the aggregate of at least \$500,000 in any consecutive 12-month period.*⁴

³ 18 New York Code of Rules and Regulations Section 521.1

⁴ 18 New York Code of Rules and Regulations Section 521.2(b)

WHAT IS REQUIRED FOR CERTIFICATION UNDER SSL § 363-D AND PART 521

Medicaid providers required to have a compliance program (as listed above) must have an implemented and operating compliance program that addresses all the requirements under each of the eight elements specified in SSL § 363-d and Part 521. Medicaid providers must certify to the Department of Health and OMIG that a compliance program meeting the requirements of the statute and regulation are in place. The certification must be completed upon enrollment with New York State in the Medicaid program⁵ and during the month of December each year thereafter.⁶ The certification must be made to the New York State Department of Health, on a form provided by OMIG on its Web site, that a compliance program meeting the requirements of the regulation is in place.⁷

It is the Medicaid provider's responsibility to determine if:

- a. it has a compliance program that meets the statutory and regulatory requirements of under SSL § 363-d subsection 2 and 18 NYCRR § 521.3 (c) and
- b. its compliance program is effective.

RESOURCES

The regulation, certification form, and FAQs are available on the OMIG Web site at: <http://www.omig.ny.gov/compliance/certification>.

Additionally, New York State's Medicaid providers are advised to review OMIG's Web site and review the information and resources that are published under the Compliance Tab on OMIG's home page. The Compliance Library under the Compliance Tab provides copies of current forms, publications, and other resources that could prove helpful in conducting a self-assessment and completing the certification form in December.

Finally, OMIG will be updating New York Medicaid's Form for Provider Certification of Effective Compliance Programs during 2014 for use during December 2014. When the new form is available, it will be announced in a *Medicaid Update* and also on OMIG's Web site. The current form and the form for 2014 give the Medicaid provider the opportunity to provide information to OMIG that its compliance program does not meet the effectiveness requirements. OMIG expects to present a Webinar on the new certification form for 2014 in November, 2014.

⁵ New York Social Services Law Section 363-d subsection 3 and 18 New York Code of Rules and Regulations Section 521.3(b)

⁶ 18 New York Code of Rules and Regulations Section 521.3(b)

⁷ 18 New York Code of Rules and Regulations Section 521.3(b)

If you have any questions, please contact the OMIG's Bureau of Compliance at (518) 408-0401 or by using the Bureau of Compliance's dedicated e-mail address compliance@omig.ny.gov.

OMIG recommends that New York's Medicaid providers sign up for e-mail notices from OMIG by subscribing to OMIG's listserv. Anyone can become a subscriber at no cost by signing up on OMIG's home page by using the following link: <http://www.omig.ny.gov/omig-email-list-subscriptions>. The listserv is a great way to keep informed of the introduction of new compliance tools and information on compliance. As additional compliance-related resources are posted by OMIG, those on OMIG's listserv will receive notices of their publication.

If you have any questions, please contact the OMIG's Bureau of Compliance at (518) 408-0401 or by using the Bureau of Compliance's dedicated e-mail address compliance@omig.ny.gov.

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