

COMPLIANCE GUIDANCE 2016-01

Certifying Official for Compliance Program Certifications

September 1, 2016

The certification requirement established by New York State Social Services Law § 363-d (“SSL 363-d”)¹ and 18 New York Codes of Rules and Regulations Part 521 (“Part 521”)² applies to required providers³ and their compliance programs. Required providers must certify to the Department of Health, using a form on the Office of the Medicaid Inspector General’s (“OMIG”) website, that a compliance program meeting the requirements of Part 521 is in place.

The Certifying Official is required to submit the certification form on OMIG’s website.

PURPOSE OF THIS COMPLIANCE GUIDANCE

This Compliance Guidance provides direction on who OMIG considers as qualifying as a Certifying Official and directs that the Certifying Official and the Compliance Officer not be the same person within a required provider.

DISCUSSION

Compliance programs are required to have an employee vested with responsibility for the day to day operation of the compliance program⁴ (“Compliance Officer”). The Compliance Officer

shall report directly to the [required provider’s] chief executive or other senior administrator designated by the chief executive and shall periodically report directly to the governing body on the activities of the compliance program;⁵

When completing the certification required by SSL 363-d and Part 521, OMIG considers the Certifying Official to be the person to whom the Compliance Officer reports on the activities of the compliance program. When required providers are completing the certification, the Certifying Official must be the person completing and submitting the certification. Additionally the Certifying Official should be either:

1. the required provider’s chief executive (e.g., Chief Executive Officer, most senior administrator, owner, etc.); or

¹ SSL 363-d at subsection 3.

² 18 NYCRR § 521.3(b).

³ “Required providers” is defined in 18 NYCRR § 521.2(a).

⁴ SSL 363-d at subsection 2 (b) and 18 NYCRR § 521.3(c)(2).

⁵ 18 NYCRR § 521.3(c)(2).

2. a senior administrator of the required provider formally designated by the chief executive to whom the Compliance Officer reports (e.g., Chief Operating Officer, Vice President or other officer level staff, etc.); or
3. a member of the required provider's governing body to whom the Compliance Officer periodically reports (e.g., chair of the board's Compliance Committee, board chair, etc.).

CONCLUSION

The Certifying Official on the certification should be someone other than the Compliance Officer. Additionally, the Certifying Official should be the person who completes and submits the certification on OMIG's website.

If you have any questions on this Compliance Guidance, or any compliance issue under New York State's mandatory compliance program obligation, please contact the Office of the Medicaid Inspector General's Bureau of Compliance at 518-408-0401 or by email at compliance@omig.ny.gov.

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This Compliance Guidance should be considered to be a general guidance to assist those subject to the mandatory compliance program obligations set out in New York State Social Services Law Section 363-d (§ 363-d) and 18 NYCRR Part 521 (Part 521). It does not set out all points that the Office of the Medicaid Inspector General (OMIG) will consider or use when assessing if compliance programs meet statutory and regulatory requirements. OMIG reserves the right to recall or change this Compliance Guidance at any time.

This Compliance Guidance does not constitute rulemaking by 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 this Compliance Guidance alters any statutory or regulatory requirement. In the event of a conflict between statutes and regulations applicable to the Medicaid provider and either OMIG audit protocols or this Compliance Guidance, the requirements of the statutes and regulations govern.

A provider's legal obligations are determined by applicable federal and state statutory and regulatory law. This Compliance Guidance is not a substitute for a review of 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.