



Office of the
Medicaid Inspector
General

New York State's Mandatory Compliance Program Obligation for Medicaid Providers - Element #2

**OMIG Webinar Series Addressing Requirements of New York's
Mandatory Compliance Programs for Medicaid Providers**

November 2015

The Fine Print

- ❑ This presentation reflects what OMIG considers when assessing compliance programs required by SSL § 363-d and 18 NYCRR Part 521, as of the date this is posted.
- ❑ OMIG does not have responsibility for updating this presentation to reflect changes in approach or interpretation.
- ❑ This presentation does not provide legal advice; shall not bind OMIG in any way; and does not represent the opinion of the Office of the Medicaid Inspector General (OMIG), Centers for Medicare and Medicaid Services (CMS), Office of Inspector General (OIG) or any other State or federal agency.

Program Agenda

- ❑ Identify the statutory and regulatory requirements of Element #2 of New York's mandatory compliance program
- ❑ Identify what OMIG looks for when it assesses if compliance programs meet the requirements for Element #2
- ❑ Introduce the next webinar in the series

General Introduction to the Eight Elements

Introduction

- ❑ Medicaid providers are required to adopt and implement a compliance program
- ❑ Each requirement under each compliance program element must be implemented in order to meet the mandatory compliance program obligation
- ❑ Compliance programs must be effective
- ❑ OMIG considers the provider's characteristics when determining effectiveness, but all requirements must be adopted and implemented at the time of the review

Element #2 – Designate an Employee

SSL § 363-d subsection 2(b)

18 NYCRR §521.3(c)(2)

Element #2 – Designate an Employee Vested with Responsibility

1. designate an employee vested with responsibility for the day-to-day operation of the compliance program;
2. such employee's duties may solely relate to compliance or may be combined with other duties,
3. so long as compliance responsibilities are satisfactorily carried out;
4. such employee shall report directly to the entity's chief executive or other senior administrator **designated by the chief executive** and
5. such employee shall periodically report directly to the governing body on the activities of the compliance program

What OMIG Looks for When it Assesses if the Requirements of Element #2 Are Met

1. designate an employee vested with responsibility for the day-to-day operation of the compliance program;

1. The person with day-to-day operational responsibility must be an employee
 - a. Employees are not consultants, independent contractors, volunteers, leased employees, persons supplied through Professional Employer Organizations (PEOs), non-employed board members, or others

1. designate an employee vested with responsibility for the day-to-day operation of the compliance program; (continued)

2. What are factors to consider when determining employee status for a compliance officer?
 - a. Is compliance officer a W-2 employee?
 - b. Is the provider **required** to withhold payroll tax deductions from the compliance officer's compensation?
 - c. Is the provider required to cover the compliance officer under unemployment, disability, workers' compensation or other employment benefits?

1. designate an employee vested with responsibility for the day-to-day operation of the compliance program; (continued)

- d. Compliance Guidance 2015-02 sets out an expansion of the employment requirement in cases of Holding Companies and Joint Venture Structures
https://www.omig.ny.gov/images/stories/compliance_alerts/20150330_Compliance_Guidance_2015-02_final.pdf
- e. Compliance Guidance 2015-02 also applies in non-profit cases where there is a sole corporate member structure

1. designate an employee vested with responsibility for the day-to-day operation of the compliance program; (continued)

3. In determining whether a person is “vested,” among other things, OMIG looks for consistency in:
 - a. the compliance plan
 - b. applicable policies and procedures
 - c. management organization charts
 - d. job descriptions and employment offers setting duties
 - e. board resolutions and reports
 - f. communications to those covered by the compliance program



1. designate an employee vested with responsibility for the day-to-day operation of the compliance program; (continued)

4. Day-to-day operational responsibility is reflected in the compliance officer's duties and is typically reflected in the same documents that determine what the compliance officer is "vested" to do

1. designate an employee vested with responsibility for the day-to-day operation of the compliance program; (continued)

5. What constitutes day-to-day operation of the compliance program?
 - a. Management of compliance staff and assignments
 - b. Management of communications, logs and reports
 - c. Drafting and reviewing appropriate policies, reports, etc.
 - d. Conducting or overseeing compliance training
 - e. Conducting, arranging for and obtaining the results of compliance related investigations/audits

2. such employee's duties may solely relate to compliance or may be combined with other duties

1. What is set out in employee performance plans and reviews; job descriptions; employment offers; titles, etc.?
 - a. If a time study were done, what would it reflect?
 - b. Who does the employee supervise and manage?
 - c. Who does the employee report to?
 - d. What reports (topics) are issued by the employee?

2. such employee's duties may solely relate to compliance or may be combined with other duties

2. OMIG is concerned with potential conflicts of interest between compliance responsibilities & other duties such as:
 - a. billing and receipts
 - b. quality management
 - c. CFO
 - d. General Counsel
 - e. others

3. so long as compliance responsibilities are satisfactorily carried out

1. OMIG looks at this beyond just those cases where a compliance officer may have additional non-compliance duties.
2. OMIG looks for evidence that there is an assessment of the compliance officer's performance and the performance of the compliance program itself.
3. If the compliance officer has multiple responsibilities, OMIG assesses if there are sufficient resources devoted to or by the compliance officer to the compliance function.

3. so long as compliance responsibilities are satisfactorily carried out (continued)

4. OMIG assesses if all the stated compliance duties/responsibilities are being satisfactorily addressed.
5. OMIG assesses if the compliance officer is given access (through participation or receiving reports) to all relevant management reports and control structure assessments.
6. If compliance responsibilities are not being satisfactorily carried out, OMIG assesses if it is due to the qualifications of the compliance officer or due to insufficient resources being made available to the compliance function.



4. such employee shall report directly to the entity's chief executive or other senior administrator designated by the chief executive

1. Reporting structure should be self-evident through a review of organization charts, performance reviews, job descriptions, management reports, etc.
2. OMIG will look for evidence of designation by the chief executive if to another senior administrator.
3. Reporting structure should be to a “senior” administrator. A senior administrator should have a close reporting relationship to the chief executive.

4. such employee shall report directly to the entity's chief executive or other senior administrator designated by the chief executive (continued)

4. Conflicts of interest in reporting relationship is a concern (e.g., compliance officer reporting to CFO).
5. Reporting should be considered to include:
 - a. reporting in the context of performance appraisals, but also
 - b. reporting on the results of the operation of the compliance program – results of audits, plans of correction, education, etc.

5. such employee shall periodically report directly to the governing body on the activities of the compliance program;

1. “Periodically” is not defined, but OMIG expects that the necessary report will be at least annually.
2. OMIG prefers to see reports to the full board, but board committees or specific board members may be acceptable.
 - * If to board committee or specific board member, OMIG expects that there be some report from the committee or individual to the full board when appropriate.
3. OMIG expects to see direct reporting (e.g., no filter).



5. such employee shall periodically report directly to the governing body on the activities of the compliance program; (continued)

- 4. Reporting can take many forms, but OMIG will look for evidence that it occurs:
 - a. Written reports
 - b. Oral reports – Board minutes should reflect the reporting
- 5. For providers without governing boards, the report should be to the owner(s), partner(s), or person(s) with responsibility for oversight of senior management

Compliance-Related Tools and Resources

Compliance Resources

OMIG website: www.omig.ny.gov

- ❑ Compliance Tab
 - Compliance Library
- ❑ Resources Tab
 - Webinars
- ❑ Bureau of Compliance contacts:
 - compliance@omig.ny.gov
 - 518-408-0401

Compliance Resources (continued)

Compliance Library

- ☐ Compliance Authorities – applicable laws and regulations
- ☐ OMIG Compliance Publications
 - Compliance Guidance
 - Compliance Alerts
 - Medicaid Updates
- ☐ Forms
 - Compliance Program Self-Assessment Form

Compliance Resources (continued)

Compliance Library: (continued)

- ☐ OMIG Assessment Results
 - Best Practices
 - Opportunities for Enhancement
 - Identified Insufficiencies
- ☐ FAQs
- ☐ Compliance-related Webinars
- ☐ Other Compliance Resources



The Next Webinar in the Series

Element #3

Training and education of all affected individuals on compliance issues, expectations and the compliance program...

Closing

OMIG Resources

- ❑ www.omig.ny.gov
- ❑ Join the OMIG list serve – signup on the OMIG website
- ❑ OMIG's social media channels include Twitter, Facebook and LinkedIn

Questions

- ❑ Questions related to this webinar and others in this series should be emailed to OMIG's Bureau of Compliance at: compliance@omig.ny.gov
- ❑ Questions received up to November 25, 2015 will be addressed in an FAQ to be posted on the OMIG website in December 2015.
- ❑ Please include "COMPLIANCE WEBINAR QUESTION" in the subject line when submitting questions via email.

Thank You

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