



Office of the
Medicaid Inspector
General

New York State's Mandatory Compliance Program Obligation for Medicaid Providers - Element #5

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 #5 of New York's mandatory compliance program.
- ❑ Identify what OMIG looks for when it assesses if compliance programs meet the requirements for Element #5.
- ❑ 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 # 5 – Disciplinary Policies

SSL § 363-d subsection 2(e) &
18 NYCRR §521.3(c)(5)

Element #5 – Disciplinary policies to encourage good faith participation ...

1. disciplinary policies to:
 - a. encourage good faith participation in the compliance program by all affected individuals,
 - b. including policies that articulate expectations for
 - 1) reporting compliance issues and
 - 2) assisting in the resolution of compliance issues

Element #5 – Disciplinary policies to encourage good faith participation ... (continued)

2. outline sanctions for
 - a. failing to report suspected compliance problems;
 - b. participating in non-compliant behavior; or
 - c. encouraging, directing, facilitating or permitting non-compliant behavior;
3. such disciplinary policies shall be fairly and firmly enforced.

What OMIG Looks for When it Assesses if the Requirements of Element #5 are Met

1. disciplinary policies to:

a. encourage good faith participation in the compliance program by all affected individuals,

1. Disciplinary policies must exist.
2. Good faith is not defined, but “good faith” is based upon the motivation for the affected individuals’ participation in the compliance program.
3. “Good faith” generally describes an honesty of purpose, freedom from intent to defraud, and generally speaking being faithful to one’s duty or obligation.

- 1. disciplinary policies to:**
 - a. encourage good faith participation in the compliance program by all affected individuals, (continued)**
4. The disciplinary policies must apply to all affected individuals (employees, executives, board, contractors, persons associated with the provider, vendors, volunteers, etc.)
5. Encouraging good faith participation often establishes some disciplinary response for failures in good faith participation.
6. Discipline that applies will likely vary based upon not only the action, but also the relationship of the person.

1. disciplinary policies to:...

b. including policies that articulate expectations for

1) reporting compliance issues and ...

1. Policies should identify that reporting compliance issues to the compliance function are expected and that failure to do so will result in discipline, if appropriate.
2. Some recognition is appropriate to address uncertainty with facts and persons' concerns with reporting structures, but potential reporters should be aware of Element #8's obligations for non-retaliation and non-intimidation.

1. disciplinary policies to:...

b. including policies that articulate expectations for ...

2) assisting in the resolution of compliance issues

1. Policies should identify that assisting in resolving compliance issues is expected and that failure to do so will result in appropriate discipline.
2. Some recognition is appropriate of the level of individuals to assist in the resolution of compliance issues, but those providing assistance should be aware of Element #8's protections for non-retaliation and non-intimidation.
3. Assisting in resolution could include assisting in investigations by non-compliance staff.

2. outline sanctions for:

- a. failing to report suspected compliance problems;**
 - b. participating in non-compliant behavior; or**
 - c. encouraging, directing, facilitating or permitting non-compliant behavior;**
1. Sanctions may be different based upon the level of involvement and what is the sanctionable activity.
 2. Investigations and analysis should be sufficiently detailed to be able to identify who the participants are and who may be encouraging, directing, facilitating or permitting the non-compliant behavior.

2. outline sanctions for:

- a. failing to report suspected compliance problems;
- b. participating in non-compliant behavior; or
- c. encouraging, directing, facilitating or permitting non-compliant behavior; (continued)

3. Sanctions for failure to report may be the basis for encouraging reporting.
4. Sanctions should include non-employees or management that may be involved in the non-compliant behavior.
5. Typical language that has been found to be acceptable includes: violations of the compliance program may result in discipline being taken up to and including termination of employment.

3. such disciplinary policies shall be fairly and firmly enforced.

1. Sanctions for co-participants in non-compliant behavior should be commensurate with their participation and involvement.
2. Application of disciplinary policies should be the same across management and line staff.
3. Disciplinary policies must be operating in order for them to be enforced.
4. Consistent training and education across affected individuals on the discipline should be evident.
5. Evidence of discipline should be evident.

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 #6

System for routine identification of compliance risk areas and non-compliance ...

Closing

OMIG Resources

- ❑ www.omig.ny.gov
- ❑ Join the OMIG listserv – 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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