



Office of the  
Medicaid Inspector  
General

# New York State's Mandatory Compliance Program Obligation for Medicaid Providers - Element #7

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 #7 of New York's mandatory compliance program.
- ❑ Identify what OMIG looks for when it assesses if compliance programs meet the requirements for Element #7.
- ❑ 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 # 7 – System for Responding to Compliance Issues

SSL § 363-d subsection 2(g) &  
18 NYCRR §521.3(c)(7)

# **Element #7 – System for responding to compliance issues when raised, for investigating and correcting problems ...**

A system for:

1. responding to compliance issues as they are raised;
2. investigating potential compliance problems;
3. responding to compliance problems as identified in the course of self-evaluations and audits;

# Element #7 – System for responding to compliance issues when raised, for investigating and correcting problems ... (continued)

A system for: ...

4. correcting such problems promptly and thoroughly and implementing procedures, policies and systems as necessary to reduce the potential for recurrence;
5. identifying and reporting compliance issues to the department or the office of the Medicaid inspector general; and
6. refunding overpayments.



# What OMIG Looks for When it Assesses if the Requirements of Element #7 are Met

## A system for: ...

1. Element #1 requires that written policies and procedures exist that describe how potential compliance problems are investigated and resolved.
2. A system must exist and evidence of its operation must be evident.
3. Written policies and procedures must outline the system that addresses the remaining requirements in Element #7.
4. OMIG looks for logs, compliance reports, work plans, etc. as evidence that the system is working.

## A system for: ... (continued)

5. It is acceptable that the system is part of a larger enterprise level system addressing corrective actions or responses to operational gaps, but compliance matters must be addressed.

# 1. responding to compliance issues as they are raised;

1. The system must address compliance issues as they are raised.
2. Addressing compliance issues varies based upon the complexity of the issue and the availability of information.
3. OMIG expects issues to be addressed in a reasonably diligent manner.
4. Compliance issues “as they are raised” includes responding to reported issues, but also taking affirmative action even without someone reporting an issue.

## 2. investigating potential compliance problems;

1. The system should include identification of potential compliance problems, not just actual problems.
2. Investigations should be thorough and complete.
3. Evidence of investigations should be evident, and include:
  - a. identification of issue(s) being investigated,
  - b. investigative notes and findings, and
  - c. reports on results of investigations.

### **3. responding to compliance problems as identified in the course of self-evaluations and audits;**

1. Results of self-evaluations and audits that identify compliance problems should be made available to the compliance function.
2. There should be plans of correction or plans of action that are designed to address identified compliance problem(s).
3. If response requires attention at a higher level or in areas other than the compliance function, appropriate action should be taken.

### **3. responding to compliance problems as identified in the course of self-evaluations and audits;** (Continued)

4. Response to compliance problems may not necessarily be a compliance function response, it may involve other units or leaders.
5. Development of work plans and plans of correction, as well as providing ongoing assessment of progress in completing the correction are appropriate responses.

## **4. correcting such problems promptly and thoroughly and implementing procedures, policies and systems as necessary to reduce the potential for recurrence;**

1. “Promptly” is not defined, but OMIG expects that once a compliance problem is identified action is taken with little or no delay
2. “Thoroughly” is not defined, but OMIG expects that the problem will be completely addressed. Plans of correction that are not completed or appropriately revised before resolution of matter is not a thorough response.



## **4. correcting such problems promptly and thoroughly and implementing procedures, policies and systems as necessary to reduce the potential for recurrence;** (continued)

3. Correcting the immediate compliance problem is only the first step, implementing procedures to reduce the potential for recurrence is also required and demonstrates a thorough response to the problem.
4. Adding or revising control structures may be one way to reduce potential recurrence.

## **4. correcting such problems promptly and thoroughly and implementing procedures, policies and systems as necessary to reduce the potential for recurrence;** (continued)

5. Reducing the potential for recurrence should seek to eliminate it from ever happening again, but OMIG recognizes that may not be possible.
6. Examples of taking steps to reduce recurrence may include:
  - a. change/update of policies and procedures;
  - b. compliance work plans that include the problem areas,
  - c. self-assessment/audit schedules that target problem areas.

## 5. identifying and reporting compliance issues to the department or the office of the Medicaid inspector general; and

1. The “department” referred to is the NYS Department of Health (DOH).
2. OMIG’s self-disclosure protocol can be used to report overpayments at <https://www.omig.ny.gov/self-disclosure>.
3. OMIG will look to policies and procedures and plan to identify commitment to report to DOH and OMIG.
4. OMIG sees most compliance issues as involving an overpayment to a provider.

## **5. identifying and reporting compliance issues to the department or the office of the Medicaid inspector general; and**

5. Is there a protocol to identify what compliance issues should be reported and is there evidence that the analysis is taking place?

## 6. refunding overpayments.

1. Refunding overpayments can be through the self-disclosure process, or through voids and adjustments, but there are limitations on the void and adjustment process.
2. OMIG looks to assess if the payment system set up to refund overpayments:
  - a. Is there any self-disclosure history, history of voids or adjustments?
  - b. Is there any analysis of any overpayments to identify why and how to correct it?

# Compliance-Related Tools and Resources

# Compliance Resources

OMIG website: [www.omig.ny.gov](http://www.omig.ny.gov)

- ❑ Compliance Tab
  - Compliance Library
- ❑ Resources Tab
  - Webinars
- ❑ Bureau of Compliance contacts:
  - [compliance@omig.ny.gov](mailto: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 #8

Policy of non-intimidation and non-retaliation for good faith participation in the compliance program ...

# Closing

# OMIG Resources

- ❑ [www.omig.ny.gov](http://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](mailto: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

# Contact Information

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