



Office of the  
Medicaid Inspector  
General

# New York State's Mandatory Compliance Program Obligation for Medicaid Providers - Element #8

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 #8 of New York's mandatory compliance program.
- ❑ Identify what OMIG looks for when it assesses if compliance programs meet the requirements for Element #8.

# 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 # 8 – Policy of Non-intimidation and Non-retaliation

SSL § 363-d subsection 2(h) &  
18 NYCRR §521.3(c)(8)

## **Element #8 – Policy of non-intimidation and non-retaliation for good faith participation in the compliance program ...**

1. policy of non-intimidation and non-retaliation for
2. good faith participation in the compliance program, including, but not limited to
  - a. reporting potential issues,
  - b. investigating issues,
  - c. self-evaluations, audits and remedial actions, and
  - d. reporting to appropriate officials as provided in Labor Law sections 740 and 741.

# What OMIG Looks for When it Assesses if the Requirements of Element #8 are Met



# 1. policy of non-intimidation and non-retaliation for;

1. There must be one or more policies in effect that address non-intimidation and non-retaliation. Both must be present.
2. OMIG considers intimidation in this context to include any form of bullying, coercion or threatening behavior.
3. OMIG considers retaliation in this context to include an injury to one's person, livelihood, or reputation.
4. Evidence should be available that demonstrates that the required policy is operating. Evidence may be in compliance or human resource files.

# 1. policy of non-intimidation and non-retaliation for; (continued)

5. Allegations of intimidation or retaliation should be considered a compliance risk area that requires investigation under Element #6.
6. OMIG looks for clear language in the compliance plan, or policies, or handbooks that identify the unacceptability of intimidation and retaliation for those that participate in good faith in the compliance program.

## **2. good faith participation in the compliance program, including, but not limited to**

### **a. reporting potential issues,**

1. Good faith is based upon the participation in the compliance program.
2. “Good faith” generally describes an honesty of purpose, freedom from intent to defraud, and generally speaking being faithful to one’s duty or obligation.
3. Reporting can be made in good faith but be wrong about the facts.
4. The law anticipates that there may be other actions requiring protection from intimidation and retaliation.

## **2. good faith participation in the compliance program, including, but not limited to ...**

**b. investigating issues,**

**c. self-evaluations, audits and remedial actions,  
and**

1. Those involved in assisting in investigations as well as those that are conducting investigations must be covered by the policy of non-intimidation and non-retaliation.
2. Those conducting the self-evaluations, audits and remedial actions must also be covered by the policy of non-intimidation and non-retaliation.

## **2. good faith participation in the compliance program, including, but not limited to ...**

### **d. reporting to appropriate officials as provided in Labor Law sections 740 and 741**

1. Those reporting to government officials identified in Labor Law sections 740 and 741 are specifically protected from intimidation and retaliation.

## **2. good faith participation in the compliance program, including, but not limited to ...**

### **d. reporting to appropriate officials as provided in Labor Law sections 740 and 741 (continued)**

2. Labor Law section 740 specifically prohibits retaliatory personnel actions by employers when employees
  - a. disclose or threaten to disclose to a supervisor or public body an activity, policy or practice that violates law, rule or regulation, which violation creates and presents a substantial and specific danger to public health or safety, or constitutes health care fraud.

## **2. good faith participation in the compliance program, including, but not limited to ...**

### **d. reporting to appropriate officials as provided in Labor Law sections 740 and 741 (continued)**

2. Labor Law section 740 specifically prohibits retaliatory personnel actions by employers when employees ...
  - b. provide information to or testifies before any public body conducting an investigation, hearing or inquiry into any violation of law, rule or regulation by the employer.

## **2. good faith participation in the compliance program, including, but not limited to ...**

### **d. reporting to appropriate officials as provided in Labor Law sections 740 and 741 (continued)**

2. Labor Law section 740 specifically prohibits retaliatory personnel actions by employers when employees ...
  - c. object to or refuse to participate in any such activity, policy or practice in violation of a law, rule or regulation.



## **2. good faith participation in the compliance program, including, but not limited to ...**

### **d. reporting to appropriate officials as provided in Labor Law sections 740 and 741 (continued)**

3. Labor Law section 741 specifically prohibits retaliatory actions by employers when employees
  - a. disclose or threaten to disclose to a supervisor, or to a public body, an activity, policy or practice of the employer or agent that the employee in good faith, reasonably believes constitutes improper quality of patient care; or

## **2. good faith participation in the compliance program, including, but not limited to ...**

### **d. reporting to appropriate officials as provided in Labor Law sections 740 and 741 (continued)**

3. Labor Law section 741 specifically prohibits retaliatory actions by employers when employees ...
  - b. object to or refuse to participate in any such activity, policy or practice of the employer or agent that the employee in good faith, reasonably believes constitutes improper quality of patient care.

# 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

# 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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