

# Mandatory Compliance Program Certification Requirement under 18 NYCRR §521.3(b) Recommendation for Self Assessment

**THIS IS A REMINDER FROM THE NEW YORK STATE OFFICE OF THE MEDICAID INSPECTOR GENERAL (OMIG) FOR ALL MEDICAID PROVIDERS WHO ARE SUBJECT TO THE NYS SOCIAL SERVICES LAW SECTION 363-d MANDATORY COMPLIANCE PROGRAM REQUIREMENT.**

OMIG highly recommends that all Medicaid providers annually conduct a self-assessment of their compliance programs. A self-assessment will maximize a provider's opportunity to make improvements, corrections or refinements to their compliance programs prior to the December 2013 certification period. This article is a reminder that OMIG recommends that Medicaid providers conduct their self-assessment.

The following identifies Medicaid providers that must have compliance programs. If a Medicaid provider is required to have a compliance program, the Medicaid provider is also required to certify on OMIG's website at [www.omig.ny.gov](http://www.omig.ny.gov) that its compliance program meets the requirements of applicable law and regulations. The certification must occur in December of each year.

The OMIG has actively enforced both Social Services Law § 363-d and Part 521, of Title 18 of the New York State Codes, Rules and Regulations, both entitled "Provider Compliance Programs," has been actively enforced by the Office of the Medicaid Inspector General (OMIG) since 2009. This regulation requires all Medicaid providers who fall under the following categories to **certify in December of each year** that they have adopted, implemented and maintained an effective compliance program.

- *Persons subject to the provisions of Articles 28 or 36 of the New York State Public Health Law;*
- *Persons subject to the provisions of Articles 16 or 31 of the New York State Mental Hygiene Law; and,*
- *Other persons, providers or affiliates who provide care, services or supplies under the Medicaid program, or persons who submit claims for care, services or supplies for or on behalf of another person or provider for which the Medicaid program is or should be reasonably expected by a provider to be a substantial portion of their business operations.*

Under 18 NYCRR § 521.2 (b), "substantial portion" of business operations means any of the following:

- (1) *When a person, provider or affiliate claims or orders, or has claimed or has ordered, or should be reasonably expected to claim or order, at least \$500,000 in any consecutive 12-month period from the Medical Assistance Program;*

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- (2) *When a person, provider or affiliate receives or has received, or should be reasonably expected to receive, at least \$500,000 in any consecutive 12-month period directly or indirectly from the Medical Assistance Program; or*
- (3) *When a person, provider or affiliate who submits or has submitted claims for care, services, or supplies to the Medical Assistance Program on behalf of another person or persons in the aggregate of at least \$500,000 in any consecutive 12-month period.*

Each compliance program must contain the eight elements required under SSL § 363-d and 18 NYCRR § 521.3 (c). **Upon applying for enrollment in the Medical Assistance Program, and during the month of December each year thereafter**, 18 NYCRR 521.3 (b) requires providers to certify to the Department of Health and OMIG that a compliance program meeting the requirements of the regulation is in place.

The regulation, certification form, and FAQs are available on the OMIG website at:

<http://www.omig.ny.gov/compliance/certification>

Additionally, New York State's Medicaid providers are advised to review OMIG's website and review the information and resources that are published under the Compliance Tab on OMIG's home page. The Compliance Library under the Compliance Tab provides copies of current forms, publications and other resources that could prove helpful in conducting a self-assessment and completing the certification form in December.

Finally, OMIG will be updating New York Medicaid's form for Provider Certification of Effective Compliance Programs during 2013 for use in December 2013. When the new form is available, it will be announced in a *Medicaid Update* and also on OMIG's website. The current form and the form for 2013 give the Medicaid provider the opportunity to provide information to OMIG that its compliance program does not meet the effectiveness requirements. OMIG expects to present a Webinar on the new certification form for 2014 in November 2013.

It is the Medicaid provider's responsibility to determine if:

- a. *it has a compliance plan that meets the requirements of under SSL § 363-d and 18 NYCRR § 521.3 (c) and;*
- b. *its compliance program is effective. How the Medicaid provider assesses its compliance program will determine whether the Medicaid provider can certify that the compliance program is effective, or whether the Medicaid provider determines that its compliance program is not effective.*

OMIG recommends that New York's Medicaid providers sign up for e-mail notices from OMIG by subscribing to OMIG's listserv. Anyone can become a subscriber at no cost by signing up on OMIG's home page. The listserv is a great way to keep informed of the introduction of new compliance tools and information on compliance.

If you have any questions, please contact the OMIG's Bureau of Compliance at (518) 408-0401 or by using the Bureau of Compliance's dedicated e-mail address at: [compliance@omig.ny.gov](mailto:compliance@omig.ny.gov).