

# Evaluating Effectiveness of Compliance Programs

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# Introductions/Contacts

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# Introductions/Contacts

Bureau of Compliance phone number and dedicated e-mail

- [Compliance@omig.ny.gov](mailto:Compliance@omig.ny.gov)

Response within 2 business days

- (518) 473-3782

OMIG's listserv at [www.omig.ny.gov](http://www.omig.ny.gov)



# The Fine Print

- Personal opinions and ideas for collegial discussion
- Acknowledgement – ideas and some materials from many sources – We own the errors
- Assumption – usually it's the “good guys” who attend these programs
- If you have a question someone else probably wants to know the answer
- If you find these slides useful, please share them

# THE MEDICAID PROBLEM

- 60,000 providers (hospitals, clinics, nursing homes, home health, physicians)
- 200+ million claims each year
- All electronic claim review
- Audits of 1000 providers each year
- Lots of room for errors, and false statements in claims and in responses to audits
- How likely will OMIG identify improper payments, abuse and fraud?

## TRADITIONAL LAW ENFORCEMENT RESPONSE

- “We will punish these criminals to the **fullest extent** of the law ...”
- “We're bringing to bear the full resources of the federal government against individuals and corporations who illegally divert taxpayer resources for their own gain.”
- Armenian fraud ring indicted in New York by US Attorney October 13, 2010-stole identities and numbers of patients, used identities and names of physicians without their knowledge.

U.S. v. Armen Kazarian, et al. and U.S. v. Aron Chervin, et al.

“We will punish these criminals to the fullest extent of the law ...”

- FOR SOME PROVIDERS (AND ENROLLEES) COMPLIANCE PROGRAMS HAVE LIMITED IMPACT
- 7/16/10 BROOKLYN PROSECUTIONS –BAY MEDICAL, DR. GUSTAVE DRIVAS, DR. JONATHAN WAHL - KICKBACKS TO PATIENTS
- COURT ORDERED CAMERA AND MICROPHONE
- NEXT-THE POSTER FROM THE ALLEGED PATIENT KICKBACK ROOM AT BAY MEDICAL

БУДЬ НА ЧЕКУ,  
В ТАКИЕ ДНИ  
ПОДСЛУШИВАЮТ СТЕНЫ.  
НЕДАЛЕКО ОТ БОЛТОВНИ  
И СПЛЕТНИ  
ДО ИЗМЕНЫ.



# НЕ БОЛАЙ!

## Translation

Stay alert!

Even walls have ears these days.

**DON'T GOSSIP!!!**

# Difficult Job of the Compliance Officer

- The Compliance Officer and the Compliance function must highlight the importance of the moral context for compliance.
- The entity's culture does play into the level of compliance a provider is willing to undertake.
- Annual compliance program certification of effectiveness done by a member of senior management other than the Compliance Officer creates an enterprise-wide understanding of the importance of compliance.

# How Compliance Programs Can Be Effective

## LEARNING FROM SOCIAL SCIENCE

- Compliant behavior of individuals in large organizations can be significantly influenced by factors that those individuals do not consciously recognize
- Factors which influence compliant behavior can be affected by compliance program design and operation

## MORAL CONTEXT AND COMPLIANT BEHAVIOR

- Two strangers in a room w/videotape-ten minute conversation
- After, one asked if he had said anything that “was not entirely accurate.” Uniformly answered No.
- Watched videotape. 60 percent admitted to making knowing false statements during conversation-average of 2.92 inaccurate statements.
- Tyler, J.M., & Feldman, R.S. (2005). Deflecting threat to one's image: Dissembling personal information as a self-presentation strategy. *Basic and Applied Social Psychology*, 27, 371-378

## MORAL CONTEXT AND COMPLIANT BEHAVIOR

**“Did you *Cheat* to Get Into Graduate School?”\***

**YES**

Liberal Arts – 43%  
Education - 52%  
Law and Medicine – 63%  
**Business – 75%**

\*Source: Rutgers Professor Donald L. McCabe, Survey of Students

# MORAL CONTEXT AND COMPLIANT BEHAVIOR

- Academic Dishonesty in Graduate Business Programs: Prevalence, Causes, and Proposed Action Academy of Management Learning and Education Volume 5, Number 3 September 2006 Donald L McCabe, Kenneth D Butterfield, Linda K Trevino
- “We found that graduate business students cheat more than their nonbusiness-student peers. Correlation results found cheating to be associated with perceived peer behavior, as well as the perceived certainty of being reported by a peer, and the understanding and acceptance of academic integrity policies by students and faculty. . . . regression analysis results suggest that perceived peer behavior has the largest effect.”

Compliance Officers have a tough job!

# Ten Commandments

Decisions change when  
moral content is changed

# New York's Challenges

New York State's Medicaid program (annually):

- Costs > \$52 billion
- Provides health care to over 4.7 million recipients through 60,000 active providers
- >12,000 providers must certify that they have an effective compliance program

## Mandated Provider Compliance Programs

“The legislature finds that medical assistance [Medicaid] providers may be able to detect and correct payment and billing mistakes and fraud if required to develop and implement compliance programs.”

- *New York Social Services Law § 363-d (SSL)*

## Mandated Provider Compliance Programs

Every provider of medical assistance program items and services ....shall adopt and implement an “*effective*” compliance program

- *New York Social Services Law § 363-d*

# Building an Ethical Framework

***“In looking for people to hire, you look for three qualities: integrity, intelligence, and energy. And if you don’t have the first, the other two will kill you.”***

-- Warren Buffet  
CEO Berkshire Hathaway

# Compliance Regulations - 2009

§ Effective July 1, 2009

§ 18 NYCRR Section 521.3 requires:

- those subject to Articles 28 and 36 of the Public Health Law (hospitals, clinics, home care, etc.);
- those subject to Articles 16 and 31 of the Mental Hygiene Law (OMH, OPWDD, OASAS, etc.); and
- those that order services or supplies or receive reimbursement, **directly or indirectly**, or submit claims for at least \$500,000 in a year ...

- ☞ Must adopt/implement an “effective” compliance program.
- ☞ Must annually certify that there is an “effective” compliance program

# What does “Effective” mean?

OMIG’s standard –

1. the organization exercises due diligence to prevent and detect inappropriate conduct by the Medicaid provider;
2. the organization promotes an organizational culture that encourages ethical conduct and is committed to compliance with the law; and
3. the compliance program is reasonably designed, implemented, and enforced so that the program is generally effective in preventing and detecting improper conduct.

Failure to prevent or detect specific offenses does not necessarily mean that the program is not generally effective in preventing and detecting such conduct.

**Federal Sentencing Guidelines amendment effective 11/1/2010 Section 8B2.1(a)**

## Lessons Learned from the First Year

- Over 12,000 providers qualified to certify
- BY APRIL 2010 – over 50% certified
- OMIG's outreach
  - Unannounced on-site visits
  - Phone calls
  - Direct mail
  - Medicaid Updates
  - Public presentations
  - Websites

# Lessons Learned from the First Year

## Outreach Results –

- 80% certified after interventions
- Some providers unaware of Social Services Law certification requirement
- Some providers confused Social Services Law (SSL) requirement with Deficit Reduction Act (DRA) requirement
- Some providers are not reading the monthly Medicaid Updates ... available at:  
[http://www.health.ny.gov/health\\_care/medicaid/program/update/main.htm](http://www.health.ny.gov/health_care/medicaid/program/update/main.htm)
- Patient Protection and Accountable Care Act (PPACA) Section 6402 – report, repay and explain

# Lessons Learned from the First Year

## Outreach Results (cont.)

- Some providers' contact information not maintained or current on EMEDNY. “ The New York State Department of Health, Office of Health Insurance Programs, requires all providers to notify the Medicaid Program in writing if they change their **CORRESPONDENCE, PAY TO** and/or **CORPORATE ADDRESS(ES)**.”

[EMEDNY-610601 Rate Based Change of Address Form](#)

- Some providers unaware of dollar value of ordered Medicaid services.
- Compliance Program Effectiveness Reviews (“ERs”) will include provider certification-did they certify? Was it accurate?

# Moving Forward – 2010 and Beyond

## On-Line Certification Form 12/1/2010

- ➔ Form now addresses the confusion between SSL and DRA (form labels now highlighted in red)
- ➔ Simplified – FEIN/SSN (need not insert provider Id #s )
- ➔ Instruction – **DO NOT certify if not effective**
- ➔ A new ‘sub-tab’ on home page under Compliance
- ➔ Includes current address field for OMIG

# Directions to New On-Line Certification Form CCSSL2010-1 Revised 12/1/2010



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US Attorney

Home > Compliance > Certification

## Certification

**NYS Mandatory Provider Compliance Programs**

- **PART 521 - Provider Compliance Programs, effective on July 1, 2009.**
  - Department of State: NYS Register - June 24, 2009/Volume 1000, Issue 25
- **Frequently Asked Questions (FAQs)**
- **Effect the Provider Compliance Certification (online certification form) - NYS OMIG CCSSL2010-1 (Revised: 12/1/2010)**

**Federal Deficit Reduction Act**

- **Employee Education Requirement Regarding False Claims Recoveries**
- **Relevant Statutes - (Revised: 12/22/09)**
- **Frequently Asked Questions (FAQs)**
- **Federal Deficit Reduction Act Certification (online certification form) - NYS OMIG CCORA2011-1 (Revised: 12/1/2010)**

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Form: NYS-DWIG-CCSSL2010-1 (Revised: 12/01/2010)

**Certification of Compliance with the Social Services Law § 363-d and 18 NYCRR Part 521**

This form permits Medicaid providers to certify that their compliance program is effective as required by NYS Social Services Law Section 363-d and 18 NYCRR Part 521.

This form **CANNOT** be used to certify that Medicaid providers meet the requirements of the Federal Deficit Reduction Act of 2005 (DRA) which establishes requirements about the False Claim Act. To determine if you must certify under the DRA, please see the material on the Federal Deficit Reduction Act by going to [www.onig.ny.gov](http://www.onig.ny.gov), clicking on the Compliance tab on the home page and clicking on the Certification sub tab and looking for the Federal Deficit Reduction Act material.

Corporation/Provider Information

Federal Employer Identification Number (FEIN) (SSN if 1099):  Re-Enter FEIN or SSN:

Corporation/Provider Name:  , hereinafter "Provider"

Address:  Address2:

City:  State:  Alabama Zip Code:

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http://www.state.ny.us/

# Directions to New On-Line Certification Form CCSSL2010-1 Revised 12/1/2010



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City: State: Alabama Zip Code:

**Compliance Officer Information**

First Name: Middle Initial: Last Name: Suffix: Title:  
Phone Number: Email Address: Re-Enter Email Address:

**Person Certifying**

First Name: Middle Initial: Last Name: Suffix: Title:  
Phone Number: Email Address: Re-Enter Email Address:

**Certification**

Provider certifies that the provider and its affiliates have adopted, implemented and maintain an effective compliance program that meets the requirements of NYS Social Services Law 5362-d and 18 NYCRR Part 521.

A provider who does not have an effective compliance program should not complete this form.

If you determine that your compliance program is not effective, you should not certify, but you must communicate to OMIG the following:

1. Identify the provider:
  - the name of the provider
  - the provider's Federal Identification Number ("FEIN") that the provider uses to bill Medicaid
  - all Provider Numbers that provide services to Medicaid beneficiaries under the FEIN
  - the name, telephone number and e-mail address of the person providing the communication to OMIG

# Directions to New On-Line Certification Form CCSSL2010-1 Revised 12/1/2010



NYS Office of the Medicaid Inspector General - Windows Internet Explorer  
http://www.onig.ny.gov/datacontent/view/21350/ US Attorney

A provider who does not have an effective compliance program should not complete this form.

If you determine that your compliance program is not effective, you should not certify, but you must communicate to OMIG the following:

1. Identify the provider:
  - the name of the provider
  - the provider's Federal Identification Number ("FEIN") that the provider uses to bill Medicaid
  - all Provider Numbers that provide services to Medicaid beneficiaries under the FEIN
  - the name, telephone number and e-mail address of the person providing the communication to OMIG
2. The subject line on your e-mail should indicate your name and "Unable to Certify"
3. The body of your e-mail should indicate:
  - the reasons why your compliance program is not effective
  - the steps you are taking to make your compliance program effective
  - when you expect that you will be able to certify that your compliance program is effective

Your communication that you are unable to certify that your compliance program is not effective should be sent via e-mail to: [compliance@onig.ny.gov](mailto:compliance@onig.ny.gov).

Captcha

Please enter the numbers in the order as they appear. NOTE: There are no spaces inbetween the numbers.

077775

Reload Image

Submit Certification

When you click the Submit button, a Confirmation Page will appear. Please print a copy of the Confirmation Page for your records.

Submit Cancel

# Directions to New On-Line Certification DRA - Form CCDRA2011-1 Revised 12/1/2010



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# Directions to New On-Line Certification DRA - Form CCDRA2011-1 Revised 12/1/2010



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**Certification**

**NYS Mandatory Provider Compliance Programs**

- PART 521 - Provider Compliance Programs, effective on July 1, 2009.
  - Department of State: NYS Register - June 24, 2009/Volume 2009, Issue 25
- Frequently Asked Questions (FAQs)
- Effect the Provider Compliance Certification (online certification form) - NYS OMIG CCSSL2010-1 (Revised: 12/1/2010)

**Federal Deficit Reduction Act**

- Employee Education Requirement Regarding False Claims Recoveries
- Relevant Statutes - (Revised 12/22/09)
- Frequently Asked Questions (FAQs)
- Federal Deficit Reduction Act Certification (online certification form) - NYS OMIG CCDA2011-1 (Revised: 12/1/2010)

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# Directions to New On-Line Certification DRA - Form CCDRA2011-1 Revised 12/1/2010



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Form: NYS OMIG CCDRA2011-1 (Revised: 12/01/2010)

**Certification of Compliance with the Federal Deficit Reduction Act of 2005.**

This form must be used by New York State Medicaid providers who must certify that they are in compliance with the requirements of the Federal Deficit Reduction Act of 2005 as it relates to the False Claims Act.

This form **CANNOT** be used to certify that Medicaid providers have an effective compliance program as required by NYS Social Services Law §363-d and 18 NYCR Part 521. To determine if you must certify under §363-d and Part 521, please see the material on the NYS Mandatory Provider Compliance Programs by going to [www.omig.ny.gov](http://www.omig.ny.gov), clicking on the Compliance tab on the home page and clicking on the Certification sub tab and looking for the NYS Mandatory Provider Compliance Programs material.

Corporation/Provider Information  
[CAPTCHA Image]

Federal Employer Identification Number (FEIN) (SSN if 1099):  Re-Enter FEIN or SSN:

Corporation/Provider Name:  , hereinafter "Provider"

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# Directions to New On-Line Certification DRA - Form CCDRA2011-1 Revised 12/1/2010



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Corporation/Provider Name:  , hereinafter "Provider"

Address1:  Address2:

City:  State: Alabama Zip Code:

Compliance Officer Information

First Name:  Middle Initial:  Last Name:  Suffix:  Title:

Phone Number:  Email Address:  Re-Enter Email Address:

Person Certifying

First Name:  Middle Initial:  Last Name:  Suffix:  Title:

Phone Number:  Email Address:  Re-Enter Email Address:

Certification

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Certification

Provider certifies that the provider and its affiliates have established and maintain written policies in accordance with 42 USC 51396a (a)(68), and include such policies in any existing employee handbook if maintained by the provider and/or its affiliates, and that they have been properly adopted and published by the provider and/or its affiliates, and disseminated among employees, contractors and agents, and that the written policies and any employee handbook shall be retained for a period of six years from the latter of the due date or the actual date of submission of this certification.

Captcha

Please enter the numbers in the order as they appear. NOTE: There are no spaces inbetween the numbers.

436260 [CAPTCHA Image](#)

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Submit Certification

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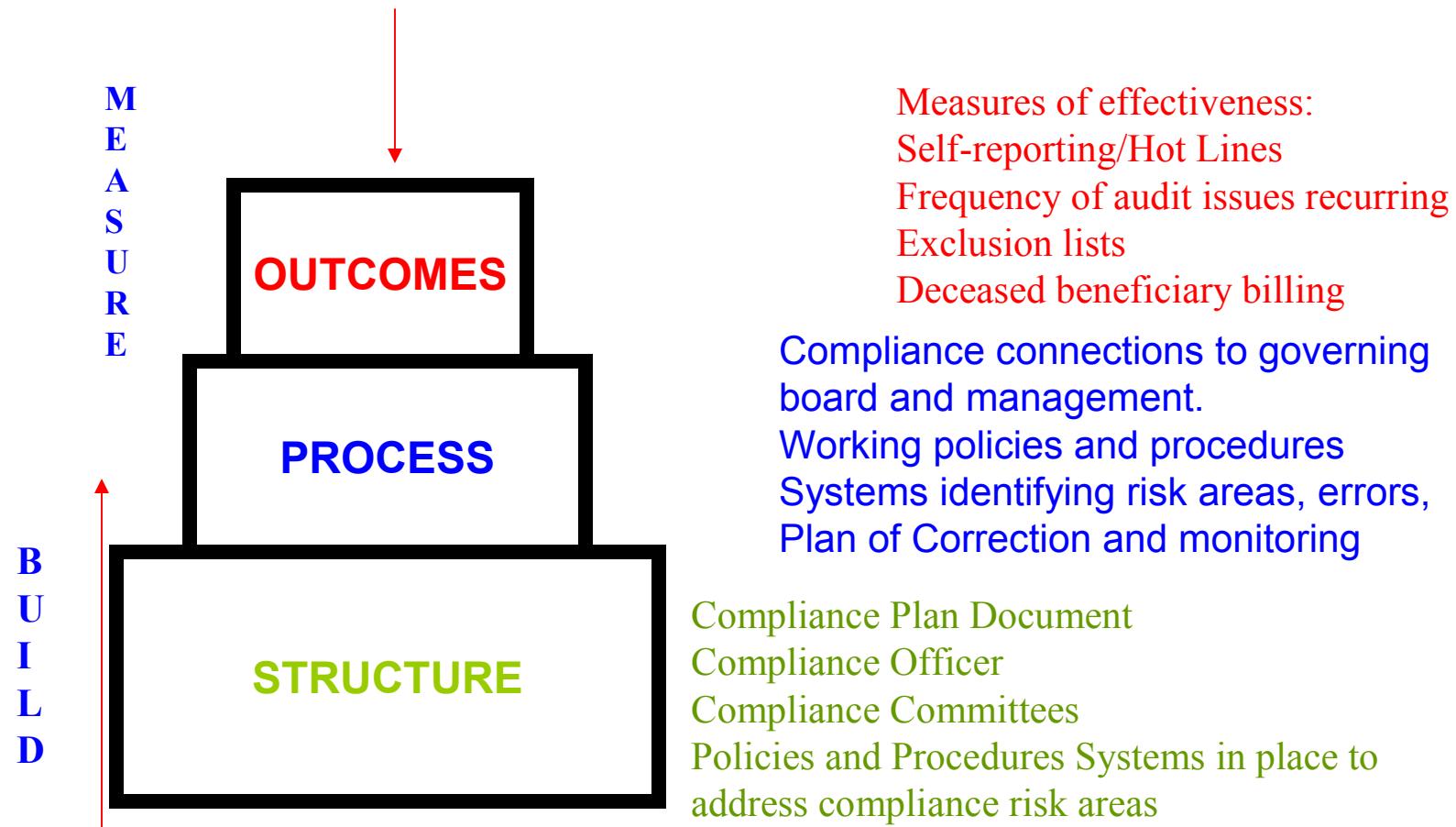
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# Building Blocks for Effective Compliance Programs



## HOW TO DEMONSTRATE COMPLIANCE EFFECTIVENESS

New York State Social Services Law Section 363-d. Subsection 2  
18 NYCRR Section 521.3 (c)

An effective compliance program shall include the following **8 elements**:

- **Element 1:** Written Policies and Procedures
- **Element 2:** Designation of Compliance Officer
- **Element 3:** Training and Education
- **Element 4:** Communication lines to the Compliance Officer
- **Element 5:** Disciplinary Policies
- **Element 6:** Identification of Compliance Risk Areas and non-compliance
- **Element 7:** Responding to Compliance Issues
- **Element 8:** Policy of Non-Intimidation and Non-Retaliation

## HOW TO DEMONSTRATE COMPLIANCE EFFECTIVENESS

It's **NOT JUST** about the 8 Elements

**8 elements plus .....**

- ✓ Culture\*
- ✓ Governance \*
- ✓ Quality \*
- ✓ Credentialing
- ✓ Documentation
- ✓ Mandatory Reporting of Adverse Events

\* Raises Compliance visibility/responsibility in all areas.

## HOW TO DEMONSTRATE COMPLIANCE EFFECTIVENESS

### Provider Identification of Risk Areas

- Risk Assessments
- Audits
  - Internal
  - External
- Conflicts of Interest
- Corrective Action
- OMIG and OIG Guidance – Work Plans

## ANALYZING OUTCOMES OF AN EFFECTIVE PROGRAM

### Considerations for metric identification:

1. Can the metric be measured from existing data bases or sources available to OMIG?
2. Can OMIG identify baselines, benchmarks, outliers, etc.?
3. What behavior is OMIG trying to model with the metric?
4. What Element of Effective Compliance programs does the metric model?
5. Survey results.
6. Other considerations?

## ANALYZING OUTCOMES OF AN EFFECTIVE PROGRAM

### Some Metrics for Provider Self Assessment:

1. Certification History.
2. Findings by OMIG Audit, Investigations or Allegations & Complaints.
3. Frequency/persistency of DMI or Audit findings over defined period.
4. Self Disclosure/Self Reporting History.
5. Reviews of incorrect billings
  - \* services provided by excluded parties,
  - \* inadequate internal controls
  - \* services provided after date of death,
  - \* billing when a patient is in an alternate level of care.

## ANALYZING OUTCOMES OF AN EFFECTIVE PROGRAM

### Some Metrics for Provider Self Assessment:

6. Refund History (dual eligibles, voids, etc.) and reports of issues associated with rebates and net acquisition cost.
7. Outlier on Card Swipe Program (where applicable).
8. Automatic refill/reorder.
9. Quality of Care Reviews [Hospital and Nursing Home Compare, Program for Evaluating Payment Patterns Electronic Report (PEPPER reports)].
10. Services provided by unlicensed/unqualified providers.

## ANALYZING OUTCOMES OF AN EFFECTIVE PROGRAM

Wait, there's more ...

### Metrics for Provider Self Assessment:

11. Medically unnecessary services.
12. Billing for DOH and CMS Never Events.
13. Corporate Integrity Agreement Status and Independent Review Organization Reports.
14. Other Regulatory Action taken against Medicaid Provider.
15. Special Investigation Unit activity of Managed Care Companies.
16. Does the provider do self assessments?

# Compliance Alert 2010-02

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New York State Office of Medicaid Inspector General

## Compliance Alert

2010 - 02



Effectiveness of Medicaid Provider's Compliance Program

Provider Self Assessment Tool - 2010

Unknown Zone

# First Self Assessment Question

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11:06 AM

**(1) Written policies and procedures**

	Description	Yes	No	Evidence of Compliance or action required	Explanation
1.1 *	Are compliance expectations included in a written code of conduct or code of ethics?				
1.2 *	Has the compliance program been implemented within the organization?				
1.3 *	Does the compliance program provide guidance to employees and others associated with the Medicaid provider on how to identify and communicate compliance issues to compliance personnel?				
1.4 *	Does the compliance program describe how potential compliance problems are investigated and resolved?				
1.5	Does the compliance program clearly communicate the provider's compliance expectations to the governing board, management, employees and others associated with the Medicaid provider?				
1.6	Have the compliance program and its associated policies and procedures been reviewed and approved by the governing board or senior management?				
1.7	Is the compliance program made accessible				

# Effective?

## Questions to ask relative to compliance failures:

- ❖ How does the provider define compliance failures?
- ❖ How many, what kind and do they repeat?
- ❖ Is the plan of correction timely, relevant and inclusive?
- ❖ How are compliance failures monitored?

## OMIG's On-site Effectiveness Review

- ⊕ Assess the culture/tone at the top
- ⊕ Well-connected compliance officer with access to the “right” meetings and information
- ⊕ “Active” monitoring & auditing efforts built into department operations
- ⊕ Conduct employee surveys & exit interviews
- ⊕ Address issues and track information
- ⊕ inquiries/complaints/repayments

## BRONX PHARMACY - \$1.2 million/year – (2d time on deceased patient list)

- 10/25/10 T called and asked to speak with Andrew, a contact from a previous mailing. The woman on the phone said to call back on Thursday and would not take a message. When I asked if he would be in all day on Thursday, she said she didn't know what time he would be there.
- 11/8/10 T Called and asked for Andrew, was told he wasn't in. I asked to speak to another pharmacist. Spoke to Amy she said she didn't know anything about it, she was just filling in for the day. She said I should try calling back on Wednesday after 2:00 and Andrew might be in.

# Tales from the Trenches

2010 :

- Provider visits – hospital, home care, physician, transportation, pharmacy, nursing home, and OASAS
- Best practices/areas for improvement
- Some certified that they had an effective compliance program and some did not

# Tales from the Trenches

## 2010 Findings:

### Providers without compliance programs

- “I need to do **what?**”
- “I never got any letter from OMIG.”
- “Just tell me what I need to do.”

# Tales from the Trenches

## 2010 Findings:

### Providers with compliance programs

- “I certified (here’s my confirmation page) and let me show you our compliance program.”
- “Let me introduce you to our compliance officer/staff.”
- “Let me give you a tour so you can see our compliance posters and speak with staff.”

# Tales from the Trenches

2010 Findings:

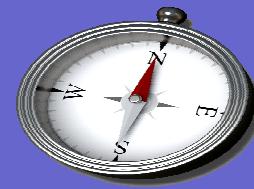
## **OMIG's basic recommendations:**

- ☞ Medicaid Updates-read and distribute
- ☞ Use OMIG compliance resources-[www.omig.ny.gov](http://www.omig.ny.gov)
- ☞ Review and respond to contacts from OMIG
- ☞ Employees need to know about compliance program
- ☞ Compliance officers need training, identification, recognition, management and board support to be effective
- ☞ Use a self assessment tool

# Carol Booth Tales

- ✍ Billing because the salesman said it was ok
- ✍ The missing lawyer's letter
- ✍ You're making my office manager cry
- ✍ The medical flophouse
- ✍ We haven't seen him in years! HC patients

# Direction In 2011 . . .



- Compliance Alerts
- Timely and Accurate Certification
- Compliance with Affordable Care Act Section 6402-report, repay and explain overpayments within 60 days
- Excluded persons providing or ordering
- Deceased patients & billing outpatient while inpatient
- Auditing and monitoring, hot lines
- Zero billing, repayment of credit balances
- Billing Medicaid patients directly
- Corporate Integrity Agreements or Exclusion for significant compliance failures

# FREE STUFF!

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

- Model compliance programs-hospitals, managed care (coming soon) and Compliance Alerts
- Over 2000 provider audit reports, detailing findings in specific industry
- Annual work plans
- New York excluded provider list
- Self-Disclosure protocol
- Corporate Integrity Agreements
- Listserv/Twitter
- Previous Webinars – Excluded Parties, Overpayments, Self Disclosure, and Third Party Liability

## A Final Thought. . .

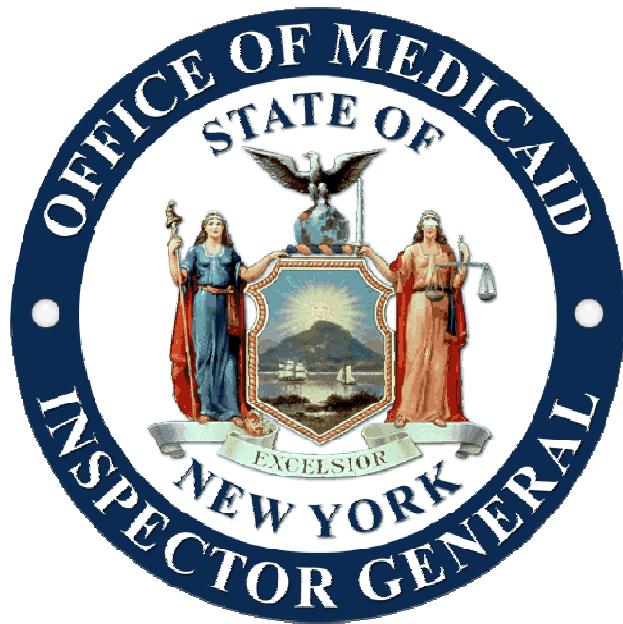
It takes less time to

*do a thing right*

than it does to **explain why**  
you did it wrong

*- Henry Wadsworth Longfellow*

# Thank You!



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