

Mandatory Compliance Program Certification Requirement under 18 NYCRR §521.3(b)

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

Medicaid Required Providers (as described below) are required to implement and maintain a compliance program as described in NYS Social Services Law Section 363-d and 18 NYCRR Part 521.3(c). Any Required Provider must also certify annually that its compliance program meets the statutory and regulatory requirements. The certification must occur in December of each year.

OMIG reminds all those who must have a compliance program that they must complete the certification on OMIG’s website (www.omig.ny.gov) by December 31, 2013.

A webinar on the 2013 Certification Forms is available on OMIG’s website, at the following link <http://bit.ly/1iQ57vY>. The webinar explains the mandatory compliance obligation, the certification obligation and the form that must be used as of December 1, 2013.

The following identifies the Required Providers that must have compliance programs.

Social Services Law § 363-d and Part 521 of Title 18 of the New York State Codes, Rules and Regulations have been actively enforced by OMIG since 2009. OMIG may also refer matters to other investigatory agencies. Part 521 requires all Required Providers under the Medicaid program that meet the following criteria to **certify in December of each year** that they have adopted, implemented and maintain 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;*
- *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;

(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

ALL PROVIDERS

(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 those subject to the mandatory compliance program obligation 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 Frequently Asked Questions ("FAQ's") are available on the OMIG website at: <http://www.omig.ny.gov/compliance>.

It is the responsibility of Required Providers to determine if:

- a. it has a compliance plan that meets the requirements of SSL § 363-d and 18 NYCRR § 521.3 (c); and
- b. its compliance program is effective.

As always, Medicaid providers have an independent obligation to be aware of existing statutory and regulatory requirements of the Medicaid program. Additionally, OMIG recommends regular visits to its website to 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.

OMIG also recommends that Required 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. As additional compliance-related resources are posted by OMIG, those on OMIG's listserv will receive notices of their publication.

If you have any questions regarding New York State's mandatory compliance obligation for Medicaid providers, please contact the OMIG's Bureau of Compliance at (518) 408-0401 or by using the Bureau of Compliance's dedicated e-mail address compliance@omig.ny.gov.