

All Providers

Mandatory Compliance Program Certification Requirement under Title 18 of the New York Codes, Rules and Regulations (NYCRR) §521.3(b)

Reminder

This is a reminder from the New York State Office of the Medicaid Inspector General (OMIG) for all required providers who are subject to the New York State Social Services Law Section 363-d Mandatory Compliance Program Requirement.

On December 1, 2016, OMIG will make available on its website, the New York State Social Services Law Compliance Program Certification Form (Certification Form) for 2016. The Certification Form for 2015 will remain active on OMIG's website until December 1, 2016 for newly enrolling and revalidating Medicaid providers.

OMIG will host a webinar in November 2016 that will explain the new certification form. Please check OMIG's listserv, Facebook page or Twitter feeds for registration information. You can subscribe to OMIG's listserv at www.omig.ny.gov.

The required providers listed below must have compliance programs. If you are required to have a compliance program, you are also required to certify on OMIG's website at www.omig.ny.gov, that your compliance program meets the requirements of the applicable law and regulations. The certification must occur in December of each year.

OMIG has actively enforced Social Services Law §363-d and Part 521, of Title 18 of the New York State Codes, Rules and Regulations since 2009. The regulation mandates all required providers under the Medicaid program in the following categories 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
- (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 New York State Department of Health (DOH) and OMIG that a compliance program meeting the requirements of the regulation is in place. For those Medicaid providers required to have a compliance program and to certify in December 2016, OMIG recommends that providers test the operation of their compliance program and make any adjustments necessary so that in December, the Medicaid provider is prepared to certify that its compliance program meets the requirements of SSL §363-d and 18 NYCRR §521.3 (c).

Please note that DOH is revalidating Medicaid providers' enrollment in the medical assistance program. As part of DOH's revalidation process, required providers will be asked to submit evidence that they met the December certification obligation. Certifying in December and retaining a copy of the Certification Confirmation and/or confirmation emails will help Medicaid required providers complete the revalidation process.

The regulation and Frequently Asked Questions (FAQs) are available on the OMIG website. OMIG's listserv subscribers will be notified when the new forms are posted.

It is the responsibility of a required provider to determine if:

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

Required providers must assess their compliance programs to determine whether they can certify that they do or do not have a compliance program in place that meets the requirements of SSL § 363-d and 18 NYCRR Part 521.

Additionally, OMIG recommends a regular visit to its website to review the information and resources that are published under the Compliance tab on OMIG's homepage. The Compliance Library under the Compliance tab provides copies of current forms, publications and other resources that are helpful in conducting a self-assessment and completing the certification form in December.

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