



New York State Office of Medicaid Inspector General

## Compliance Guidance

2014 – 02



### RISK AREAS BY PROVIDER TYPE Certified Home Health Agencies

May 7, 2014

New York State Social Services Law Section 363-d (§ 363-d) and 18 NYCRR Part 521 (Part 521) provides that the Office of the Medicaid Inspector General (OMIG) issue compliance program guidance on its Web site for those providing care, services, or supplies under New York's Medicaid program.<sup>1</sup> This *Compliance Guidance* is available on OMIG's Bureau of Compliance (BOC) Web page, in the Compliance Library section, in connection with OMIG's statutory and regulatory responsibilities.

#### **PURPOSE OF THIS COMPLIANCE GUIDANCE**

New York's mandatory compliance program obligations require Medicaid Providers<sup>2</sup> to develop a system for routine identification of compliance risk areas, specific to the type of services

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<sup>1</sup> N.Y. Soc. Serv. Law § 363-d(2), 18 NYCRR § 521.3(b)

<sup>2</sup> The use of the word "Provider" herein shall be used to refer to any natural person or entity who is subject to New York State's mandatory compliance program obligations in § 363-d and Part 521.

offered to Medicaid beneficiaries.<sup>3</sup> The purpose of this *Compliance Guidance* is to provide examples of compliance risk areas that may be of particular concern to certified home health agencies (CHHAs). Many of these are taken from the OMIG Audit Protocol for CHHAs, effective April 30, 2013. The full Audit Protocol can be found on OMIG's Web site, [www.omig.ny.gov](http://www.omig.ny.gov).

The *Compliance Guidance* is presented in a question format to highlight that identification of risk areas can be accomplished through methods similar to how a good root cause analysis process operates.

## **BACKGROUND**

At any particular point in time, a provider should expect changes to compliance risk areas based upon changes in the Medicaid program; improvements in the provider's control and compliance structures; changes in provider's staff, management, service delivery methods, and patients; and other factors. Since each provider is different, even within the same provider type, this *Compliance Guidance* should not be viewed as an exhaustive list of compliance risk areas for all CHHAs. These questions can serve as a starting point for further discussion between the compliance staff, management, general staff, and governing body of each individual CHHA. It is expected that CHHAs will conduct a customized risk assessment that will not only include identifying risk areas, but also prioritizing the risks identified.

## **COMMON RISK AREAS FOR CHHAs<sup>4</sup>**

The following are some common risk areas for CHHAs that should be considered when assessing compliance risk areas. These risk areas can be used during self-evaluations or audits to determine where compliance, management, or staff resources should be deployed to reduce, minimize, or eliminate compliance related failures:

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<sup>3</sup> Element #6, which is the subject of Compliance Guidance 2014-02, can be accessed on OMIG's public Web site in the Compliance Library. That *Compliance Guidance* provides guidance on the requirement set out in § 363-d (2)(f) and 18 NYCRR § 521.3(c)(6).

<sup>4</sup> Other risk areas exist that are not specific to CHHAs that should also be considered when conducting risk assessments.

A. Documentation Risk Areas

1. Does written documentation in the patient’s record support the service (level and type of service) billed to Medicaid?
2. Are all orders for services provided to patients signed by an appropriate ordering practitioner within required timeframes (e.g., before care starts and during ongoing care periods)?
3. Is a system in place to verify that scheduled visits and/or services were delivered and of the required duration, as set out in the plan of care?
  - a. Is the CHHA considered a “participating provider”<sup>5</sup> subject to preclaim review by a Verification Organization?<sup>6</sup> If so, is it being used?
  - b. If not, what is in place to verify the date, time, duration, and specifics of visit/service? Is such verification taking place?

B. Quality of Care Risk Areas

1. Does required documentation and content for initial assessment, plans of care, updating assessments, delivery of services, etc., meet current Medicaid standards?
2. Does the delivered care correspond to the care that is ordered? Is it documented correctly?
3. Are home health aides and clinical staff being supervised as required by current New York State and federal standards?

C. Billing and Payment Risk Areas

1. Have reasonable steps been taken to determine third-party liability for payment of services prior to submitting claims to Medicaid?
2. Are Medicaid billing and coding rules being followed?
3. Does billing reflect the services actually delivered? Are services appropriately documented?

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<sup>5</sup> N.Y. Soc. Serv. Law § 2(38)(i)

<sup>6</sup> N.Y. Soc. Serv. Law § 363-e

#### D. Credentialing and Workforce Risk Areas

1. Are ordering practitioners and those delivering Medicaid-covered services through the CHHA appropriately licensed, authorized to provide the services being offered to patients, and not excluded from the Medicaid program?
2. Do all those providing services to patients meet established credentialing standards (e.g., education, criminal background check, on-going training, health status, etc.)?
3. Does a system exist to ensure that the home health aides utilized by contracted licensed home care service agencies are properly credentialed?
4. In regard to compliance program training for persons associated with the CHHA – Are licensed home care services agencies' staff utilized by the CHHA trained on the CHHA's compliance program or a compliance program that meets the requirements of § 363-d, Part 521, and other applicable federal and state compliance laws and regulations?

#### **CONCLUSION**

Any questions regarding this *Compliance Guidance*, or any compliance issue under New York State's mandatory compliance program obligation, should be directed to the Office of the Medicaid Inspector General's Bureau of Compliance at 518-408-0401, or by e-mail at [compliance@omig.ny.gov](mailto:compliance@omig.ny.gov).

The *Compliance Guidance* should be considered a general guidance to assist those subject to the mandatory compliance program obligations set out in § 363-d and Part 521. It does not include all criteria OMIG may consider or use when assessing whether compliance programs meet statutory and regulatory requirements. OMIG reserves the right to recall or change this *Compliance Guidance* at any time.