



Risk Areas by Provider Type

Transportation Providers

COMPLIANCE GUIDANCE

2014 – 07

October 7, 2014

This *Compliance Guidance* should be considered to be a general guidance to assist those subject to the mandatory compliance program obligations set out in New York State Social Services Law Section 363-d (§ 363-d) and 18 NYCRR Part 521 (Part 521). It does not set out all points that the

Office of the Medicaid Inspector General (OMIG) will consider or use when assessing if compliance programs meet statutory and regulatory requirements. OMIG reserves the right to recall or change this *Compliance Guidance* at any time.

This *Compliance Guidance* does not constitute rulemaking by OMIG and may not be relied on to create a substantive or procedural right or benefit enforceable, at law or in equity, by any person. Furthermore, nothing in OMIG audit protocols referred to herein or this *Compliance Guidance* alters any statutory or regulatory requirement. In the event of a conflict between statutes and regulations applicable to the Medicaid provider and either OMIG audit protocols or this *Compliance Guidance*, the requirements of the statutes and regulations govern.

A provider's legal obligations are determined by applicable federal and state statutory and regulatory law. Audit protocols do not encompass all current requirements for payment of Medicaid claims for a particular category of service or provider type and, therefore, are not a substitute for a review of statutory and regulatory law. OMIG cannot provide individual advice or counseling, whether medical, legal, or otherwise. If you are seeking specific advice or counseling, you should contact an attorney, a licensed practitioner or professional, a social services agency representative, or an organization in your local community.

New York State Social Services Law Section 363-d (§ 363-d) at subd. 2 and 18 NYCRR Part 521 (Part 521) at § 521.3(b) provide that OMIG issue compliance program guidance on its Web site for those providing care, services, or supplies under New York’s Medicaid program.¹ This *Compliance Guidance* is being published in OMIG’s Compliance Library in connection to OMIG’s responsibilities.

PURPOSE OF THIS COMPLIANCE GUIDANCE

Routine identification of compliance risk areas, specific to the type of services being offered to Medicaid beneficiaries by a Medicaid provider,² is a requirement of New York’s mandatory compliance program obligations.³ The purpose of this *Compliance Guidance* is to provide some examples of compliance risk areas that may be of particular concern to those providing transportation services. Many of these are taken from OMIG Audit Protocols for Transportation Ambulette and Transportation Taxi/Livery and can be found on OMIG’s Web site, <http://www.omig.ny.gov/audit/audit-protocols>.

This *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’s compliance risk areas should be expected to change based upon changes in the Medicaid program; improvements in a provider’s control and compliance structures; changes in a 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 exclusive list of areas where compliance risks exist for all programs and services. These questions can serve as a starting point for further questions and discussion among the compliance function, management, staff, and the governing body. OMIG expects that providers will conduct a customized risk assessment, which should include not only identifying risk areas, but also prioritizing the risks identified.

¹ N.Y. Social Services Law § 363-d subd. 2 and 18 NYCRR § 521.3(b).

² 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.

³ Element #6, which is the subject of *Compliance Guidance 2014-01*, 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 at subd. 2 (f) and Part 521 at § 521.3(c)(6).

COMMON RISK AREAS FOR TRANSPORTATION PROVIDERS⁴

The following identifies examples of some common risk areas for transportation providers that should be considered when assessing their 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. Please note that the following risk areas are not arranged by program type, as they may apply to more than one program.

A. Documentation Risk Areas

1. Do the transportation records contain all required information for each leg of the trip?
2. Are electronic transportation records time-stamped (possible best practice), or do you utilize some other method to show that the records are contemporaneous with the services provided as required?
3. Are transportation services being provided to or from a location where Medicaid-covered services are provided?

B. Quality-of-Care Risk Areas

1. Are the vehicles used to provide transportation services properly maintained, registered, and/or licensed, inspected, and insured?
2. Is personal assistance provided by the driver to the enrollee when necessary, as required?
3. Is the mode of transportation provided designed and equipped to provide nonemergency transport that has wheelchair-carrying capacity, stretcher-carrying capacity or the ability to carry disabled individuals?

C. Billing and Payment Risk Areas

1. Is prior authorization obtained for all non-emergency transportation services?
2. Is there a process in place to determine if enrollees are covered by a managed care or managed long term care plan that includes transportation within their scope of benefits?
3. Is the correct driver license number and vehicle registration number of the driver and vehicle used to provide the transportation service indicated on the claim?
4. For group rides, are mileage and tolls being claimed as allowed under Medicaid rules?
5. Are all the required claim fields being completed?

⁴ There are other risk areas that are not specific to the providers that are the subject of this *Compliance Guidance* that should also be considered when conducting risk assessments. The listing in this *Compliance Guidance* is intended to be specifically related to OMIG Audit Protocols.

6. Are claims submitted in connection to actual services provided and not based on transportation rosters?

D. Credentialing and Workforce Risk Areas

1. Do all drivers who provide Medicaid transportation services have a valid driver's license in the appropriate license class (e.g., Class E for taxi and livery drivers) on the date the transportation service is provided?
2. Do all ambulette drivers maintain appropriate driver license endorsements?
3. Do all ambulette drivers maintain 19A Certification as required under Article 19A of the Vehicle and Traffic Law?
4. If applicable, are provider and drivers licensed by local Taxi and Limousine Commissions (e.g., NYC, Nassau and Westchester Counties have TLCs.)

CONCLUSION

If you have any questions on this *Compliance Guidance*, or any compliance issue under New York State's mandatory compliance program obligation, please contact the Office of the Medicaid Inspector General's Bureau of Compliance at 518-408-0401 or by e-mail at compliance@omig.ny.gov.