



New York State Office of Medicaid Inspector General

## Compliance Alert

2012 - 01



Medicaid Provider Certification of its Compliance Program

### Introduction

Specified Medicaid providers in New York State are required to have a compliance program that meets the requirements of the Social Services Law §363-d (SSL §363-d) and 18 New York Code of Rules and Regulations Part 521 (18 NYCRR 521). If a Medicaid provider is required to have a compliance program, the provider must certify to the New York State Department of Health (DOH) that it has a compliance program that meets the requirements of SSL§363-d and 18 NYCRR Part 521. The certification must be done in December of each year for Medicaid providers already serving Medicaid recipients and the certification must be done at the time Medicaid providers enroll with DOH for participation as a Medicaid provider, if the provider is required to have a compliance program.

### Purpose of this *Compliance Alert*

The purpose of this *Compliance Alert* is to:

1. identify Medicaid providers who must have a compliance program and who must annually certify on OMIG's Web site that their compliance program meets New York State's mandatory compliance program requirement;
2. remind providers of their annual certification requirement during December each year;
3. advise newly enrolling Medicaid providers of the certification requirement;
4. recommend that providers conduct a self assessment of their compliance programs prior to completing the certification; and
5. provide a self-assessment tool that can be used by Medicaid providers as they conduct their self-assessment activities.

### Compliance Program Obligation for Some Medicaid Providers

SSL§363-d and 18 NYCRR 521 require the following Medicaid participating providers of health care services and supplies (Medicaid providers) to implement a compliance program that meets the

requirements of SSL§363-d and 18 NYCRR 521:

- (a) persons subject to the provisions of article 28 or 36 of the New York State Public Health Law;
- (b) persons subject to the provisions of article 16 or 31 of the New York State Mental Hygiene Law; and
- (c) 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.

(Emphasis added)

Source: 18 NYCRR §521.1. (Note: “persons” is not limited to natural persons.)

The regulations define “substantial portion of business operations” for purposes of determining if the Medicaid provider must have a compliance program to be 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 [Medicaid];
- (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 ... [Medicaid]; or
- (3) when a person, provider, or affiliate who submits or has submitted claims for care, services, or supplies to the ... [Medicaid] program on behalf of another person or persons in the aggregate of at least \$500,000 in any consecutive 12-month period.

(Emphasis added)

Source: 18 NYCRR §521.2 (b).

The regulation refers to payments received by a provider that are made “directly or indirectly” from Medicaid. It should be noted that direct payments include payments which the Medicaid provider receives directly from the Medicaid program. The most common example of a direct payment is a fee-for-service payment made to a Medicaid provider. Indirect payments include payments which the provider receives for providing covered services to Medicaid recipients from a source other than directly from New York’s Medicaid program. The most common example of an indirect payment is a payment made by a managed care organization (MCO) under the MCO’s managed Medicaid program. New York’s Medicaid payment to the MCO is considered a direct payment, while payment by the MCO to the provider of the Medicaid service is considered an indirect payment.

Not all Medicaid providers are required to have a compliance program under SSL§363-d and 18 NYCRR 521. Providers who provide covered Medicaid services to Medicaid recipients and who are subject to articles 28 or 36 of the Public Health Law or subject to articles 16 or 31 of the Mental Hygiene Law must have a compliance program meeting the requirements of SSL§363-d and 18 NYCRR 521, regardless of how much they are paid by the Medicaid program. However, providers not subject to articles 28 or 36 of the Public Health Law or subject to articles 16 or 31 of the Mental Hygiene Law must have compliance programs if they meet the claiming, ordering, or payment threshold of \$500,000 during a consecutive 12-month period. It is noted that the regulatory language in 18 NYCRR 521.2(b)

connects the \$500,000 threshold to actually meeting that threshold or if meeting the threshold is “reasonably expected” to occur.

### Certification Obligation

Medicaid providers required to have a compliance program are required to certify that they have implemented a compliance program that meets the requirements of SSL§363-d and 18 NYCRR 521. The certification obligation follows from the obligation to implement a compliance program.

18 New York Code of Rules and Regulations §521.3(b) provides:

- (b) Upon applying for enrollment in the medical assistance program, and during the month of December each year thereafter, a required provider shall certify to the department, using a form provided by the Office of the Medicaid Inspector General on its Web site, that a compliance program meeting the requirements of this Part is in place. The Office of the Medicaid Inspector General will make available on its Web site compliance program guidelines for certain types of required providers.

The Medicaid provider must certify electronically using a form that is available on OMIG’s Web site. The current link to the certification form is <https://www.omig.ny.gov/data/content/view/270/53/> . OMIG Webinar #14, presented on November 14, 2011, provides information on how to complete the 2011 certification form. Access to that session is available through the following link: <http://www.omig.ny.gov/data/content/view/204/294/>. The 2012 certification form will be available on OMIG’s Web site on December 1, 2012.

#### *Certification as Part of the Medicaid Application Process with the Department of Health<sup>1</sup>*

As part of DOH’s Medicaid application process, providers who are required to have a compliance program must certify “... that the provider and its affiliates have adopted, implemented, and maintain an effective compliance program that meets the requirements of NYS Social Services Law §363-d and 18 NYCRR Part 521.” If the applying provider is not subject to one or more of the articles from New York’s Public Health Law or the Mental Hygiene Law, or the \$500,000 threshold (as described above) do not apply, then the certification obligation does not apply to that provider. The applicant as a Medicaid provider should communicate to the Department of Health that the certification obligation is not applicable.

If the applying provider is subject to one or more of the articles from New York’s Public Health Law or the Mental Hygiene Law, or if the \$500,000 threshold (as described above) does apply, then the certification obligation applies to the provider. The applicant as a Medicaid provider must, prior to completing the Medicaid application, implement a compliance program that meets the requirements of SSL §363-d and 18 NYCRR Part 521. Once the compliance program is implemented, the applicant should conduct a self assessment as described below. If, following the self assessment, the provider determines that it has a compliance program that meets the requirements of SSL §363-d and 18 NYCRR Part 521, the applicant should certify using OMIG’s form that is currently available at the following link: <https://www.omig.ny.gov/data/content/view/270/53/> . The applicant can then communicate to the Department of Health that the certification obligation has been satisfied and the applicant can provide to

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<sup>1</sup> Those applying to become Medicaid providers may wish to consult OMIG’s *Compliance Alert 2011-05, Compliance Program Requirement for New Medicaid Providers*, published on May 5, 2011, and available through the following link: [http://www.omig.ny.gov/data/images/stories/compliance\\_alerts/compliance\\_alert\\_2011-05.pdf](http://www.omig.ny.gov/data/images/stories/compliance_alerts/compliance_alert_2011-05.pdf) .

the Department of Health the information necessary to complete its application.

### *Annual Certification for Medicaid Providers*

Medicaid providers already in the Medicaid program who are required to have a compliance program must certify each December, "... that the provider and its affiliates have adopted, implemented and maintain an effective compliance program that meets the requirements of NYS Social Services Law §363-d and 18 NYCRR Part 521."

#### OMIG's Recommendation – What Providers Should do Prior to Their Annual Certification

1. Conduct a self assessment of the compliance program.
  - a. Compliance programs must conform to the requirements of SSL §363-d and 18 NYCRR Part 521.
  - b. Develop a self-assessment tool: Providers can refer to OMIG's *Compliance Alert 2010-01* that can be accessed through the following link as a starting point for their tool: [http://www.omig.ny.gov/data/images/stories/compliance\\_alerts/2010-02.pdf](http://www.omig.ny.gov/data/images/stories/compliance_alerts/2010-02.pdf). Providers may wish to customize their self-assessment tool to address prior compliance issues or specific compliance risk areas that may exist for their provider type. Other resources can be found in OMIG's forms that can be accessed in the OMIG Compliance Library at the following link: <http://www.omig.ny.gov/data/content/view/246/328/>. Providers' self assessments should not be submitted to OMIG, unless specifically requested as part of a compliance program review by OMIG.
  - c. Conduct the self assessment early in the year that the certification will be made: Conducting a self assessment early each year will give the provider an opportunity to make corrections or update the compliance program prior to the certification in December.
  - d. Provide the results of the self assessment to senior leadership and the governing board of the provider.
  - e. Determine if the compliance program complies with the requirements of SSL §363-d and 18 NYCRR Part 521.
  - f. If during December the provider determines that its compliance program does not comply with the statutory and regulatory requirements, **do not certify!!** In the alternative, follow the directions on the certification form for when a provider cannot certify.
2. Verify who the certifying official will be. The certification form includes directions on who should be the certifying official. In most cases, the certifying official should not be the compliance officer.
3. Identify the Federal Employer Identification Number (FEIN) that the provider uses when receiving payment for services rendered to Medicaid recipients. If more than one FEIN is used, a separate certification is required for each FEIN that the provider uses to receive Medicaid payments.
4. Complete the certification process early in December by accessing the certification form on OMIG's Web site. The current form is accessed at the following link: <https://www.omig.ny.gov/data/content/view/270/53/>.

## Summary

New York State Medicaid providers who are required to have a compliance program are required to annually certify "... that the provider and its affiliates have adopted, implemented, and maintain an effective compliance program that meets the requirements of NYS Social Services Law §363-d and 18 NYCRR Part 521." OMIG recommends that prior to performing the certification, Medicaid providers should conduct a self assessment.

If you have any questions on this *Compliance Alert*, 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](mailto:compliance@omig.ny.gov) .