



Risk Areas by Provider Type
Mental Health Providers -
Rehabilitation in Community Residences - Adult Services

COMPLIANCE GUIDANCE

2014 – 06

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.

Section 363-d at subd. 2 and 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 provider² 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 rehabilitative mental health services. Many of these are taken from OMIG Audit Protocols for Mental Health Providers: Rehabilitation Adult Services, and can be found on OMIG's Web site, 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's compliance risk areas should be expected to change based upon changes in the Medicaid program; improvements in 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 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. It is expected 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 website 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 Mental Health Providers – Rehabilitation in Community Residences – Adult Services⁴

The following identifies examples of some common risk areas for adult rehabilitative mental health 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. Are the dates and duration of each rehabilitative service performed documented in the case record?
2. Is each rehabilitative service being billed to Medicaid of at least 15 minutes in duration?
3. Do case records include appropriate service plans?
4. Are all provided services identified in the recipient's current service plan?

B. Quality-of-Care Risk Areas

1. Are all initial service plans developed within four weeks of admission to the program?
2. Is each service plan reviewed at least every three months?
3. Are service plans reviewed and signed by qualified mental health staff persons (QMHSs)?
4. Are all billed Medicaid services covered by a physician's authorization or reauthorization?

C. Billing and Payment Risk Areas

1. Is a system in place to ensure billing does not occur for:
 - a. a month of rehabilitative services when a resident is not in residence for at least 21 days in a month?
 - b. a half-month of rehabilitative services when a resident is not in residence for at least 11 days in a month?
2. Is a system in place to ensure billing does not occur for rehabilitative services when a resident is an inpatient of any hospital or temporarily residing in any other licensed residential facility?

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.

D. Credentialing and Workforce Risk Areas

1. Are the persons providing the service being billed properly licensed/credentialed to provide the service?
2. Are the names of those providing the services properly documented in the record?

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.