



New York State Office of Medicaid Inspector General

Compliance Alert

2011 - 05



COMPLIANCE PROGRAM REQUIREMENT FOR NEW MEDICAID PROVIDERS May 5, 2011

New York Social Services Law §363-d subsection 3 and 18 NYCRR §521.3(b) require applicants as providers in the Medicaid program to have a compliance program and to certify that they have an effective compliance program, if required. The purpose of Compliance Alert 2011-06 is to provide guidance to providers that are applying for participation status in New York State's medical assistance (Medicaid) program on this requirement. This Compliance Alert will address the Medicaid providers who are required to have and to certify that they effective compliance programs because Medicaid is a substantial portion of business operations.

Statutory/Regulation Authority:

Persons or entities that are subject to the provisions of New York State Public Health Law articles 28 or 36 (generally hospitals, nursing homes, clinics, home care agencies, etc.) and New York State Mental Hygiene Law articles 16 and 31 (Office of Mental Health, Office of Persons with Developmental Disabilities and Office of Alcohol and Substance Abuse Services facilities, etc.) are required by Social Services Law §363-d subsection 4 and 18 NYCRR §521.1 to adopt and implement effective compliance programs. In addition to the above providers, 18 NYCRR §521.1(c) requires providers for which Medicaid is or should be reasonably expected to be a "substantial portion of business operations" to adopt and implement effective compliance programs. For most providers, if the Medicaid provider orders at least \$500,000 in Medicaid services during a 12 month period; or claims and/or is paid at least \$500,000 in Medicaid services during a 12 month period, the provider is determined to have Medicaid as a substantial portion of business operations. This requires the Medicaid provider to have a compliance program and to annually certify that it is effective.

Social Services Law §363-d subsec. 3 requires:

Upon enrollment in the medical assistance program, a provider shall certify to the department that the provider satisfactorily meets the requirements of this section [363-d].

18 NYCRR §521.3(b) requires:

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Upon applying for enrollment in the Medical Assistance program, ... a required provider shall certify to the department, using a form provided by the Office of the Medicaid Inspector General on its website that a compliance program meeting the requirements of this Part [521] is in place.

NYS Department of Health Medicaid Application - Required Documentation to be Submitted, requires providers to:

SUBMIT THE OFFICE OF MEDICAID INSPECTOR GENERAL (OMIG) PROVIDER COMPLIANCE CONFIRMATION (IF APPLICABLE). ...

Bureau of Compliance Review of New Medicaid Providers

For providers who must have a compliance program and annually certify that their compliance program is effective, solely because Medicaid is a substantial portion of business operations,¹ the certification should be based upon the existence of a compliance program that meets the eight elements set out in Social Services Law §363-d subsec. 2 and 18 NYCRR §521.3(c).

1. The Bureau of Compliance will review the Medicaid provider applicant to determine if he/she/it will claim, order or be paid \$500,000 for Medicaid services during a 12 month period. If the Medicaid provider applicant's Medicaid business is not a "substantial portion of business operations," the applying provider need not certify as part of the Department of Health's application process that he/she/it has a compliance program.

The Medicaid provider applicant should be advised that he/she/it will be expected to certify that he/she/it has an effective compliance program when the Medicaid provider applicant's business is a "substantial portion of business operations" as defined in 18 NYCRR §521.2(b).

The Medicaid provider applicant is expected to take reasonable notice of the facts and circumstances surrounding the services that he/she/it will be providing when making the assessment of whether Medicaid shall be a "substantial portion of business operations."

2. If option "1." above does not apply and the applying provider has a Medicaid patient base such that the applying provider's Medicaid business is a "substantial portion of business operations" as defined in 18 NYCRR §521.2(b), the applying provider must certify as part of the Department of Health's application process that he/she/it has a compliance program.

The applying provider is expected to take reasonable notice of the facts and circumstances surrounding the services that he/she/it will be providing when making the assessment of whether Medicaid shall be a "substantial portion of business operations." This shall include, but not be limited to the following:

- a. If the applying provider is purchasing an existing Medicaid provider location, whether the Medicaid business at that location at the date of purchase meets the definition of a "substantial portion of business operations" as defined in 18 NYCRR §521.2(b).
- b. If the applying provider has an existing Medicaid patient base that when combined with the new location or new services, will move the total Medicaid business by the applying provider to become a "substantial portion of business operations" as defined in 18

¹ If the Medicaid provider applicant is subject to Public Health Law Articles 28 or 36, or Articles 16 or 31 of the Mental Hygiene Law, the Medicaid provider applicant must certify that he/she/it has an effective compliance program as part of the Department of Health application process regardless of the dollar amount claimed, order or paid by Medicaid during a 12 month period.

NYCRR §521.2(b).

- c. If the applying provider is purchasing an existing Medicaid provider or Medicaid provider location where Medicaid is a “substantial portion of business operations” as defined in 18 NYCRR §521.2(b), does the selling Medicaid provider have a compliance program that meets the requirements of Social Services Law §363-d subsec. 2 and 18 NYCRR §521.3(c) such that during a transition, as part of the sale, the selling Medicaid provider’s compliance program can be incorporated into the applying Medicaid provider’s operation until such time as the applying Medicaid provider can update, revise or replace the existing compliance program?
- d. The applying Medicaid provider’s current or prior NYS Medicaid compliance history for programs.

Medicaid provider applicants with any questions can contact OMIG’s Bureau of Compliance at compliance@omig.ny.gov.

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