

Frequently Asked Questions ("FAQs")

Federal Deficit Reduction Act of 2015 - 42 USC § 1396a(a)(68) ("DRA") (Revised: 12/1/2016)

The following FAQs primarily address requirements of the DRA (Section A) and are for reference relative to the completion of the DRA annual certification requirement (Section B).

Please note: If you have questions about requirements surrounding the DRA, please refer to the FAQs developed by CMS discussing the purpose and implementation of the DRA requirements; they are available [here](#).

If you have questions about the applicability of the New York State ("NYS") Social Services Law ("SSL") § 363-d and 18 NYCRR § 521.3 (b) certification requirement to your compliance program, please refer to the [New York State's Social Services Law \("SSL"\) § 363-d FAQs](#).

If you have not yet completed the SSL Certification, you can access the SSL Certification page [here](#).

Contents

SECTION A–DRA PROGRAM FAQs	3
A-1. WHO IS SUBJECT TO AND WHAT IS THE PURPOSE AND INTENT OF THE DRA?	3
A-2. WHAT ARE THE DRA REQUIREMENTS?	3
A-3. HOW MUST THE POLICIES BE DISSEMINATED?	3
A-4. ARE NEW YORK STATE'S MANDATORY COMPLIANCE PROVISIONS RELATED TO THE DRA REQUIREMENTS?	3
A-5. WHO DO I CALL IF I HAVE QUESTIONS ABOUT THE SSL § 363-D AND 18 NYCRR PART 521 REQUIREMENTS OF A COMPLIANCE PROGRAM?	4

SECTION B–DRA CERTIFICATION FAQs	5
B-1. WHO IS SUBJECT TO THE DRA?	5
B-2. HOW AND WHEN DO I CERTIFY THAT I AM MEETING THE REQUIREMENTS OF THE DRA?	5
B-3. DOES A PROVIDER HAVE TO SUBMIT A SEPARATE CERTIFICATION FOR EACH LOCATION OR PROVIDER NUMBER?	5
B-4. WHAT IS THE PROCESS FOR CERTIFICATION UNDER THE DRA?.....	5
B-5. CAN PROVIDERS SUBMIT PAPER CERTIFICATIONS?	5
B-6. WILL PROVIDERS RECEIVE A CONFIRMATION OF RECEIPT?.....	5
B-7. WHO SHOULD SUBMIT THE CERTIFICATION?.....	6
B-8. WHAT IS THE CONSEQUENCE OF A PROVIDER'S FAILURE TO CERTIFY?.....	6
B-9. SHOULD PROVIDERS SUBMIT COPIES OF THEIR RELEVANT POLICIES OR DOCUMENTS ALONG WITH THE CERTIFICATION?	6
B-10. WHO DO I CALL IF I HAVE QUESTIONS ABOUT THE DRA AND THE DRA CERTIFICATION REQUIREMENTS?	6

SECTION A–DRA PROGRAM FAQs

A-1. WHO IS SUBJECT TO AND WHAT IS THE PURPOSE AND INTENT OF THE DRA?

The DRA¹ instituted a requirement for health care entities receiving or making \$5 million or more in direct Medicaid payments during a federal fiscal year (“FFY”) to establish written policies and procedures informing their employees, contractors, and agents about federal and state False Claims Acts and whistleblower protections. If an entity furnishes items or services at more than a single location, under more than one contractual or other payment arrangement, or uses more than one provider or tax identification number, the aggregate of all payments to that entity is used to determine if the entity reached the \$5 million annual threshold. The applicability of the \$5 million annual threshold is based upon reimbursements for the FFY beginning on October 1 and ending on September 30. For example, the certification due on or before January 1, 2010 is based on the applicability of the reimbursements for the FFY ending September 30, 2009. FAQs developed by the federal government that are specific to the DRA’s obligations can be accessed by clicking [here](#).

A-2. WHAT ARE THE DRA REQUIREMENTS?

1. An entity must establish and disseminate written policies that provide detailed information about detecting and preventing Medicaid fraud, waste, and abuse to the following individuals:
 - a. all employees, including management;
 - b. any contractors or vendors furnishing Medicaid health care items or services; and
 - c. all agents.
2. The written policies must include detailed information about:
 - a. the federal False Claims Act, 31 USC §§ 3729-3733;
 - b. the federal administrative remedies for false claims and statements, 31 USC §§ 3801-3812;
 - c. the NYS False Claims Act, NYS Finance Law §§ 187-194;
 - d. any NYS laws pertaining to civil or criminal penalties for false claims and statements; and
 - e. federal and state whistleblower protections, 31 USC § 3730(h) and NYS Finance Law § 191.
3. If the entity has an employee handbook, the handbook must include a specific discussion of:
 - a. the state and federal laws described above;
 - b. the rights of employees to be protected as whistleblowers; and
 - c. the entity’s policies and procedures for detecting and preventing Medicaid fraud, waste, and abuse.
4. A list of the relevant state and federal laws can be found on OMIG’s website by clicking [here](#).

A-3. HOW MUST THE POLICIES BE DISSEMINATED?

The written policies may be disseminated in hard copy or electronic form as long as they are readily available to all employees, management, contractors, and agents of the entity.

A-4. ARE NEW YORK STATE’S MANDATORY COMPLIANCE PROVISIONS RELATED TO THE DRA REQUIREMENTS?

No. While the mandatory compliance requirements contained in NYS SSL § 363-d and 18 NYCRR Part 521, and the DRA obligations found in 42 USC § 1396a (a) (68) address similar areas and have

¹ 42 United States Code § 1396a (a) (68).

a certification requirement, there are significant differences in which providers are covered and the scope of provider responsibilities.

Providers required to meet both provisions usually include the DRA requirements in their (typically more comprehensive) mandatory compliance programs.

A-5. WHO DO I CALL IF I HAVE QUESTIONS ABOUT THE SSL § 363-d AND 18 NYCRR PART 521 REQUIREMENTS OF A COMPLIANCE PROGRAM?

Address questions to compliance@omig.ny.gov; please state in the subject line that you have a compliance program question. You may also call the Bureau of Compliance's dedicated telephone number (518-408-0401).

SECTION B—DRA CERTIFICATION FAQs

B-1. WHO IS SUBJECT TO THE DRA?

The DRA applies to health care entities that receive or make \$5 million or more in Medicaid payments during an FFY. FAQs specific to the DRA's obligations can be accessed [here](#).

B-2. HOW AND WHEN DO I CERTIFY THAT I AM MEETING THE REQUIREMENTS OF THE DRA?

The DRA Certification for NYS can only be submitted electronically on the NYS Office of the Medicaid Inspector General's website. The DRA Certification form can be accessed [here](#).

Paper DRA Certifications are not accepted.

The DRA must be completed during the month of December (i.e., between December 1 and December 31) for each prior FFY that the Medicaid provider is subject to the DRA's requirements (i.e., receives or makes \$5 million or more in Medicaid payments). The FFY starts on October 1 and ends on September 30. OMIG updates the DRA Certification form each December following the end of the FFY for which the certification must be made.

B-3. DOES A PROVIDER HAVE TO SUBMIT A SEPARATE CERTIFICATION FOR EACH LOCATION OR PROVIDER NUMBER?

Please refer to FAQs #1 through #12 of the FAQs document located on the Centers for Medicare and Medicaid Services ("CMS") website: <http://www.cms.hhs.gov/smdl/downloads/SMD032207Att1.pdf>.

Please note: There are separate certification forms for mandatory compliance under NYS's SSL and DRA requirements. Questions or comments can be directed to OMIG's Bureau of Compliance at compliance@omig.ny.gov or via telephone at 518-408-0401.

B-4. WHAT IS THE PROCESS FOR CERTIFICATION UNDER THE DRA?

Certification must be submitted by completing an [online certification form](#) that is available on OMIG's website. Covered providers are required to annually certify on or before January 1 following the end of the FFY that the provider becomes subject to the DRA.

B-5. CAN PROVIDERS SUBMIT PAPER CERTIFICATIONS?

No. Only online certifications will be accepted.

B-6. WILL PROVIDERS RECEIVE A CONFIRMATION OF RECEIPT?

Yes. An electronic confirmation will be generated upon submission of the certification. This electronic confirmation will be in the form of a printable page with a confirmation number on it. The provider should print this confirmation page for their records and retain it as proof of certification. The confirmation page will only be available at the time of the form submission.

A confirmation email will be sent for the DRA certification to the email addresses the provider lists on the form for the Certifying Official and Compliance Officer.

B-7. WHO SHOULD SUBMIT THE CERTIFICATION?

The certification should be submitted by the individual identified as the Certifying Official on the certification form. The Certifying Official should be an employee of the provider who has oversight responsibility for DRA compliance.

Please note that OMIG anticipates that the Certifying Official for the DRA may be different from the Certifying Official designated on the SSL Certification form because the obligations for the DRA may be managed through different structures at the provider than the individual who manages the obligations for the SSL.

B-8. WHAT IS THE CONSEQUENCE OF A PROVIDER'S FAILURE TO CERTIFY?

OMIG is authorized to impose administrative sanctions, up to and including exclusion from the program, against providers who fail to certify compliance with the DRA requirements.

B-9. SHOULD PROVIDERS SUBMIT COPIES OF THEIR RELEVANT POLICIES OR DOCUMENTS ALONG WITH THE CERTIFICATION?

No. OMIG will specifically request a copy of a provider's relevant policies or documents when OMIG evaluates a particular provider's compliance with the DRA requirements.

B-10. WHO DO I CALL IF I HAVE QUESTIONS ABOUT THE DRA AND THE DRA CERTIFICATION REQUIREMENTS?

Address questions to compliance@omig.ny.gov; please state in the subject line that you have a DRA question. You may also call the Bureau of Compliance's dedicated telephone number (518-408-0401).