



Office of the
Medicaid Inspector
General

New York State's Mandatory Compliance Program Obligation for Medicaid Providers - Element #1

OMIG Webinar Series Addressing Requirements of New York's
Mandatory Compliance Programs for Medicaid Providers

November 2015

The Fine Print

- ❑ This presentation reflects what OMIG considers when assessing compliance programs required by SSL § 363-d and 18 NYCRR Part 521, as of the date this is posted.
- ❑ OMIG does not have responsibility for updating this presentation to reflect changes in approach or interpretation.
- ❑ This presentation does not provide legal advice; shall not bind OMIG in any way; and does not represent the opinion of the Office of the Medicaid Inspector General (OMIG), Centers for Medicare and Medicaid Services (CMS), Office of Inspector General (OIG) or any other State or federal agency.

Program Agenda

- ❑ Identify the statutory and regulatory requirements of Element #1 of New York's mandatory compliance program
- ❑ Identify what OMIG looks for when it assesses if compliance programs meet the requirements for Element #1
- ❑ Introduce the next webinar in the series

General Introduction to the Eight Elements

Introduction

- ❑ Medicaid providers are required to adopt and implement a compliance program
- ❑ Each requirement under each compliance program element must be implemented in order to meet the mandatory compliance program obligation
- ❑ Compliance programs must be effective
- ❑ OMIG considers the provider's characteristics when determining effectiveness, but all requirements must be adopted and implemented at the time of the review

Element #1 – Written Policies and Procedures

SSL § 363-d subsection 2(a)

18 NYCRR §521.3(c)(1)

Element #1 – Written Policies and Procedures

Written policies and procedures that:

1. describe compliance expectations as embodied in a code of conduct or code of ethics,
2. implement the operation of the compliance program,
3. provide guidance to employees and others on dealing with potential compliance issues,
4. identify how to communicate compliance issues to appropriate compliance personnel, and
5. describe how potential compliance problems are investigated and resolved.

What OMIG Looks for When it Assesses if the Requirements of Element #1 Are Met

Written Policies and Procedures

1. Policies and procedures must be in writing
2. Are the policies and procedures approved or adopted by the appropriate governance or leadership group?
3. Policies and procedures must be in effect

1. describe compliance expectations as embodied in a code of conduct or code of ethics

1. Identify the expectation of conducting business, at all times, in a manner that supports integrity in its operations.
2. Conduct contrary to the expectation is a violation of the compliance program and the related policies and procedures.
3. Compliance program organizes provider resources to resolve payment discrepancies and detect inaccurate billings, among other things, and quickly and efficiently impose systemic checks and balances to prevent recurrence.

1. describe compliance expectations as embodied in a code of conduct or code of ethics (continued)

4. Identify who is covered by the policies and procedures and what is expected of them.
5. Expectations should address
 - a. some of the requirements in later elements;
 - b. obligations set out in 18 NYCRR 521.3(a)
6. A code of conduct or code of ethics is preferred, but if policies and procedures are complete, that is sufficient.

2. implement the operation of the compliance program

1. Evidence should exist that the compliance program is implemented:
 - a. Operating organization-wide
 - b. Governing body approval of the policies and procedures
 - c. Management engagement in approval and operation
 - d. Reporting and meetings
 - e. Work product flowing from stated expectations

2. implement the operation of the compliance program, ethics (continued)

2. Evidence of operating results for other Elements of the compliance program:
 - a. Work plans
 - b. Investigations/audits
 - c. Corrective Action Plans
 - d. Reports
 - e. Meetings
 - f. Budgets

3. provide guidance to employees and others on dealing with potential compliance issues,

1. Specific guidance to:
 - a. Employees and Executives
 - b. Governing Body
 - c. Management
 - d. Vendors and Contractors
 - e. Volunteers
 - f. Others subject to or interacting with the compliance program

3. provide guidance to employees and others on dealing with potential compliance issues, (continued)

2. Guidance can tie into other Elements of the compliance program:
 - a. What constitutes fraud, waste or abuse
 - b. What should be reported, who should get the report and how a report should be made
 - c. Existence of protection for good faith reporting
 - d. What is the investigative process and how will results of the investigation be addressed
 - e. What discipline may be imposed

3. provide guidance to employees and others on dealing with potential compliance issues, (continued)

3. Identification of possible compliance risk areas
4. Examples of areas of concern
5. The level of detail in the guidance for each group may be different based upon the related responsibilities of the class of people covered by the compliance program

4. identify how to communicate compliance issues to appropriate compliance personnel,

1. Identify the appropriate compliance personnel who should receive the communication - it need not be the CO, but it must be compliance personnel
 - a. Policies and procedures can include direction to report to supervisors and management, as long as supervisors and management report issues to compliance personnel
 - b. Reporters must also have a clear reporting path to the appropriate compliance personnel

4. identify how to communicate compliance issues to appropriate compliance personnel, (continued)

2. Since communication methods may vary for different groups under the compliance program, policies and procedures should identify how each group can communicate to the appropriate compliance personnel
3. Guidance should tie into other Elements of the compliance program.

5. describe how potential compliance problems are investigated and resolved

1. Investigative steps should be identified - from start to finish
2. It is permissible for investigation to be conducted by people outside of the compliance function, but if that is to occur, policies and procedures should state so
3. To the extent that someone outside of the compliance function is investigating, it should be clear that the results will be provided to the appropriate compliance personnel

5. describe how potential compliance problems are investigated and resolved (continued)

4. Investigative activity should tie into other Elements of the compliance program
5. A clear commitment to resolution of compliance problems should be evidenced in the policies and procedures
6. Resolution of some compliance problems may be outside of the authority of the compliance function to resolve, but it is expected that an organization resolution will occur

5. describe how potential compliance problems are investigated and resolved (continued)

7. Resolution should commit to correction (which may including reporting to the government) and implementing steps to prevent future recurrence
8. Resolutions should tie into other Elements of the compliance program
9. Resolution could include development and implementation of plans of correction to address the results of the investigation

5. describe how potential compliance problems are investigated and resolved (continued)

10. Resolution should include a monitoring feature to be sure that resolution addressed the compliance problem
11. Resolution may involve the need to update, correct or modify policies, procedures and business practices

Compliance-Related Tools and Resources

Compliance Resources

OMIG website: www.omig.ny.gov

- ❑ Compliance Tab
 - Compliance Library
- ❑ Resources Tab
 - Webinars
- ❑ Bureau of Compliance contacts:
 - compliance@omig.ny.gov
 - 518-408-0401

Compliance Resources (continued)

Compliance Library

- Compliance Authorities – applicable laws and regulations
- OMIG Compliance Publications
 - Compliance Guidance
 - Compliance Alerts
 - Medicaid Updates
- Forms
 - Compliance Program Self-Assessment Form

Compliance Resources (continued)

Compliance Library: (continued)

- OMIG Assessment Results
 - Best Practices
 - Opportunities for Enhancement
 - Identified Insufficiencies
- FAQs
- Compliance-related Webinars
- Other Compliance Resources

The Next Webinar in the Series

Element #2

Designation of an employee vested with responsibility for the day-to-day operation of the compliance program ...

Closing

OMIG Resources

- ❑ www.omig.ny.gov
- ❑ Join the OMIG list serve – signup on the OMIG website
- ❑ OMIG's social media channels include Twitter, Facebook and LinkedIn

Questions

- ❑ Questions related to this webinar and others in this series should be emailed to OMIG's Bureau of Compliance at: compliance@omig.ny.gov
- ❑ Questions received up to November 25, 2015 will be addressed in an FAQ to be posted on the OMIG website in December 2015.
- ❑ Please include "COMPLIANCE WEBINAR QUESTION" in the subject line when submitting questions via email.

Thank You

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