

Follow-up Questions and Answers

Related to the OMIG Compliance Elements Webinar Series: Webinars #26 through #34

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- 1. Introductory Compliance Program Requirements Webinar (Webinar #26)**
Are companies that submit providers' Medicaid billing file to Medicaid required to have a compliance plan under the State and/or federal requirements?

The company in question falls into two categories; one where the company actually produces the billing file and submits it to Medicaid for payment, and the second where the company provides the capability for the Medicaid provider to produce the billing file and the Medicaid provider submits the bill to Medicaid for payment.

Answer:

The fact pattern described in the question involves whether the company under contract to submit claims for Medicaid providers is required to have a compliance program. 18 NYCRR Section 521.2 (b)(3) appears to apply to the fact pattern presented. The company that submits claims on behalf of Medicaid provider(s) in an aggregate that exceeds \$500,000 must have a compliance program that meets the requirements of Social Services Law Section 363-d and 18 NYCRR Part 521.

By way of background, the obligation to implement an effective compliance program is required for Medicaid providers that are subject to New York State Public Health Law Article 28 or Article 36; or New York State Mental Hygiene Law Article 16 or Article 31; or Medicaid providers for which Medicaid is a substantial portion of their business operations. 18 NYCRR Section 521.2 (b) defines "substantial portion of business operations" to mean when a person, provider, or affiliate:

- (1) claims or orders, or has claimed or ordered, or should be reasonably expected to claim or order at least \$500,000 in any consecutive 12-month period from Medicaid;
- (2) 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) submits or has submitted claims for care, services, or supplies to Medicaid on behalf of another person or persons in the aggregate of at least \$500,000 in any consecutive 12-month period.

Since 18 NYCRR Section 521.2 (b)(3) addresses submission of claims, if the company were to simply prepare billing files for the Medicaid provider to submit on its own, the company may not be subject to the obligation to have a compliance program.

Please complete OMIG's "Are You Required to Have a Compliance Program?" questionnaire to help you determine if your specific situation requires you to comply with the compliance program requirements. The questionnaire can be found at <https://omig.ny.gov/compliance>; click the picture of the compass to access it. This questionnaire is intended as a self-assessment tool only and should not be submitted to OMIG.

Obligations under any federal compliance obligations are outside of the scope of this FAQ to address.

**2. Introductory Compliance Program Requirements Webinar (Webinar #26)
How much "evidence" is necessary when assessing the requirements? For instance, how many meeting minutes, sign-in sheets, etc. does OMIG require to be submitted?**

Answer:

When assessing whether the mandatory compliance requirements are being met as part of an OMIG compliance program review, there is no specific volume of evidence that is expected to be submitted. However, OMIG expects to see enough evidence to demonstrate that the compliance program is continually operating and effective. Evidence of a single occurrence is usually not enough to demonstrate continuous operation.

Meeting minutes are a record of what occurred at a meeting. When compliance issues are reported or addressed and action is taken at a meeting, the minutes provide evidence that compliance issues are being considered and addressed at management or governing body meetings. Meeting minutes can also provide evidence that the employee designated with responsibility for the day-to-day operation of the compliance program (compliance officer) is meeting with the governing body on a periodic basis as required by Social Services Law Section 363-d subsection 2.(b) and 18 NYCRR Section 521.3 (c)(2). OMIG generally will not look to review all meeting minutes, but it may review minutes of meetings where there was a report by the compliance officer that addressed compliance issues. Minutes are just one form of evidence that management and the governing body are receiving compliance reports and taking appropriate action to address compliance issues and risks. Other examples of evidence could include copies of correspondence, reports, or other documents that are used before, during, or after meetings where compliance issues are addressed.

Sign-in sheets are evidence that training has taken place for all affected employees, executives, governing body members, and all persons associated with the provider as required by Social Services Law Section 363-d subsection 2.(c) and 18 NYCRR Section 521.3 (c)(3). Sign-in sheets are just one possible method to provide evidence that the required training has taken place for all those required to receive

the training. Other examples of evidence that training has occurred include copies of post-training test scores for all those required to receive training, and entries in personnel records that employees received compliance training.

Please note that the evidence referred to should only be provided to OMIG when it is specifically requested by OMIG. Typically, this is limited to when OMIG is conducting a formal compliance program review or conducting compliance contact initiatives.

3. Introductory Compliance Program Requirements Webinar (Webinar #26)
During the webinar series, OMIG references the Compliance Program Assessment Form that can be used to help providers assess their compliance programs. Must I submit the completed Compliance Program Assessment Form to OMIG as part of my self-assessment process?

Answer:

No. Providers should not submit Compliance Program Assessment Forms to OMIG unless they are specifically requested to do so by OMIG. OMIG's request for the Compliance Program Assessment Form is typically part of a compliance program review that is conducted by OMIG's Bureau of Compliance.

4. Element #1 (Webinar #27)
Who must be covered by the policies and procedures that set out compliance expectations?

Answer:

Those who are subject to the compliance program's compliance expectations include those who are subject to the operation of the compliance program and/or have responsibilities under the compliance program. It generally will only include individuals who are involved in the delivery of Medicaid care, services, or supplies; or in the activities referred to in 18 NYCRR Section 521.3(a). This includes, but may not be limited to:

- a. the provider's governing body (e.g., board of directors, board of trustees, partners in a partnership, or owners);
- b. provider's work force (e.g., executives, management, employees, or staff);
- c. contractors (e.g., medical staff, leased staff, or subcontractors who deliver Medicaid reimbursable care services or supplies);
- d. consultants (e.g. compliance, billing, or utilization consultants);
- e. volunteers (e.g., unpaid interns, members of the provider's foundation, or others who are not paid, but are involved in the delivery of Medicaid care, services or supplies); and
- f. vendors (e.g., sales staff for medical equipment, billing services).

5. Element #2 (Webinar #28)

What criteria must be considered when identifying a person to serve as a compliance officer within a healthcare organization? Should independence or conflicts of interest be considered?

Answer:

There is no specific background required for a person who is vested with responsibility for the day-to-day operation of the compliance program (commonly referred to as the compliance officer). Social Services Law Section 363-d subsection 2.(b) and 18 NYCRR Section 521.3(c)(2) **require** that the compliance officer:

- a. be an employee of the provider required to have a compliance program;
- b. report directly to the entity's chief executive or other senior administrators designated by the chief executive; and
- c. periodically report directly to the governing body on the activities of the compliance program.

Independence and conflicts of interest should be considered when identifying a person to serve as the compliance officer. Reporting to the chief executive and to the governing body anticipate that the compliance officer is independent and does not have any conflicts of interest. Since many compliance risks involve billing and payment matters and, in many providers, the billing and payment functions are under the direct oversight, management, and control of the Chief Financial Officer (CFO), OMIG does not recommend that the compliance officer report to or through the CFO so that conflicts of interest may be minimized. Providers are encouraged to be sensitive to issues of independence and conflicts of interest when identifying a compliance officer and the compliance officer's reporting structure.

6. Element #2 (Webinar #28)

In a practice where there are no employees, just independent contractors and leased employees (of another organization), how would the compliance officer requirement be met?

OMIG's guidance on its website and recent webinar indicates that an independent contractor/leased employee cannot be the compliance officer.

Answer:

Social Services Law Section 363-d subsection 2.(b) and 18 NYCRR Section 521.3 (c)(2) require that the person vested with responsibility for the day-to-day operation of the compliance program (compliance officer) be an employee. There is no alternative under current law and regulations to the employment requirement. The law and the regulation allow for an employed compliance officer to have other duties beyond just compliance responsibilities, so long as compliance responsibilities are satisfactorily carried out. OMIG cautions that those other duties should not create a conflict of interest for the compliance officer with the compliance responsibilities.

Any questions related to New York State's mandatory compliance program obligation can be directed to OMIG's Bureau of Compliance at compliance@omig.ny.gov or by telephone to 518-408-0401.