

Frequently Asked Questions (FAQs)
Federal Deficit Reduction Act of 2015 – (DRA)

Revised: 11/21/2019

The following FAQs address requirements of the DRA and are a guide for completion of the DRA annual certification requirement.

Please note: If you have questions about requirements surrounding the DRA, please refer to the FAQs developed by the Centers for Medicare and Medicaid Services (CMS) (available on the CMS website), which discuss the purpose and implementation of the DRA requirements. The DRA was enacted as the Deficit Reduction Act of 2005. The DRA is found in Title 42 United States Code Section 1396a(a)(68).

1. WHAT IS THE PURPOSE AND INTENT OF THE DRA?

The DRA requires health care entities to establish written policies and procedures informing their employees, contractors, and agents about federal and state False Claims Acts and whistleblower protections. OMIG recommends that entities consult the *CMS FAQs* that are specific to the DRA's obligations.

2. WHO IS SUBJECT TO THE DRA?

Health care entities receiving or making \$5 million or more in direct Medicaid payments during a federal fiscal year (FFY) are subject to the DRA requirements. The \$5 million annual threshold is based upon payments received or made for the FFY beginning on October 1 and ending on September 30. For example, the certification due on or before January 1, 2020, is based on the applicability of the reimbursements for the FFY ending September 30, 2019.

To determine if the entity reached the \$5 million annual threshold, the CMS FAQs require the entity to aggregate the following:

1. payments for items or services provided at more than a single location,
2. payments made under more than one contractual or other payment arrangement, or
3. payments made under more than one provider or tax identification number.

OMIG recommends that entities consult the *CMS FAQs* that are specific to the DRA's calculation of the \$5 million threshold.

3. 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 agents 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, Title 31 United States Code Sections 3729 to 3733;
 - b. the federal administrative remedies for false claims and statements, Title 31 United States Code Sections 3801 to 3812;
 - c. the NYS False Claims Act, NYS Finance Law Sections 187 to 194;

- d. any NYS laws pertaining to civil or criminal penalties for false claims and statements; and
 - e. federal and state whistleblower protections, Title 31 United States Code Section 3730(h) and NYS Finance Law Section 191.
3. The DRA does not require the entity to have an employee handbook, but if the entity does have 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. 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.

5. ARE NEW YORK STATE'S MANDATORY COMPLIANCE PROVISIONS RELATED TO THE DRA REQUIREMENTS?

No. There is a **separate** certification form for NYS's mandatory compliance program and certification. Please refer to the FAQs about NYS's Mandatory Compliance Program and Certification Requirements on OMIG's website.

6. WHO DO I CONTACT IF I HAVE QUESTIONS ABOUT THE 18 NYCRR PART 521 REQUIREMENTS OF A COMPLIANCE PROGRAM?

Address questions to OMIG's Bureau of Compliance at 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).

7. WHO MUST COMPLETE A DRA CERTIFICATION?

Those who are subject to the DRA requirements (FAQ 2 above) must certify that they are meeting the requirements of the DRA electronically on OMIG's website.

8. 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 by completing the DRA online certification form on OMIG's website.

The DRA certification 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 direct Medicaid payments). The FFY starts on October 1 and ends on September 30.

9. CAN PROVIDERS SUBMIT PAPER CERTIFICATIONS?

No. Only online certifications through OMIG's website will be accepted.

10. WILL PROVIDERS RECEIVE A CONFIRMATION OF RECEIPT?

Yes. An electronic confirmation of the DRA certification will be generated upon submission of the certification and sent to the email addresses the provider lists on the form for the Certifying Official and Compliance Officer. This electronic confirmation will be in the form of a printable page with a confirmation number. The provider should print this confirmation page for its records and retain it as proof of certification. The confirmation page will only be available at the time of the form submission.

11. WHO SHOULD SUBMIT THE CERTIFICATION?

The certification should be completed and 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.

12. WHAT IS THE CONSEQUENCE OF A PROVIDER'S FAILURE TO CERTIFY?

OMIG is authorized to take administrative action for failure to meet the DRA requirements.

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

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

14. WHO DO I CONTACT IF I HAVE QUESTIONS ABOUT THE DRA AND THE DRA CERTIFICATION REQUIREMENTS?

Address questions to OMIG's Bureau of Compliance at 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).