

Frequently Asked Questions (“FAQs”)
SSL Mandatory Compliance Program and Certification Requirements
Revised: September 12, 2019

To be eligible to receive Medicaid payments or to submit claims, for or on behalf of another person, you are required to adopt and implement an effective compliance program. These FAQs will assist you in determining if you are required to have a compliance program and what your compliance program must include.

A New York State Medicaid provider (“Provider”) must certify that its compliance program meets the requirements of NYS Social Services Law Section 363-d (SSL § 363-d) and 18 NYCRR Part 521 (Part 521).

Part A addresses the mandatory compliance program requirements.

Part B addresses the certification requirements and the Certification form.

The Office of the Medicaid Inspector General (“OMIG”) reserves the right to change its FAQs at any time without notice.

Part A – MANDATORY COMPLIANCE PROGRAM FAQs

A-1. WHAT IS NYS’S AUTHORITY TO REQUIRE PROVIDERS TO HAVE A MANDATORY COMPLIANCE PROGRAM?

Certain Medicaid providers are required to develop, adopt, and implement effective compliance programs aimed at detecting fraud, waste, and abuse in NYS’s Medical Assistance (“Medicaid”) program.

Social Services Law section 363-d and Title 18 NYCRR Part 521 outline the mandatory compliance program requirements.

It is each Provider’s responsibility to determine if you have a compliance program obligation.

If you are required to certify that you have a compliance program and **do not have or will not have** a program that meets the annual certification requirements you must take immediate steps to implement and maintain a compliance program that meets the requirements. Failure to do so may result in further action against you by OMIG.

A-2. WHAT IS THE PURPOSE OF NYS’S MANDATORY COMPLIANCE LAW FOR MEDICAID PROVIDERS?

The purpose of requiring Medicaid providers to develop and implement a compliance program is to ensure that Providers maintain appropriate systems and processes to detect and prevent billing mistakes, fraud, waste, and abuse in the Medicaid program.

This promotes program integrity in the Medicaid program and saves the Medicaid program dollars by reducing inappropriate payments and maximizing appropriate payments for covered services that are delivered to Medicaid recipients.

A-3. ARE NYS'S MANDATORY COMPLIANCE PROGRAM REQUIREMENTS THE SAME AS THE DRA REQUIREMENTS?

No. For more information on the DRA, please see the DRA FAQs.

A-4. WHO MUST HAVE A COMPLIANCE PROGRAM?

Providers subject to Public Health Law (“PHL”) articles 28 or 36, or Mental Hygiene Law (“MHL”) articles 16 or 31 must implement and maintain a compliance program. Providers subject to the PHL or MHL must have the required compliance program regardless of the amount that they bill, order, or receive from NYS's Medicaid program.

A compliance program is also required for other persons, providers, or affiliates when Medicaid is a “substantial portion of their business operations” as defined in 18 NYCRR Section 521.2.

There are three separate tests. The dollar threshold is separate for each test and is not aggregated.

Medicaid is a substantial portion of your business operations if you are a person, provider, or affiliate that:

1. claims, orders; 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, has received, or should be reasonably expected to receive at least \$500,000 in any consecutive 12-month period directly from Medicaid (payment is made from the State directly to a provider) or indirectly from Medicaid (although payment originates from the State, there is an intermediary that makes the payment, e.g., payment to a provider by a managed care company for the provider's services to a managed care company's Medicaid beneficiary); or
3. submits or has submitted claims for Medicaid care, services, or supplies on behalf of another person or persons in the aggregate of at least \$500,000 in any consecutive 12-month period. (Note: the \$500,000 threshold aggregates all the billing or claiming that a person, provider, or affiliate does on behalf of all Medicaid providers, not just an individual Medicaid provider.)

OMIG calculates whether a Provider meets the above thresholds using the Provider's Provider Identification Number ("Provider ID").

If you meet the requirements above for any one of the tests, you must have a compliance program.

A-5. WHAT IS A PROVIDER ID?

A Provider ID is the Provider Identification Number that is assigned by the New York State Department of Health (DOH) at the time enrollment as a Medicaid provider is approved. It may also be referred to as the Medicaid Management Information Systems (MMIS) number.

A-6. DO ALL PROVIDERS REQUIRED TO ADOPT AND IMPLEMENT AN EFFECTIVE COMPLIANCE PROGRAM, REGARDLESS OF SIZE, HAVE TO MEET THE SAME REQUIREMENTS?

Yes. However, the law recognizes that, to be effective, compliance programs should reflect the provider's size, complexity, resources, and culture, as long as the compliance program meets the requirements.

A-7. WHAT MUST A COMPLIANCE PROGRAM APPLY TO?

A compliance program applies to:

1. billings;
2. payments;
3. medical necessity and quality of care;
4. governance;
5. mandatory reporting;
6. credentialing; and
7. other risk areas that are or should, with due diligence, be identified by the Medicaid provider.

(See 18 New York Codes, Rules and Regulations § 521.3(a))

All required elements of the compliance program are important. For example, when medically unnecessary care is provided or the quality of patient care does not meet established standards, waste and abuse in the Medicaid program may result.

A-8. AT A MINIMUM, WHAT MUST A COMPLIANCE PROGRAM CONTAIN?

For more information on the specific elements needed to have an effective compliance program review regulation section 521.3(c), available on OMIG's website under the Compliance tab, *Elements of a Compliance Program*. Additionally, please refer to *Compliance Program Review Guidance* issued in 2016 in the Compliance Library.

A-9. WILL OMIG PROVIDE GUIDELINES OR MODEL COMPLIANCE PLANS ON ITS WEBSITE TO ASSIST PROVIDERS?

No. However, *Compliance Program Review Guidance*, issued in 2016, can be accessed in the Compliance Library on OMIG's website. This Guidance is the most comprehensive analysis of what OMIG expects when it conducts compliance program reviews.

Medicaid providers should review OMIG's published Compliance Guidance, Medicaid Updates, and Compliance Alerts, for information on how to meet NYS's mandatory compliance program requirements.

Medicaid providers are encouraged to subscribe to OMIG's listserv, which provides email notification of any changes to OMIG's website, including changes to published compliance program-related materials. There is no-cost to subscribe.

A-10. WILL OMIG PROVIDE ASSISTANCE TO PROVIDERS UPON REQUEST?

Yes. However, that assistance will be limited to educating providers on mandatory compliance program requirements and issuing general guidance. OMIG neither assists providers in developing compliance programs nor assesses providers' compliance programs upon request. OMIG will not advise providers on specific compliance program language or operations without OMIG conducting a compliance program review.

A-11. HOW DOES THE MANDATORY COMPLIANCE PROGRAM LAW IMPACT PROVIDERS?

If you are required to have a compliance program OMIG has the authority to review that compliance program at any time, to determine whether you have implemented and are maintaining a compliance program that satisfactorily meets the requirements.

You must certify upon enrollment in the Medicaid program, during the Department of Health's revalidation of a Medicaid provider's enrollment, and every December, that you have implemented and are maintaining a compliance program that meets the requirements.

A-12. WHAT ARE THE POSSIBLE CONSEQUENCES FOR FAILING TO ADOPT AND IMPLEMENT AN EFFECTIVE COMPLIANCE PROGRAM?

OMIG is authorized to recommend termination from the Medicaid program, as well as impose sanctions or penalties against you if you fail to develop, adopt, and implement an effective compliance program. Required Providers may also face revocation of the Provider's agreement to participate in the Medicaid program by the NYS Department of Health.

A-13. ARE THERE ANY EXCEPTIONS TO THE MANDATORY COMPLIANCE LAW?

Yes, but it is not an unconditional exception. New York State Social Services Law § 363-d subsection 3 (a) and (b) provide:

(a) A compliance program that is accepted by the federal department of health and human services office of inspector general and remains in compliance with the standards promulgated by such office shall be deemed in compliance with the provisions of this section, so long as such plans adequately address [Medicaid] risk areas and compliance issues.

(b) A compliance program that meets Federal requirements for managed care provider compliance programs, as specified in the contract or contracts between the department and the Medicaid managed care provider shall be deemed in compliance with the provisions in this section, so long as such programs adequately address medical assistance program risk areas and compliance issues. For purposes of this section, a managed care provider is as defined in paragraph (c) of subdivision one of section three hundred sixty-four-j of this chapter, and includes managed long term care plans.

A-14. WHERE CAN I GET INFORMATION ON THE CERTIFICATION OBLIGATION UNDER THE MANDATORY COMPLIANCE LAW?

The “Compliance” tab on OMIG’s website includes a section on Compliance Certification.

Part B – COMPLIANCE PROGRAM CERTIFICATION FAQs

B-1. WHEN AND HOW DO I CERTIFY THAT I HAVE A COMPLIANCE PROGRAM MEETING NYS'S MANDATORY COMPLIANCE PROGRAM REGULATION?

It is each Provider's responsibility to determine if you have a compliance program obligation.

If you have a compliance program obligation, you must electronically certify your compliance program using the form on OMIG's website.

If you are required to certify that you have a compliance program and **do not have or will not have** a program that meets the annual certification requirements you must take immediate steps to implement and maintain a compliance program that meets the requirements. Failure to do so may result in further action against you by OMIG.

There are five instances when you must certify that a compliance program meeting the requirements is in place:

1. during the month of December each year,
2. upon applying for enrollment in NYS's medical assistance program ("Medicaid"),
3. when revalidating enrollment in New York's Medicaid program with the NYS Department of Health ("DOH"),
4. after correcting Insufficiencies identified by OMIG as part of a Compliance Program review, and
5. after receiving notice of regulatory action by OMIG for failing to complete an annual certification.

The five Certification Categories are listed on the certification form. To certify you are required to choose which Category applies to the certification you are completing.

B-2. WHAT DOES OMIG RECOMMEND PROVIDERS DO PRIOR TO COMPLETING THE CERTIFICATION?

Prior to initiating the certification, some basic actions a Medicaid provider should take are:

1. identify all the Provider IDs subject to the mandatory compliance program obligation (since providers using the "Enrolling Provider Certification" Certification Category have not been assigned a Provider ID, this will not be part of their certification data submission requirements).
2. identify the Federal Employer Identification Number ("FEIN") or Social Security Number ("SSN") that is subject to the mandatory compliance program obligation – this is particularly applicable to the "Enrolling Provider Certification" Certification Category.
3. conduct a self-assessment of the Provider's compliance program to determine whether your compliance program meets the requirements. OMIG offers a *Compliance Program Self-Assessment Form* on its website in the Compliance Library.

4. identify who should be considered the Certifying Official (see FAQ B-5 below).
5. review the Instructions to complete the SSL Compliance Program Certification.

B-3. CAN PROVIDERS SUBMIT PAPER CERTIFICATIONS?

No. Medicaid providers must complete the form and submit it electronically on OMIG's website.

B-4. WILL PROVIDERS RECEIVE A CONFIRMATION OF RECEIPT?

Yes. After you submit the certification form, an electronic confirmation will appear in the form of a printable page with a confirmation number on it. **You should print this confirmation page for your records and retain it as proof of certification.**

Additionally, an electronic confirmation will be generated upon submission of the certification, and sent via email to the email addresses of the Compliance Officer and Certifying Official. A separate email will be sent for each Provider ID that has been certified. **You should print this email for your records and retain it as proof of certification.**

B-5. WHO SHOULD SUBMIT THE CERTIFICATION (OR WHO SHOULD BE THE CERTIFYING OFFICIAL)?

The Certifying Official should be the person who completes and submits the certification on OMIG's website. The certification form can be completed by someone other than the Certifying Official, but the certification form must be submitted to OMIG by the Certifying Official. The Certifying Official should be someone **other** than the Compliance Officer. Please see *Compliance Guidance 2016-01* for more information.

B-6. DO I COMPLETE THE CERTIFICATION USING MY PROVIDER ID OR FEIN/SSN?

If you are certifying using the "Enrolling Provider Certification" Certification Category you can only certify using your FEIN/SSN.

Note: During enrollment in the Medicaid program at the time that a certification is required, an enrolling provider has not been assigned a Provider ID by DOH. Enrolling providers must use their FEIN/SSN to certify **ONLY FOR THEIR INTIAL CERTIFICATION**. Once a provider obtains a Provider ID the Provider ID must be used to certify.

In all other circumstance your Provider ID is **required** to complete the compliance program certification.

B-7. WHO MUST CERTIFY THAT THEY HAVE A COMPLIANCE PROGRAM?

A compliance certification is only required for those Medicaid providers that meet the definition of Required Provider as detailed in *Question A-4*.

B-8. IF I AM ENROLLED AS A GROUP DO I HAVE A COMPLIANCE CERTIFICATION OBLIGATION? WHAT ABOUT ENROLLED PROVIDERS WORKING FOR THE GROUP?

A compliance certification is required for those Medicaid providers that meet the definition of Required Provider as detailed in *Question A-4*. If a Group meets the definition of Required Provider it must certify upon enrollment, revalidation and each December. Enrolled providers that work for the group have their own compliance certification requirement if the individual provider meets the definition of Required Provider. Each Required Provider has an independent certification obligation, even if they are covered by an Enrolled Group.

B-9. IF I AM AN ENROLLING PROVIDER AND MY ENROLLMENT APPLICATION WITH DOH USES MULTIPLE FEINs/SSNs, DO I COMPLETE A SEPARATE CERTIFICATION FOR EACH FEIN/SSN?

Yes. Enrolling Providers are only permitted to certify one FEIN per certification form.

B-10. IS THERE A WAY FOR A PROVIDER WITH ONE COMPLIANCE PROGRAM THAT APPLIES TO MORE THAN ONE PROVIDER ID TO CERTIFY USING A SINGLE CERTIFICATION FORM?

Yes. **All** of the following conditions must be met in order to use one Certification form to certify for multiple Provider IDs:

- a. the same compliance program must apply to all the Provider IDs listed on the Certification form;
- b. the Certification Category chosen must apply for all the Provider IDs listed on the Certification form;
- c. the Compliance Officer listed must be the same for all the Provider IDs listed on the Certification form;
- d. the Certifying Official listed must be the same for all the Provider IDs listed on the Certification form; and
- e. all the Provider IDs reported on the Certification form must have the same FEIN. (Note: when using one Certification form to certify for multiple Provider IDs, the FEIN field must be completed.)

If any of the conditions are not met you must complete a separate certification for each provider.

Please note: Certifying entities may enter up to 150 Provider IDs on a single certification form. Certifying entities that have additional Provider IDs to certify must complete and submit additional certification form(s) as needed to capture all Provider IDs subject to the certification requirement.

B-11. IF I HAVE ONE COMPLIANCE PROGRAM THAT APPLIES TO MULTIPLE PROVIDER IDS, AM I REQUIRED TO USE ONE CERTIFICATION FORM TO CERTIFY FOR ALL THE PROVIDER IDS COVERED BY THAT COMPLIANCE PROGRAM?

No. Required Providers can choose to submit a separate Certification form for each Provider ID even if they otherwise qualify to submit one certification form for multiple Provider IDs.

B-12. SHOULD PROVIDERS SUBMIT A COPY OF THEIR COMPLIANCE PLAN OR SELF-ASSESSMENTS ALONG WITH THE CERTIFICATION?

No.

B-13. HOW DO I KNOW WHETHER MY COMPLIANCE PROGRAM MEETS THE COMPLIANCE PROGRAM REQUIREMENTS?

OMIG recommends that Medicaid providers conduct an annual self-assessment of their compliance programs to determine whether the required certification can be made.

Providers may use any self-assessment tool they wish to conduct the annual self-assessment, but it is recommended that OMIG's *Compliance Program Self-Assessment Form* be used.

However, use of OMIG's Compliance Program Self-Assessment Form is not a guarantee that your compliance program meets the compliance program requirements.

B-14. WHO IS RESPONSIBLE FOR DETERMINING WHETHER A REQUIRED PROVIDER'S COMPLIANCE PROGRAM MEETS THE COMPLIANCE PROGRAM REQUIREMENTS?

It is each Provider's responsibility to determine if you have a compliance program certification obligation.

OMIG has the statutory and regulatory authority to assess a provider's compliance program at any time.

B-15. WHAT IF I AM A REQUIRED PROVIDER ENROLLING AS A MEDICAID PROVIDER AND CANNOT CERTIFY TO HAVING A COMPLIANCE PROGRAM THAT MEETS THE MANDATORY COMPLIANCE PROGRAM REQUIREMENTS?

A Required Provider that cannot certify to having a compliance program at the time of enrollment, should develop, document, and implement a compliance program that meets the requirements of 18 NYCRR Part 521, complete the certification process, and then recommence the enrollment process.

B-16. AM I REQUIRED TO CERTIFY THAT I HAVE A COMPLIANCE PROGRAM IN CONNECTION TO THE DEPARTMENT OF HEALTH ("DOH") REVALIDATION PROCESS?

Yes. If you are required to have a compliance program, DOH asks revalidating providers to submit evidence of your annual certification. If you did not certify in the prior December, the revalidating Medicaid provider should complete OMIG's online certification form and choose the "Revalidating Provider" option in the Certification Category section of the form.

B-17. IF, DURING THE YEAR FOLLOWING MY CERTIFICATION, THE NAME OF MY COMPLIANCE OFFICER OR OTHER INFORMATION SUPPLIED ON THE CERTIFICATION FORM CHANGES, CAN I UPDATE THE INFORMATION ON MY CERTIFICATION?

No. The information on the SSL Certification form cannot be updated. New information can be submitted during the next certification cycle the following December.

B-18. IF I COMPLETE THE SSL CERTIFICATION FORM AND DISCOVER THAT I MADE A MISTAKE, HOW CAN I CORRECT THE INFORMATION SUBMITTED?

Currently, OMIG does not have an electronic method to amend information supplied on the certification once it is submitted.

B-19. WHEN I COMPLETE THE SSL CERTIFICATION AM I COMMITTING THAT MY COMPLIANCE PROGRAM WILL MEET THE REQUIREMENTS OF SSL § 363-D AND PART 521 FOR A PERIOD IN THE FUTURE?

Yes. The Certifying Official is certifying that the Required Provider adopted, implemented, and maintains a compliance program that meets the requirements and that the compliance program shall remain in place until the next December certification period.

B-20. WHAT IS THE CONSEQUENCE OF A REQUIRED PROVIDER'S FAILURE TO CERTIFY?

OMIG is authorized to recommend termination from the Medicaid program, as well as impose sanctions or penalties against you if you fail to develop, adopt, and implement an effective compliance program.

B-21. ARE THERE ANY OTHER CERTIFICATIONS THAT I MUST SUBMIT TO OMIG ANNUALLY?

Yes. You may also be required to submit DRA certification. The DRA applies to providers who receive or make direct payments of \$5 million or more annually from the Medicaid program. The SSL Compliance Certification and the DRA Certification are separate certifications. Some providers may be required to complete both certifications.

Please refer to the DRA FAQs for additional information.

B-22. WHO DO I CALL IF I HAVE QUESTIONS ABOUT THE 18 NYCRR PART 521 REQUIREMENTS OF A COMPLIANCE PROGRAM?

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