



New York State Office of Medicaid Inspector General

## Compliance Alert

2010 - 02



Effectiveness of Medicaid Provider's Compliance Program

Provider Self Assessment Tool - 2010

New York State Social Services Law Section 363-d and the corresponding regulations at 18 NYCRR Part 521 require certain providers in the medical assistance program (Medicaid) to have an effective compliance program. The Office of Medicaid Inspector General (OMIG) has the responsibility under Section 363-d to determine if compliance programs meet these requirements.

New York State Social Services Law Section 363-d also requires the OMIG to create and make guidance available on its website to reflect the requirements of mandatory provider compliance programs. OMIG uses Compliance Alerts as one method to provide guidance to Medicaid providers in order to meet the guidance requirements of Section 363-d. Compliance Alert 2010-01 describes the purpose behind OMIG's publication of Compliance Alerts.

### Purpose of this Compliance Alert

OMIG believes that it is a best practice for Medicaid providers to perform, at a very basic level, an annual self-assessment of the effectiveness of their compliance programs. Compliance officers, chief executives and governing boards should use self-assessment, along with other measurements, to objectively assess the strengths and weaknesses of their compliance programs.

A Medicaid provider's self assessment will be one measure available to OMIG when reviewing the effectiveness of a provider's compliance program. OMIG may ask Medicaid providers for evidence of their self assessment as part of routine audits, routine investigations or routine Compliance Program effectiveness reviews. The pages that follow in this Compliance Alert present a very basic Provider Self Assessment Tool – 2010 that could be used by providers in their self assessment. If providers opt to use their own tool, the following pages outline the information that OMIG would expect to be included on the providers' tools.

OMIG recommends that the compliance officer review the questions under each of the eight essential elements of an effective compliance program and objectively determine if the provider's compliance program supports each element. (It is expected that the compliance officer will consult with other members of the Medicaid provider's staff, management or governing board, as appropriate.) The tool could be used for each entity that separately bills Medicaid. Once the Provider Self Assessment Tool is completed, OMIG recommends that the compliance officer share the responses on the tool with the provider's senior management and governing board.

A provider's response to the tool's questions are a first step to indicate whether the provider has established a structure that meets the eight elements of an effective compliance program as required by Section 363-d and Part 521. Structure alone does not determine the effectiveness of a compliance program, but it creates the framework for an effective compliance program. How the compliance program works and the outcomes produced must also be assessed.

It must be noted that the following tool is a generic tool that can be used for any type of provider that bills for Medicaid-covered services. Providers should take into account their size, complexity, and the sophistication of their compliance program. Some of the terms used on the tool may not apply to specific providers in their operating context. In reviewing the questions posed on the tool, OMIG has included questions that are tied directly to requirements set out in SSL 363-d and Part 521. Those questions include an asterisk in the box containing the question's number. OMIG has included some questions that relate to the United States Federal Sentencing Guidelines that are effective on November 1, 2010, the Patient Protection and Affordable Care Act of 2010 (PPACA), and New York's Fraud Enforcement and Recovery Act of 2010 (Chapter 379 of the Laws of 2010). Those questions are identified by a double asterisk in the box containing the question's number. The remaining questions are designed, in part, to encourage the Medicaid provider, its governing board, senior management and compliance officer to consider factors beyond just the requirements of the statute or regulations and reflect issues that OMIG recently has addressed in other forums.

#### Directions for use of the Self Assessment Tool

If the answer is "yes" to a question on the attached tool, complete the "Yes" box and provide a description of what supports that response in the "Evidence of Compliance" column. The Evidence of Compliance description will provide a cross reference to the provider as to where the evidence supporting the "Yes" response can be located. For example, if the provider responds, "Yes," that its compliance expectations are included in a written code of conduct or code of ethics (see 1.1 on the attached tool), the provider should state what documents, policies and procedures exist that set out the code of conduct or code of ethics and specify whether it is a code of conduct, code of ethics, or both.

If the answer is "no" to a question, complete the "No" box and consider what action (if any) should be taken to address the "no" response or document the rationale for the "no" response. Because OMIG intends this tool to be used by many provider types of various sizes and complexity, a "no" response may be an appropriate response.

An explanation column is provided for the provider's use to provide any additional information that the provider may wish to include to demonstrate how the provider is ensuring compliance.

In preparing this Compliance Alert, comments were solicited from various Medicaid provider constituencies. The OMIG appreciates and recognizes the contributions of those who provided comments. Those ideas, suggestions, and constructive criticism were invaluable in the development of this Compliance Alert. Not all ideas, suggestions, and constructive criticisms were incorporated into the final version, nor should the final product be considered to be a consensus document. Ultimately, this Compliance Alert is the work product of OMIG and is provided in accordance with the requirements of Social Services Law Section 363-d.

If there are questions regarding this Compliance Alert or any Medicaid compliance related issue, you are requested to forward your question to the Office of Medicaid Inspector General's Bureau of Compliance at [compliance@omig.ny.gov](mailto:compliance@omig.ny.gov). Please include in the subject line of your e-mail, "Compliance Alert."

Providers are encouraged to monitor OMIG's Web site, [www.omig.ny.gov](http://www.omig.ny.gov), for additional compliance information and any changes to this Alert or information contained herein.

Issued 10/26/2010

New York State Office of Medicaid Inspector General

Medicaid Compliance Program  
 Provider Self Assessment Tool – 2010

Name of Medicaid Provider: \_\_\_\_\_  
 Medicaid Provider ID #: \_\_\_\_\_  
 Federal ID#: \_\_\_\_\_  
 Person Completing Assessment: \_\_\_\_\_ Title: \_\_\_\_\_  
 Date Assessment Completed: \_\_\_\_\_  
 Assessment Period: \_\_\_\_\_

**(1) Written policies and procedures**

	Description	Yes	No	Evidence of Compliance or action required	Explanation
1.1 *	Are compliance expectations included in a written code of conduct or code of ethics?				
1.2 *	Has the compliance program been implemented within the organization?				
1.3 *	Does the compliance program provide guidance to employees and others associated with the Medicaid provider on how to identify and communicate compliance issues to compliance personnel?				
1.4 *	Does the compliance program describe how potential compliance problems are investigated and resolved?				
1.5	Does the compliance program clearly communicate the provider's compliance expectations to the governing board, management, employees and others associated with the Medicaid provider?				
1.6	Have the compliance program and its associated policies and procedures been reviewed and approved by the governing board or senior management?				
1.7	Is the compliance program made accessible to the governing board, senior management, employees, customers, and others associated with the Medicaid provider?				

**(2) Designate an employee vested with responsibility**

	Description	Yes	No	Evidence of Compliance or action required	Explanation
2.1 *	Is the responsible compliance position an employed position?				
2.2 *	Does the responsible compliance position have responsibility for day to day operation of the compliance program?				
2.3 *	Does the person with responsibility for the day to day operation of the compliance program have responsibilities other than compliance?				
2.4 *	<p>If the answer to question 2.3 is “Yes,” are sufficient resources made available to the person with responsibility for the day to day operation of the compliance program to satisfactorily carry out their compliance duties?</p> <p>What evidence exists to demonstrate that the Compliance Officer is conducting his/her compliance duties satisfactorily?</p>				
2.5 *	Does the responsible compliance position report to the CEO or other senior staff (and not through the legal department or the CFO)?				
2.6 *	Does the responsible compliance position periodically communicate with the governing board on the activities of the compliance program?				
2.7	Does the responsible compliance position have a regularly pre-scheduled meeting with the governing board to report on activities of the compliance program?				
2.8	Is the responsible compliance position part of the Medicaid provider’s leadership?				
2.9	Does the person with responsibility for the day to day operation of the compliance program have a background in compliance?				
2.10	Has the Medicaid provider created compliance committees at both the management and governing body levels (see also questions 6.5 and 6.6)?				

**(3) Training and education**

	Description	Yes	No	Evidence of Compliance or action required	Explanation
3.1 *	Is there evidence of a compliance training program which includes the Code of Conduct/Ethics; expectations of the compliance program; and how the compliance program operates?				
3.2 *	Are new employees, board members and affiliates trained in compliance so that they could identify circumstances of fraud, waste and abuse?				
3.3 *	Is the compliance training made part of orientation for new employees, board members and affiliates?				
3.4	Is there annual training on compliance to employees, board members and affiliates so that they could identify circumstances of fraud, waste and abuse?				
3.5	If a compliance issue arises that appears to be systemic or broad-based, is there a specific compliance related training performed to address the specific issue?				
3.6	Do training materials include information identifying the responsible compliance position; the responsible compliance position's contact information; anonymous and confidential methods to report potential compliance violations; and ways to obtain additional assistance?				
3.7	Is the training information made accessible throughout the organization?				
3.8	Is training provided by qualified individuals or entities?				

**(4) Communication lines to the responsible compliance position**

	Description	Yes	No	Evidence of Compliance or action required	Explanation
4.1 *	Are there accessible mechanism(s) for the governing board, management, employees and others associated with the Medicaid provider to communicate compliance related concerns to the responsible compliance position?  What examples exist of how the Compliance Officer discusses those points?				
4.2 *	Do the accessible mechanisms referred to in 4.1 include methods for anonymous or confidential communication?				
4.3	Are the available lines of communication and examples of the types of issues to be reported to the responsible compliance position well publicized throughout the Medicaid provider (i.e.: orientation/education sessions, posters, pamphlets, intra/internet, etc)?				
4.4	Does the entity maintain a tracking system for all questions or concerns that come to the responsible compliance position?				
4.5	Does a mechanism exist for providing feedback to those that raise questions/concerns (even those communicated on an anonymous or confidential basis)?				

**(5) Disciplinary policies to encourage good faith participation**

	Description	Yes	No	Evidence of Compliance or action required	Explanation
5.1 *	Do disciplinary policies exist which encourage good faith participation in the compliance program by the governing board, senior management, employees and others associated with the Medicaid provider?				
5.2 *	Do disciplinary policies set out expectations for reporting compliance issues and for assisting in their resolution?				
5.3 *	Do disciplinary policies outline sanctions for failing to report suspected problems; participating in non-compliant behavior; or encouraging, directing, facilitating or permitting non-compliant behavior?				
5.4 *	If disciplinary action was taken, was discipline fairly and consistently applied regardless of the perpetrator's position with the Medicaid provider?				
5.5	Have disciplinary policies and procedures related to the compliance program been implemented, published and communicated to the governing board, senior management, employees and others associated with the Medicaid provider?				
5.6	Is there a stated consequence for assisting, participating, facilitating in or ignoring a breach of the Medicaid provider's compliance program?				
5.7	Is there a stated consequence for assisting, participating facilitating in, or ignoring fraud, abuse or waste in the Medicaid program?				

**(6) A system for routine identification of compliance risk areas**

	Description	Yes	No	Evidence of Compliance or action required	Explanation
6.1 *	Does a system exist within the Medicaid provider's compliance plan to routinely identify compliance risk areas specific to the type of service provided?				
6.2 *	Does a system exist within the Medicaid provider's compliance plan to routinely conduct self-evaluation of risk areas, including internal audits and as appropriate external audits?				
6.3 *	Does the Medicaid provider routinely evaluate potential or actual non-compliance as a result of its self-evaluations and audits?				
6.4 **	Does the Medicaid provider have systems in place to ensure that its employees, contractors, grantees and other organizations providing services or billings through the Medicaid provider are not submitting false claims as that may be defined under the federal False Claims Act or New York's Fraud, Enforcement and Recovery Act (FERA)?				
6.5	Does the organization have a formal committee that assists the compliance officer in identifying risk areas and evaluating potential or actual non-compliance as part of a risk evaluation process?				
6.6	If the answer to item 6.4 is yes, does the committee referenced in item 6.4, have regular meetings where meeting summaries are prepared or minutes are taken and reports are issued to the Medicaid provider's management or governing board that routinely identify risk areas for the organization.				
6.7	Has the Medicaid provider identified its compliance risks to minimize its risk exposure, address weaknesses in the compliance program and correct violations of the Medicaid program's requirements				
6.8	Does the Medicaid provider develop test the effectiveness of corrective actions identified in the risk analysis, in previous audits and in the Office of Medicaid Inspector General's Work Plan, Medicaid Updates, Compliance Alerts or Webinars (for example billing for excluded parties, disclosure requirements for overpayments required by the federal Patient Protection and Affordable Care Act or third party zero billings)?				
6.9	18 NYCRR Part 521 requires certain Medicaid providers to certify during the month of December each year that they have an effective compliance program.				



	Can the Medicaid provider certify to the Medicaid Inspector General that it has an effective compliance program?				
6.10	If the answer to item 6.8 is yes, and if the Medicaid provider is required by 18 NYCRR Part 521 to do so, did it certify that it has an effective compliance program during December?				
6.11	The federal Deficit Reduction Act of 2005 (DRA) requires Medicaid providers that receive \$5 million or more in Medicaid payments during a federal fiscal year to certify on or before January 1 <sup>st</sup> each year that it has establish written policies and procedures informing their employees, contractors and agents about federal and state false claim acts and whistleblower protections.  Has the Medicaid provider met DRA's certification requirement?				

**(7) A system for responding to compliance issues**

	Description	Yes	No	Evidence of Compliance or action required	Explanation
7.1 *	Does a system exist within the Medicaid provider's compliance plan for responding to compliance issues as they are raised?				
7.2 *	Does a system exist within the Medicaid provider's compliance plan for investigating potential compliance issues?				
7.3 *	Does a system exist within the Medicaid provider's compliance plan to respond to compliance issues that are identified in the course of self-evaluations and audits?				
7.4 * **	Does a system exist within the Medicaid provider to correct compliance issues promptly and thoroughly and implement procedures, policies and systems that may be necessary to reduce the potential for recurrence?				
7.5 **	Does a system or methodology exist to periodically prioritize compliance oversight of activities that are the most serious or most likely to occur?				
7.6 *	Does a system exist within the Medicaid provider's compliance plan for identifying and reporting compliance issues to the New York State Office of Medicaid Inspector General?				
7.7 **	Does a system exist within the Medicaid provider's compliance plan to report, refund and explain overpayments received from the Medicaid program to the New York State Office of Medicaid Inspector General as required by Section 6402 of the Patient Protection and Affordable Care Act (PPACA)?  What is the history on self-disclosures and refunds?				
7.8	Do the Medicaid provider's policies and procedures ensure immediate action to secure the health and safety of current Medicaid enrollees, including those situations where a failure in compliance has occurred?  What are the details on how the system works?				
7.9	Has the system for responding to compliance issues been used by employees, management, the governing board or affiliates?  What is the history on the use of the system?				
7.10	Did the Medicaid provider respond to issues on potential overpayments made by Medicaid as identified by the Office of the Medicaid Inspector General which may				

	<p>include, but not be limited to: billing for dates of service for Medicaid enrollees after a Medicaid enrollee's date of death; checking the three lists for individuals who are excluded from providing, ordering or billing for services under the Medicaid program; mandatory disclosure, repayment and explanation of overpayments received under the Medicaid program as required by Section 6402 of the Patient Protection and Affordable Care Act (PPACA); and billing for services while the Medicaid enrollee was in an alternative level of care that would be inconsistent with the service being billed to Medicaid.</p>				
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**(8) A policy of non-intimidation and non-retaliation**

	Description	Yes	No	Evidence of Compliance or action required	Explanation
8.1 *	Does the compliance plan or organization policy state intimidation or retaliation will not be permitted against individuals who in good faith participate in the compliance program, including but not limited to reporting potential issues, investigating issues, self-evaluations, audits and remedial actions and reporting to appropriate officials as provided in New York State Labor Law Sections 740 and 741?				
8.2	Are allegations of intimidation or retaliation fully and completely investigated?  What history exists associated with investigations of allegations of intimidation or retaliation?				
8.3	Is the disciplinary action uniformly and consistently applied across the organization regardless of title or position?  What examples exist of uniform application of discipline?				

Issued 10/26/2010