



New Medicaid Compliance Program Requirements

In connection with the New York State Budget, Social Services Law ("SSL") §363-d, was [amended](#) to revise certain requirements of a Medicaid compliance program, as well as the consequences and penalties for failing to have an effective compliance program in place. Medicaid providers should review their compliance programs to ensure that changes are incorporated to reflect the new 2020-21 budget requirements, which took effect April 1, 2020.

The requirement for non-retaliation and non-intimidation, which was previously its own compliance program element, has now been incorporated into the element of written policies and procedures. Further, the non-intimidation/non-retaliation provision must now protect persons from reporting to government officials rather than just appropriate officials in connection with the labor law provisions.

Your compliance program should be reviewed and revised, as applicable, to include:

- The commitment to comply with all applicable federal and state standards is clearly stated in the compliance policies. Additionally, if applicable, the requirements of the 2005 Deficit Reduction Act ("DRA") must be clearly identified in the compliance plan as a written compliance policy.
- Policies and procedures to ensure that all employees providing services to Medicaid beneficiaries meet all requirements for providing such services and billing the Medicaid program. This should include monthly checks of exclusion lists, licensing verification and credentialing, and confirmation that employees providing services have received all required certifications and training and met all other statutory and regulatory requirements.
- The requirement that every home care services worker, personal care aide and personal assistant will obtain an individual unique identifier from the state (as and when required by DOH).
- The creation of a compliance committee, in addition to a compliance officer, to oversee the compliance program. The amendment also added the requirement that the compliance officer receive compliance training, which adds to the previous requirement for training of employees, senior management and the governing body. Compliance training must be provided at orientation and at least annually thereafter.
- The establishment and implementation of effective lines of confidential communication between the compliance officer, members of the compliance committee, the organization's employees, managers and the governing body.

Although disciplinary policy requirements have not changed, disciplinary policies must be well publicized. Providers should ensure that their written compliance plans clearly state the organization's disciplinary policy with respect to compliance responsibilities, and distribute and highlight that plan as part of compliance training.

Providers should be aware that substantial increased consequences have been added for failure to implement and maintain an effective compliance program.

The adoption and implementation of a provider compliance program is now considered a condition of payment from the medical assistance program. As a result of this change, the Office of the Medicaid Inspector General ([OMIG](#)) has authority to recoup all Medicaid payments received by a provider during a

period for which it determined the provider did not have an effective compliance program in place. OMIG is authorized to impose a monetary penalty of \$5,000 per month, up to twelve months, for the failure to adopt and implement a compliance program that meets statutory requirements. The penalty increases to \$10,000 per month, for up to twelve months, if a penalty was previously imposed within the past five years. Lastly, OMIG is authorized to impose monetary penalties on any provider that fails to report and return an overpayment within 60 days of its identification.

In light of the significant changes to SSL §363-d, and the expansion of sanctions, we recommend all providers review and modify their internal compliance programs as necessary to address the required changes. [Contact](#) our office with any questions you have concerning compliance with the amended requirements.

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