



New York Adopts Regulations Requiring Compliance Programs for Medicaid Providers

On June 24, 2009, the New York Office of Medicaid Inspector General (OMIG) finalized, without substantive changes, its January 14, 2009 proposal to require most Medicaid providers to adopt an effective compliance program. Medicaid providers subject to the new regulations must have a compliance program in place by September 28, 2009.

The requirement will apply to virtually all Medicaid-enrolled health care facilities — including, but not limited to, hospitals, ambulatory surgical centers, nursing homes, diagnostic testing facilities, and home health agencies no matter the value of Medicaid claims they receive. It also applies to any other Medicaid provider that submits claims for, or receives payments of \$500,000, or more within any consecutive 12-month period, directly or indirectly, from the New York Medicaid program.

The compliance program must address billing, payments, medical necessity, quality of care, governance, mandatory reporting, credentialing, and other risk areas that are (or should with due diligence be) identified by the provider.

The compliance program must include:

- Written policies and procedures that describe compliance expectations in a code of conduct or code of ethics, implement the compliance program operations, provide guidance to employees on dealing with potential compliance issues, identify how to communicate compliance issues to appropriate personnel, and describe how problems will be investigated and resolved;
- The designation of an employee with responsibility for day-to-day operation of the compliance program;
- Training and education of all affected employees and other persons associated with the provider, including officers and directors (or other members of the provider's governing body);
- Communication lines to the designated employee responsible for the compliance program, including a method for anonymous and confidential good faith reporting;
- Disciplinary policies for participating in, encouraging, facilitating, or failing to report non-compliant behavior;
- A system for routine identification of compliance risk areas specific to the provider type;
- A system for responding to compliance issues as they are raised and investigating potential compliance problems, correcting problems, reporting problems to the OMIG, and refunding overpayments; and
- A policy of non-intimidation and non-retaliation for good-faith compliance in the compliance program.

Training must be provided periodically and to each new employee, officer, and governing body member.

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At the time of initial enrollment in the Medicaid program and annually thereafter, New York Medicaid providers will be required to certify that a compliance program that meets these requirements is in place. The OMIG is authorized to determine at any time whether a provider has in place an effective and appropriate compliance program. Failure to maintain an effective and appropriate compliance program could result in sanctions and penalties under state and federal law. A provider whose compliance program has been accepted by the federal Department of Health and Human Services Office of Inspector General (“OIG”), and who remains in compliance with OIG standards, will be deemed in compliance with the New York requirement, so long as the program adequately addresses Medicaid risk areas and compliance issues.

If you have any questions regarding these new requirements, please contact one of the Winston & Strawn attorneys listed below:

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