



REMINDER

THE DEADLINE FOR COMPLYING WITH THE NEW YORK STATE MANDATORY COMPLIANCE PROGRAM RULES IS FAST APPROACHING

ARE YOU READY?

As a reminder, the September 29, 2009 deadline for complying with the mandatory compliance program regulations issued by the New York State Office of Medicaid General (“OMIG”) is fast approaching. Health care providers subject to the requirement (including hospitals, nursing homes, home care service agencies, providers of OMH and OMRDD services and others who provide Medicaid services or submit claims to Medicaid in excess of \$500,000) must implement compliance programs that meet specific criteria prior to the September 29th deadline. OMIG is expected to begin enforcing these regulations as of October 1, 2009. Providers who do not have compliance programs that satisfy the regulatory requirements risk sanctions or penalties, including possible revocation of the provider’s agreement with the Medicaid program.

The requirements of the new regulations were summarized in our July 2009 Legal Alert. The most significant requirement is the delineation of risk areas that the compliance program must address. As well as such common compliance areas as billings, payments and medical necessity, the OMIG’s regulations mandate that compliance programs be made applicable to quality of care, governance, mandatory reporting, credentialing and other risk areas that are or should with due diligence be identified by the provider. This is noteworthy because these additional requirements are not specifically identified by the Federal Department of Health and Human Services’ Office of Inspector General’s Compliance Program Guidance for Hospitals or the Federal Sentencing Guidelines.

In addition to requiring substantive changes to the overall operation of the compliance program, OMIG requires separate annual certification from certain providers that they comply with the Deficit Reduction Act of 2005 (“DRA”). Providers who are required by the DRA to establish written policies concerning false claims laws and whistleblower protections (i.e., health care providers who receive over \$5 million annually in Medicaid payments) must revise those policies to reflect the changes that have been made to the Federal False Claims Act as a result of the Federal Fraud Enforcement Recovery Act of 2009. Thus, it is important that such updates are put in place prior to the provider certifying compliance with the DRA, as is annually required by the OMIG.

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We strongly recommend that all providers review their current compliance programs to assess whether your current program complies with the requirements in the OMIG regulations and whether your DRA policy reflects the recent amendments to the FCA.

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If you need assistance with implementing a compliance program, revising your existing compliance program and policies to comply with the new OMIG requirements, or revisions to your DRA policy, please contact the GWT attorney with whom you regularly consult.

About Garfunkel, Wild & Travis, P.C.

Garfunkel, Wild & Travis, P.C. was founded in 1980 with a single purpose in mind: to become a pre-eminent health care law firm attending to the unique business and legal needs of its clients. Since then, the firm has grown to over 80 attorneys devoted to addressing the complex legal, regulatory, business and financial needs of its diverse clients.

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