



New OMIG Compliance Certifications

On October 30th, the New York State Office of Medicaid Inspector General established on its website, two separate on-line certification forms that health care providers must submit to certify compliance with two different requirements: the mandatory provider compliance program requirements set forth in Social Services Law § 363-d and 18 NYCRR Part 521 and the federal Deficit Reduction Act (the “DRA”).

Mandatory Provider Compliance Certification

The mandatory provider compliance program statute and regulations require Medicaid providers who (i) operate under Public Health Law Articles 28 and 36; or (ii) operate under Mental Hygiene Law Articles 16 and 31; or (iii) order, provide, bill or claim \$500,000 or more from Medicaid in a 12-month period to adopt and implement an effective compliance program that incorporates eight specified elements, with the purpose of preventing and detecting fraud, waste and abuse in the Medicaid Program. Medicaid providers are also required to certify that they have a compliance program meeting the requirements of the statute and regulations during the month of December. OMIG is requiring that the “Mandatory Provider Compliance Certification”, which is available on OMIG’s website, be submitted by or before December 1, 2009 and that providers attest that they are, and will continue to be, in compliance with the mandatory provider compliance program statute and regulations for the period December 1, 2009 through November 30, 2010. We note that in a new “Frequently Asked Questions” section on its website, OMIG states that it “strongly encourages” that the certification be signed by someone from the entity’s senior management (other than the compliance officer) or a member of the governing authority as an indication that “the provider’s compliance efforts and responsibilities extend beyond the compliance officer.” The certification form can be found at <http://www.omig.state.ny.us/data/content/view/157/53/>.

Deficit Reduction Act Certification (DRA)

The DRA mandates that providers who receive \$5 million from Medicaid in a federal fiscal year adopt policies informing their employees and certain contractors and agents about criminal and civil false claims laws and whistleblower protections. Although the DRA is a federal law, the OMIG is responsible for its enforcement and requires that affected providers annually certify that they maintain the policies and have appropriately disseminated them. The OMIG’s Certification of Compliance with the DRA form does not need to be signed by senior management or a board member, but can be signed by “someone who has oversight responsibility for that area.” This certification form also contemplates “prospective” compliance, covering the period January 1, 2010 through December 31, 2010. This form must be submitted by or before January 1, 2010. The certification form can be found at <http://www.omig.state.ny.us/data/content/view/156/53/>.

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OMIG has authority to impose sanctions on providers who fail to adopt an effective compliance program, up to and including revocation of the provider's agreement to participate in the Medicaid Program. In addition, OMIG is claiming administrative authority to impose sanctions, including exclusion from the Medicaid Program on providers who fail to certify compliance with either the mandatory provider compliance program statute and regulations or the DRA requirements.

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If you have any questions regarding these requirements or need assistance, please contact the GWT attorney with whom you regularly work.

About Garfunkel, Wild & Travis, P.C.

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