

## Health Law Alert: OMIG Publishes Regulations for Mandatory Compliance Programs

1/28/2009

The New York State Office of Medicaid Inspector General (OMIG) is an independent entity established within the Department of Health pursuant to Chapter 442 of the Laws of 2006 to improve and preserve the integrity of the state's Medicaid program. The same laws also created a new Social Services Law § 363-d, which requires certain Medicaid providers<sup>1</sup> ("Providers") to develop and implement compliance programs aimed at detecting fraud, waste, and abuse in the Medicaid program.

On January 14, 2009, the OMIG published proposed regulations<sup>2</sup> setting forth the requirements applicable to the mandatory compliance programs, which Providers must have in place prior to becoming eligible, and in order to remain eligible, to receive payment for services or supplies rendered to Medicaid enrollees.

According to the OMIG, a proper compliance program must include the following:

- written policies and procedures that provide guidance to employees on dealing with potential compliance issues, such as how to communicate noncompliance to the appropriate personnel;
- a designated employee responsible for overseeing the compliance program's day to day operations;
- periodic training and education of all employees;
- a mechanism for determining how compliance issues are investigated and resolved;
- a system for identifying compliance risk areas specific to the provider type, including internal audits;
- disciplinary policies that outline sanctions for (1) failing to report suspected compliance issues, (2) participating in noncompliant behavior, and (3) facilitating or permitting, either actively or passively, noncompliant behavior; and
- a policy of non-intimidation and non-retaliation for an employee's good-faith participation in the compliance program.

Providers will be required to annually certify compliance with these requirements. If the OMIG determines that the Provider does not have a satisfactory compliance program, the Provider may be subject to administrative sanctions and penalties, including revocation of the Provider's participation in the Medicaid program.

The proposed regulations are subject to a 45-day public comment period. When implemented, Providers will be required to have a satisfactory compliance program in place within 90 days from the date the regulations take effect.

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### Endnotes

<sup>1</sup> Section 363-d of the Social Services Law is applicable to providers who (1) are subject to Articles 28 or 36 of the Public Health Law, such as hospitals, nursing homes and home health agencies; (2) are subject to Articles 16 or 31 of the Mental Hygiene Law, such as drug and alcohol treatment facilities and residential facilities for the mentally disabled; and (3) submit Medicaid claims totaling \$500,000 or greater in a twelve-month period.

<sup>2</sup> N.Y.S. Register (Jan. 14, 2009).

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*For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.*

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