

HEALTH CARE
&
HUMAN
SERVICES

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New OMIG Medicaid Compliance Plan Effective Now

The New York State Office of Medicaid Inspector General (“OMIG”) has finalized its regulations for “Compliance Programs for Medical Assistance Providers.” These regulations became effective July 1, 2009. Hiscock & Barclay previously advised our clients of this pending requirement in a January 2009 Legal Alert.

As required by the Social Services Law, these regulatory requirements apply to all Providers licensed under Public Health Law Article 28 (hospitals, nursing homes, clinics) or Article 36 (home health care) or under Mental Hygiene Law Article 16 (OMRDD providers) or Article 31 (OMH providers). **In addition, the requirements will apply to any other Medicaid provider who submits claims for at least \$500,000 in any consecutive twelve-month period.** This threshold is much lower than the \$5 million threshold under federal law and will cover many additional providers. Providers who meet the threshold will be required to certify annually to the OMIG that the provider has a Medicaid Compliance Program.

The OMIG has advised that all covered providers including Counties and School Districts must have a compliance plan by October 1, 2009. The failure to have a plan could result in sanctions against a provider and a prohibition on a provider to bill until it has a plan in place. Additionally, all covered providers must certify that they have a plan in place by December 1, 2009. It is therefore essential that you establish a valid compliance plan as soon as possible.

We note that many providers who formulated a Compliance Program prior to the promulgation of these regulations will now need to review their plan to ensure that these required areas are appropriately addressed.

Pursuant to OMIG regulations, a Compliance Plan is required to include:

1. written policies and procedures;
2. designation of an employee responsible for the compliance program (compliance officer);
3. training and education;

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Hiscock & Barclay is a full service, 210-attorney law firm, with offices throughout the major cities of New York State, as well as in Boston, Washington, D.C. and Toronto. We provide comprehensive legal and business counsel to a diverse client base in 29 specialized practice areas with statewide and regional expertise as well as with national and international capabilities.



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4. communication lines for reporting to the compliance officer;
5. disciplinary policies;
6. system for routine investigation and self-evaluation;
7. system for responding to compliance issues and reporting to the OMIG; and
8. a policy of non-intimidation and non-retaliation for participation.

Hiscock & Barclay has extensive experience in representing health care providers of all types and in preparing compliance plans. Attorneys from our firm have offered presentations on this issue and on county and school district Medicaid billing protocols at the New York State Association of Counties' conference in September and at the State School Superintendent's Conference in October. The preparation of a valid and adequate plan requires that the preparer have extensive knowledge in compliance requirements and in the very complex areas of health care law such as anti-kickback prohibitions and HIPAA requirements. Our firm, with over 200 attorneys located in every major city in this state, can prepare a detailed and valid compliance plan that meets these tight timeframes. Aside from this requirement, a Compliance Plan can prevent or minimize provider conduct that could result in exposure to Medicaid audits, investigations, recoveries and sanctions. In essence, they are an effective front-end mechanism for assisting providers in avoiding costly mistakes. ■

Hiscock & Barclay's Health Care & Human Services Practice Area has substantial experience in assisting providers in the development and implementation of Compliance Programs and the training of Boards of Directors and staff of providers. Our attorneys also have extensive experience in defending Medicaid and Medicare provider audits, investigations and sanctions and in the defense of matters brought by the State Attorney General. Please contact Robert Tengeler (518-429-4289), Eugene Laks (518-429-4228), or any other member of our practice area, should you have any questions regarding this new requirement.

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