

HEALTH CARE
&
HUMAN
SERVICES

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The Office of the Medicaid Inspector General Releases Mandatory Provider Compliance Certification

The New York State Office of the Medicaid Inspector General (OMIG) has released the mandatory certification form that must be completed by providers who are required to have compliance programs in place under regulations finalized in July of this year. This law applies to Medicaid providers operating under Articles 28 or 36 of the Public Health Law, Articles 16 or 31 of the Mental Hygiene Law and those providers of care, services and supplies who order, provide, bill or claim \$500,000 or more from Medicaid in a 12-month period. The \$500,000 threshold applies if a provider receives the reimbursement directly or indirectly from Medicaid funds. If the provider meets either the statutory provisions or monetary thresholds, there are no exemptions. For example, the law is applicable to early intervention, school supportive, state and county-run providers, etc. As of October 1, 2009, OMIG is authorized to impose sanctions or penalties, including, but not limited to, the revocation of the provider's agreement to participate in the Medicaid program, against providers who fail to develop, adopt and implement an **effective** compliance program. OMIG has stated in various conferences that it will be focusing on whether a compliance program is truly effective.

The Certification is required to be submitted by December 31, 2009. Providers should note that a new certification released by OMIG on November 20, 2009, replaced a prior certification that OMIG had removed from its website. You can view the form at <http://www.omig.state.ny.us/data/content/view/157/53/>. OMIG has stated that the document should be signed by someone from senior management (other than the compliance officer) or a member of the governing authority, as this is an indication that the provider's compliance efforts and responsibilities extend beyond the compliance officer.

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Note that this certification is in addition to the certification to OMIG required by providers covered by the Federal Deficit Reduction Act (DRA). The DRA instituted a requirement for health care entities receiving or making \$5 million or more in Medicaid payments during a federal fiscal year to establish written policies and procedures informing their employees, contractors and agents about federal and state false claim acts and whistleblower protections. These requirements are separate from, but related to, the mandatory provider compliance law. ■

Hiscock & Barclay's Health Care and 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 Melissa Zambri (518-429-4229), the current Chair of the New York State Bar Association Health Law Section's Committee on Fraud, Abuse and Compliance, or any other member of the Practice Area should you have any questions regarding the issues raised in this Alert.

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