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## OMIG Compliance Initiative

### The New York State Office of the Medicaid Inspector General to Focus on the Role of the Provider's Governing Board in Implementing and Overseeing Mandatory Compliance Programs

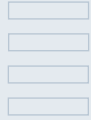
In its 2009-2010 Medicaid Work Plan, the New York State Office of the Medicaid Inspector General ("OMIG") reiterated its intent this year to aggressively review the adequacy of providers' mandatory compliance programs. The Work Plan also indicated that as part of its review, the OMIG would focus on the role of the provider's governing board in implementing and overseeing the compliance program. If the OMIG determines that a board has failed to exercise the appropriate level of oversight, it will consider sanctions, including censure and/or exclusion from the Medicaid program for individual board members.

Social Services Law §363-d requires that providers subject to Article 28 and Article 36 of the Public Health Law (generally, hospitals and home care service agencies, respectively) and providers subject to Article 16 and Article 31 of the Mental Hygiene Law (providers of services to the developmentally disabled) adopt and implement new compliance programs designed to preserve the integrity and safeguard the assets of the Medicaid program. In addition, the statute requires providers of care, services and supplies who derive a substantial portion of their revenues from the Medicaid program to adopt a compliance program. The OMIG has published draft regulations implementing the new statutory requirements, which will be found at 18 NYCRR Part 521.

It is clear from the statutory language and the pronouncements of the OMIG that a provider will not be deemed to have an "effective" compliance program that meets the requirements of the statute by simply adopting a "canned" written compliance policy. The OMIG will review the totality of the compliance program in the context of the provider's business to determine whether the program is sufficiently designed and maintained and sufficient revenues are provided to prevent illegal, unethical or improper conduct within the organization to safeguard the assets of the Medicaid program. The program should reflect the provider's size, complexity, resources and culture and must address billings and payments, medical necessity and quality of care, governance, mandatory reporting and credentialing. We note that the proposed regulations specifically require a link between quality of care, credentialing and the compliance program and many providers will need to revise current compliance programs to ensure the appropriate linkages are in place.

Under the statute, there are three basic components of a properly designed compliance program: (1) a detailed written policy that complies with the statute; (2) the designation of  
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a compliance officer provided with the necessary resources to design, implement and monitor the compliance program on an ongoing basis; and, (3) the input and oversight of the provider's governing board.

As indicated, of particular importance to the OMIG is the active involvement of the provider's governing board in overseeing the compliance program. Where the OMIG identifies a compliance or control weakness at a provider, it will look closely at the board's level of involvement and understanding of the compliance program and whether the board members exercised reasonable oversight over the program. The compliance program should include routine, periodic reports to the board by the compliance officer that address on-going issues such as training and education of new and existing employees, the identification of compliance risk areas, the results of internal audits and the investigation and correction of any compliance issues discovered. This furthers prior guidance from the United States Department of Health and Human Services Office of Inspector General, emphasizing the importance of Board of Directors being involved in compliance and quality assurance activities.

Providers covered by the statute and regulations are required to have compliance programs in place within 90 days after OMIG's adoption of final regulations, which is expected to take place in the next 120 days. Going forward, during each December thereafter, all required providers must certify to the Department of Health on a form provided by the OMIG that they have a compliance program in place meeting the requirements of the statute and regulations. The OMIG has announced that it will review provider compliance programs during the course of its upcoming audits and investigations of providers. Providers that fail to adopt and implement properly structured compliance programs are subject to sanctions and penalties, including exclusion from the Medicaid program.

The OMIG has indicated that during the coming year it will publish compliance guidance for hospital and managed care organizations and that it anticipates developing guidance documents focused on nursing homes, home care and other specific types of providers as the next phase.

As stated above, the OMIG intends to dedicate significant resources to ensuring that all providers establish and maintain "effective" compliance programs. We believe that the key to having an acceptable compliance program is to view the program as an on-going process, rather than simply the adoption of a policy, and to integrate the program into the business culture of the organization. It is crucial that the provider's governing board take an active leadership role in the development, implementation and operation of the compliance program to ensure compliance with the requirements to avoid sanctions against the provider and individual board members. ■

*Please feel free to contact the attorneys in the Health Care and Human Services Practice Area of Hiscock & Barclay, LLP to discuss compliance with the new compliance program mandates. Hiscock & Barclay, LLP has substantial experience in drafting and revising compliance programs, training Boards of Directors, management teams and staff, and assisting in internal and external audits, reviews and investigations.*

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