

HEALTH CARE
&
HUMAN
SERVICES

David P. Glasel, Chair
518.429.4250
dglasel@hblaw.com

Marie A. Butchello
Linda J. Clark
Charles Z. Feldman
Sheila A. Gaddis
James S. Grossman
Holly J. Hoehner
Eugene M. Laks
Henry J. Nahal
Gabriel M. Nugent
Margaret Surowka Rossi
Robert G. Tengeler
Stephen H. Volkheimer
Melissa M. Zambri

New OMIG Medicaid Compliance Plan Requirements Finalized

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

For a covered provider, having a Medicaid Compliance Plan is a condition of receiving Medicaid funds. Under the regulations, the elements of a Medicaid Compliance Program are applicable to a broad scope of areas:

1. billings;
2. payments;
3. medical necessity and quality of care;
4. governance;
5. mandatory reporting;
6. credentialing; and
7. other risk areas that are or should with due diligence be identified by the provider.

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.

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.



- Commercial Litigation
- Construction & Surety
- Corporate
- Creditors' Rights
- Economic & Project Development
- Energy & Utilities
- Environmental
- Financial Institutions & Lending
- Health Care & Human Services
- Immigration
- Indian Law
- Insurance Coverage & Regulation
- Intellectual Property & Technology
- Intellectual Property Litigation
- International Business
- Labor & Employment
- Lobbying & Election Law Compliance
- Media & First Amendment Law
- Municipal & Land Use
- Professional Liability
- Public Finance
- Real Estate
- Real Property Tax & Condemnation
- Regulatory
- Sports & Entertainment
- Tax
- Telecommunications
- Torts & Products Liability Defense
- Trusts & Estates

Pursuant to these 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;
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.

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 potential costly mistakes. ■

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 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.

Eugene M. Laks
(518) 429-4228
elaks@hblaw.com



Robert Tengeler
(518) 429-4289
rtengeler@hblaw.com

