

# NEW YORK'S MEDICAID COMPLIANCE PROGRAM REQUIREMENTS

Micro-Webinar Series 2023



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Effective April 3, 2020, New York amended Social Services Law § 363-d's ("§ 363-d") mandatory compliance program requirements. Those requirements apply to certain specified Medicaid providers. On December 28, 2022, significant revisions to the NYS Office of the Medicaid Inspector General's ("OMIG") compliance program regulations took effect. The revised regulations interpret and expand on the statutory requirements, and may be found in 18 NYCRR SubPart 521-1 ("SubPart 521-1"). Following the changes to the regulatory requirements, OMIG issued "Compliance Program Guidance" to the health care community on January 31, 2023 further explaining the revised regulations. OMIG followed that guidance with additional documents that provide insight as to how OMIG will assess the effectiveness of a provider's compliance program. This additional guidance includes OMIG's "Compliance Program Review Module" (issued March 8, 2023) and its "Compliance Program Self-Assessment Form" (issued June 22, 2023).

Under New York law, specified Medicaid providers must have an Effective Compliance Program as a condition of Medicaid payment. OMIG refers to these providers as Required Providers. An Effective Compliance Program means a compliance program that is adopted and implemented by the Required Provider, and that meets each of the seven elements established in SubPart 521-1. An Effective Compliance Program must also be well-integrated and supported by the highest levels of the Required Provider, must promote adherence to legal and ethical obligations, and must be reasonably designed and implemented to prevent, detect and correct non-compliance with Medicaid program requirements, including fraud, waste and abuse.

**Harris Beach's seven-part micro-webinar series devotes one entire 30-minute session to each of the seven elements.<sup>1</sup>**

## WHAT MEDICAID PROVIDERS MUST HAVE A COMPLIANCE PROGRAM UNDER § 363-D AND SUBPART 521-1?

- (1) Any person subject to NYS Public Health Law Articles 28 or 36,
- (2) Any person subject to NYS Mental Hygiene Law Articles 16 or 31, and
- (3) Any other person for whom Medicaid is, or is reasonably expected to be, a Substantial Portion of Business Operations. Substantial Portion of Business Operations includes those who, during any consecutive 12-month period: claim or reasonably expect to claim at least \$1 million directly or indirectly from NYS Medicaid; or receive, have received, or reasonably expect to receive, at least \$1 million directly or indirectly from NYS Medicaid.

## WHO IS SUBJECT TO A REQUIRED PROVIDER'S COMPLIANCE PROGRAM?

All Affected Individuals are subject to a Required Provider's Compliance Program. Affected Individuals are defined in OMIG's regulations to be those who are impacted by the Required Provider's Risk Areas, and include:

- (1) Employees,
- (2) Chief Executive Officer and other senior administrators and managers,
- (3) Contractors, agents, subcontractors and independent contractors (collectively "Contractors"), and
- (4) Governing body and corporate officers.

## WHAT ARE A REQUIRED PROVIDER'S RISK AREAS THAT ARE IMPACTED BY THE COMPLIANCE PROGRAM?

OMIG identifies the following areas of operations that are affected by the Compliance Program:

- (1) Billings,
- (2) Payments,
- (3) Ordered Services,
- (4) Medical Necessity,
- (5) Quality of Care,
- (6) Governance,
- (7) Mandatory Reporting,
- (8) Credentialing,
- (9) Contractor, subcontractor, agent or independent contractor oversight,
- (10) Other risk areas that are, or should reasonably be, identified through Organizational Experience.<sup>2</sup>

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<sup>1</sup> Not included are compliance program requirements specific to managed care plans that are Required Providers.

<sup>2</sup> Organizational Experience is defined in 18 NYCRR § 521-1.2(b)(9).