

Loeb & Troper's *e-Bulletin*

Reminder: Certification Required by 12/31/11

Corporate Compliance Program and Deficit Reduction Act

I. Corporate Compliance Program Certification

Social Services Law § 363-d requires that Medicaid providers develop and implement an effective compliance program aimed at detecting fraud, waste, and abuse, effective October 1, 2009. The following providers are included in this requirement:

- ◆ Providers subject to the provisions of Articles 28 or 36 of Public Health Law
- ◆ Providers subject to the provisions of Articles 16 or 31 of Mental Hygiene Law
- ◆ Other providers of care, services and supplies for which the Medicaid program “constitutes a substantial portion of their business operations.” The “substantial portion” is defined in the law as \$500,000 or more in Medicaid business.

Providers are required to certify annually that they have adopted, implemented and are maintaining an effective compliance plan by December 31. If the provider determines that they do not have an effective compliance program in place, the OMIG has indicated that providers should not certify to having an effective compliance program. The certification form includes an option for providers to indicate that an effective program is not in place. If an effective compliance program is not in place, the OMIG requests additional information be provided including why the compliance program is not effective, steps being taken to make the compliance program effective and a timeline for implementation.

Certification forms must be submitted online through the OMIG website at <http://www.omig.ny.gov/data/content/view/270/53/>. According to OMIG, the person certifying should be different from the Compliance Officer for most providers. OMIG expects that the certifying official is a member of senior management (or the governing board) that the compliance function reports to.

Required Elements of a Compliance Program

There are eight elements required in the compliance program:

1. Written policies and procedures
2. Designation of a Compliance Officer
3. Training and education
4. Communication lines to the Compliance Officer
5. Disciplinary policies
6. Identification of Compliance Risk Areas and non-compliance
7. Responding to compliance issues
8. A policy of non-intimidation and non-retaliation

Self Assessment

OMIG has provided a self-assessment tool on their website at: http://www.omig.ny.gov/data/images/stories/compliance_alerts/compliance_alert_2011-06.pdf which should be used by all providers to help them determine the effectiveness of their own compliance program. Also on the OMIG website, at http://www.omig.ny.gov/data/images/stories/compliance_alerts/compliance_alert_2011-07.pdf, is a detailed description of the process that OMIG will follow when conducting on-site assessments of provider compliance programs.

II. Deficit Reduction Act Certification

Health care providers receiving \$5 million or more in annual Medicaid payments are required to establish written policies and procedures informing employees and contractors about federal and state false claim acts and whistleblower protections. The OMIG has developed an online certification form on its website. Providers receiving \$5 million or more in annual Medicaid payments are required to annually certify compliance with this requirement by December 31.

Certification forms must be submitted online through the OMIG website at <http://www.omig.ny.gov/data/content/view/269/53/>.

If you have any questions or would like assistance in this area, please contact us:

Koy Dever
Principal
kdever@loebandtroper.com

Brian O'Reilly, CPA
Partner
boreilly@loebandtroper.com