



Compliance Program Reviews and Common Findings

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Agenda

- OMIG Background
- 18 NYCRR Part 521
- Definitions
- Compliance Program Review Process, Common Findings, and Best Practices
- Resources
- OMIG Contacts
- Questions & Answers



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OMIG Background



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OMIG Mission

To enhance the integrity of the NYS Medicaid program by preventing and detecting fraudulent, abusive, and wasteful practices within the Medicaid program and recovering improperly expended Medicaid funds, while promoting high-quality patient care.



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18 NYCRR Part 521

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Part 521

- Adopted on December 28, 2022

- Compliance program reviews began July 3, 2023. There are three lookback periods currently under review:
 - April 1-June 30, 2023
 - July 1-September 30, 2023
 - October 1-December 31, 2023

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Part 521

Compliance Program Reviews to date:

- 13 reviews have been completed
- 88 are in progress



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Definitions



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Definitions

- ❑ **All affected individuals** is defined as all persons who are affected by the required provider's risk areas including the provider's:
 - employees;
 - the chief executive and other senior administrators;
 - managers;
 - governing body and corporate officers.
 - contractors, agents, subcontractors, independent contractors (Contractors); and

Definitions, cont.

- ❑ **Contractors** include contractors, agents, subcontractors, and independent contractors.

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Compliance Program Requirements



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Compliance Program Requirements

- Definitions established
- Contractual requirements
- Written policies and procedures
- Defined responsibilities (compliance officer, etc.)
- Management-level compliance committee
- Training requirements
- Communications and transparency requirements



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Compliance Program Requirements

- ❑ Auditing and monitoring requirements
 - Auditing and monitoring risk areas
 - Responding to compliance issues
 - Provider-generated annual compliance program review
- ❑ Report, return, and explain requirements



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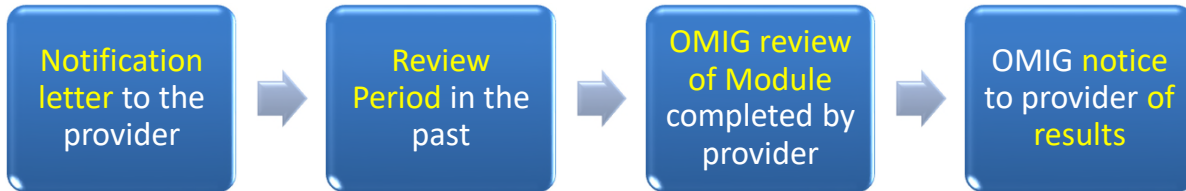
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Compliance Program Review Process and Common Findings



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Compliance Program Review Process



See additional information in the Compliance Program Guidance on pages 7-8

Compliance Program Review Process

Best Practices:

- Upon receipt of a notification letter, assemble the appropriate team and promptly begin completing the form/gathering related documentation
- Communicate early and often with OMIG throughout a review

Element 1 – Compliance Policies

- ❑ The Providers should incorporate legal and ethical obligations related to compliance program requirements into their written policies, procedures, and standards of conduct (Policies).
- ❑ The written Policies should also document the implementation of each of the seven elements and outline the ongoing operation of the compliance program.

See additional information in the Compliance Program Guidance on pages 8-9

Element 1 – Compliance Policies

Frequently identified issues:

- ❑ Written Policies not applicable to all affected individuals
- ❑ Use of limiting language

Best Practices:

- ❑ Define an umbrella term for all affected individuals to use consistently

Element 2 – Compliance Officer

- ❑ Designation of a compliance officer who is vested with responsibility for the day-to-day operation of the compliance program
- ❑ Designation of a compliance committee that will coordinate with the compliance officer

See additional information in the Compliance Program Guidance on pages 9-11

Element 2 – Compliance Officer

Frequently identified issues:

- ❑ No annual compliance work plan
- ❑ Including compliance work plan activities in policies & procedures rather than in a work plan.

Best Practices:

- ❑ Making the compliance work plan a living document
- ❑ Having the Compliance Officer independent from financial and legal departments

Element 2 – Compliance Committee

Frequently identified issues:

- No compliance committee charter
- Content in the compliance committee charter

Best Practices:

- Setting tone from the top

Element 3 – Compliance Program Training

- Compliance program training and education for all affected individuals annually and at orientation

Best practice: Compliance training as part of orientation for new affected individuals occurs within thirty days of their start date.

- Develop and maintain a training plan

See additional information in the Compliance Program Guidance on pages 11-12

Element 3 – Compliance Program Training

- Form and format of compliance program training
- Pre-purchased training materials
- Compliance training for Contractors
- Periodic evaluation of the effectiveness of training

Element 3 – Compliance Program Training

Frequently identified issues:

- Not including all required training topics
- Not training all affected individuals, such as governing body members and contractors
- Not having a compliance program training plan

Best Practices:

- Documenting who completed training

Element 4 - Communications

- ❑ Lines of communication to the compliance officer to report compliance issues
- ❑ Provider must ensure the confidentiality of persons reporting compliance issues

See additional information in the Compliance Program Guidance on pages 12-13

Element 4 - Communications

Frequently identified issues:

- ❑ Confusing the terms “confidential” and “anonymous” with each other.
- ❑ Confidentiality should be maintained unless the matter is subject to:
 - a disciplinary proceeding;
 - referred to, or under investigation by, MFCU, OMIG, or law enforcement; or
 - disclosure is required during a legal proceeding.
- ❑ Making required information available on the website.

Element 4 - Communications

Best Practices:

- ❑ A best practice is to routinely document evidence of when information concerning the compliance program, standards of conduct, and lines of communication were continuously posted on the provider's website such as:
 - Maintaining a log of what information is posted, along with when and where
 - Maintaining screenshots of information on the website including dates published
- ❑ Confidential methods of communication such as a drop box should be placed in an area with no monitoring or surveillance

Element 5 – Disciplinary Standards

- ❑ Disciplinary standards that address potential violations and encourage good-faith participation in the compliance program
- ❑ Written policies establishing disciplinary standards are published and disseminated to all affected individuals

See additional information in the Compliance Program Guidance on pages 13-14

Element 5 – Disciplinary Standards

Frequently identified issues:

- ❑ Disciplinary standards not being applicable to all Affected Individuals

Best Practices:

- ❑ Disciplinary actions should be progressive

Element 6 – Auditing & Monitoring

- ❑ Systems for:
 - identifying compliance risk areas
 - routine auditing and monitoring
 - annual compliance program review
 - checking monthly for excluded providers
- ✓ requiring Contractors to comply with checking monthly for excluded providers

See additional information in the Compliance Program Guidance on pages 14-15

Element 6 – Auditing & Monitoring

Frequently identified issues:

- Providers not recognizing compliance issues
- Not checking the exclusion status of all Affected Individuals
- Not requiring Contractors to check the exclusion status of all Affected Individuals

Element 6 – Auditing & Monitoring

Best Practices:

- Utilize the Module and Self-Assessment Form on OMIG's website to guide the annual compliance program review. The Module focuses on the elements from a high level; the Self-Assessment form focuses on each requirement under the elements.
- The compliance work plan is a key component in demonstrating that a provider has an effective compliance program.

Element 7 – Responding to Compliance Issues

- ❑ Systems for responding to compliance issues
 - responding promptly to compliance issues when raised
 - investigating and correcting problems
 - ensuring compliance with state and federal laws, rules, regulations, and requirements of the Medicaid program

See additional information in the Compliance Program Guidance on pages 15-16



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Element 7 – Responding to Compliance Issues

Frequently identified issues:

- ❑ When providers don't identify compliance issues, they aren't:
 - taking prompt action to investigate,
 - determining corrective actions, and
 - promptly implementing corrective actions.

Best Practices:

- ❑ Monitoring corrective actions to ensure effectiveness



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Sanctions & Penalties

- ❑ Per SOS § 363-d(3)(c-d), if the provider does not have a satisfactory program, the provider may be subject to any sanctions or penalties permitted by federal or state laws and regulations, including revocation of the provider's agreement to participate in the Medicaid program
- ❑ OMIG may impose penalties for failure to have an effective compliance program up to:
 - \$5,000 per calendar month in the first instance
 - \$10,000 per calendar month for subsequent instances

Plans of Correction

- ❑ Providers should identify and implement corrective actions in all areas identified in a review by OMIG as needing improvement.
- ❑ Implementation of corrective actions may not be immediately reviewed by OMIG, but failure to implement requested corrective action could subject a provider to further sanctions associated with a future review.

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Resources

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OMIG's Compliance Program Resources

- ❑ The Compliance Library on OMIG's website (omig.ny.gov) contains:
 - [Compliance Program Guidance](#)
 - [Compliance Program Requirements FAQs](#)
 - [Compliance Program Self-Assessment Form](#)
 - *General Compliance Guidance and Resources*
 - *Compliance-Related Laws and Regulations*
- ❑ Bureau of Compliance email: compliance@omig.ny.gov

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OMIG Contacts



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Agency Contact & Resource Information

- OMIG Executive Office: 518-473-3782
- Website: www.omig.ny.gov
- Bureau of Medicaid Fraud Allegations:
bmfa@omig.ny.gov
- Medicaid Fraud Hotline: 877-873-7283
- Join our [listserv](#)
- Follow us on X formerly known as Twitter: @NYSOMIG
- Dedicated e-mail: information@omig.ny.gov



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Any questions?

Contact the Bureau of Compliance at:
compliance@omig.ny.gov or (518) 408-0401