

Council of School Superintendents October 4, 2009

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Medicaid Compliance

1. Federal and State Compliance Requirements
2. Compliance Plans
3. Relevant Laws
4. Audit Process
5. School Based Medicaid – Pre School
6. Conclusion/Questions & Answers

Federal and State Compliance Requirements

Federal Law – Section 1902(a)68 of the Social Security Act – any entity receiving annual payments of \$5,000,000 or more.

State Law – Section 363d of the SSL*

18 NYCRR Part 521*

Annual Payments of at least \$500,000

Elements of a Compliance Plan*

1. billings;
2. payments;
3. medical necessity and quality of care.

Elements of a Compliance Plan* (continued)

4. governance;
5. mandatory reporting;
6. credentialing; and
7. other risk areas that are or should with due diligence be identified by the provider.

Requirements of a Compliance Plan

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;

Requirements of a Compliance Plan (continued)

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.

Credentialing – excluded providers

OMIG website – www.omig.state.ny.us

Regulatory Requirements (18 NYCRR Part 521)*

- Annual certification in December of each year [521.3(b)]
- Can use plan accepted by federal government [521.4(b)]
- Unsatisfactory program could result in OMIG sanctions [521.4(c)]

What is a Compliance Plan?

- Developed and implemented internal controls and procedures that promote adherence to statutes and regulations applicable to Federal Health Care Programs and private insurance requirements.

Why Develop Compliance Plans and Programs

- To prevent unwanted events from occurring
- To help the organization learn about these events before they occur
- If the event occurs and the organization does not learn about it first, an effective plan can help mitigate or reduce negative effects by showing that these events are exceptions.

Some Specific Benefits

- Ensuring Compliance with Regulations, Payment Policies and Coding Rules
- Improved Documentation
- Improved Education
- More Streamlined Practices
- Avoidance of Potential Liability
- Reduced Exposure to Penalties

Seven Elements That Must Be Addressed

1. Written Standards of Conduct that Produce a Clear Commitment to Compliance
2. Appointment of High Level Individuals in Organization to Oversee the Corporate Compliance Effort
3. Effective Training and Education programs

Seven Elements That Must Be Addressed (continued)

4. Monitoring Systems to Uncover Potential Problems and Encourage Reporting Without Fear or Retaliation
5. Developing Accessible Lines of Communication Between Management and Staff
6. Disciplinary Systems for Non-Compliant Persons that are Consistently Enforced
7. Reasonable Steps to Respond to Detected Offenses and to Prevent Reoccurrence

Compliance Programs Must Have Substance

- It is more harmful to have a shoddy program in place than to have no program at all.
- Fraud investigators may consider an ineffective or inactive program to be a bad faith attempt to circumvent, rather than enforce, compliance.

Code of Conduct

- Introduction
- Ethical Standards
 - Legal Compliance
 - Avoidance of Conflicts of Interest
 - Accurate and Complete Records and Claims
- Certification that Person Has Received and Reviewed

The Plan: Compliance Officer and Committee

- Duties of Compliance Officer
 - Day to Day Monitoring of Plan
 - Supervising Internal and External Reviews
 - Training
 - Receiving, Investigating and Responding to Reports
 - Updating Rules Handbook
 - Recommendations to Modify Plan
- Compliance Officer Reports Quarterly to Compliance Committee who Reports Quarterly to Designated Entity

The Plan: Employee Training

1. All Current and New Employees
2. On-Going Training - At Least Once Per Year
3. Documentation As To Who Attends Training

The Plan: Employee Hiring Policy

1. Research Background of Applicants
2. Comply with Conflict of Interest Policy

Contractor Engagements

- Research background of persons and companies with whom you do business
- Train your contractors and consultants on compliance

The Plan: Reporting and Discipline

1. Employees Required to Report Suspected Violations
2. Drop Box for Reporting/No Retaliation
3. Attempt to Keep Reporter's Identity Confidential

The Plan: Records Management

- Complete Records
- Accurate Records
- No Signing Name of Another Person
- No signature Stamps
- No Altering Without Proper Permission
- If Altered – Must Include Date of Alteration, signature of Employee Who Altered and Signature of Authorizing Staff
- Confidentiality

The Major Health Care Compliance Laws

- Anti-Kickback Laws
- HIPAA – Health Insurance Portability and Accountability Act
- False Claims Act
- DEFRA 2005

Anti Kickback Laws

Federal Section 1128B (42 U.S.C. 1320-a-7b)

State Law – Section 366-d SSL

Safe Harbors – 42 CFR 1001.952

HIPAA

Protected Health Information

Stimulus Package - 2009

False Claim Act

Federal – covers all federal claims

Knowledge that the claim is false or fraudulent
(but no proof of specific intent to be fraud is
required).

False Claims Act (continued)

Knowledge that claim is False or Fraudulent:

- Actual knowledge
- Deliberate Ignorance
- Reckless Disregard
- Not Mistake or Negligence

(Not knowing may not be a defense)

Federal False Claims (continued)

Qui Tam Actions

Civil Penalties - \$5,500 - \$11,000 per claim.

Federal False Claims Act (continued)

Federal Law – 2009 Amendments

Definition of Claim Expanded to include
contractors and subcontractors.

False Claims Act State Law

Section 187-194 of State Finance Law

School Based Medicaid Pre-School

Compliance Agreement

- Compliance Officer designated by DOH
- Compliance Committee
- OMIG Audits
- NYC to submit corrective action plan

School Based Medicaid Pre-School (continued)

- Independent audits of internal counsel
- Implementation of statewide compliance policy
- Training of staff
- Confidential disclosure program for staff to report to OSC

School Based Medicaid Pre-School (continued)

- Revision of reimbursement methodology (state plan)
- CMS can audit/review
- Review of all records – 6 years
- Legislation
 - Pre-School still required
- Stay tuned

Conclusion

Questions & Answers

Websites/Phone #s

- Medicaid Fraud Hotline #1-877-87FRAUD (1-877-873-7283)
- DOH website: <http://www.health.state.ny.us>
- HHS OIG website: www.oig.hhs.gov
- Provider manuals:
<http://www.emedny.org/providermanual/index>
- OMIG: <http://www.omig.state.ny.us>

What should you take away?

- Compliance
- Record keeping
- Adherence to state policy
 - Get it in writing
 - Keep up to date
 - State website
 - State provides Medicaid update
 - Hiscock & Barclay newsletter