



## LAW ALERT

December 9, 2020

By: David F. Durso, Esq.

**RMF**  
RUSKIN MOSCOU FALTISCHEK P.C.  
*Smart Counsel. Straight Talk.*

### **New York State Makes Significant Changes to the Compliance Certification Requirement**

New York State recently adopted significant changes to the annual compliance certification process. As a reminder, providers that meet the following criteria are required to adopt and implement a compliance program as required by New York State Social Services Law § 363-d and 18 N.Y.C.R.R. Part 521:

- are subject to Article 28 or Article 36 of the New York State Public Health Law;
- are subject to Article 16 or Article 31 of the New York State Mental Hygiene Law;
- claim or order, and/or can reasonably be expected to claim or order, Medicaid services or supplies of at least \$500,000.00 in any consecutive 12-month period;
- receive Medicaid payments, and/or can reasonably be expected to receive payments, either directly or indirectly, of at least \$500,000.00 in any consecutive 12-month period; or
- submit Medicaid claims of at least \$500,000.00 in any consecutive 12-month period on behalf of another person or persons.

#### **Changes to Annual Compliance Certification Process**

Previously, providers that met the above criteria were required to certify every December that they had adopted and implemented a compliance program as required by New York State Social Services Law § 363-d and 18 N.Y.C.R.R. Part 521. Instead of completing an annual compliance certification each December, providers now are required to attest to adopting and maintaining an effective compliance program as part of the annual Certified Statement for Provider Billing Medicaid. This certification occurs on the anniversary date of the provider's enrollment in Medicaid. The New York State Department of Health provides information and materials to providers, including the Certification Statement for Provider Billing Medicaid Form, approximately 45 – 60 days before the anniversary of the provider's enrollment in the Medicaid program.



## **Penalties for Failure to Adopt and Maintain an Effective Compliance Program**

We anticipate that OMIG will continue to review compliance programs in 2021. Goal #1 in OMIG's 2019-2020 Work Plan was provider and managed care organization compliance. The Work Plan indicated that OMIG would conduct compliance program reviews of providers in an effort to analyze whether the provider's compliance program was implemented and operating as required by law. If OMIG reviews a provider's compliance program and finds that it does not meet the statutory requirements, OMIG can now impose a monetary penalty of \$5,000.00 per month, for a maximum of 12 months, for failure to adopt and implement a compliance program that meets the statutory requirements. For a repeat offender, OMIG can impose a monetary penalty of \$10,000.00 per month for a maximum of 12 months. Even more concerning to providers should be the fact that New York State Social Services Law § 363-d was recently amended to make clear that the requirements contained therein, including the adopting and maintaining an effective compliance program, are conditions of payment from Medicaid. As a result, OMIG can now recoup all Medicaid reimbursements to a provider during a period when the provider did not have an effective compliance program.

As a result of these changes, providers should locate their initial Medicaid enrollment date to determine when they are required to complete the annual Certification Statement for Provider Billing Medicaid Form. Providers should undertake a review of their existing compliance program to ensure that it complies with all statutory requirements. Providers who do not have a compliance program should, with the assistance of counsel, create and implement a program immediately.

**For more information, please contact:**

**David F. Durso, Esq.**

**[ddurso@rmfpc.com](mailto:ddurso@rmfpc.com)**

**516-663-6667**