

Part 521 - OMIG Compliance Policy Templates

The Policies are templates. They are designed to serve as useful starting points for providers to develop their own compliance policies. The documents are not intended to be adopted mechanically without review, evaluation and modification by an agency. An effective compliance program must be based on, and specially tailored to address, the unique compliance risks faced by the particular organization. The Policies should significantly reduce the amount of time and resources an agency must invest in developing compliance policies that satisfy the Regulations. However, the Policies are not a substitute for an evaluation by each agency of its particular compliance risks. Agencies should revise and expand upon the Policies to meet their unique needs.

Providers subject to the Regulations must be in compliance by September 28, 2009. Providers must certify their compliance to OMIG each December.

Description of the Policies

Below is a list of each Policy together with a description of how the Policy is linked to compliance with the Regulations:

Employee Screening Policy

Although not specifically referenced in the Regulations, a system for screening employees and contractors to ensure that they are not excluded from participating in government health care programs is widely recognized as an essential element of an effective compliance program. Federal statutes and regulations impose civil monetary penalties on health care providers for submitting claims for reimbursement to a federal health care program for services the provider knows, or should have known, were furnished by or at the direction of an excluded person. See Social Security Act § 1128A(a)(6); 42 C.F.R. § 1003.102; Article 13 of the New York State Finance Law. The U.S. Department of Health and Human Services Office of Inspector General (the "OIG") has stated that providers have an affirmative duty to check the list of excluded persons to avoid liability. See OIG Special Advisory Bulletin, "The Effect of Exclusion From Participation in Federal Health Care Programs," September 1999. The law prohibits the employment or retention of excluded persons not only to directly provide health care services but also to render administrative or management services related to the provision of care reimbursed by a federal health care program.

Compliance Training Policy

The Regulations require compliance training and education of all "affected employees and persons associated with the provider, including executives and governing body members ..." The Regulations state that such training must be carried out "periodically" and must be part of the orientation process for new employees and directors. 18 N.Y.C.R.R. § 521.3(c)(3).

Employee Discipline Policy

The Regulations require "disciplinary policies to encourage good faith participation in the compliance program by all affected individuals ..." The policies must include sanctions for (i) failing to report suspected problems, (ii) participating in non-compliant behavior and (iii) encouraging, directing, facilitating or permitting non-compliant behavior. 8 N.Y.C.R.R. § 521.3(c)(5).

Vendor Screening Policy

See discussion above on the Employee Screening Policy.

Vendor Relations Policy

Although not specifically referenced in the Regulations, a policy governing relationships with vendors is an important element in reducing the risk of liability under state and federal anti-kickback statutes and assuring compliance with the provisions of the DRA obligating certain health care providers to educate their contractors about the False Claims Act.

Fraud and Abuse Reporting Policy

The Regulations require communication mechanisms for the reporting of compliance issues by employees, Board members and vendors. These mechanisms must include an option for anonymous reporting 8 N.Y.C.R.R. § 521.3(c)(4). The Regulations also require a system for investigating potential compliance programs, taking corrective action, reporting problems to OMIG and refunding overpayments when appropriate. 8 N.Y.C.R.R. § 521.3(c)(7).

Non-Retaliation Policy

The Regulations require the adoption of a policy of non-intimidation and non-retaliation for reporting compliance concerns and otherwise participating in the compliance program. 8 N.Y.C.R.R. § 521.3(c)(8).

Internal Auditing Policy

The Regulations require a system for the identification of compliance risk areas and internal auditing of compliance by the organization. 8 N.Y.C.R.R. § 521.3(c)(6).

Government Investigations Policy

Although not specifically referenced in the Regulations, a policy for managing and assuring cooperation with government audits and investigations is generally considered an important element of an effective compliance program.

Directors and Officers Conflicts of Interest Policy

Although not specifically referenced in the Regulations, this policy can assist agencies in ensuring proper governance, which is one of the risk areas identified in the Regulations. 10 N.Y.C.R.R. § 521.3(a)(4). This policy can also assist agencies in complying with New York statutes governing conflicts of interest in not-for-profit organizations (Sections 715 through 717 of the New York Not-for-Corporation Law) and IRS requirements applicable to tax-exempt organizations.

Employee Conflicts of Interest Policy

Although not specifically referenced in the Regulations, this policy may be useful for tax-exempt organizations in avoiding claims of private inurement or private benefit. In addition, the policy may assist agencies in reducing the risk of cost reporting fraud and avoiding violations of state and federal anti-kickback statutes.

These templates may be ordered through the Professional Learning Center Store (PLC Store) on the Coalition's website http://www.coalitionny.org/prof_learn_ctr/store/.