

COMPLIANCE IN MEDICAID SCHOOL SUPPORTIVE HEALTH SERVICES

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UPFRONT . . .

Good ideas from many sources
Feel free to use these slides-propagation is not plagiarism
Assumption of good faith and respect
Going green-email or card if you want a copy of presentation
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DISCLOSURES

mother was a school board member in New York State, and an early advocate on special education(1960s)
three brothers and a child who were beneficiaries of special education professionals and programs
former life as an Assistant US Attorney on matters involving claims against school districts, among many other cases-not permitted to be involved in schools case

COMPLIANCE IN MEDICAID SCHOOL SUPPORTIVE HEALTH SERVICES

TWIN COMPLIANCE PROGRAM REQUIREMENTS

ONE IMPOSED BY FEDERAL GOVT. AS
PART OF SETTLEMENT (UNIQUE TO NY)
ONE IMPOSED BY SOCIAL SERVICES
LAW
OMIG COMMITMENT: WE RECOGNIZE
THE EXTENT OF THESE
REQUIREMENTS- WE WILL WORK WITH
THE ASSOCIATION AND PROVIDERS TO
ADDRESS THEM

THE THREE SYSTEMS OF SERVICES AND PAYMENT

Education-long term relationship-school
year or more
Health care-short term relationship-visit,
hospitalization, episode of care
Third party payment-no relationship-the
claim, to be processed w/o human contact

PRACTICAL ISSUES FOR SCHOOLS IN PAST 20 YEARS

The end of "special" education, most "special"
schools, and "special school" funding
Mainstreaming of special needs students
Time and skill requirements for staff
Greater obligations on teachers, counselors,
administrators imposed by statute and court
decisions-IIPs
Greater knowledge about relation between health
care issues and school performance
Greater burdens on teachers from social issues,
testing and higher school expectations

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MEDICAID SCHOOL-BASED HEALTH SERVICES

“ . . . we have found numerous errors in billings for Medicaid services to children by school districts. . . School districts billed their states for services that were not supported by documentation, were medically unnecessary, coded incorrectly, or were not covered by the program.

George Reeb, HHS Office of Inspector General-Audit, testimony to Senate Finance Committee, 6/28/2005

THE RESPONSES OF THE OFFICE OF INSPECTOR GENERAL

Huge growth in these expenditures-we need to audit this area

Some organizations (Deloitte Consulting) have received contingency contracts from states to increase federal reimbursement in this area-what do you expect them to do?(OIG review-NJ Medicaid School-based rates-A-02-03-01003, A-02-04-01017(February 2008))

THE NEW YORK STATE AND CITY SETTLEMENT July 2009

\$540 million to settle allegations that for the period 1990 to 2001, the state of New York failed to provide proper guidance to the districts and counties outlining the requirements for a service to be covered by the Medicaid program, failed to monitor the districts and counties for compliance as required by the program and passed on claims to the federal government for services

First CMS Integrity Program imposed on State as part of settlement

CMS Dispute Resolution process-“if we disagree, we’re right.”

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SETTLEMENT July 2009 THE WHISTLEBLOWER

"Ms. Cirrincione, former owner and operator of CREST Mainstream Inc., filed suits in U.S. District Court against the county and the state Education Department in 1998 and 1999 claiming violations of the Medicaid program's requirements. As late as 2002, she told the county Legislature that she tried to tell the former director of community services for Jefferson County, and County Administrator Robert F. Hagemann III that the county was billing Medicaid for ineligible expenses.

As part of the 2009 settlement agreement, Ms. Cirrincione agreed to drop all further claims against the state, but her lawsuit against the county was allowed to continue.

Watertown Times-also reported in Speech Pathologist News

COMPLIANCE AND WHISTLEBLOWERS

COMPLIANCE-SYSTEMS AND PROCESSES
EFFECTIVE INTERNAL AUDIT PROGRAM,
INCLUDING RISK ASSESSMENT, IS PART OF
COMPLIANCE

MOST WHISTLEBLOWERS SEEK INTERNAL
RELIEF FIRST, WITHOUT SUCCESS

DEMONSTRATION OF AN EFFECTIVE
COMPLIANCE AND RISK ASSESSMENT
PROGRAM IS YOUR ORGANIZATION'S BEST
PROTECTION AGAINST WHISTLEBLOWER
CLAIMS

FALSE CLAIMS ACT 31 U.S.C. 3729

Lincoln law-passed in 1863

"knowing" submission of false claim-includes "reckless disregard" or deliberate ignorance

Triple damages

\$5000 per claim

Are governments and elected officials liable?

Cook County v. United States ex rel. Chandler, 538 U.S. 119, 123 S. Ct. 1239 (2003) local governments are "persons" subject to the FCA and the penalties, including triple damages.

Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765, 120 S. Ct. 1858 (2000), ruled that a State is not subject to triple damages under the FCA

Current (confused) state of the law-school boards and districts in, state out

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FALSE CLAIMS EXAMPLES

Billing for services on days child absent
Billing for services ordered by excluded or
dead physicians
Billing for services performed by excluded
individuals
Knowingly billing for unnecessary services

WHAT CMS REQUIRED OF THE STATE

New York State Health Services Program
Compliance Agreement
State Compliance Officer (Rose Firestein,
Esq.) and State Compliance Committee
Submission of State Plan Amendment and
CMS approval as a condition for new
payment (submitted 9/30)
State Implementation Plan (October 20)

WHAT CMS REQUIRED OF THE STATE

Program for payment audits and agency internal
audits by OMIG
OMIG Audit protocols to be approved by CMS
Annual comprehensive audit by external
accounting firm
Special corrective action plan for NYC
Confidential disclosure policy for all school districts
Required Training to be performed by SED

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WHAT CMS REQUIRED OF THE STATE

DOH and SED promulgated on October 23, 2009 the two policies required by the compliance agreement:
Confidential disclosure mechanism by which district employees can anonymously report to the compliance officer any Medicaid claiming procedures or policies they believe are inappropriate.
State's commitment to full compliance with federal Medicaid requirements for claiming FFP for SSHSP services. It also provides that adverse consequences may be imposed on districts and individual employees for noncompliance.
Available on New York state Department of Education website

REQUIRED CONFIDENTIAL DISCLOSURE POLICY

Submitted to state compliance officer, Rose Firestein, at DOH.

Sent to District or County to determine:

- Credible
- Whether violation exists
- Systemic or limited to small number of cases
- District or County must report back

WHAT CMS REQUIRED OF THE STATE

Beginning of 2010 (and 2011 and 2012), OMIG will audit every school district and preschool provider paid in excess of \$1 million (est. 9 school districts, 9 counties)

Selection of \$250,000 to \$1 million (20 school districts, 5 counties) out of 101/25)

Small group under \$250,000

Audits begin January 5-6 audits/month

100 paid claims sample-projected to universe for that calendar year

NOTE: AUDIT WILL COVER CLAIMS ALREADY SUBMITTED, AS WELL AS NEW CLAIMS

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WHAT CMS REQUIRED OF THE STATE

Training curriculum on federal and federally compliant state SSHSP policies and procedures is being developed.
The districts will have to ensure that all of their employees and contractors' employees involved in claiming Medicaid reimbursement for SSHSP services or providing or overseeing the provision of SSHSP services to children participate in one hour of this training per year.

WHAT CMS REQUIRED OF THE STATE

All school districts
All counties
All 4201 schools
"are not allowed to submit claims for services for Medicaid Eligible Services . . . With a service date of July 1, 2009 or later until CMS approves a state plan amendment (which was submitted in September 2009)

WHAT THE SOCIAL SERVICES LAW 363-d REQUIRES OF ALL MEDICAID PROVIDERS OVER \$500,000

18 NYCRR 521-Regulation-"effective compliance program" with eight elements
Frequently Asked Questions
www.omig.state.ny.us

COMPLIANCE IN MEDICAID SCHOOL SUPPORTIVE HEALTH SERVICES

WHAT THE SOCIAL SERVICES LAW 363-d REQUIRES OF ALL MEDICAID PROVIDERS OVER \$500,000

Written policies and procedures. (for each provider number)
An employee vested with responsibility for day-to-day compliance program operation. (local, in addition to state compliance officer)
Training and education of all affected employees and persons (1 hour training provided for by CMS agreement is good start)
Communication lines to the responsible compliance position.(policy required by CMS is good start)
Disciplinary policies to encourage good faith compliance program participation.
A system to routinely identify compliance risk areas.(ATTENDANCE BY SOMEONE IN SCHOOL DISTRICT AT THESE TRAININGS IS A GOOD START-KEEP RECORD)
A system for responding to compliance issues as they arise.(keep record)
A policy of non-intimidation and non-retaliation for good faith compliance program participation.

8 Elements: Compliance Programs

Written policies and procedures, including code of conduct, how to report
Employee designated as compliance program head- report periodically “directly to governing body” on compliance activities
Training of everyone on compliance, including orientation for new governing body member-School Board

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8 Elements: Compliance Programs

Communication lines to compliance officer, including anonymous and confidential reporting
Discipline for failure to report suspected problems, permitting non-compliant behavior
Routine identification of compliance risk areas, including internal audit and appropriate external audit

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COMPLIANCE IN MEDICAID SCHOOL SUPPORTIVE HEALTH SERVICES

8 Elements: Compliance Programs

System for responding to compliance issues as they are raised; correcting such problems promptly and thoroughly, and identifying and reporting compliance issues to government; refunding overpayments
Non-retaliation policy

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CREDENTIALING AND EXCLUSION

WHERE ARE THEY NOW? PROBLEM DOCTORS , NURSES, PHARMACISTS, THERAPISTS, AND PROVIDERS- STRAIGHTFORWARD FALSE CLAIM ACTION- CMS, OIG CITE 1999 STANDARD
KEEPING BAD AND EXCLUDED PROVIDERS OUT OF HEALTH CARE- USING AUTOMATED BACKGROUND CHECKS, PRIOR LICENSE ACTIONS, PRIOR EXCLUSIONS(state and federal)

Effect of Exclusion From Participation in Medicaid

September 1999 OIG bulletin
No excluded person can receive any compensation from federal health care programs
In effect, this bars even janitors if their compensation is derived in any part from Medicaid
<http://www.oig.hhs.gov/fraud/docs/alertsandbulletins/effect.htm>

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State Medicaid Directors Letter 08-003 (available on CMS website)

Issued on June 12, 2008
Clarifies CMS policy
Reminds States of their duty to report to HHS-OIG about excluded persons
Tells States where and when to look for exclusions
Reminds States of the consequences of paying excluded providers

EXCLUSIONS

section 1932(d)(1) of the Social Security Act prohibits organizations:
from having an employment, consulting, or other agreement with an individual or entity for the provision of items and services that are significant and material to the entity's obligations under its contract with the State where the individual or entity is debarred, suspended, or excluded.

CONCLUSION

Good faith and fair dealing
-to students and parents
-to staff
-to taxpayers and public
To Board members
Government responsibility to manage case and response

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FREE STUFF

OMIG website-WWW.OMIG.State.ny.us
Mandatory compliance programs-hospitals, managed care, all providers over \$500,000/year
Over 100 provider audit reports, detailing findings in specific industry
66 page work plan issued 4/20/09-shared with other states and CMS, OIG
Listserv (put your name in)
New York excluded provider list
DEAR PROVIDER LETTER –no billing for dead patients, repay credit balances, no balance billing Medicaid patients

MORE FREE STUFF

http://www.oms.nysed.gov/medicaid/handbook/handbook_6/documentation_charts_guidebook_6.pdf

http://www.oms.nysed.gov/medicaid/resources/state_plan_amendment/Confid-Disclosure-Policy-Final.pdf

http://www.oms.nysed.gov/medicaid/medicaid_alerts/alerts_2009/alert_09_3.html

WANT THIS POWERPOINT?

YOU ARE WELCOME TO USE IT OR
REPRODUCE IT
Email me for a copy

JGS05@OMIG.state.ny.us
Thank you for your attention and your work
