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New NYS Compliance-Program Requirements May Be Useful Everywhere as a 'Fresh Look'

By Nina Youngstrom

On March 28, a sea change in compliance-program requirements takes effect in New York state, and it may be useful to compliance officers everywhere. New York state has now made an effective compliance program a condition of Medicaid payment and the requirements are more expansive, according to a Dec. 28, 2022, regulation from the Office of the Medicaid Inspector General (OMIG).^[1] The regulations touch on virtually every aspect of provider compliance programs, require annual effectiveness reviews and extend the provider's compliance program to its contractors, among other things.

Providers in other states may find it useful to mine the requirements for effectiveness purposes, experts say. The regulations and their companion documents "afford providers outside New York an opportunity to look at their compliance programs with fresh eyes," said Laurel Baum, chief compliance and integrity officer for Trinity Health's New York region. They just don't have the same pressure as providers in her state because "compliance is mandatory for New York providers subject to the regulations."

Although there has been a compliance-program requirement in New York state since 2009, it was expanded by the state legislature in 2020, said attorney Robert Hussar, former first deputy Medicaid inspector general. The implementing regulation wasn't released until January, apparently because of the COVID-19 pandemic, and now the effective date is around the corner, said Hussar, with Rivkin Radler in Albany, New York.

"It's a game-changer," he said. "It's probably the most significant change to compliance programs since they originally came out in the late 1990s," including the Federal Sentencing Guidelines and compliance program guidance from the HHS Office of Inspector General (OIG). "Unlike a lot of those standards, these are mandatory." He thinks the OMIG development "raises the bar" and may cause OIG to reconsider its compliance guidance. OIG already has a process underway to modernize program integrity and compliance information and communications.

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