



Delivery System Reform Incentive Payment (DSRIP) Program DSRIP Compliance Guidance 2015-01 - **Revised**

Special Considerations for Performing Provider System (PPS) Leads' Compliance Programs

Introduction

This is a revised DSRIP Compliance Guidance and it replaces the DSRIP Compliance Guidance 2015-01 that was initially published on April 6, 2015.

This document is intended to highlight special considerations for PPS Leads as they develop their compliance programs. This document does not address all compliance program requirements. Please refer to New York Social Services Law Section 363-d (SSL 363-d) and Title 18 of the New York Codes Rules and Regulations at Part 521 (Part 521) for all compliance program requirements that are applicable to PPS Leads' Compliance Programs. The items listed below are limited to considerations as they relate to the phase of the DSRIP program as of the date of publication. It is expected that as the DSRIP program develops, PPS Leads' compliance programs will develop to include additional considerations.

Background

The legislative intent stated in SSL 363-d is, in part, to organize provider resources to resolve Medicaid payment discrepancies and to impose systematic checks and balances to prevent future occurrences.

During the DSRIP Demonstration Period, PPS Leads will be making Medicaid payments to their network partners in connection with DSRIP project implementation and performance. Therefore, PPS Leads must dedicate resources toward implementing a compliance program that will assist in preventing and identifying Medicaid payment discrepancies related to DSRIP payments.

Recommendations

As PPS Leads develop their compliance programs, they must dedicate resources and develop systems to take all reasonable steps to ensure the Medicaid funds distributed

as part of the DSRIP program are not connected with fraud, waste or abuse. It is reasonable for a PPS Lead to consider its network performing providers' program integrity systems when dedicating resources and developing the PPS Lead's systems.

PPS Leads can focus their compliance program risk assessments on those risks specifically associated with the current phase of the DSRIP program and payments made pursuant to it. PPS Leads are not responsible for network providers' individual compliance programs that may be required in connection with their status as a servicing provider. Likewise PPS Leads cannot be responsible for how network providers use their respective DSRIP distributions, but PPS Leads must have adequate processes in place (such as an effective compliance program) to be able to identify when network providers obtain DSRIP distributions in a way that is inconsistent with approved DSRIP project plans.

Special Considerations by Element

Element 1: PPS Leads must have policies and procedures that describe compliance expectations specifically related to the compliance issues involving DSRIP funds. The policies and procedures should identify how to communicate DSRIP related compliance issues identified by performing providers to the Compliance Officer at the PPS Lead. Reporting of compliance issues identified may be made directly to the PPS Lead's Compliance Officer or through compliance liaisons within the network.

Element 2: The Compliance Officer must be an employee of the PPS Lead. The Compliance Officer must report directly to the PPS Lead's chief executive or other senior administrator and shall periodically report directly to the PPS Lead's governing body on activities of the compliance program. The Office of the Medicaid Inspector General (OMIG) recommends that a PPS Lead's Compliance Officer make reports to the governing body at least quarterly. The Compliance Officer should consider the distribution of DSRIP funds and the Department of Health's (DOH) requirements set out in *Delivery System Reform Incentive Payment (DSRIP) - Measure Specification and Reporting Manual*

https://www.health.ny.gov/health_care/medicaid/redesign/docs/dsrip_measure_specification_and_reporting_manual_for_public_comment.pdf. Any compliance program issues must be reported by the Compliance Officer.

Element 3: The PPS Lead is responsible for training and education of all affected employees, persons associated with the provider (i.e., PPS Lead), its executives and its governing body members on compliance issues and expectations. "Persons associated with the provider" include performing providers within the PPS network who are or may be eligible to receive DSRIP funds. While the PPS Lead is responsible for the training and education on its compliance program, the PPS Lead is not required to provide the training and education itself. The training and educational materials may be supplied by the PPS Lead and distributed to performing providers throughout the network to

implement. If the PPS Lead does not provide the training and education itself, the PPS Lead must have a process in place to confirm that the training and education was provided at each performing provider. Training and education materials should include compliance expectations related to the DSRIP program, performing providers' roles in DSRIP projects, and how to report any fraud, waste, or abuse of DSRIP funds.

Element 4: The PPS Lead must establish a process of reporting compliance issues to its Compliance Officer which must include an anonymous and confidential method of reporting. As stated in Element 3 above, it is recommended that the process of reporting compliance issues be part of the training and education provided.

Element 5: The PPS Lead's policies and procedures must include disciplinary policies and procedures to encourage good faith participation in the compliance program by all affected individuals. "All affected individuals" includes performing providers within the PPS network. OMIG recommends that the policies and procedures be communicated as part of the training and education. OMIG recommends that the PPS Lead coordinate with their network performing providers to support implementation of the policies and procedures throughout the network.

Element 6: The PPS Lead must develop and implement a system for routine identification of compliance risk areas specific to their provider type (i.e., PPS Lead). Risks specific to PPS Leads during this phase of the DSRIP program include partners' performance and progress toward DSRIP milestones. The PPS Lead's system should include a plan for auditing/monitoring network partners' performance toward meeting DSRIP milestones.

Element 7: The PPS Lead must develop and implement a system for responding to compliance issues that are raised. A PPS Lead should consider its own willful misuse¹ of DSRIP funds, or false statements² made by a PPS Lead or its network providers to obtain DSRIP funds, as examples of compliance issues. SSL 363-d and Part 521 require reporting compliance issues to DOH and OMIG. The PPS Lead's system must also include a method for prompt corrective action and refunding overpayments.³ PPS Leads will need to work with their network performing providers to support compliance with this requirement.

¹ OMIG considers "misuse" to include the use of DSRIP dollars for purposes other than those described in the PPS Lead's project plan, implementation plan, or as committed in any performance report.

² OMIG considers "false statements" to include making, or causing to be made any false, fictitious or fraudulent statement or misrepresentation of material fact.

³ Under the DSRIP program only, OMIG considers "overpayments" to include DSRIP payments that are issued based upon data that DOH and the DSRIP Independent Assessor subsequently determine to be incorrect or falsified, regardless of the reason. Overpayments are expected to be recovered through DOH's established DSRIP protocols.

Element 8: PPS Leads must develop a policy of non-intimidation and non-retaliation for good faith participation in the compliance program. PPS Leads will also need to work with their network partners to support compliance with this requirement.

Conclusion

Since the PPS Lead is dependent upon the actions of their network partners for the compliance program to be fully implemented and effective, it is recommended that support of the compliance program requirements be incorporated into any contract the PPS Lead may have with network partners.

There are other compliance related resources that are not specific to the DSRIP program on OMIG's website www.omig.ny.gov. However, many of the concepts they deal with can be related to the DSRIP program. OMIG recommends that PPS Leads and performing providers refer to those resources.

The recommendations outlined here may change at any time based upon reconsideration by OMIG and DOH.

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DSRIP Compliance Guidance should be considered to be a general guidance to assist those involved in the DSRIP program that are subject to the mandatory compliance program obligations set out in SSL 363-d Part 521. It does not set out all points that OMIG will consider or use when assessing if compliance programs meet statutory and regulatory requirements. OMIG reserves the right to recall or change this *DSRIP Compliance Guidance* at any time.

This *DSRIP Compliance Guidance* does not constitute rulemaking by OMIG and may not be relied on to create a substantive or procedural right or benefit enforceable, at law or in equity, by any person. Furthermore, nothing in this *DSRIP Compliance Guidance* alters any statutory or regulatory requirement. In the event of a conflict between statutes and regulations applicable to the Medicaid provider and either OMIG audit protocols or this *DSRIP Compliance Guidance*, the requirements of the statutes and regulations govern.

A provider's legal obligations are determined by applicable federal and state statutory and regulatory law. This *DSRIP Compliance Guidance* is not a substitute for a review of statutory and regulatory law and should not be considered to be legal advice by OMIG.