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Delivery System Reform Incentive Payment (DSRIP) Program DSRIP Compliance Guidance 2015-02

Frequently Asked Questions by Performing Provider System (PPS) Leads Relative to Compliance Programs

Introduction

This document is a joint publication issued by the New York State Office of the Medicaid Inspector General (OMIG) and the New York State Department of Health (DOH). It is intended to address questions posed to both OMIG and DOH relative to the mandatory compliance program obligations that exist for Performing Provider System Leads (PPS Leads) that are established under 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). This document does not address all compliance program requirements. Please refer to SSL 363-d and Part 521 for all compliance program requirements that are applicable to PPS Leads' Compliance Programs.

Frequently Asked Questions

Q.1.: In connection to its compliance program, what does OMIG expect of PPS Leads relative to partners' use of DSRIP funds?

A.1.: OMIG will review a PPS Lead's compliance program to assess if the PPS Lead is meeting the substantive requirements of SSL 363-d and Part 521. 18 NYCRR 521.3(c)(6) (Element #6) requires a compliance program to include "a system for routine identification of compliance risk areas specific to the provider type...including but not limited to internal audits and as appropriate external audits."

DSRIP Compliance Guidance 2015-01 is currently being considered for revision and is expected to provide more detail on this issue once it is published.

DOH expects the PPS Lead to have a budget and funding distribution plan as submitted in its project application, and implementation plans that specify how

DSRIP funds are distributed among the participating providers to incentivize providers to reach DSRIP performance goals. The PPS Lead will need to provide a distribution methodology taking into account five different categories:

- Project implementation costs
- Costs for delivery of services not reimbursed or under-reimbursed by Medicaid
- Provider performance payments
- Compensate revenue loss
- Other for administrative and other costs not included in previous categories

Each PPS is required to submit, as part of its quarterly report to the Independent Assessor, the PPS Lead's actual distributions in the five categories which shall be subject to audit to confirm the distributions.

It should be noted that DOH direction is specific to DSRIP program guidance and OMIG's response is specific to compliance program requirements. It is the PPS Lead's responsibility to address both.

Q.2.: What does OMIG expect of PPS Leads relative to their obligation to provide training and education on its compliance program?

A.2.: 18 NYCRR 521.3(c)(3) (Element #3) requires "training and education of all affected employees and persons associated with the provider" on the compliance program. Those determined to be "affected employees and persons" may be different during different phases of DSRIP implementation. It is up to the PPS Lead to undertake a reasonable analysis to identify who is "affected" and provide training and education accordingly. OMIG expects that PPS Leads' training and education plans will need to evolve and be revised as the DSRIP program develops. It is recommended that PPS Leads consider this when they evaluate their compliance programs.

Q.3.: What is OMIG's expectation of PPS Leads in checking for excluded or sanctioned parties?

A.3.: 18 NYCRR 515.5 provides that no payment will be made for medical care, services or supplies furnished, ordered or prescribed by any person while that person is excluded. Therefore, PPS Leads and all providers should consider payments to excluded persons to be a risk area. To mitigate that risk, OMIG recommends that PPS Leads and all providers check the exclusion lists routinely. The U.S. Department of Health and Human Services, Office of the Inspector General recommends that to minimize the liability of civil monetary penalties, providers check the exclusion lists monthly. As the DSRIP program develops PPS Leads will need to consider payments to excluded persons as a risk area and consider an exclusion screening

process to mitigate that risk. OMIG expects PPS Leads will consider this when they evaluate their compliance programs.

Q.4.: What are the relative roles between DOH, OMIG and the Independent Assessor?

- A.4.: a. OMIG's role in the DSRIP program is consistent with its mission: to enhance the integrity of the New York State Medicaid program by preventing and detecting fraudulent, abusive, and wasteful practices within the Medicaid program and recovering improperly expended Medicaid funds while promoting high-quality patient care. OMIG activities related to the DSRIP program will vary during the different phases of the DSRIP program implementation. OMIG's work plans will reflect the current year's planned activities. In 2015-2016, OMIG plans to conduct compliance program reviews of PPS Leads.
- b. The Independent Assessor, a vendor contracted by the Department of Health, is responsible for conducting the ongoing monitoring of performance and reporting deliverables for the duration of the DSRIP program.

The ongoing monitoring of performance and reporting deliverables will be primarily focused on the review of the Quarterly Reports submitted by the PPS. The Quarterly Reports will be used by the PPS to demonstrate their progress to meeting defined organizational implementation milestones and project Implementation milestones. The Independent Assessor will review the Quarterly Reports to ensure that PPSs are making progress towards the successful implementation of organizational and project milestones to determine the award of performance payments on a semi-annual basis.

The Assessor will also be responsible for reviewing the required documentation to validate the successful implementation of the organizational and project milestones. Following the review process, the Independent Assessor will be assigning Achievement Values (AVs) to the PPS based on their progress towards and achievement of the milestones with the resulting AVs determining the portion of the available performance payment the PPS will receive in the applicable payment period.

The Independent Assessor will also be responsible for including the AVs associated with the claims based measures and non-claims based measures (Medical Record Reviews, CAHPS, UAS) to determine the performance payment to the PPS.

Throughout the quarterly review processes, the Independent Assessor will be identifying any PPS and projects that are 'at risk' based on missed

milestones or other non-performance indicators. The Independent Assessor will then work with the DOH to determine the necessary corrective action steps, including, but not limited to the creation of additional milestones or subjecting the PPS to specific 'enhanced oversight' requirements.

Lastly, the Independent Assessor will be conducting on-site reviews of each PPS at least one time per DSRIP year. The on-site visits will be used by the Independent Assessor to conduct additional validations of the progress being made by the PPS as communicated through the Quarterly Reports.

- c. DOH is the oversight agency for the DSRIP program and coordinates the regulatory and program requirements with other State agencies to optimize alignment of activities and policy as it pertains to DSRIP activities. The Independent Assessor's scope is defined above and is under the direction of DOH.

Q.5.: What are the compliance program obligations relative to refunding overpayments?

A.5.: 18 NYCRR 521.3(c)(7) requires compliance programs to include a system for "identifying and reporting compliance issues to the department [DOH] or the office of Medicaid inspector general; and refunding overpayments." Therefore, PPS Leads' compliance programs must include a system for identifying and reporting compliance issues, which includes identification and reporting of overpayments. OMIG considers "overpayments" to include DSRIP payments that are issued based upon data that is later found to be incorrect or falsified, regardless of the reason.

DSRIP payments are being made for performance and reporting, not for service delivery. Overpayments must be considered in the context of what the DSRIP payment is for, namely for activities associated with delivery system reform through the identified DSRIP projects that the PPS Lead has committed to DOH to advance. Since it is possible that DOH will release DSRIP funds to PPS Leads based upon the PPS Leads' periodic reporting of project progress that the IA may determine on a subsequent audit was not warranted, the excessive payment would be considered to be an overpayment during this DSRIP phase.

Q.6.: In those situations where a DSRIP payment to a PPS Lead is determined to be more than what it should have been, how will that be recovered by the State?

When a DSRIP overpayment has been identified, the DOH will initiate a recoupment process whereby the overpayment is deducted from future DSRIP performance payments until the full amount of the overpayment has been recouped.

For example: A PPS receives performance payments in DSRIP Year 3, Payment period 1, totaling \$12M, and it is later determined that they should have only received \$11M in performance payments for that period. The DOH would reduce the performance payment for the period following the identification of the overpayment by the \$1M difference.

Conclusion

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 or DOH.