

 Office of Mental Health		Official Policy Manual Directive		Section Quality Assurance – Reporting and Investigation	Section # QA-545
Prepared by Nancy Pepe, Associate Counsel		T.L. 19-05	Title Medicaid Compliance and Corrective Action Policy		
Commissioner's Approval Ann Marie T. Sullivan, M.D.		Date Issued 5/1/2019	Supersedes This is a new policy.		

A. POLICY STATEMENT

The New York State Office of Mental Health (OMH) is dedicated to ensuring a culture of compliance, honesty and integrity. As part of OMH's commitment to foster a culture of compliance and to support the integrity of the services provided, OMH has established procedures for responding to and investigating compliance-related issues as they are raised. Under the direction of the Medicaid Compliance Officer, all complaints and allegations of Medicaid misconduct, fraud, waste, and abuse will be reviewed and investigated. Allegations of employee misconduct and failure to follow the laws and agency policy regarding Medicaid fraud and abuse will be investigated by the OMH Internal Affairs.

B. PURPOSE

To provide a mechanism to respond to and investigate detected Medicaid-related offenses of Federal, State, local laws, and applicable OMH policies and procedures and to develop corrective action plans based on the severity of the offense.

C. APPLICABILITY

This policy directive shall apply to all OMH employees, clinicians serving under contracts with facilities (inclusive of outpatient services), paid student interns, and other persons whose conduct, in the performance of work for OMH, including its programs or facilities, is under the OMH's direct control.

RELEVANT STATUTES AND STANDARDS:

New York State Social Services Law §363-d
18 NYCRR Part 521
42 USC §1396(a)(68) (Federal Deficit Reduction Act)
31 U.S.C. 3729-3733 et seq. (Federal False Claims Act)
New York State Finance Law §§187-194 (State False Claims Act)
New York State Labor Laws §§740, 741
New York State Penal Law §175 (False Written Statements)
New York State Penal Law §176 (Insurance Fraud)
New York State Penal Law §177 (Health Care Fraud)

D. DEFINITIONS (for this policy):

- 1) *Abuse* means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care.
- 2) *Compliance Program* means a proactive and reactive system of internal controls, operating procedures and organizational policies to ensure that the rules that apply to a provider are regularly followed.

- 3) *Compliance Officer* means the designated OMH Medicaid Compliance Officer.
- 4) *Fraud* means an intentional misrepresentation, omission or concealment calculated to deceive or knowingly presenting or causing to be presented a false record or false claim for payment.
- 5) *Noncompliance* means failure to adhere to established agency policy, procedure, or governmental regulation.
- 6) *OMH Personnel* means any person responsible for complying with this policy directive.
- 7) *OMIG* means the NYS Office of the Medicaid Inspector General.
- 8) *Waste* means the overutilization, underutilization, or misuse of resources.

SUMMARY: All employees have an affirmative duty to report anything that a reasonable person might think is a violation of the Medicaid Compliance Program, state or federal law or agency policy. All reports received through the Medicaid Compliance Report Line or through any other monitoring mechanism shall be initially screened by the Medicaid Compliance Officer. If the initial assessment indicates that there is a basis for believing that the conduct reported constitutes non-compliance with the Medicaid Compliance Program, applicable state, or federal law or an agency policy, the matter shall be fully investigated. Based on the findings of the investigation, corrective action will be taken. Violations of Federal, State, or local law will be reported to the appropriate governmental authorities in accordance with this policy.

E. INVESTIGATION PROCEDURE

- 1) The Medicaid Compliance Officer and/or Internal Affairs will be responsible for directing the investigation. Counsel, auditors, or health care experts may be engaged to assist in an investigation.
- 2) If the alleged violation is suspected to be a felony or if criminal conduct may have occurred, the matter will be referred to the OMH Internal Affairs, who will determine whether the allegation should be referred to the New York State Inspector General or investigated internally.
- 3) Internal Affairs will meet with the Medicaid Compliance Officer and/or Counsel's Office prior to the investigation to determine: steps of the investigation, time frame for the investigation, and provision of periodic updates.
- 4) The investigation will commence as soon as possible following the receipt of any information or complaint regarding alleged non-compliance.
- 5) A review will be made of the statutes, regulations, and policies involved. Persons involved in or having knowledge of the potential non-compliance will be interviewed. Employees who may be a potential subject of disciplinary action at the time of questioning may have the right to representation in accordance with a collective bargaining agreements and Section 75 of Civil Service Law.
- 6) During investigations of any person for a violation, such person may, if necessary, be temporarily reassigned to other job duties, or if it is determined that their continued presence during the investigation could create a danger to persons/property or would significantly disrupt operations, placed on administrative leave.
- 7) If the investigation determines that Medicaid fraud, waste or abuse has been committed, a member of the Executive Team will be notified of the findings of the investigation as soon as reasonably possible.
- 8) The destruction of documents or other evidence related to the investigation is prohibited. The Compliance Officer with the assistance of the facility leadership (e.g.,

PC Executive Director or his/her designee) will take appropriate steps to prevent the destruction of evidence.

- 9) Records of the investigation will include the following information: documentation of the alleged violation, a description of the investigative process, copies of statements, copies of key documents, a log of the witnesses interviewed, a log of the documents reviewed, the results of the investigation, administrative action taken, and corrective action implemented.
- 10) A summary report of non-compliant conduct will be provided to the Commissioner and Executive Deputy Commissioner. For Medicaid compliance investigations, a report will be prepared by the Compliance Officer. This report will include: statement of the complaint, findings of the investigation, recommended corrective actions, recommended reports to governmental agencies, and recommended follow-up with Human Resources for any potential administrative action. Outcomes of Internal Affairs investigations will be reported by the Director of Internal Affairs (or his/her designee) to the OMH Commissioner and the Executive Deputy Commissioner.

F. CORRECTIVE ACTION

- 1) Corrective action will depend on the seriousness of the violation. Corrective action may include: referral to criminal and/or civil law enforcement authorities having jurisdiction over such matter, submission of any overpayments (if applicable), appropriate education or training, and/or appropriate disciplinary action.
- 2) It will be the responsibility of the program leadership to follow up and report progress on the corrective action plan to the Compliance Officer (for Medicaid compliance investigations).
- 3) The Compliance Office will report on the status of the corrective action plans to the Executive Deputy Commissioner.

G. SELF-REPORTING TO THE APPROPRIATE GOVERNMENTAL AUTHORITY

- 1) A report that a violation of Federal, State, or local law has occurred must be made to the appropriate governmental authorities by Internal Affairs if the conduct (1) is a clear violation of criminal or civil law; (2) has a significant adverse effect on the quality of care provided to program beneficiaries; or (3) indicates evidence of a systemic failure to comply with applicable laws, an existing Medicaid integrity agreement, or other standards of conduct, regardless of the financial impact on Federal health care programs.
- 2) After an Internal Affairs investigation is complete, Internal Affairs, along with Counsel's representation, will make a report to the appropriate governmental authority if there has been a violation of law. Counsel's Office will review reports prior to being submitted to any outside entity. (Self-disclosure, as required by OMIG for Medicaid Compliance Programs will be addressed in the following section entitled SELF-DISCLOSURE).
- 3) The report may include: all evidence relevant to the alleged violation of applicable Federal or State law, the outcome of the investigation, the potential cost impact, and a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries.

OMH DISCLOSURE OF OVERPAYMENT

- 1) If a compliance investigation identifies a Medicaid overpayment to OMH, OMH will follow the OMIG's self-disclosure process. The OMIG submission checklist may be used as a guidance tool for self-disclosure (<https://omig.ny.gov/self-disclosure/submission-checklist-and-faqs>).
- 2) The Compliance Officer will coordinate with the Director of State Operations Finance Group regarding data required for submission.
- 3) Self-Disclosures may be submitted via OMIG's Self-Disclosure Unit using the Hightail Secure Uplink site: <https://spaces.hightail.com/uplink/OMIGSelfDisclosure>
- 4) OMIG's self-disclosure process is as follows:
 - a) The self-disclosure is examined to ensure reporting criteria are met
 - b) Submitted data are reviewed and verified
 - c) Discrepancies are addressed with the provider/contact person
 - d) Final letter is issued to the provider/contact person
 - e) Provider remits payment (unless claims were previously voided)

H. ATTACHMENTS/REFERENCES

<https://omig.ny.gov/self-disclosure/submission-checklist-and-faqs>

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