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Compliance Requirements for Receiving or Ordering Medicaid Payable Dental Services

By Jennifer Kirschenbaum, Esq.

With its newly formed Dental Fraud Unit, the Office of Medicaid Inspector General is not tiptoeing around the fact that its work order for the years 2011 onward is to target dental practices and attempt to recoup monies already paid or to deny moneys that would be paid.

To that end, OMIG has relayed that its enforcement actions against dental practices are likely to begin the simplest way possible—a list will be tabulated of the dental practices in New York and OMIG will peer in to each practice to make sure it is operating effectively and appropriately. You may be wondering how OMIG is going to do this in an efficient manner, and the answer is that the groundwork has already been laid. For this preliminary check OMIG will take your word for it; until information to the contrary arises. However, in order to enforce the presumption that you are operating appropriately, OMIG is now requiring that you take affirmative steps on an annual basis to verify compliance.

Specifically, New York State law now requires that providers who receive or order more than \$500,000 in any consecutive 12-month period from Medicaid have a written compliance plan in place at their practice. Importantly, the \$500,000 precipice includes: straight Medicaid and Medicaid HMO monies, and the amount of "ordered" services, not just monies received by a practice are included in the tally, capturing a wide array of practices into the compliance requirement that may otherwise have been immune. OMIG is referring to providers that fall within the definition of needing a compliance plan as "required providers."

The compliance plan requirement for required providers did not come without direction. OMIG has set forth with particularity areas (billing, payments, medical necessity and quality of care, etc.) and elements, which required providers' compliance programs, must be applicable to (i.e., be in writing, address governance and training at the practice, designate a compliance officer, etc.).

Required providers are responsible for certifying to OMIG each December that they have adopted and have in place a compliance program that meets OMIG's requirements. To simplify the certification process, OMIG has made certification available on its website <www.omig.ny.gov>. Should the commissioner of health or OMIG find that a required provider does not have a satisfactory compliance program, or no program at all, applicable law states that "the required

provider may be subject to any sanctions or penalties permitted by federal or state laws and regulations, including revocation of the provider's agreement to participate in the Medical Assistance Program."

Further, OMIG has intimated that it will be utilizing the compliance program requirement as a window into practices. Should your practice appear on OMIG's radar as a potentially noncompliant practice, you run the risk of being targeted by OMIG for a retrospective review of claims or being placed on prepayment review, which is a process that requires that you send in patient records prior to receiving reimbursement for any services. Either process, a retrospective

review or prepayment review, create dire ramifications for many practices, requiring legal representation, diminished reimbursement and the potential to have to pay back monies received or anticipated to be received by the practice.

In addition to staying off of OMIG's radar, there are benefits to OMIG's compliance plan requirement that are immediate and rewarding, which is why mandatory compliance can be a good thing. Of note, many practitioners report an increase in their reimbursement upon adopting a compliance plan; because their staff has a written policy to follow when performing billing, practitioners find that fewer errors are occurring and the result is increased reimbursement.

In sum, akin to preventative dentistry, a compliance plan is a preventative measure you implement to keep your practice in top shape to prevent potential problems in the future by mitigating billing errors and protecting the integrity of the practice's documentation and operations. As many of you recommend in your practices on a daily basis, preventative medicine pays, which is exactly what a compliance program represents—preventative action for your practice to keep auditors/investigators out and for you to remain in compliance.

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Jennifer Kirschenbaum, Esq., manages Kirschenbaum & Kirschenbaum's healthcare department, which specializes in representing healthcare practitioners in regulatory compliance, audit defense, licensure and transactional matters. She is a member of the New York State Dental Association Legal Panel and is available to answer questions at Jennifer@Kirschenbaumesq.com or (516) 747-6700.

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