

# NYSDA

AN OFFICIAL PUBLICATION OF THE NEW YORK STATE DENTAL ASSOCIATION

## news



## Making Compliance a Priority Today May Save Your Practice from OMIG Tomorrow

Think of it as preventative medicine for your practice.

*Jennifer Kirschenbaum, J.D.*

While it's doubtful that any reader of this article would dispute the benefits of recent advances in technology, the increased ease of maintaining and sorting patient information has also enabled government agencies to modernize oversight tactics. Specifically, new and improved methods of data mining are being utilized to determine where practitioners are overusing services, misrepresenting care provided or flat out billing for services that were not rendered. While historically such inquiries were made predominantly for instances of reported or discovered blatant abuse, new software with the ability to identify questionable billing patterns or unnecessary services has drastically changed the oversight game.

### MEDICAID AS DOMINANT PLAYER IN DENTAL COMPLIANCE

The most significant player to emerge for dentists in New York State in the sampling and enforcement role is the Office of the Medicaid Inspector General (OMIG). With its newly formed Dental Fraud Unit, OMIG is not tiptoeing around the fact that its work order today and for years to come is to target dental practices and attempt to recoup monies already paid to them or to

deny monies that would be paid. To that end, in conversations with our firm, OMIG has said 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 State and OMIG will peer into each practice to make sure it is operating effectively and appropriately.

You may be wondering how OMIG can do this efficiently; the answer is, 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 annually to prove that you are.

For dentists not familiar with OMIG, or the process referenced above, pursuant to New York law, certain persons eligible to receive reimbursement from New York State Medicaid are required to have a compliance plan that meets specified criteria and to certify adoption of that compliance plan with Medicaid.<sup>1</sup> Of relevance to

1. New York Codes, Rules and Regulations, Title 18, Part 521.

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Madeline Ginzburg, holding oversized teeth, and other volunteers gather for parade down Malcolm X Boulevard opening Harlem Week Children's Festival.

## Harlem Week Celebrates Oral Health

ON A SUNNY WEEKEND in August, under blue canopies erected on the schoolyard outside of P.S. 175, in the Harlem section of New York City, a volunteer cadre of NYSDA dentists, Columbia dental students and Mt. Sinai Hospital residents performed oral health exams on neighborhood children and adults. By the end of the weekend, these dental professionals had screened nearly 500 people.

The event was organized by the New York State Dental Foundation and timed to coincide with New York's annual Harlem Week Children's Festival, a two-day, family-friendly cultural celebration that also features health and educational awareness activities. Madeline Ginzburg, president elect of the Bronx County Dental Society and a member of the NYSDF Board of Trustees, worked with Rep. Charles Rangel, Democrat of New York, to secure a place at the festival for the NYSDA screeners. She further immersed herself in the event, participating—along with other dental volunteers—in a parade down Malcolm X Boulevard and 135th Street to the schoolyard for a ribbon-cutting ceremony. The families who entered the schoolyard behind them received tubes of toothpaste, toothbrushes, coloring books, floss—courtesy of Henry Schein—and, of course, free dental screenings. Patients needing follow-up treatment were referred to local dental components for contacts with nearby dentists.

Components volunteering for the Harlem Week screening included New York County, Bronx County, Second District and Suffolk County Dental societies. ☘

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## Making Compliance a Priority *continued from page 1*

dental professionals, the following individuals are required to adopt an effective compliance plan:

"Persons, providers or affiliates who provide care, services or supplies under the medical assistance program or persons who submit claims for care, services, or supplies for or on behalf of another person for which the medical assistance program is or should be reasonably expected by a provider to be a substantial portion of their business operations."<sup>2</sup> (Emphasis added.)

The term "substantial portion" of business operations is the key to understanding the broad reach of the compliance plan requirement. The statute offers the following encompassing definition for "substantial portion," which will be discussed at greater length below.

"(1) when a person, provider or affiliate claims or orders, or has claimed or has ordered, or should be reasonably expected to claim or order at least five hundred thousand dollars (\$500,000) in any consecutive twelve-month period from the medical assistance program;

"(2) when a person, provider or affiliate receives or has received, or should be reasonably expected to receive at least five hundred thousand dollars (\$500,000) in any consecutive twelve-month period directly or indirectly from the medical assistance program; or

"(3) when a person, provider or affiliate who submits or has submitted claims for care, services, or supplies to the medical assistance program on behalf of another person or persons in the aggregate of at least five hundred thousand dollars (\$500,000) in any consecutive twelve-month period."<sup>3</sup>

According to the OMIG enrollment office, the \$500,000 precipice in the substantial portion definition section applies to practitioners who receive over \$500,000 of reimbursement from straight Medicaid or any managed care Medicaid plan (Medicaid HMO). The rationale behind incorporating Medicaid HMO monies is that Medicaid funds every managed care Medicaid plan; so even though services are "administered" by the managed care company, reimbursement comes from Medicaid and, therefore, Medicaid has an interest and connection to the funds.

Another important element of the substantial portion definition that deserves highlighting is that Medicaid includes the cost of services ordered by a dentist (just ordered, not actually paid to that practitioner) in the \$500,000 calculation. The ordering element of the substantial portion definition applies to the ordering of any of the following, as well as additional services: dentures, DME, lab work, radiology and home care services.

When taking into consideration the two factors referenced above, that the \$500,000 precipice includes straight Medicaid and Medicaid HMO monies and that the amount of "ordered" services, not just monies

received by a practice are included in the tally, the conclusion that in all likelihood the majority of New York dental practices will fall within Medicaid's compliance program requirement is hard to miss. If you are one of the many practitioners who qualify as requiring a compliance plan, Medicaid has dubbed you a "required provider."

## OMIG COMPLIANCE REQUIREMENTS

The compliance plan requirement for affected providers did not come without direction. OMIG has specified the areas that required providers' compliance programs must be applicable to. These are:

1. Billings.
2. Payments.
3. Medical necessity and quality of care.
4. Governance.
5. Mandatory reporting.
6. Credentialing.
7. Other risk areas that are or should with due diligence be identified by the provider.<sup>4</sup>

In addition, a required provider's compliance program must include the following elements:

1. Written policies and procedures that describe compliance expectations; provide guidance to employees and others on dealing with potential compliance issues; identify how to communicate compliance issues to appropriate compliance personnel; and describe how potential compliance problems are investigated and resolved.
2. Designate an employee vested with responsibility for the day-to-day operation of the compliance program.
3. Provide for compliance training and education of all practice staff.
4. Dictate the proper communication lines to allow compliance issues to be reported (including anonymous and confidential good faith reporting) as they are identified.
5. Set forth disciplinary policies to encourage good faith participation in the compliance program by all affected individuals, including policies that articulate expectations for reporting compliance issues and assist in their resolution and outline sanctions for:
  - a. failing to report suspected problems;
  - b. participating in non-compliant behavior; or
  - c. encouraging, directing, facilitating or permitting either actively or passively non-compliant behavior.
6. Designate a system for routine identification of compliance risk areas specific to dentistry for self-evaluation of such risk areas, including, but not limited to, internal audits and as appropriate, external audits, credentialing of providers and persons associated with providers, mandatory reporting, governance and quality-of-care of medical assistance program beneficiaries.
7. Detail a system for responding to compliance issues as they are raised, such as: responding to compliance problems as identified in the course of self-evaluations and audits; correcting such problems promptly and thoroughly and implementing procedures, policies and systems as necessary to reduce the potential for recurrence; identifying and reporting compliance issues to the department or the Office of Medicaid Inspector General; and refunding overpayments.
8. Provide a policy of non-intimidation and non-retaliation for good faith participation in the compliance program, including, but not limited to,

2. 18 NYCRR § 521.1.

3. 18 NYCRR § 521.2.

4. 18 NYCRR § 521.3.

reporting potential issues, investigating issues, self-evaluations, audits and remedial actions, and reporting to appropriate officials as required by law.<sup>5</sup>

While the elements listed may seem overwhelming, in all likelihood, your practice has some form of procedures, no matter how basic, established for each of the above. The difficulty that arises now is taking the steps to adopt a written compliance program that explicitly covers all of the listed elements. This is not as laborious a process as you may think, so long as you are working with the right healthcare attorney. In creating your compliance program, the appropriate balance must be met between incorporating the needs and intricacies of your practice and the requirements established by OMIG.

### OMIG KNOWS

One of the first questions I receive from clients with regard to compliance is, who is going to know if I don't bother to comply? The answer is, OMIG will know, because OMIG is checking. In fact, OMIG does not have to look further than its own database, because 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.<sup>6</sup> To simplify the process, OMIG has made certification available on its website ([www.omig.ny.gov](http://www.omig.ny.gov)).

Should the commissioner of health or the Medicaid inspector general find that a required provider does not have a satisfactory compliance program,<sup>7</sup> 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."<sup>8</sup> Unfortunately, if you are a required provider, it is not anticipated that should it be discovered that your practice does not have a compliance program, your troubles with OMIG would stop. OMIG has intimated that it will be using the compliance program requirement as a window into practices. Failing to certify that you have a compliance program would be equivalent to allowing your window to have cracks and dirt accumulation, indicating a messy interior with the potential for additional noncompliance.

Should your practice appear on OMIG's radar as a potentially non-compliant 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—creates dire ramifications for many practices, requiring legal representation, diminished reimbursement and the potential to have to pay back monies received or anticipated by the practice.

Be advised that should you outsource your billing to a billing company, OMIG has implemented compliance requirements and registration requirements for them as well. Should your billing company fail to comply, our office has received information from OMIG that the billing company may be investigated and be required to identify clients—which may result in you also being looked at by OMIG. If you do work with a billing company, be sure to request proof of compliance with OMIG's requirements.

### BENEFITS OF COMPLIANCE

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.

A few ways you are protecting your practice through compliance are:

1. Identifying Red Flags. Designating in your policy potential red flags that your practice will make an effort to identify during your billing process, not after.
2. Designating Lines of Communication. Your compliance program will also set forth appropriate lines of communication to report compliance issues. Often, employees will cover up mistakes, rational-

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5. Id.  
6. 18 NYCRR § 521.3.  
7. 18 NYCRR § 521.4.  
8. Id.

# Ed Department Waives Fees for Dentists Needing to Replace Storm-Damaged Documents

THE NEW YORK STATE EDUCATION DEPARTMENT has been directed by Gov. Andrew Cuomo to temporarily suspend fees it ordinarily charges to replace license and/or registration documents lost as a result of recent flooding and damage in designated disaster-area counties. Until further notice, the fees charged by the Education Department's Division of Professional Licensing Services for issuing duplicate license parchments and registration certificates are suspended for the replacement of documents lost as a result of the disaster.

All requests for copies of any document or record on file with the DPLS should indicate the document to be replaced was

the result of Hurricane Irene and subsequent storms. To replace a lost or destroyed license parchment, write or call: Office of the Professions, Division of Professional Licensing, Records & Archives Unit, State Education Building, 2nd Floor, 89 Washington Ave., Albany, NY 12234-1000; (518) 474-3817, ext. 380.

To replace a damaged, lost or destroyed registration certificate, contact the Registration Unit by e-mailing them at [opreg-fee@mail.nysed.gov](mailto:opreg-fee@mail.nysed.gov) or calling (518) 474-3817, ext. 410, or writing them at the address above. ☞

## Making Compliance a Priority *continued from page 3*

izing that they may be in more trouble for identifying them than not.

3. Detailing Repercussions for Perpetuating Noncompliance. Your compliance plan should explicitly state that covering up noncompliance may result in potential termination from employment. Further, an effective compliance program should establish a chain of command for responding to and dealing with noncompliance.
4. Requiring Training. Your compliance plan will be a place to keep track of required training and education for those conducting billing services at the practice, as well as to track changes in billing and coding requirements for each third-party payor.
5. Holding Your Staff Accountable for Documentation Requirements. Your compliance program should clearly indicate that any practitioner of your practice will be held accountable for failing to take appropriate X-rays during patient care and that any practitioner who fails to abide by applicable requirements will be responsible for the repercussions.

It's worth noting that 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.

### CONCLUSION

A compliance plan is a preventative measure you implement to keep your practice in top shape to avert potential problems in the future by mitigating billing errors and protecting the integrity of the practice's documentation and operations. In that regard, it's not unlike the advice dentists give to their patients daily: preventative medicine pays. ☞

*Ms. Kirschenbaum 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 Services Panel. Should you require assistance acquiring and implementing a Medicaid compliant program, she can be reached at [Jennifer@Kirschenbaumesq.com](mailto:Jennifer@Kirschenbaumesq.com) or (516) 747-6700. Or visit the firm online at [www.nyhealthcareattorneys.com](http://www.nyhealthcareattorneys.com) to view compliance plan options.*