

This *Guide* is a comparison of:

- [Compliance Program Elements—New York State, Social Services Law §363-D](#)
- [Office of Inspector General \(OIG\) Compliance Program Effectiveness Guide](#) (March 2017)
- [Office of Medicaid Inspector General \(OMIG\) Compliance Self-Assessment Checklist](#) (February 2015)
- [Department of Justice \(DOJ\) Evaluation of Corporate Compliance Programs](#) (February 2017)

Standards, Policies, and Procedures

New York Element 1: There must be written policies and procedures, including a code of conduct, that describe compliance expectations and the operation of the corporate compliance program.

OIG Document:

- Are policies periodically created, reviewed, and updated for relevance, accuracy, and evolving standards of practice?
- Are policies written appropriately for target audience(s) including the governing body, executives, employees, medical staff and external entities?
- Are policies communicated to and understood by the target audience?
- Are policies organized and accessible to all affected internal and external individuals?
- Are identified individuals/positions responsible for specified policies?
- Is there a compliance program manual? Is an annual compliance plan prepared and approved by the governing body?
- Is there a system for periodic review and revision, if warranted, of the code of conduct, conflict of interest, and other high-level policies by management and the governing body?

OMIG Document:

- Are there written policies describing compliance program expectations embodied in a code of conduct or ethics?
- Are there policies and procedures implementing the operation of the compliance program?
- Are there policies and procedures providing guidance to employees and others on dealing with potential compliance issues?

DOJ Document:

- What is the company's process for designing and implementing new policies and procedures? Who is involved? Are units/divisions consulted?
- Is there a policy that prohibits misconduct and does the company assess if it has been effectively implemented? Are supervisors held accountable for oversight?
- Who is responsible for integrating policies and procedures? Who do they consult? How is integration rolled out?

Program Administration

New York Element 2: Designate an employee vested with responsibility for day-to-day operation of the program; this individual must report to the CEO or other senior position and periodically report to the governing body.

OIG Document:

- What is the organizational perception of the compliance officer's role and the purpose of the compliance program?
- Is there documented board-level involvement in the compliance program?
- Does the compliance committee have a charter or document describing its responsibilities? Do committee members actively participate? Is there a method to evaluate the effectiveness of the committee? Are committee activities reported to executive leadership by the compliance officer?
- Is there a budget providing sufficient resources dedicated to the compliance program?
- How is the annual compliance plan developed, and is the plan adhered to?
- Is the compliance officer independent of legal and financial officers? Is the compliance officer involved in organization-wide initiatives and strategies?
- Does the compliance officer have independent authority to convene workgroups to address new challenges?

OMIG Document:

- Is a designated employee responsible for day-to-day operation of the compliance program?
- Are the designated employee's responsibilities solely designated to compliance?
- Does the designated employee report directly to the chief executive or other senior administrator?
- Does the designated employee periodically report compliance activities to the governing body?

DOJ Document:

- Is compliance expertise available on the board? Are private sessions on compliance held? What types of information do the board and senior management examine in their oversight?
- How does the compliance function compare with other strategic functions in compensation, rank, reporting line, recourses and access to decision makers? Is there much turnover? What role does compliance play in strategic/operational decisions?
- Do compliance personnel have the appropriate experience and qualifications?
- Do compliance personnel have a direct reporting line to the board? How often do they meet with the board? Is senior management present? Do compliance staff have reporting lines to headquarters?
- Who reviews the performance of the compliance program and what is the process? Who determines compensation/hiring/firing of compliance officers?
- How are decisions made about the allocation of personnel and resources for compliance programs? Have there been requests for more resources and how have decisions regarding those requests been made?
- Does the company outsource compliance functions? What is the rationale? How is the process managed? How is effectiveness assessed?

Communication, Education, and Training

New York Element 3: All affected employees and persons associated with the provider receive training on compliance expectations and compliance program operation as part of orientation and periodically thereafter.

New York Element 4: There are communication lines to the compliance officer that are accessible to all persons associated with the provider, including a method for anonymous and confidential good faith reporting.

OIG Document:

- Is mandatory compliance training provided in accordance with an established schedule and is failure to receive training disciplined?
- Is training appropriate to targeted job families (e.g., generic, issue-specific, high-risk, and to position governing body, senior executives, middle management)?
- Is compliance education included in other organization-wide educational communications?
- Is there a system for updating training?
- Is training effectiveness evaluated by use of post-training testing?
- Are managers accountable for subordinates' training?
- Does the governing body periodically receive board-appropriate training?
- Are compliance training and information communications appropriate to the intended audience?
- Is the "culture of compliance" message communicated by executives and managers? Is it included in performance evaluations?
- Is compliance education provided to vendors and volunteers? How is it communicated?

OMIG Document:

- Is periodic training provided to employees, executives, the governing body, and persons associated with the provider?
- Does orientation for employees, executives, governing body members, and persons associated with the provider include compliance training?
- Are there policies and procedures identifying how and to whom compliance issues are communicated?
- Are there communication lines to the designated compliance individual accessible to employees, executives, governing body members, and persons associated with the provider?
- Is there a method for employees, executives, governing body members, and persons associated with the provider to report compliance issues anonymously and confidentially?

DOJ Document:

- What specific actions do senior leaders take to demonstrate their commitment to compliance and remediation efforts? How is this information shared?
- Is there clear guidance for gatekeepers (e.g., those who issue payments) regarding misconduct and is there a process for them to raise concerns?
- How does the company communicate policies relative to misconduct and how is the usefulness of these policies evaluated?
- What training do employees receive? Do high-risk employees receive tailored training? How is it determined who should be trained on what?
- Is training appropriate (in form and language) for the intended audience and is effectiveness measured?
- What resources are made available to employees relating to compliance policies and does the company assess if employees know how to seek advice and if they are willing to do so?
- How does senior management convey the company's position on misconduct as it occurs and how do they communicate when an employee is terminated for failure to comply with policies?

Discipline

New York Element 5: A disciplinary process, encouraging good faith participation, is in place and includes policies for reporting and resolving compliance issues and sanctions for failure to report, engaging in non-compliant activities, and encouraging or condoning non-compliance; disciplinary policies must be fairly and firmly enforced.

OIG Document:

- Is discipline fairly and consistently applied?
- Does the compliance officer participate in the disciplinary process?
- Are disciplinary policies included in compliance education?
- Are human resources files audited to determine if compliance-related matters are sufficiently documented?
- Are lessons learned conveyed and used as educational resources?
- Is good faith participation in compliance, e.g., reporting, included in performance evaluations?
- Do evaluations of executives and senior managers include subordinates' compliance-related performance?

OMIG Document:

- Do disciplinary policies encourage good faith participation in compliance activities by employees, executives, governing body members, and persons associated with the provider?
- Are there policies articulating compliance expectations of the above groups of individuals regarding good faith reporting, sanctions for failure to report, and assisting with compliance issue resolution?
- Are there sanctions for engaging in, encouraging, directing, facilitating, or permitting non-compliant behavior?
- Are disciplinary policies enforced fairly and firmly?

DOJ Document

- How have senior leaders discouraged misconduct? What actions have they taken in remediation efforts? How does the company monitor senior leadership behavior and do they model proper behavior?
- In the event of misconduct, was compliance involved in training and decisions relevant to the misconduct? Did compliance raise concerns prior to misconduct?
- What disciplinary action has the company taken in response to misconduct and when? Were managers held accountable for subordinates? Did the company consider disciplinary actions for supervisors? What is the company's record of employee discipline? Has the company ever terminated or disciplined anyone for misconduct?
- Who participates in making disciplinary decisions?
- Are disciplinary actions fairly and consistently applied?
- How does the company incentivize ethical behavior? Has the company considered the potential negative implications of its incentives? Are there specific examples of actions taken as a result of compliance considerations?

Monitoring, Auditing, and Internal Controls

New York Element 6: A system for routine identification and self-evaluation of compliance risk areas by internal and, if necessary, external audits and for evaluating potentially non-compliant situations is in place.

OIG Document:

- Are compliance reporting systems evaluated for accessibility, ease of use, and effectiveness? Are there multiple methods for reporting?
- Are reporting systems publicized and promoted internally and externally?
- Is there an enterprise-wide risk assessment document?
- Who participates in the risk assessment process? How are risks prioritized? Is there a companion educational component?
- Is an annual audit plan and schedule developed and followed?
- Are risk assessments the basis for the annual audit plan?
- How independent are individuals conducting audits?
- Is there a process for determining if an “ad hoc” audit is warranted?
- Are audits, results, and follow-up inventoried and accessible?
- Are random audits conducted?
- How is legal counsel’s role determined? What is the process for determining the necessity for an external audit?
- Is individual accountability for a corrective response assigned? Is there a process to determine the priority of multiple corrective actions?
- Are audit results and corrective actions reported to the governing body?

OMIG Document:

- Is there a system for routine identification of compliance risk areas?
- Is there a system to evaluate risks by use of internal and, where warranted, external audits?
- Is there a system to evaluate if identified risks reveal potential or actual non-compliance?

DOJ Document:

- How does the company identify, analyze, and address risk?
- Do those with approval authority know what to look for and when and how to escalate concerns?
- What information or metrics are collected to detect misconduct and how does it inform compliance activities?
- How does the company’s risk assessment process account for manifested risk?
- In the event of misconduct, what types of audits would have identified issues relevant to misconduct? Did they occur? What were the findings? How were findings and remediation reported to the management and board? Have the management and board followed up?
- How often is an internal audit conducted in high-risk areas?
- Does the company review and audit its compliance program, including testing of relevant controls, collection and analysis of compliance data, and interviews of employees? How are the results reported and action items tracked? What control testing has the company generally undertaken?

DOJ Document:

Mergers and Acquisitions (M&A)

- Is the risk of misconduct evaluated during due diligence? Who conducts the review? How is it done? What is the M&A due diligence process generally?
 - Has compliance been integrated into the M&A process?
 - Does the company have a process for tracking and remediating misconduct or misconduct risks identified in due diligence and for implementing compliance policies and procedures at new entities?
- How often does the company update risk assessments and review compliance policies, procedures, and practices? What steps has the company taken to determine whether policies and procedures make sense for business segments?

Employee, Physician, and Vendor Screening

There is no New York State compliance program element dedicated only to screening; the function is incorporated into Element 6.

OIG Document:

- Is the conflict of interest disclosure process more than a perfunctory exercise?
- Is self-reporting program exclusion a condition of employment; an essential term in vendor contracts?
- Are all required exclusion checks conducted, verified, and action taken when warranted?
- Are background screening and related checks done for prospective employees, medical staff, and vendors according to a schedule of position categories?
- Is there a process to determine if additional screening is necessary due to compliance investigation findings?
- How are vendors screened? Do contracts include compliance and exclusion provisions protecting the provider?

OMIG Document: NONE

DOJ Document:

- What is the process for vendor selection and do vendors go through that process?
- How does the company's third-party management process correspond to the nature and level of the enterprise risk identified by the company? How is the process integrated into the relevant procurement and vendor management process?
- Is there a business rationale for the use of the third parties with which the company is engaged? What mechanisms exist to ensure contract terms describe services and payment terms appropriately? Is the described work performed and is the compensation commensurate with services?
- How does the company consider and analyze third-party incentive models against compliance risks? How does the company monitor third parties; train relationship managers about compliance risks and how to manage them; incentivize compliance and ethical behavior by third parties?
- Were red flags identified during due diligence of third parties and how were they resolved?
- Has a similar third party been treated differently as a result of compliance issues?
- How has the company monitored these actions (e.g., to ensure the vendor is not used again)?

Investigations and Remedial Action

New York Element 7: A system is in place to respond to compliance issues including investigations, corrections, systems modifications to reduce recurrence, reporting issues to oversight and enforcement agencies, and refunding overpayments.

OIG Document:

- Are there mechanisms to assure that investigations are fair, objective, and discrete?
- Are dedicated resources available to equip investigators with necessary skill sets and assure investigator independence?
- Are there investigatory protocols, and are they followed?
- Are there policies for communicating with reporters, individuals being interviewed, and the broader workforce at the investigation, correction, and post-correction stages?
- Are there policies and procedures regarding record preservation and investigator access to records?
- Are there systems to determine investigatory consistency across an organization and over time?
- Are there policies to determine legal counsel participation?
- Are there policies to determine when to report an investigation to the governing body?
- Is there a process for determining appropriate corrective plans based on a root cause analysis of the matter under investigation?
- Is there a process for determining responsibility for implementing a corrective plan?
- Are there policies and procedures to assure timely overpayment refunds and self-disclosures, if warranted?
- Are there systems for ongoing evaluation of corrective plan effectiveness?
- Is post-correction education provided to affected individuals, executives and, if warranted, the governing body?

OMIG Document:

- Are there policies and procedures regarding compliance issue investigation and resolution?
- Are there systems for responding to compliance issues: i) as they arise; and ii) as identified in audits?
- Is there a system for prompt and thorough correction of issues?
- Is there a system for implementing measures to reduce the risk of recurrence?
- Is there a system for reporting issues to OMIG or the New York State Department of Health?
- Is there a system for refunding overpayments?

DOJ Document:

In the event of misconduct:

- Were there opportunities to detect misconduct? What is the company's analysis of why such opportunities were missed? What controls failed or were absent?
- How was misconduct funded and how could it have been prevented? Have processes been improved?
- Did the company respond to compliance concerns?
- What is the company's root cause analysis of the misconduct? What systemic issues were identified? Who was involved in the analysis?
- What changes have been made to prevent a similar issue from occurring? What remediation has addressed the issues identified in the root cause and missed opportunity analysis?
- Has an investigation been used to identify root causes, system vulnerabilities, and accountability lapses, including among supervisory manager and senior executives? What has been the process for responding to findings? How high up do findings go?
- How has the company ensured that the investigations have been properly scoped, independent, objective, appropriately conducted, and properly documented?
- How has the company collected, analyzed, and used information from its reporting mechanisms and assessed the seriousness of the allegations it received? Has compliance had full access findings?

Non-Intimidation and Non-Retaliation Policy

New York Element 8: A non-intimidation and non-retaliation policy for good faith participation in the compliance program is in place and includes reporting potential issues, participating in investigations, self-evaluations, audits, and remedial actions and reporting to oversight and enforcement agencies.

OIG Document: NONE

DOJ Document: NONE

OMIG Document:

- Is there a non-intimidation and non-retaliation policy for good faith participation in compliance activities including but not limited to reporting, investigating, conducting audits and other self-evaluations, implementing remedial measures, and reporting to government officials as required by NY Labor Law §§ 740 and 741?