

Compliance & Quality Connections 2024

The 16th Annual Conference for Providers Serving People with Disabilities

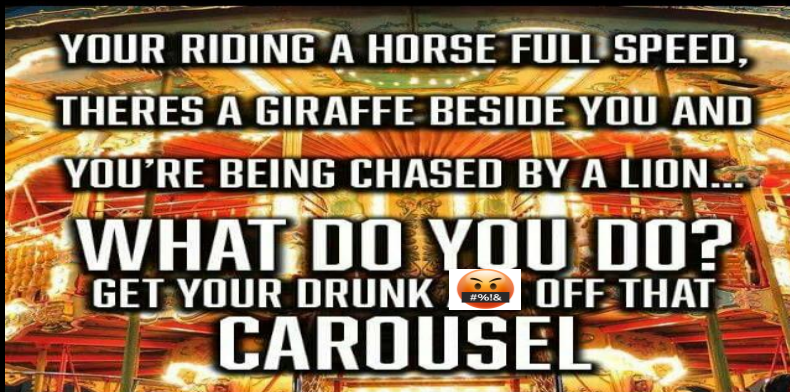
May 7 – The Saratoga Hilton

A Year of Change: On the Compliance Carousel



1

A Year of Change: On the Compliance Carousel



2

Disclaimer

The material provided in this presentation is for informational purposes and is not a legal analysis of the topics covered and represents the opinions of the panelists only.

The information contained on this presentation and any access to the written or verbal statements do not create or constitute the formation of an attorney-client relationship. The panelists are not providing legal advice or legal counsel.



3

Today's Panel



Robert Hussar
Rivkin Radler, LLP
Partner
Robert.Hussar@rivkin.com



Paul Mayer
The Bonadio Group
Executive Vice President
pmayer@bonadio.com



Melissa Zambri
Barclay Damon, LLP
Partner
mzambri@barclaydamon.com



4

Audience Poll TEST

What is the best flavor of ice cream?



5

What is the best flavor of ice cream? 0



Nobody has responded yet.
Hang tight! Responses are coming in.

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

6

Part 521 & Provider Compliance Program Regulations

New York State Register

Wednesday, December 28, 2022

7

A Year of Learning: Panelist Perspective

What is one thing you would like to share about your experience with compliance program requirements since the changes in Dec 2022?



8

2024 Survey & Call for Questions

- April 2024 Survey to members of the Arc New York and CP of NY State
- Questions exploring the experience of staff involved in compliance since Dec 22 reg changes
- 35 Responses
- 68% of respondents had at least 5 years experience with compliance program work at their agency
- Call for panel questions from same group
- Information to inform today’s discussion



9

2024 Survey

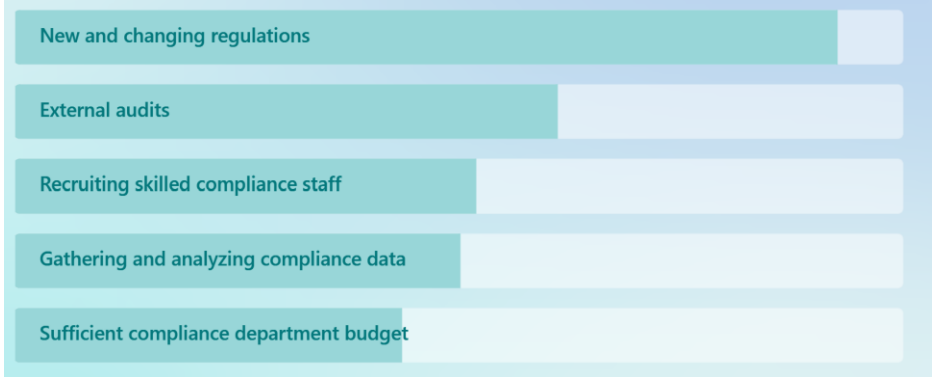
Rank the following Compliance Program Elements in order of which you feel you need more information on since the new regulations took effect on 12/28/22. (1 being the element you need the most information and 7 the least information)



10

2024 Survey

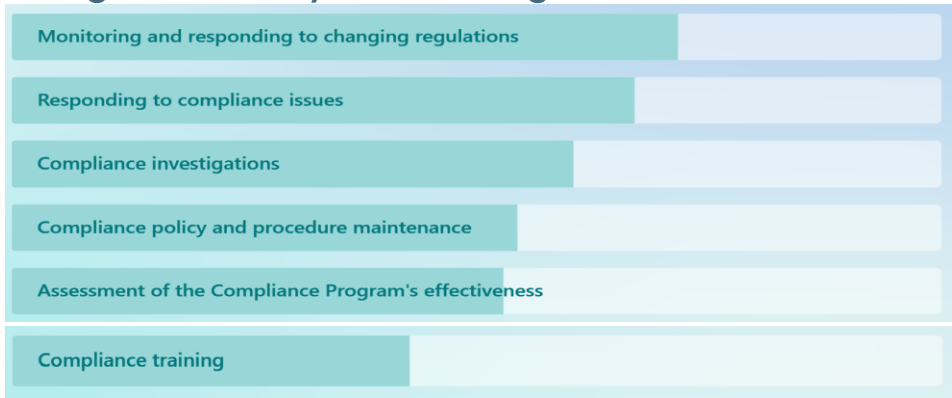
Rank the following in order of the greatest challenge to compliance efforts at your agency. (1 being the greatest challenge)



11

2024 Survey

Rank the following in order of compliance activities that consume the most compliance resources at your agency. (1 being the activity consuming the most resources)



12

Audits



13

AUDIENCE POLL

What words come to mind when you think of audits?



14

What words comes to mind when you think of audits? 👍 0

Nobody has responded yet.
Hang tight! Responses are coming in.

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

15

A Year of Learning: Panelist Perspective

What has been your experience with audits since the regulation changes in 2022?



16

Questions for Panel: Internal Audit Type and Scope

We are investigating an employee who documented daily service delivery for a date of service when they were not clocked in working. We went back 6 months and reviewed every date of service billed by this employee and found no other instances of them documenting service delivery when they were not clocked in working. Did we look at more claims than was necessary?

What is your advice on how to determine the type and scope of audit to conduct as part of an investigation into alleged non-compliance with service and/or billing standards?



17

Questions for Panel: Draft Audit Reports (DARs)

We just received our Draft Audit Report (DAR) from the OMIG with several findings resulting in an adjusted lower confidence limit in excess of a million dollars.

What has been your experience with a provider receiving a DAR with this type of initial result?



18

Questions for Panel: Final Audit Reports (FARs)

After responding to the Draft Audit Report (DAR) the OMIG issued us a Final Audit Report (FAR) with findings resulting in adjusted lower confidence limit still in excess of a million dollars.

What has been your experience with a provider receiving a FAR with this type of result?



19

Questions for Panel: Extrapolation

We struggle with understanding why audit findings are extrapolated.

What has been your experience with extrapolation in audits?

What advice can you share to providers who have audit findings that are extrapolated?



20

Questions for Panel: External Audits

N.Y. Comp. Codes R. & Regs. tit. 18, § 521-1.4

Auditing. Required providers shall perform routine audits by internal or external auditors who have expertise in state and federal MA program requirements and applicable laws, rules and regulations, or have expertise in the subject area of the audit. Audits or investigations conducted by state or federal governmental entities are not considered external audits for purposes of this paragraph.

In your experience, how do audits conducted by internal auditors vs. those conducted by external auditors compare when trying to meet the above standard?



21

Questions for Panel: Contemporaneous

The are many service guidance documents that do not contain an explicit timeframe for contemporaneous service documentation.

How have you approached situations where the definition of contemporaneous is unclear?



22

Governance & Compliance



23

2024 Survey

In what ways could the level of support you receive from the C_SUITE & SENIOR MANAGEMENT (CEO, COO, CFO, etc.) towards Compliance Program operation at your agency be improved?

Some themes within responses:

- Increased understanding of compliance program duties and responsibilities by c-suite and senior management, particularly under the new regulations.

- C-suite and senior management could improve agency wide understanding that the compliance program detects and supports correction on non-compliance prior to the agency facing increased exposure. (emphasize the positive of the compliance program as opposed to the negative results)



24

Governance & Compliance: Panelist Perspective

How do you view the role of the C-Suite leadership in compliance programs since the new compliance regulations were issued in Dec 2022?



25

2024 Survey

In what ways could the level of support you receive from the BOARD towards Compliance Program operation at your agency be improved?

Some themes within responses:

- Better balance between Board attention to corporate compliance activities vs. quality assurance activities.
- Increase the number of Board members with prior experience & knowledge with corporate compliance.



26

Governance & Compliance: Panelist Perspective

How do you view the role of the Board of Directors in compliance programs since the new compliance regulations were issued in Dec 2022?



27

Questions for Panel: Board & Compliance Policies

With the new regulations we have had to create and revise many compliance policies and procedures. We are unsure of the Board's role in this area.

What role should a provider's Board have in compliance policies and procedures?

Should they be the **authority to approve** all compliance policy and procedures?



28

Navigating the OMIG Self-Disclosure Program

Self-Disclosure

SELF-DISCLOSURE OF MEDICAID OVERPAYMENTS

The New York State Office of Medicaid Inspector General (OMIG) developed the Self-Disclosure Program in consultation with health care providers and industry professionals to give providers an easy-to-use method for disclosing overpayments. OMIG designed this approach to encourage providers to investigate and report matters that involve possible fraud, waste, abuse or inappropriate payment of funds that they identify through self-review, compliance programs, or internal controls that affect the state's Medicaid program.

Providers must also submit self-disclosures and reports of damaged, lost or destroyed records to OMIG's Self-Disclosure Unit.

Please see the following links for additional information:

- [Regulatory Authority](#) (updated December 2022)
- [Guidance](#) (updated January 2024)
- [Frequently Asked Questions \(FAQs\)](#) (updated January 2024)
- [Full Self-Disclosure Process](#) (updated January 2023)
- [Abbreviated Self-Disclosure Process](#) (updated August 2023)
- [Lost or Destroyed Records Reporting](#) (updated January 2023)
- [Presentations](#) (updated January 2024)
- [Self-Disclosure Contact Information](#) (updated January 2023)



AUDIENCE POLL

The addition of the OMIG's ABBREVIATED Self-Disclosure option has been helpful to me?



The addition of the OMIG's ABBREVIATED Self-Disclosure option has been helpful to me?

Nobody has responded yet.
Hang tight! Responses are coming in.

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

31

OMIG Self-Disclosure Program: Panelist Perspective

What has been your experience with the OMIG's Self-Disclosure Program since the regulation changes in 2022?



32

Questions for Panel: 60-Day Report & Return

Our compliance department received a report of alleged noncompliance that may require payback to the Medicaid program. We are investigating the situation; but the process may take us beyond 60 days from the date of when we first learned about the issue. **What has been your experience with navigating the 60-day report and return requirements?**



33

Tips for Ensuring Contractor Compliance



34

Contractor Compliance: Panelist Perspective

What has been your experience with contractor compliance requirements since the regulation changes in 2022?



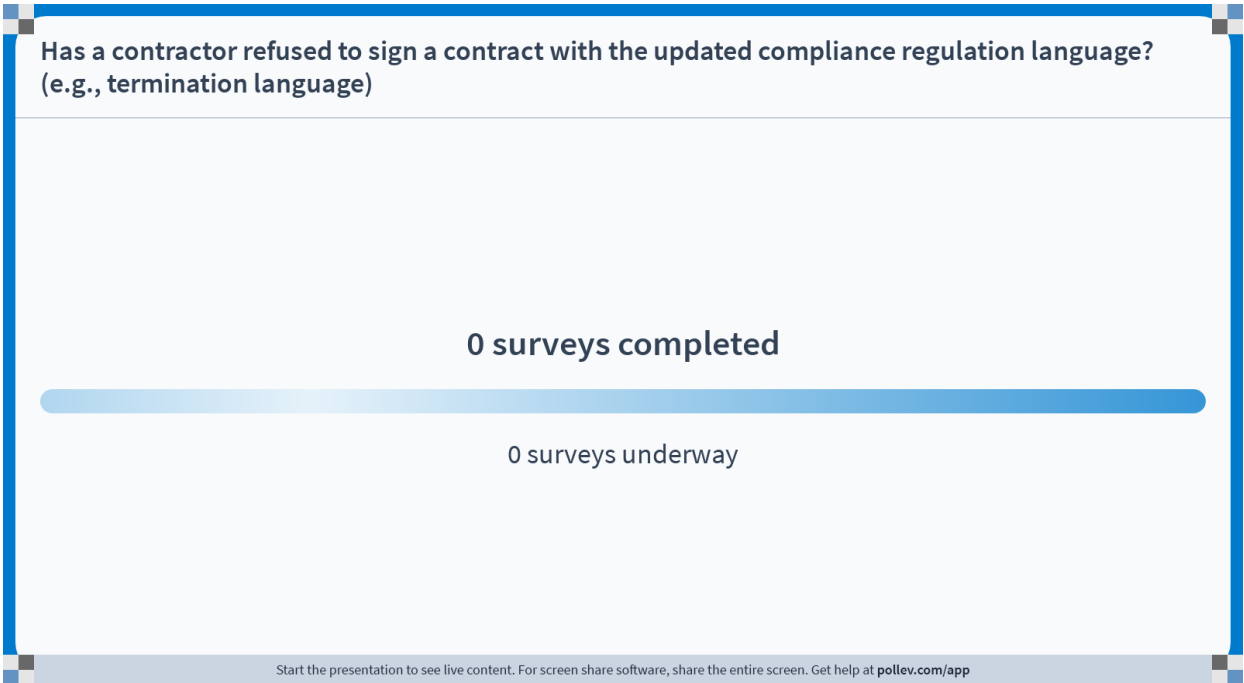
35

Contractor Compliance: Contract Language

521-1.3. Required provider duties

- (2) The required provider shall ensure that contracts with contractors specify that the contractors are subject to the required provider's compliance program, to the extent that such contractors are affected by the required provider's risk areas and only within the scope of the contracted authority and affected risk areas.
- (3) The required provider shall ensure that such contracts include termination provisions for failure to adhere to the required provider's compliance program requirements.

36



37



38

Questions for Panel: Contract Termination Language

As we update contracts to include a section regarding termination of contract for failure to follow our compliance standards, we are finding that some contractors are hesitant to have the language added.

What has been your experience approaching a resistant contractor?



39

Questions for Panel: Updating Contracts

For contracts that automatically renew we are assuming that we would need to addend or update the contracts at the time of renewal to include the language specific to the termination clause for failure to comply with our compliance program. **What are your thoughts on this?**

Typically, when contracts come up for renewal, they are signed "as is" or there is simply an addendum created for everyone to sign (vs. a completely new contract). We are assuming that an addendum would work in this instance. **What are your thoughts on this?**



40

Questions for Panel: Affected Individuals and EHR Vendors

The definition of “Affected Individuals” is defined as all persons who are affected by the provider’s risk areas. We are very unsure of how to approach our Electronic Health Record vendors and this definition.

What is your perspective on Electronic Health Record vendors as an “affected individual” subject to the provider’s compliance program?

Assuming they are an “affected individual” what is your advice on helping them comply with the requirements of the compliance program? (e.g., education and training, reporting, etc.)



41

Questions for Panel: Contractor Exclusion Checks

It appears as though the OMIG expects contractors to carry out exclusion checks? Any tips on getting compliance from contractors and how we should interpret the regs below?

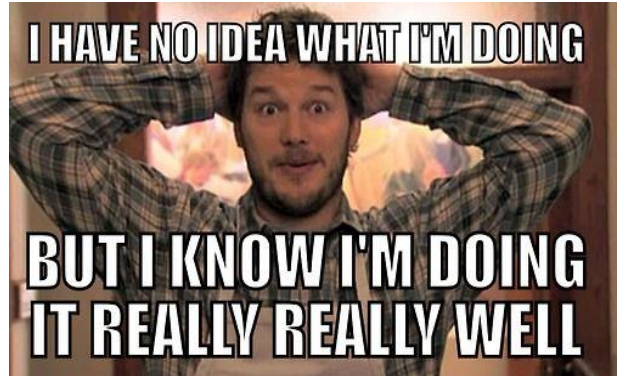
3) Excluded providers. In accordance with the requirements of section 515.5 of this Title, required providers shall confirm the identity and determine the exclusion status of affected individuals. In addition, MMCOs shall confirm the identity and determine the exclusion status of any other persons identified in its contract with the department to participate as an MMCO, including its participating providers and its subcontractors.

- (i) In determining the exclusion status of a person required providers shall review the following State and Federal databases at least every thirty (30) days:
 - (a) New York State Office of the Medicaid Inspector General Exclusion List;
 - (b) Health and Human Services Office of Inspector General’s List of Excluded Individuals and Entities; and
 - (c) for MMCOs only, any other list or database required by the contract between the MMCO and the department to participate as an MMCO.
- (ii) Required providers shall require contractors to comply with the provisions of this paragraph. In addition, MMCOs shall require their participating providers and subcontractors to comply, where applicable, with the provisions of this paragraph.



42

Compliance Program Assessments



43

New Language Requiring an Effective Compliance Program

Section 521-1.3. Required provider duties

- (a) **General.** Required providers shall, **as a condition of receiving payment under the MA program**, adopt, implement, and maintain an effective compliance program which satisfies the requirements of this SubPart. The required provider's compliance program may be a component of more comprehensive compliance activities by the required provider so long as the requirements of this SubPart are met. Required providers must implement and maintain a compliance program, adopted pursuant to this SubPart, for the entire period that the person meets the definition of being a required provider.

Penalties:

- **1st offense is \$5,000 per calendar month for a maximum of 12 months**
- **2nd offense (within 5 years of first) is \$10,000 per month for a maximum of 12 months.**



44

New Language Requiring Annual Compliance Program Review

(2) Annual compliance program review. The required provider shall develop and undertake a process for reviewing, at least annually, whether the requirements of this SubPart have been met. The purpose of such reviews shall be to determine the effectiveness of its compliance program, and whether any revision or corrective action is required.

(i) The reviews may be carried out by the compliance officer, compliance committee, external auditors, or other staff designated by the required provider, provided however, that such other staff have the necessary knowledge and expertise to evaluate the effectiveness of the components of the compliance program they are reviewing and are independent from the functions being reviewed.

(ii) The reviews should include on-site visits, interviews with affected individuals, review of records, surveys, or any other comparable method the required provider deems appropriate, provided that such method does not compromise the independence or integrity of the review.

(iii) The required provider shall document the design, implementation and results of its effectiveness review, and any corrective action implemented.

(iv) The results of annual compliance program reviews shall be shared with the chief executive, senior management, compliance committee and the governing body.



2024 Survey

How well positioned do you think your agency Compliance Program is for an OMIG conducted Compliance Program Review (CPR)?

● Extremely well	2
● Somewhat well	23
● Neutral	7
● Somewhat not well	1
● Extremely not well	0



Compliance Program Assessment: Panelist Perspective

What has been your experience with compliance program assessments (internal and OMIG conducted) since the regulation changes in 2022?



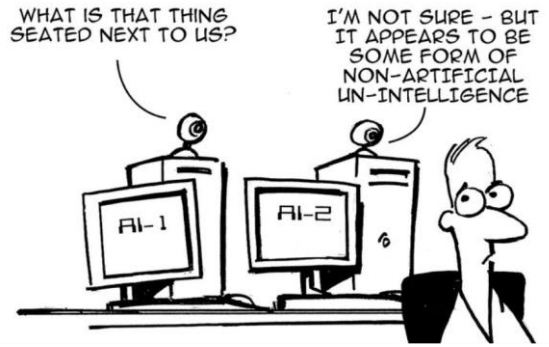
47

Compliance Program Assessment: Early OMIG Results



48

Artificial Intelligence, Automation & Compliance



49

Where is your agency using (or considering using) artificial intelligence and automation? 👍 0

Nobody has responded yet.
Hang tight! Responses are coming in.

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

50

Artificial Intelligence, Automation & Compliance: Panelist Perspective

What is your perspective on the movement towards AI, automation, and compliance?



51

Questions for Panel: Cloning

Our employees are becoming more reliant on electronic record creation. We have discovered some instances where the entry into the record is worded exactly alike or very similar to previous entries or the entries appear copied, and information is inaccurate.

What has been your experience with the growing risk of "cloning" of record documentation?



52

Audience Q&A Time



53

Thank You!



Robert Hussar
Rivkin Radler, LLP
Partner
Robert.Hussar@rivkin.com



Paul Mayer
The Bonadio Group
Executive Vice President
pmayer@bonadio.com



Melissa Zambri
Barclay Damon, LLP
Partner
mzambri@barclaydamon.com



54