



150 State Street, Suite 301 Albany, New York 12207-1698 Telephone (518) 449-2707 Fax (518) 455-8908 Web [www.nyahsa.org](http://www.nyahsa.org)

## MEMORANDUM

**TO:** RHCF and Community Services Providers

**FROM:** Patrick Cucinelli, Senior Financial Policy Analyst

**DATE:** December 16, 2009

**SUBJECT:** **Important Reminders and Advocacy on Fraud and Abuse**

**ROUTE TO:** Administrator, CFO

---

ABSTRACT: NYAHS reminds members regarding critical OMIG certification deadlines.

### Deadline Reminder

NYAHS has issued several notices over the past few months regarding the following Office of Medicaid Inspector General (OMIG) corporate compliance certification deadlines:

1. **December 31, 2009** [\*Part 521 Mandatory Provider Compliance Certification\*](#)
2. **January 1, 2010** [\*DRA False Claims Employee Education Certification\*](#)

It is absolutely critical that all Medicaid providers are in compliance with these certification requirements. It is conceivable that OMIG will red flag any provider operating certificate number that does not have the mandatory certifications on record and interpret that as the provider failing to have the necessary compliance plans in place. In turn, OMIG could sanction providers including the possibility of invalidating any claims submitted during the period in which the provider failed to have the necessary certification(s) on file.

### NYAHS Advocacy

A recent article in the New York Non-Profit Press entitled [\*The OMIG Who Stole Christmas\*](#) does an excellent job of capturing the degree of anxiety and disruption being caused among not-for-

profit Medicaid providers by the increasingly strong arm tactics being utilized by OMIG. NYAHSa is quoted in the article.

Both individually and in conjunction with other provider groups, NYAHSa is currently exploring avenues to attempt to bring some level of reasonableness to the OMIG audit process. Based upon our efforts to date, it is clear that OMIG is not going to be persuaded on their own to adopt more reasonable strategies. That leaves us with the options of pursuing the issue with the Legislature and the courts. NYAHSa has been invited to testify at a state Senate hearing in January 2010 on the subject of fraud and abuse.

Major areas of concern on NYAHSa's part are: 1) characterizing routine audit findings as fraud; 2) disallowing entire claims for services that were needed and appropriate based on alleged violations of regulations or conditions of participation; (3) the strategy of offering a provider the option to settle an audit at a certain amount under threat of imposing a much larger penalty if the provider pursues any due process; and 4) the undefined methodology of extrapolating errors from a small sample of claims in order to order invalidate a large volume of a provider's claims. The lack of due process, the abbreviated time frames in which providers must respond to audit findings, the large percentage of recoupments, and a general lack of transparency in audit methodologies all add to a situation in which providers are literally at the mercy of OMIG.

As the above referenced article makes clear this is not a long term care provider issue only, and the tactics currently being used constitute a real threat to the actual survival of many Medicaid providers. Please be sure to keep us informed of any OMIG issues you encounter as we continue to advocate in this critical area.

Please contact me with any questions or comments at [pcucinelli@nyahsa.org](mailto:pcucinelli@nyahsa.org) or call 518-449-2707 ext. 145.