

School Law Matters

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Newsletter of the Law Firm of Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C.
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Does Your District Have Its Medicaid Compliance Program in Place?

Chapter 442 of the Laws of 2006 which established the New York State Office of the Medicaid Inspector General also created a new provision of the Social Services Law requiring Medicaid providers across the state to implement effective compliance programs aimed at detecting fraud, waste and abuse in the Medicaid Program. The law applies to providers ordering, providing, billing or claiming \$500,000.00 or more for Medicaid during a twelve-month period. The \$500,000.00 threshold applies if a provider receives reimbursement directly or indirectly from Medicaid funds. As a result, School Districts that bill for School Supportive Health Services ("SSHS") and receive Medicaid reimbursement may fall within the umbrella of this statute. Moreover, even if a District typically does not bill over \$500,000.00 annually, but back billing pushes a District over that limit, a Compliance Program will need to be in place. As a result, each District must develop, adopt and implement such programs.

While each District's compliance program may vary, the law does contain minimum core requirements which are applicable to all providers. At a minimum, each District's Program must include the following eight requirements:

1. A written policy or procedure that describes compliance expectations;
2. Designation of an employee identified as a Compliance Officer, responsible for the day-to-day operation of the Compliance Program;
3. The provision of training and education to appropriate

Upcoming Training Opportunities

Our Firm's attorneys will be presenting webinar training sessions for superintendents administrators and school board members on the following dates:

November 19, 2009 - Noon - 1:30 PM

["Sexting" and Other Technology-Related Misconduct](#)

December 17, 2009 - Noon - 1:30 PM

[Alternative Revenue Sources for School Districts](#)

January 21, 2010 - Noon - 1:30 PM

[Student Discipline](#)

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- employees regarding compliance expectations;
4. The accessibility of the Compliance Officer to all employees, including a mechanism for anonymous and confidential reporting of potential compliance issues;
 5. Disciplinary policies to encourage good faith participation in the Compliance Program;
 6. A mechanism for the routine identification of compliance risk areas and an implementation of internal and external audit for evaluation of non-compliance;
 7. A mechanism for responding to compliance issues as they develop and for reporting those issues to the Department of Health or the Office of Medicaid Inspector General.
 8. A policy of non-intimidation, non-retaliation for good-faith participation in the Compliance Program.

At this time, neither the Office of the Medicaid Inspector General or the State Education Department has offered compliance guidelines or sample compliance programs. Nonetheless, Districts are expected to have plans in place. Since October 1st, the Office of Medicaid Inspector General has been authorized to impose sanctions and penalties, including, but not limited to, revocation of a provider's license to participate in a Medicaid program if a provider fails to develop, adopt and implement an effective compliance program.

We have taken steps on behalf of our clients to develop a sample Medicaid Compliance Program, which includes the minimum statutory requirements. It is recommended all School Districts who bill under the SSHS program and receive Medicaid reimbursement, develop, adopt and implement an effective Program. Each Board of Education must also adopt a resolution to approve the compliance program and appoint a Compliance Officer. The Compliance Program must be publicized throughout the District and made available to all staff. We suggest publishing the Compliance Program on the District's website and including it in employee handbooks.

Once a plan has been adopted, each District must complete, annually, an on-line certification form located at the Office of Medicaid Inspector General website (www.omig.state.ny.us/data/content/view/157/53) indicating that it has adopted, implemented and maintains an effective Compliance Program. The Office of Medicaid Inspector General strongly encourages that someone other than the Compliance Officer, for example the Superintendent, sign the certificate as an indication that the District's compliance efforts and responsibilities extend beyond the Compliance Officer. The Office of the Medicaid Inspector General will not generally request to inspect a copy of the District's compliance program unless the District becomes the subject of a compliance review or audit.

This is an area that continues to develop and we anticipate additional technical assistance and guidance to be issued from the State Education Department, the Office of Health and Human Services and the Office of the Medicaid Inspector General. We will take steps to advise our clients of the same. Should you have any additional questions on this topic, please do not hesitate to contact Colleen W. Heinrich, Esq. at 315-437-7600.

New Anti-Identity-Theft Legislation

In 2008, the Legislature enacted amendments to existing laws dealing with identity theft issues. (See, Chapter 279 of the Laws of 2008.) In

Group website at www.delacroixconsulting.com. You will also be receiving additional information on these programs in the next few weeks.

Genetic Information Nondiscrimination Act (GINA) Takes Effect This Month

The Genetic Information Nondiscrimination Act (GINA), signed into law last year, will become effective on November 21, 2009. GINA prohibits employers with 15 or more workers from using genetic information in employment decisions, intentionally acquiring genetic information about applicants and employees, and imposes strict confidentiality requirements should an employer learn about such information. The new regulations also require covered employers to post a notice to all employees about the law's requirements.

GINA was enacted, in large part, in recognition of developments in the field of genetics, the decoding of the human genome, and advances in the field of genomic medicine. Genetic tests now exist that can inform individuals whether they may be at risk for developing a specific disease or disorder (e.g., breast cancer, sickle cell anemia, etc.).

Specifically, GINA prohibits use of genetic information in making decisions related to any

particular, the legislation added a new Section 96-a to the Public Officer's Law to extend to public entities such as school districts and BOCES, the prohibitions already applicable to private businesses, including intentional communication of social security numbers.

Under this new statute, which takes effect January 1, 2010, the school districts and BOCES may not do the following, unless required by law:

- Intentionally communicate to the general public or otherwise make available to the general public in any manner an individual's social security account number.
- Print an individual's social security number on any card or tag required for the individual to access products, services or benefits provided by the district or BOCES.
- Require an individual to transmit his or her social security account number over the internet, unless the connection is secure or the social security account number is encrypted.
- Require an individual to use his or her social security account number to access an internet web site, unless a password or unique personal identification number or other authentication device is also required to access the internet website.
- Include an individual's social security account number, except the last four digits thereof, on any materials that are mailed to the individual, or in any electronic mail that is copied to third parties, unless state or federal law requires the social security account number to be on the document to be mailed. Notwithstanding this paragraph, social security account numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the social security account number. A social security account number that is permitted to be mailed under this section may not be printed in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.
- Encode or embed a social security number in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, or other technology, in place of removing the social security number as required by this section.

The law does not limit disclosure of criminal history record information currently permitted. It also does not prevent the collection, use or release of a social security number as required by federal or state law or the use of the number for internal verification, fraud investigation or administrative purposes.

If you have questions concerning the new law, please feel free to contact the firm.

Sexual Orientation Discrimination in the Classroom: An Ounce of Prevention ...

A number of area schools have recently had to address claims brought by a student which have alleged that they have been harassed due to their sexual orientation, and that the school district did not take appropriate actions to prevent, control or deter such behavior. Such claims, along with a recent case from a federal appeals court relating to a Michigan school district, highlight actions that schools should be addressing.

terms, conditions, or privileges of employment, prohibits covered entities from intentionally acquiring genetic information, requires confidentiality with respect to genetic information (with limited exceptions), and prohibits retaliation.

The Equal Employment Opportunity Commission (EEOC) recently published its regulations for enforcing GINA. The regulations note that covered employers are required to post notices in conspicuous places describing GINA's applicable provisions. The new poster may be downloaded from the EEOC's website by [clicking here](#). For additional information regarding GINA, access the EEOC's [questions and answers](#) on this topic or contact us at 315-437-7600.

Expansion of FMLA Military Leave

Recently, President Obama signed into law the Fiscal Year 2010 National Defense Authorization Act (NDAA). The new law includes an expansion of the recently-enacted "exigency" and "caregiver" leave provisions for military families under the Family and Medical Leave Act (FMLA).

Prior to the new law, employees were entitled to take "exigency leave" for up to 12 weeks for

The legal standard by which school actions are judged in such situations is whether the school district has been "deliberately indifferent" to the claims advanced by the students. In one case, for example, a gay student alleged that he was targeted by other students in his school due to his sexual orientation and was bullied, threatened, ostracized, and subjected to other inappropriate actions, and that the school district failed to adequately address the situation. While the term "deliberately indifferent" might suggest a low threshold of school responsibility, the recent case law is starting to give greater clarity to the school district's obligations in such a situation.

While a school district is not required to insure that student-to-student harassment ceases, it has an affirmative obligation to take reasonable steps designed to end such behavior. If the offending behavior continues, the level of response from the school district is expected to increase. As such, school districts should act promptly in relation to any complaints and thoroughly investigate the allegations. Such investigation should be carefully documented. If there is validity to the complaint offending students should be appropriately disciplined in accordance with your Code of Conduct. If the behavior continues, the level of penalty assessed should be enhanced. Even if a direct complaint is not filed, but school officials believe such misconduct is occurring, the school district should be pro-active in investigating and resolving the matter.

Further, there are some precautionary actions that should be taken. First, review your Code of Conduct to make sure that your definitions of discrimination include a prohibition against discrimination based on sexual orientation (as well as race, religion, national origin, and sex). Second, be pro-active in addressing tolerance issues. Finally, as a corollary, some of these claims are coupled with requests to institute a non-school-sponsored club such as the Gay-Straight Alliance. As you are probably aware, the federal Equal Access Act (EAA) requires any school that permits non-curriculum based clubs must honor requests the formation of new clubs such as Bible clubs, or other organizations, and it is important that such requests be honored provided all EAA requirements are fulfilled.

If you have any questions, please contact us.

urgent needs related to a reservist family member's (spouse, son, daughter, or parent) call to active service. The 2010 NDAA expands the exigency leave benefits to include family members of active duty service members, not just National Guard and reservists.

The "caregiver leave" provision - which granted employees up to 26 weeks of unpaid leave to care for a family member injured while serving on active military duty - was expanded to include veterans who are undergoing medical treatment, recuperation or therapy for a serious injury or illness that occurred any time during the five years preceding the date of treatment.

If you have any questions regarding this new law, please feel free to contact us.