



Introduction to Managed Care Community of Practice in I/DD

How to prepare your Board of Directors
September 6, 2018



NEW YORK
**ALLIANCE FOR
INCLUSION & INNOVATION**

The Managed Care Community of Practice is a project of the New York Alliance for Inclusion & Innovation in partnership with the following organizations



Today's Presenters

Ann Hardiman

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President
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Senior Advisor
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Who is the New York Alliance for Inclusion and Innovation?

- One of the state's largest associations of non-profit providers advancing the interest of provider organizations and people with disabilities
- Created through merger of New York State Association of Community and Residential Services (NYSACRA) and New York State Rehabilitation Association (NYSRA)



STRONGER TOGETHER



- Comprised of 175 provider organizations throughout NYS including some of the largest, multi-service agencies to the smallest, specialty I/DD service providers in NYS

What is the Managed Care Community of Practice?

- A project of the New York Alliance for Inclusion & Innovation (NY Alliance)
- **Designed to bring technical assistance and resources to the field of I/DD providers to prepare for the transition to managed care**
- The education, training, technical assistance and resources coming from the Managed Care Community of Practice are **free to ALL providers of I/DD in NYS (not only NY Alliance members)**
- MC COP is funded through funds secured in the 2018-19 NYS Budget

What's Coming Up?

- Initial webinars (Aug 27th, Aug 30th and September 6th)
- Provider Readiness Assessment, with introductory webinar (September)
- Results from the assessment (November-December)
- Announcements on future webinars and in-person regional learning collaborative events

How to Get Information/Stay Informed?

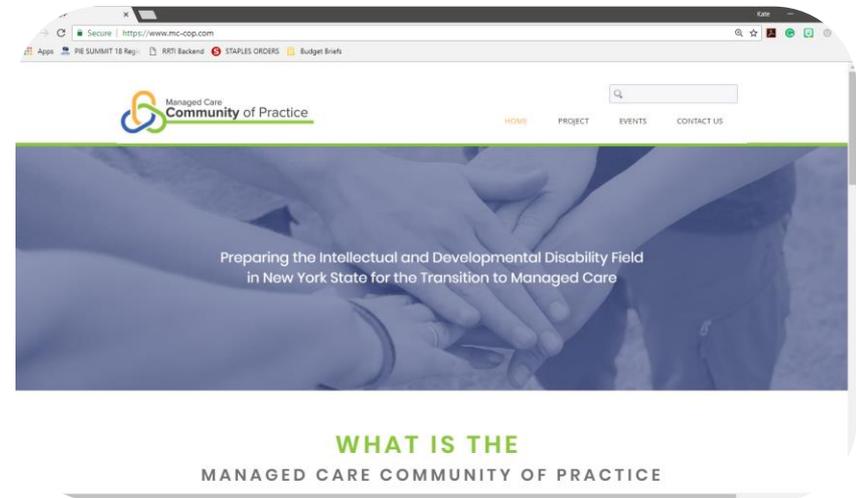
Website: [mc-cop.com](https://www.mc-cop.com) is now live!

- E-List Sign-Up Link
- Calendar of Events
- Archive of All Webinars
- Resource Library

Coming soon:

- Acronym/Glossary Lists
- "Educational" slide decks

Email: mccop.info@nyu.edu



Webinars Overview

Webinar 1:

What is the Managed Care Community of Practice in I/DD, Why TA is Needed

- Care Coordination Organization (CCO) Status Update
- Timelines for CCO and Managed Care Implementation
- Developing a common, basic understanding of care management concepts
- Intro to Value & Quality

Webinar 2:

Managed Care Basics – An Introduction and/or Refresher

- Basic understanding of managed care principles & how they connect to current CCO work
- Key business capabilities required to work with CCOs and managed care entities
- Talk about the "value" provided by an I/DD agency and its services/supports

Webinar 3:

Talking to Not-for-Profit Board of Directors About CCOs and Managed Care

- Key policy issues Boards need to understand about the changing environment
- Common questions asked by Boards, and potential answers
- Resources for Executive Directors talk to their Boards
- Driving ongoing involvement of Board through the transition

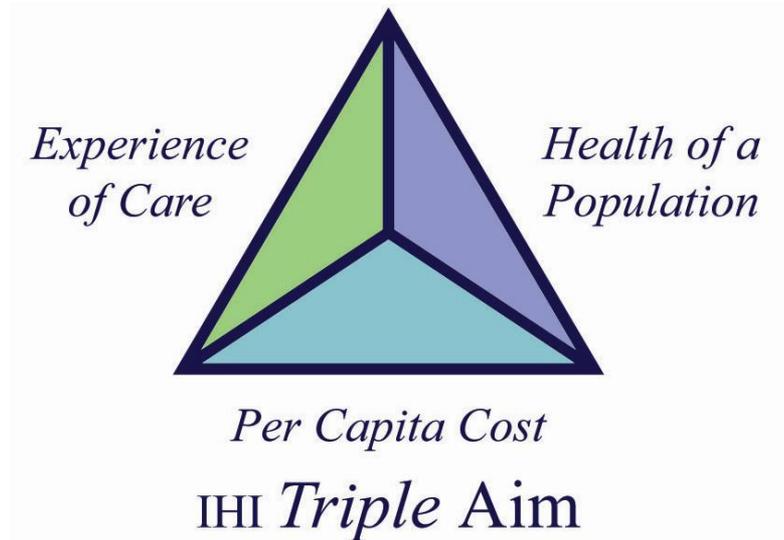
NY MRT: The Triple Aim

With adaptation for I/DD

- Individual's Experience,
- Quality & Outcomes,
- Cost

and

- ***DSP: continuity, meaningful profession.***



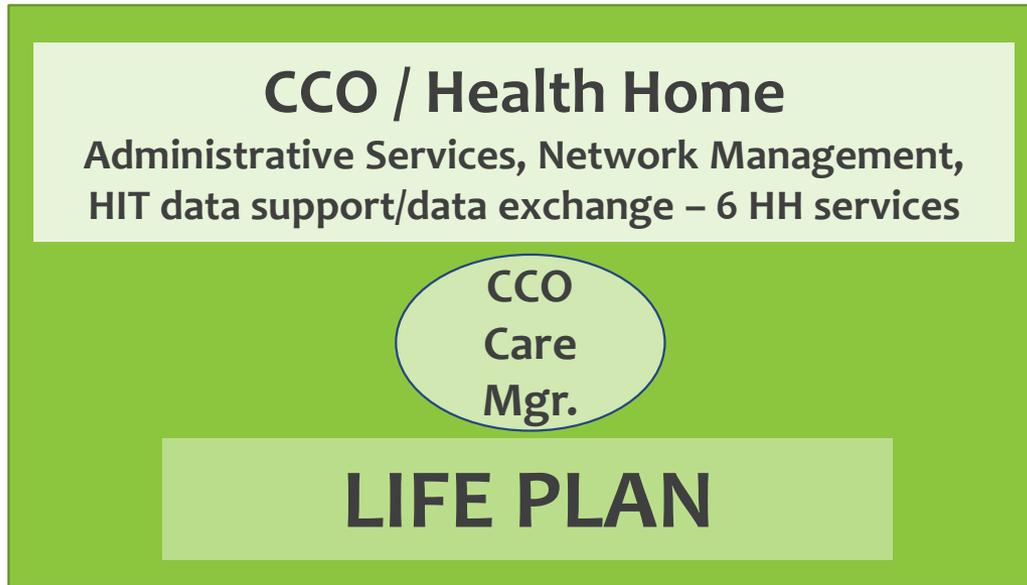
New York State HH Model w/Managed Care

Specialized I/DD MCO

Mainstream MCO

Phase 2

Phase 1



Phase 1 → 2 Care Coordination (CC) options ???

1. CCO becomes Specialized IDD/MCO & does CC
2. MCO contracts with CCO to do CC
3. MCO performs all CC

Life Plan **AUTHORIZES** Services & Supports

Res. Hab

Day Hab

Employment

Respite

Physical Health

Other OPWDD Supports

Substance Use

Mental Health



Key Policy, Governance & Business Changes

“The most critical aspect of MLTSS-I/DD program development & implementation relates to the state’s goals & reasons for moving services to managed care.”

Policy, Governance & Business Changes

National

State

NY/IDD

Policy Changes

Medicaid Managed Care
Managed Long Term Services & Supports
HCBS Settings Rule & "Conflict Free"

Medicaid Redesign Team Plan & Waiver
(1115 Cap on Total Funding, excl. I/DD)
Delivery Reform Incentive Support Payment (DRISP)
Value Based Payment Strategies

Care Coordination Organization
I/DD Specialized MCO
HCBS Transition Plan

Policy, Governance & Business Changes

National

State

NY/IDD

Business/Operational Changes

CMS: Medicare/Medicaid
Electronic Health Record-ONC
Coding, NCIC, Exclusion lists etc.

State regs of MCOs & Provider Relationships
DOH: MEDICAID ADMINISTRATION, Inc. accountability to CMS
[Regs re: life planning, billing, provider compliance]

End to End Impact: from intake/support planning throughout
Administration of Medicaid regulations
Implications of the HCBS Transition Plan
WORKFORCE CHALLENGES/OPPORTUNITIES

Policy, Governance & Business Changes

National

State

NY/IDD

Governance Changes

Enron & Sarbanes-Oxley: Non-Profit Board Implications
False Claims Act & Medicaid Repayment

NYS Office of Medicaid Inspector General
Justice Center

Board governance competencies
Regulations & Compliance

NEW ROLES: Different Leadership & Staff Skills Required

Community Based Organizations	Managed Care Organizations	States
Analytical, Data-Driven Decision-Making	Consumer Engagement	Communication Skills
Consumer Satisfaction	Consumer Satisfaction	Articulating your Value
Consumer Engagement	Innovative Thinking	Building Essential Infrastructure Support
Understanding Customer Needs	Managing Risk in a Managed Care Environment	Consumer Engagement
Articulating your Value	Measures (e.g. outcomes, consumer satisfaction)	Consumer Satisfaction

Executive Directors/Leadership

In addition to everything else, you now have to...

- 1. Be knowledgeable & current on the changes taking place**
 - Be engaged in learning about & advocating for certain changes
- 2. Effectively translate & communicate policy into action steps for staff**
 - Even when all the answers are not known
- 3. Understand how these changes impact governance, specifically at the Board level**
 - What does the Board need to know?
 - How to help them process these changes?
 - What are new &/or increasingly important roles needed from the Board?
 - How to keep our client-focus, amidst the changing & increasing oversight & administrative responsibilities?
- 4. Succinctly communicate your organization's Value Proposition**
 - ...then live up to it

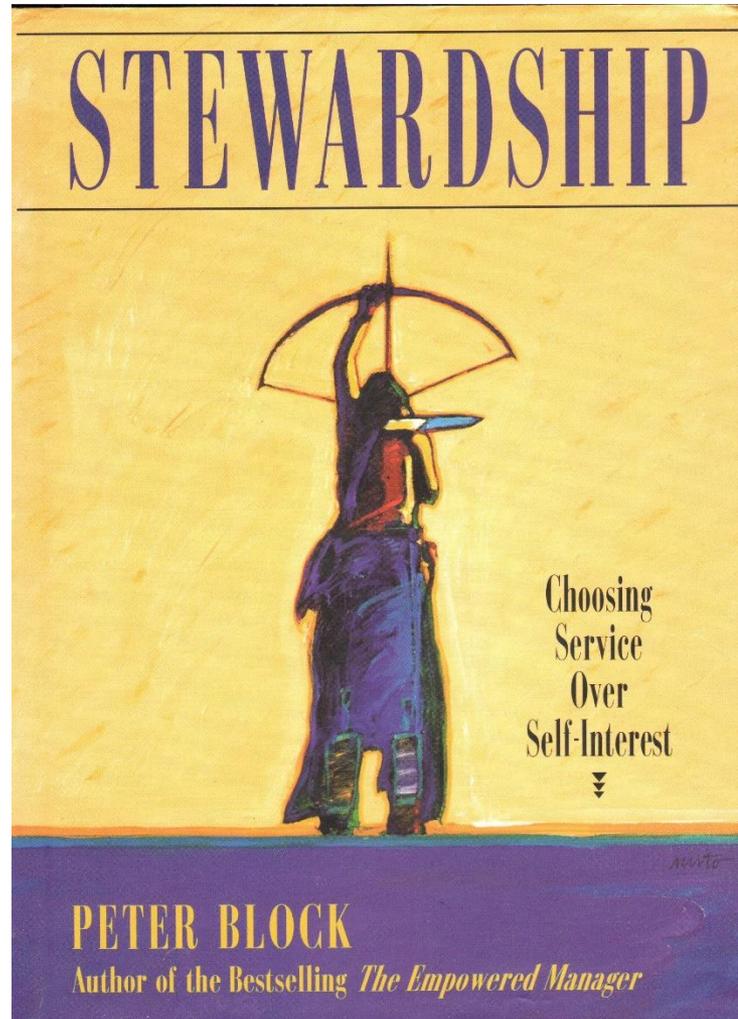


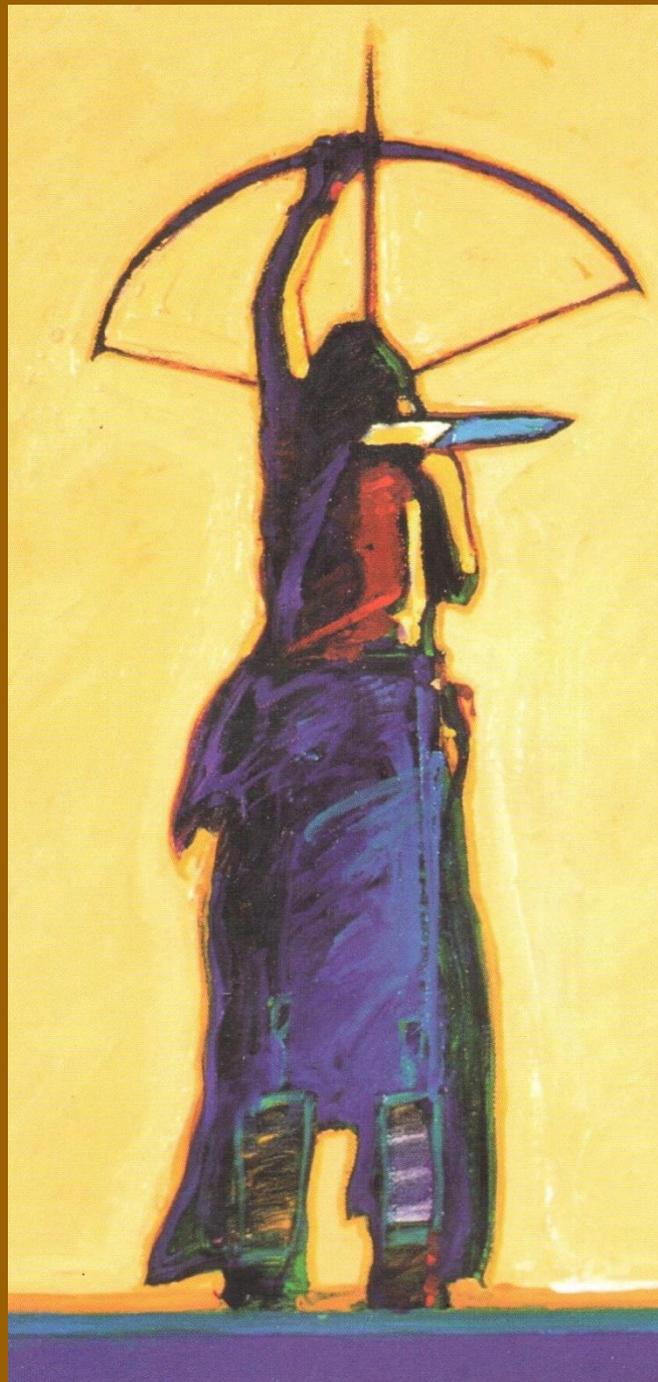
Board Governance – Leadership

**Every provider of services in NY has a
fundamental decision to make:
What do you want to be in 5 years?**

Stewardship:

Peter Block 1993





*Choosing
Service
Over Self
Interest*

Governing Board Duties

Loyalty, Care & Obedience

Duty of Obedience

- FIDUCIARY
- Board member acts for the benefit of the organization
- True to purpose or mission

Duty of Care

- Board member uses a level of care that an ordinarily prudent person would exercise in a similar position with similar circumstances
- Business Judgement rule
- Reliance on experts

Duty of Loyalty

- Expectation that the governing board member will act in a manner that is in the best interests of the organization
- Duty to disclose

Governing Board Duties

Loyalty, Care & Obedience

OWED TO

- Clients
- Families
- Public Trust
- Stakeholders
- Staff

ENFORCED BY

- State Attorneys General
- Stakeholders
- Charities
- Regulatory Agencies
- Legislature

What does this mean for...?

1. Our Clients

- What are they (and their families) telling you they want?
- How do we need to communicate? Educate? Plan?

2. Our Board –

- Do we have the right mix of competences for the task ahead?
- What do they need to know?
- Do they need to be structured or work differently?

3. Our Agency –

- How do you set the stage for the change? Create the desired leadership atmosphere?
- Are new capabilities needed?
- We need to be sure we can survive or we must plan for the alternative!



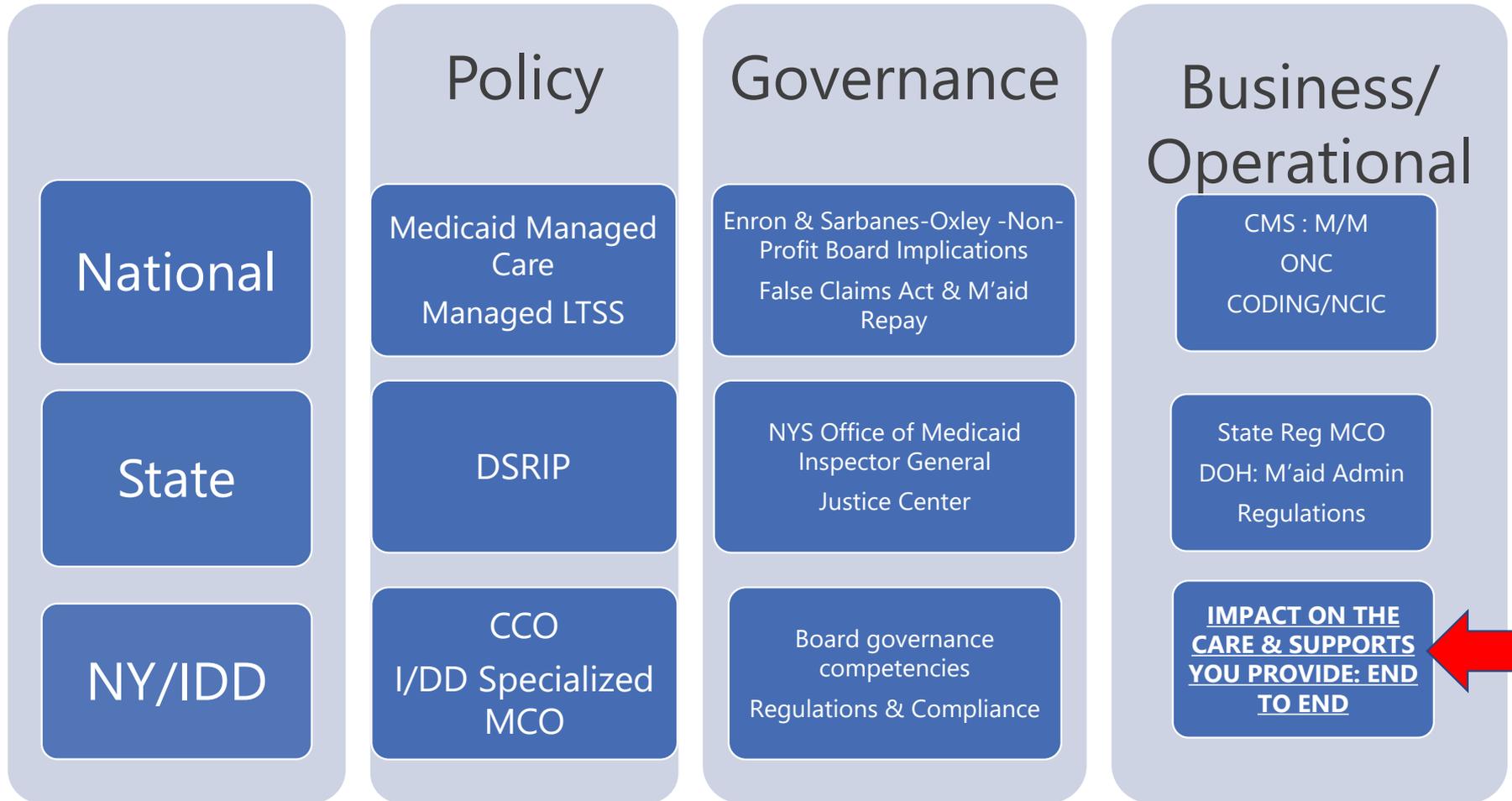
As a Non-Profit Board of Directors...

Regarding all these changes, what do I need to know?

A few of the questions your board will ask you

1. Why is this happening? Are you **sure** it's going to happen?
 - CAN'T YOU STOP THIS?
 - IT'S YOUR JOB TO STOP THIS!
2. What does it mean for the people we serve and support? How will this impact my... son/daughter/brother/sister?
3. What is a CCO? An EHR? Health Home? VBP? False Claim?
4. What does it mean for our organization's bottom line? Can we sustain ourselves?
 - What investments do we need to make, and how much will they cost?
5. What resources/outside help do we need/can we get from:
 - The NY Alliance ?
 - Other community resources ?
 - New partnerships ?
 - Outside consultants ?
6. What kinds of skillsets will we need to make this transition work? Do we need to hire to have these skills within our organization?
7. What do we want to be when we grow up (agency, specialized services, FQHC, ACO, SIP-PL, etc.)?
8. What advocacy activities do we need to be involved in at the state level?

Policy, Governance & Business Changes





As a Non-Profit Board of Directors...

Is the structure and operating practices of your board "right" for the new work ahead?

Engaging the Board

Communicate, have the hard conversations, ask the hard questions

Connect between meetings – *touch base between formal meetings*

Involve in strategy development– *engage, not just review, final strategy*

Cultivate competency – *recruit & involve members with new needed competencies*

Engage expertise – *involve members on in specific areas of expertise*

Solicit tough questions – *constructive open honest dialogue builds trust & value*

Considerations for your Board

*Feedback from Your Provider Colleagues**

****Quick survey: 17 respondents w/ total of >250 yrs. experience***

1. Differences Between/Among Boards

- Governance, by-laws, decision making may be controlled by an external entity (ARC)
- Required membership; e.g. specific % relatives
- Size matters
- Active vs. less active boards
- Newer vs. more seasoned
- DIFFERENCE BETWEEN PROFIT & NON-PROFIT BOARDS

2. How often does the full board meet?

- Monthly 29%
- 7-10/yr. 18%
- 5-6x/year 24%
- 4x/year 29%

Considerations for your Board

Feedback from Your Provider Colleagues

3. Materials & strategies for Board Member Orientation

- Board orientation manual
- Committee list & description of responsibilities
- Policy review sessions
- Board list, with bios & photos
- Local CPA provides on-site training
- Glossary of terms/acronyms

When was the last time you and the Board reviewed the D&O insurance?

Considerations for your Board

Feedback from Your Provider Colleagues

4. Walking the Tightrope:

Board Priority on Day to Day Operations vs. Governance

- Provide board information on key operational issues, but be clear on who has responsibility for respective issues
- Be purposeful in training incoming board members on governance, role, responsibilities and focusing on bigger picture, i.e., Carver Policy Governance Model
- Show how agency compares to other similar organizations on a specific issue
- Seek outside help from experience consultant if board oversight is creating problems in order to mitigate damage and preserve relationships
- Focus on overall budget as opposed to specific expenditures
- Have senior board members mentor newer board members in order to indoctrinate them into culture of operational focus

Considerations for your Board

Feedback from Your Provider Colleagues

5. Suggestions for Board Members with Less Experience (<3yrs.)

- Educate about the business/supports
- Work to understand the company business and their role in the organization
- Review and study by-laws; e.g., basics
- Meet regularly with board president and other leadership within agency
- Perform a study or analysis of board--possible focus areas: finance, meeting participation, satisfaction, effectiveness
- Participate in agency-wide activities to engage with staff or other stakeholders
- Identify areas of concern or knowledge gaps and address these in writing or at board meetings

Considerations for your Board

Feedback from Your Provider Colleagues

6. Suggestions for Board Members with More Experience (>3yrs.)

- Educate about the business/supports
- Develop relationships/mentor, other board members
- Utilize networks to support the organization
- Ensure that you help board members focus on governance, not operations
- Staff or lead a committee
- Participate in and encourage ongoing training for current and new board members



As a Non-Profit Board of Directors...

***What are my responsibilities for governance
and compliance?***

Responsibilities



Heightened Governance Responsibilities

Financial

- [False Claims Recoveries](#)
- [Limited Fiscal Review](#)
- [Personal Allowance Manual](#)

Human Capital

- [Medicaid Disqualified or Excluded Providers List](#)
- [New York Medicaid Provider Manuals](#)

Health Information Technology

- New technologies – EHR, HIE
- Protect Health Info – Liability for Breach
- Secure electronic exchange of health info & reporting

Compliance Program

- [OMIG Part 521 regulations](#)
- [OMIG Provider fraud, waste and abuse](#)
- [OMIG Self-Disclosure Guidance](#)

As you listen to the remainder of this webinar, ask yourself these questions

1. Do you understand each of these laws & associated requirements?
2. Do you (or someone else) understand them, chapter & verse?
3. Can you answer w/ certainty, whether each applies to your agency or not?
4. Is your board up to date on these & able to articulate their responsibilities for each?
5. Do your policies, operating protocols, bylaws, etc. reflect current info?
6. Can you enumerate which manager/operating division has responsibility for each? Which committee of the Board?
7. Is there a shared understanding with the Board about when an outside investigation/investigator is needed?

Sarbanes-Oxley Act

#1 & 2 apply to all. #3-7 apply to for-profit corps

1. Whistle-Blower Protection
2. Document Destruction
 - Maintain appropriate records on organization operations

Remaining apply only to for-profit organizations....

3. Independent & Competent (Board) Audit Committee
4. Independent Auditor
 - Change Auditor at least every 5 years
5. Financial Statements – accurate & complete
 - CFO – certifies & provides timely, accurate
 - CEO – responsible for positive bottom line
 - Board – competent to interpret
6. Prevent Conflict of Interest
 - Duty to the corporation, rather than self-interest
7. Disclosure
 - Conflicts, self-interest

**...but the rest
are instructive
to non-profit
boards, to
ensure effective
governance.**

EXCELLENT RESOURCE:

<https://www.guidestar.org/Articles.aspx?path=/rxa/news/articles/2003/sarbanes-oxley-act-and-implications-for-nonprofit-organizations.aspx>

Federal Deficit Reduction Act (DRA) of 2005

42 USC 1396a(a)(68)

DRA requires health care entities which receive / make \$5m* or more in Medicaid payments during a Fed FY to:

1. Establish written policies & procedures
 - provide detailed information to its employees, management, contractors, and agents on –
 - federal & state false claims acts,
 - whistleblower protections, &
 - policies & procedures for detecting & preventing fraud, waste & abuse
 - Provide an employee handbook that specifically discusses
 - federal and state false claims acts,
 - whistleblower protections, &
 - policies & procedures for detecting & preventing fraud, waste & abuse

**DRA's FAQs identify \$5 M in direct Medicaid payments received from the state by provider or \$5 M in Medicaid payments made*

NYS Office of the Inspector General

NEW YORK STATE

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Office of the Medicaid Inspector General

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Certification

For those who provide Medicaid care, services, or supplies in New York State, the *NYS Mandatory Provider Compliance Program* certification and the *Federal Deficit Reduction Act of 2005 (DRA)* certifications can be completed and submitted electronically on the New York State Office of the Medicaid Inspector General's Web site. Each certification is separate and has different obligations and criteria for its application. Some providers of Medicaid care, services, or supplies are required to complete one certification, while others are required to complete both certifications. Please reference the two sections below to determine if each certification applies to the Medicaid provider. Certifications can only be submitted electronically through the links below.

New York State Social Services Law Section 363-d and 18 NYCRR Part 521 Certification – NYS Mandatory Provider Compliance Programs

Providers who are unsure of whether the mandatory compliance obligation applies to them are encouraged to reference the chart *ARE YOU REQUIRED TO HAVE A COMPLIANCE PROGRAM?* accessible through this [link](#).

New York State Medicaid providers who are subject to the mandatory compliance program obligation set out in NYS Social Services Law Section 363-d and 18 NYCRR Part 521 must also certify on OMIG's Web site that their compliance program has been adopted, implemented and meets the statutory and regulatory requirements. Please see the [Frequently Asked Questions \(FAQs\) – NYS Mandatory Provider Compliance Programs](#) for details and information on the mandatory compliance program obligation. Please use the following [link](#) that will identify the Enrollment Categories relevant to the certification process.

- [NYS OMIG Social Services Law – Certification of Compliance with the Social Services Law § 363-d and 18 NYCRR Part 521 Form](#)

NYS Social Services Law (SSL) § 363-d (4) and 18 NYCRR Part 521 (c)

Compliance Program Requirement

- **All Providers where Medicaid is a “substantial portion of business operations”**
 - 18 NYCRR §521.2(b) defines **“substantial portion of business operations”**
 - person, provider or affiliate who receives, has received or should be reasonably be expected to receive at least \$500,000 in any consecutive 12-month period

Compliance Program

NYS Social Services Law (SSL) § 363-d, 18 NYCRR Part 521 “required provider” as defined in 18 NYCRR § 521.2(a)

- **Required to have a compliance program under If --**
 - Article 28 or Article 36 of the NYS Public Health Law?
 - Article 16 or Article 31 of the NYS Mental Hygiene Law?
 - Claim or order Medicaid services or supplies of at least \$500,000 in any consecutive 12-month period?
 - Receive Medicaid payments of at least \$500,000 in any consecutive 12-month period?
- ***Indirect Medicaid reimbursement***
 - any payment that you receive for the delivery of Medicaid care, services, or supplies that comes from a source other than the State of New York. For example, if you provide covered services to a Medicaid beneficiary who is enrolled in a Medicaid Managed Care Plan, the payment you receive from the Managed Care Organization is considered an indirect payment.
- **Does your organization submit Medicaid claims of at least \$500,000 in any consecutive 12-month period on behalf of another person or persons?**

OMIG: Certification for DRA

REQUIRED

- for all Medicaid providers subject to the DRA requirements
- by OMIG in December immediately following the end of the FFY the provider becomes subject to the DRA
- annually for each year that the DRA applies

Certification - only available electronically on OMIG's website

- OMIG provides webinars & instructions on how to complete certification

Health care entities subject to the DRA's requirements must certify –

1. they maintain written policies
2. employee handbook includes DRA required materials
3. materials have been properly adopted & published by the health care entity &
4. materials have been disseminated to employees, contractors & agents

Compliance Program

18 NYCRR § 521.3 (a)

Per 18 NYCRR § 521.3 (a)

Compliance program applies to

1. Billings
2. Payments
3. Medical necessity & 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

Compliance Program

NYS Social Services Law Section 363-d subd. 2 & 18 NYCRR Section 521.3(c) require:

1. **Agency compliance officer** *must* provide periodic reports directly to the governing body on the activities of the compliance program
2. **Governing body members** *must* receive orientation & education on compliance
3. **Communication lines** *must* be provided from governing body members to the compliance officer

Compliance Program Elements

NYCRR 18 Part 521.3 (c)

- 1) Written policies & procedures
- 2) Designate an employee as Compliance Officer
- 3) Training & education of staff, executives & governing body
- 4) Open communication with Compliance Officer
- 5) Disciplinary policies fairly & firmly enforced
- 6) Identification of compliance risk areas specific to the provider type
- 7) Responding to compliance issues
- 8) Policy of non-intimidation and non-retaliation for good faith participation in the compliance program

Fiscal Audit

Limited Fiscal Review Information Sheet

- **Agency selected for a Limited Fiscal Review (LFR)**
 - Bureau of Compliance Management (or CPA firm) audit manager calls to schedule start date for field work
 - Engagement letter - from OPWDD (or CPA) explains records they will exam, so agency can prepare for audit
 - Field work – typically takes 8 - 9 weeks, which may be impacted by a number of variables
- **Feed Back and the Informal Exit Conference**
- **Draft Report and Final Report**

False Claims

- Need to educate our employees, contractors & Board
- Preventing improper Medicaid claims
- "False claim"
 - when someone knowingly submits a claim for services that were not provided or
 - causes another person to submit a false claim or
 - knowingly makes a false record or statement to get a false claim paid by the government



Office for People With
Developmental Disabilities

False Claims Recoveries –
Medicaid Fraud and Abuse

This Information is Provided for Contractors, Agents
and Family Care Providers

1. Deficit Reduction Act of 2005 § 6032

The Deficit Reduction Act (DRA) of 2005 instituted a requirement for health care entities receiving or making \$5 million or more in Medicaid payments during a federal fiscal year to establish written policies and procedures informing their **employees, contractors and agents** about federal and state false claim statutes and whistleblower protections. The policies must be available to the entity's employees as well as employees of its agents and contractors. For purposes of Section 6032 compliance, CMS' (Centers for Medicare and Medicaid Services) guidance is as follows:

CMS defines the term "Contractors and Agents" as any contractor, subcontractor, agent, or other person that, on behalf of the entity, furnishes or otherwise authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions, or is involved in monitoring of health care provided by the entity.

Contractors furnishing Medicaid health care items or services include, but are not limited to, all contract therapists, physicians (including, but not limited to, house staff, hospitalists, and independent contractors), and pharmacies. Contractors not associated with the provision of Medicaid health care items or services, such as copy or shredding services, grounds maintenance, or hospital cafeteria or gift shop services, are excluded from the definition of "contractor".

False Claim & 60 day Repayment Requirements

- **False Claim vs. Fraud**
 - Yes, there is fraud, but we are talking about false claims/repayment
- **False Claim:** ongoing obligation on the provider to prevent, monitor, identify...and repay
- **See OMIG website re: disclosure & repayment**
- *Did a practitioner's license expire?*
- *What if a required training or retraining for staff was not provided?*
- *If the regulations require the client sign their plan of care, and they do not...?*

False Claims

- **Need to educate our employees, contractors & Board**
 - **potential risks & required safeguards** in Medicaid billing
- **Preventing fraudulent Medicaid claims**
 - requires **ONGOING** monitoring & detection efforts
- **"False claim"**
 - when someone knowingly submits a claim for services that were not provided or
 - causes another person to submit a false claim or
 - knowingly makes a false record or statement to get a false claim paid by the government



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Medicaid Exclusion Lists



Office of the
Medicaid Inspector
General

List of Exclusions

- ✓ Enrolled Provider Search
- ✓ Professional Discipline
- ✓ Professional Misconduct & Physician Discipline
- ✓ Health and Human Services
- ✓ State Education License Search
- ✓ Physician Profiles
- ✓ Government Services Administration

Considerations for your Board

Feedback from Your Provider Colleagues

7. Board Committees (survey of 17 providers)

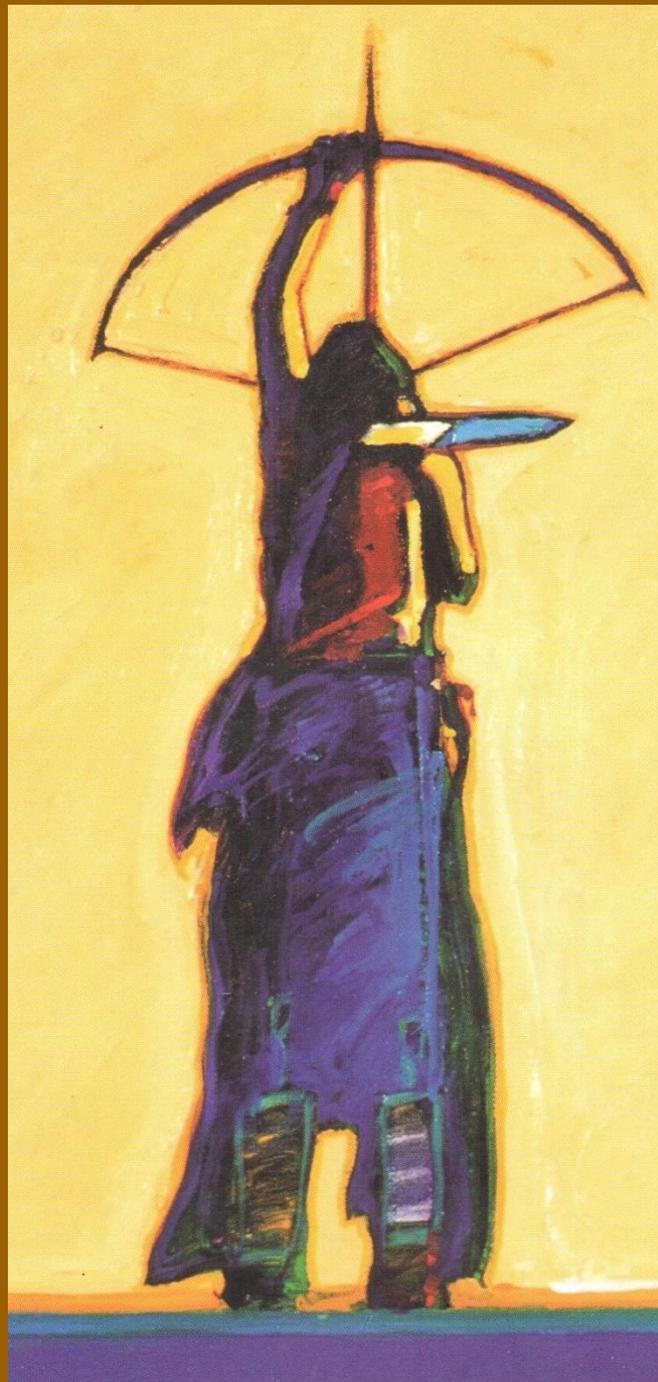
- # of Committees: range 0-13
- > 9 committees: 5
- 5 - 7 Committees: 6
- 1 - 4 Committees: 4



8. Most Common Types of Board Committees

- Budget/Finance (13)
- Compliance/Audit (13)
- Executive Committee (9)
- Personnel/HR (9)
- Nominating/Governance (8)
- Strategic Development (8)
- Incident Review (8)

Given what you have heard for the last hour, does the number and type of board committees seem right for the work ahead?



*Choosing
Service
Over Self
Interest*

Resources

- **Compliance Program Elements**
 - NYS Social Services Law §363-D
- **Office of Inspector General (OIG)**
 - Compliance Program Effectiveness Guide (3/2017)
- **Office of Medicaid Inspector General**
 - Compliance Self-Assessment Checklist (2/2015)
- **Department of Justice (DOJ)**
 - Evaluation of Corporate Compliance Programs (2/2017)
- **Human Services Council**
 - <https://humanservicescouncil.org>
- **NY Council on Nonprofits**
- **Guidestar re: Sarbanes Oxley & Non-Profit Boards**

Implications for your Board & Members

Essential Practices of Best Boards

- 1. Member Responsibilities** – understands responsibility, accountability & expectations & has written position description
- 2. Member Selection** - based on competency; written criteria for selection (knowledge, skills, diversity), not representational roles
- 3. Learning Organization** – integrate education from orientation & strategic planning to policymaking, oversight & stakeholder relations
- 4. Partner & Independent** – capable of partnering with CEO **AND** being independent & accountable to oversee executive performance
- 5. Working Committees** - provide oversight & outside recommendations for the board
- 6. Key Performance Measures** – transparent dashboard / scorecard (*finances, quality, learning & customer experience / benefit*)
- 7. Inquiry & Innovation** – ask **why** to understand & apply innovative thinking
- 8. Board Culture** — works as a team, asks questions, takes action, & has clear structure & processes
- 9. Board Policy Manual** - governance, strategic plan, budget & audit, quality, CEO & compensation review, succession plan, board recruitment & improvement
- 10. Self-Evaluation** – process to assess & improve board, chair & member governance

Member		A	B	C	D	E	F
Tenure		5	4	3	8	10	2
C	Accounting		✓				
o	Finance				✓		
m	Health Care						✓
p	Legal					✓	
e	Marketing			✓			
t	Strategy Dev & Impl						
e	Risk Mgt						
n	Human Resources						✓
c	Info Tech	✓					
y	Corporate Gov				✓		