



MEMORIAL[®]
HERMANN
Health Plan

INTRODUCTION

WELCOME TO MEMORIAL HERMANN HEALTH PLAN!

Memorial Hermann Health Plan (MHHP) is a part of the Memorial Hermann Health System that Houston has counted on for more than 100 years. We have built a reputation in the community founded on trust, honesty, and caring. It is this integrity that our relationships with business partners are built upon. Memorial Hermann Health Plan offers Medicare Advantage (MA) plans and Commercial Group plans.

Our Medicare Compliance Program helps us serve our members ethically.

MHHP created this Delegation Oversight Compliance Program Guide which includes the specific Compliance expectations for all contractors, subcontractors, vendors, sales agents, and applicable first tier, downstream, and related entities (FDRs) who provide services for its members.

We're committed to practicing business in an ethical manner.

Our Medicare Compliance Program helps to:

- Reduce or eliminate fraud, waste and abuse (FWA)
- Ensure we comply with applicable laws, rules and regulations
- Reinforce our commitment to compliance.

We use external entities to bring our members cost-effective health care solutions

MHHP offers Medicare Advantage (MA), and Commercial plan options. We contract with external entities as a cost-effective and efficient way of providing administrative and health care services. Some of the services provided by external entities are services that we are required to perform under our contracts with the Centers for Medicare & Medicaid Services (CMS). CMS refers to these entities as First Tier, Downstream and Related Entities (FDRs).

Y0110_MHHP FDR Manual 2017 IA 11/26/2017

You'll find specific requirements in this document.

CMS also requires that MHHP's FDRs fulfill specific Medicare compliance program requirements which are outlined in several regulatory platforms:

- The Code of Federal Regulations (CFR) 422.504(i)(4)(iii),
- Medicare Managed Care Manual Compliance Program Chapter 21 (the "Manual")
- Prescription Drug Benefit Manual Compliance Program Chapter 9

It is important that you follow these requirements.

You received this guide because you are a FDR for our health plan. This means that you must comply with these requirements.

What is an FDR?

We use the current CMS definitions to define First Tier, Downstream and Related Entities:

First Tier Entity is any party that enters into a written arrangement, acceptable to CMS, with an MA organization or Part D plan sponsor or applicant to provide administrative services or health care services to a Medicare-eligible individual under the MA or Part D program. (See 42 CFR §§ 422.500 and 423.501.)

Downstream Entity is any party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with the MA or Part D benefit, below the level of the arrangement between an MA organization or applicant or a Part D plan sponsor or applicant and a First Tier Entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services. (See 42 CFR §§ 422.500 and 423.501.)

Related Entity means any entity that is related to an MA organization or Part D sponsor by common ownership or control and:

1. Performs some of the MA organization or Part D plan sponsor's management functions under contract or delegation;
2. Furnishes services to Medicare enrollees under an oral or written agreement; or
3. Leases real property or sells materials to the MA organization or Part D plan sponsor at a cost of more than \$2,500 during a contract period (See 42 CFR §§ 422.500 and 423.501.).

FDRs Providing Health Care Services

The Medicare Compliance Program requirements described in this guide apply to health care providers contracted with MHHP to participate in our Medicare network. This includes physicians, hospitals and other provider types. Here are the reasons why:

- First, MA regulations and CMS rules state that providers contracted with MHHP who provide health care services to our Medicare members are deemed "First Tier Entities."
- Second, Chapter 21, Section 40 of the CMS Manual lists "health care services" as an example of the types of functions that a third party can perform that relate to an MA organization's contract with CMS. This

would give third parties “First Tier Entity” status. Therefore, these requirements apply to providers that actually deliver health care services to our Medicare members.

- Third, CMS provides a chart in the Manual, Chapter 21 § 40, showing that entities providing health services and hospital groups are First Tier Entities. If we contract with a hospital group and do not have a direct contract with that group’s hospitals and other providers, those hospitals and providers are Downstream Entities. This means that the hospital group is a First Tier Entity and must comply. The hospital group must make sure its Downstream Entities comply with the CMS compliance program requirements in this guide.

FDRs Providing Administrative Services

The Medicare Compliance Program requirements also apply to entities with which we contract to perform administrative service functions relating to our MA or Part D contracts with CMS. Some examples of administrative service functions include:

- Claims processing
- Patient management
- Credentialing

Other examples of FDRs include agents, broker organizations, pharmacies and other individuals, entities, vendors or suppliers contracted with MHHP to provide administrative and/or health care services for our Medicare plans. You can find more information in the Manual, Chapter 21, § 40, including the Stakeholder Relationship Flow Charts.

FDR Compliance Program & Attestation Requirements

It is important that our FDRs are in compliance with applicable laws, rules and regulations. Although we contract with FDRs to provide administrative and/or health care services for our Medicare plans, in the end, we are responsible for fulfilling the terms and conditions of our contract with CMS and meeting applicable Medicare program requirements. In addition, our FDRs are responsible for complying with relevant Medicare program requirements. FDRs must also ensure that their Downstream Entities, which they use for our MHHP Medicare products, also comply with applicable laws and regulations; including the requirements in this guide.

Compliance Program Requirements

This guide summarizes the Medicare Compliance Program requirements. Please review CMS’ requirements to make sure that you have internal processes to support your Compliance Program with these requirements each calendar year. These Medicare Compliance Program requirements include, but are not limited to:

- Completion of the CMS *Combating Medicare Parts C and D Fraud, Waste, and Abuse Training*, the CMS *Medicare Parts C and D General Compliance Training* modules and the Code of Conduct/Compliance Program policy distribution
- OIG/GSA Exclusion list screenings
- Reporting FWA and compliance concerns to MHHP
- Offshore operations and CMS reporting
- Specific federal and state compliance obligations
- Monitoring and auditing of First Tier, Downstream and Related Entities

Also, see the “Toolbox of resources for FDRs” at the end of this guide. It may help you meet these requirements.

What will happen if you do not comply?

If our FDRs fail to meet these CMS Medicare Compliance Program requirements, it may lead to:

- Development of an immediate Corrective Action Requirement (ICAR)
- Retraining
- Termination of your contract and relationship with MHHP

Our actions in response to noncompliance will depend on the severity of the compliance issue. If an FDR identifies areas of noncompliance (for example, refusal of an employee to complete the required FWA training), the FDR must take prompt action to fix the issue and implement measures to prevent the issue from re-occurring.

Attestation Requirements

The FDR must maintain evidence of compliance with these Medicare compliance program requirements (for example, employee training records and CMS certificates of FWA training completion) for no less than 10 years. Also, each year, an authorized representative from the FDR must attest the organization’s compliance with the Medicare compliance program requirements described in this guide. The authorized representative is an individual who has responsibility directly or indirectly for all:

- Employees
- Contracted personnel
- Providers/practitioners
- Vendors who provide health care and/or administrative services for MHHP’s Medicare plans.

Note: This could be the FDR’s Compliance Officer, Chief Medical Officer, Practice Manager/Administrator, an Executive Officer or similar positions.

You may be asked to provide evidence of compliance.

In addition to completing an attestation, MMHP and/or CMS may request that you provide evidence of your compliance with these Medicare compliance program requirements. This is for monitoring/auditing purposes. We take these responsibilities seriously. If you have questions or concerns about these Medicare Compliance Program requirements, please contact your MHHP Business Owner.

What follows is a description of Medicare Compliance Program requirements.

A. Fraud, Waste and Abuse (FWA) training and General Compliance Training

FWA and General Compliance training

You must ensure that your applicable employees and Downstream Entities complete fraud, waste and abuse and general compliance training pre-hire. Effective January 1, 2016, you/your organization must ensure completion of the CMS *Combating Medicare Parts C and D Fraud, Waste, and Abuse Training* module, as well as the CMS *Medicare Parts C and D General Compliance Training* module. CMS may update training modules annually. It is the responsibility of the FDR to maintain the latest CMS training modules.

Your applicable employees and Downstream Entities assigned to provide administrative and/or health care services for our Medicare plans can access these trainings in one of three ways:

- Complete the modules on the CMS Medicare Learning network (MLN) website. The general compliance course is called *Medicare Parts C and D General Compliance Training*, and the FWA training is called *Combating Medicare Parts C and D Fraud, Waste, and Abuse Training*. Once completed, download and retain the certificate to validate completion.
- The FDR can download or print the content of the CMS training modules from the MLN website to incorporate it into their training materials/system. The content of the CMS training modules **cannot** be changed to ensure the integrity and completeness of the training.
- The organization must retain records of completion. These must be made available to MHHP and/or CMS when requested.
- The FDR organization can incorporate the content of the CMS training modules from the MLN website into written documents for providers (for example, provider guides or participation manuals).

Training Requirements

Regardless of the method used, the training must be completed:

- Within 90 days of initial hire or the effective date of contracting;
- At least annually during each calendar year (January 1 –December 31) thereafter

We request that you confirm your compliance with these requirements as part of our annual attestation process. However, you must also maintain evidence of training completion. Evidence of completion may be in the form of certificates, attestations, training logs or other means determined by you to best represent fulfillment of your obligations. If you use training logs or reports as evidence of completion, they must include:

- Employee names
- Dates of Completion
- Passing scores (if captured)
- Date(s) of employment

Who should complete training?

Not every employee needs to take training. Below are examples of critical roles within an FDR that clearly should be required to fulfill the training requirements:

- Senior administrators or managers directly responsible for the FDR's contract with MHHP (for example, Senior Vice President, departmental managers, Chief Medical or Pharmacy Officer)
- Individuals directly involved with establishing and administering MHHP's formulary and/or medical benefits coverage policies and procedures
- Individuals involved with decision-making authority on behalf of MHHP (for example, clinical decisions, coverage determinations, appeals and grievances, enrollment/disenrollment functions, processing of pharmacy or medical claims)
- Reviewers of beneficiary claims and services submitted for payment
- Individuals with job functions that place the FDR in a position to commit significant noncompliance with CMS program requirements or health care FWA.

Not sure which employees at your organization should take the training? You can email MHHealthComplianceOversight@memorialhermann.org for help.

The only exception to this training requirement is if the organization is "deemed" to have met the FWA certification requirements through enrollment into Medicare Part A or B of the Medicare program or through accreditation as a supplier of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS). However, those parties deemed to have met the FWA training through enrollment into the CMS Medicare program must still complete general compliance training.

You can find the training requirements and information about deemed status in:

- 42 CFR § 422.503(b)(4)(vi)(C) for MA
- 42 CFR § 423.504(b)(4)(vi)(C) for Part D
- Manual, Chapter 21 § 50.3

B. Code of Conduct/Compliance Program **Policy Distribution**

You must give your employees Standards of Conduct

Your organization must also provide MHHP's Code of Conduct and Medicare compliance policies, **or** your own comparable Code of Conduct/compliance policies (collectively, "standards of conduct") to all applicable employees and Downstream Entities who provide administrative and/or health care services for our Medicare plans. The written compliance policies and standards of conduct must contain all of the elements set forth in the Manual, Section 50.1 and its subsections and articulate the entity's commitment to comply with federal and state laws, ethical behavior and compliance program operations.

You must distribute standards of conduct/policies:

- Within 90 days of hire or the effective date of contracting

- When there are updates to the Standards of Conduct, the expectation is that the update be distributed and attested to annually
- You must retain evidence of your distribution of the Standards of Conduct

You can find the Standards of Conduct requirements in:

- 42 CFR § 422.503(b) (4) (vi) (A) for MA
- 42 CFR § 423.504(b) (4) (vi) (A) for Part D
- Manual, Chapter 21 § 50.1

C. Exclusion List Screenings

Federal law prohibits Medicare, Medicaid and other federal health care programs from paying for items or services provided by a person or entity excluded from participation in these federal programs. Therefore, before hiring or contracting, and monthly thereafter, each FDR must check exclusion lists from the Office of Inspector General (OIG) List of Excluded Individuals and Entities (LEIE) and the U.S. General Services Administration (GSA). This is to confirm that employees and Downstream Entities performing administrative and/or health care services for MHHP's Medicare plans are not excluded from participating in federally funded health care programs. You can use these websites to perform the required exclusion list screening:

- **OIG List of Excluded Individuals and Entities (LEIE)**
- **GSA's System for Award Management (SAM)**

Also, FDRs must maintain evidence they checked these exclusion lists. You can use logs or other records to document that you've screened each employee and Downstream Entity in accordance with current laws, regulations and CMS requirements. Be sure to retain evidence of the screening that was conducted including date of occurrence, the results of the screening and any actions taken if sanctioned individuals or entities were identified.

You must perform exclusion list screenings

You are not alone. We are also required to check these exclusion lists before hiring or contracting with any new employee, temporary employee, and volunteer, consultant, governing body member or FDR; and monthly after that. We cannot check these exclusion lists for your employees and Downstream Entities. So to make sure we comply with this CMS requirement, you must confirm that your permanent and temporary employees and Downstream Entities that provide administrative and/or health care services for our Medicare plans are not on either of these exclusion lists.

You must take action if an Employee or Downstream Entity is on the exclusion list.

If any of your employees or Downstream Entities are on one of the exclusion lists, you must immediately remove them from work related to MHHP's Medicare plans and notify us right away.

These exclusion list requirements are noted in § 1862(e)(1)(B) of the Social Security Act, 42 CFR §§ 422.503(b)(4)(vi)(F), 422.752(a)(8), 423.504(b)(4)(vi)(F), 423.752(a)(6), 1001.1901, and further described in the manual, Chapter 21 § 50.6.8

D. Reporting FWA and compliance concerns to Memorial Hermann Health Plan

There are a number of ways to report suspected or detected noncompliance or potential FWA. Don't worry — your reports are confidential. If you choose to use your own processes, make sure you report it to MHHP. You can also refer to MHHP's Code of Conduct for information on our reporting guidelines. You must adopt and enforce a zero-tolerance policy for retaliation or intimidation against anyone who reports suspected misconduct.

E. Offshore operations and CMS reporting

To help make sure we comply with applicable federal and state laws, rules and regulations, you are required to request permission to perform offshore services or to use an individual or entity (offshore entity) to perform services for MMHP's Medicare plans when the individual or entity is physically located outside the United States or one of its territories. If MHHP approves of the arrangement, the approval will be made by an authorized MHHP representative in advance and in writing for the use of such offshore individual or entity.

F. Specific Federal and State Compliance Obligations

Based on the services that you/your organization perform for MMHP's Medicare plans, you may be subject to other federal and state laws, rules and regulations that we did not describe in this guide. If you have questions about the Medicare requirements for the services that you/your organization performs, consult your MMHP Business Owner. MMHP expects you/your organization to be compliant with all applicable federal and state laws, rules and regulations.

G. Monitoring and Auditing of First Tier & Downstream Entities

CMS requires that we develop and implement a strategy to monitor and audit our First Tier Entities. This helps ensure that our First Tier Entities comply with all applicable laws and regulations, and that our First Tier Entities monitor compliance of their Downstream Entities. Therefore, if you choose to subcontract with other individuals/parties to provide administrative and/or health care services for MHHP's Medicare plans, you must make sure that these Downstream Entities abide by all laws and regulations that apply to you as a First Tier Entity. This includes ensuring:

- Contractual agreements contain all CMS-required provisions
- They comply with the Medicare Compliance Program requirements described in this guide
- They comply with any applicable Medicare operational requirements

Not every subcontractor is considered a Downstream Entity. Only those entities who provide administrative or health care services for MHHP's Medicare Advantage products may be Downstream Entities. If you have additional questions, feel free to contact us for assistance at mhhealthcomplianceoversight@memorialhermann.org.

Also, you/your organization must conduct sufficient oversight (that is, auditing and monitoring) to test and ensure that your employees and Downstream Entities are compliant. You must retain evidence of oversight completion, ensure root-cause analysis is conducted for any deficiencies, and implement corrective actions or take disciplinary actions such as contract termination, as necessary, to prevent recurrence of noncompliance.

Expect Routine Monitoring and Audits

We routinely monitor and audit our FDRs. This helps us ensure compliant administration of our contracts with CMS to offer Medicare plans, as well as applicable laws and regulations. Each FDR must cooperate and participate in these monitoring and auditing activities. If an FDR performs their own audits, MHHP may ask for the audit results affecting MHHP's Medicare business. Also, FDRs must routinely monitor and/or periodically audit their Downstream Entities if they are used for MHHP's Medicare plans.

If we determine that an FDR does not comply with any of the requirements in this guide, we will require the FDR to develop and submit a Corrective Action Plan (CAP). We can help the FDR address the identified compliance issues.

These monitoring and auditing requirements are noted in:

- 42 CFR § 422.503(b) (4) (vi) (F) for MA
- 42 CFR § 423.504(b) (4) (vi) (F) for Part D
- Manual, Chapter 21 § 50.6.6

H. Sales Oversight Specific Expectations

MHHP contracts with Field Marketing Organizations (FMO) and employed sales agents who service our potential beneficiaries and members. As a representative who works on behalf of the Health Plan, agents are required to adhere to specific regulatory requirements which involve internal and FMO oversight based on the regulatory requirements listed above as well as the following:

- Agent onboarding and termination process
- Compliant Marketing Materials
- Educational Events for potential beneficiaries
- Scope of Appointment Adherence
- Member Complaint Process
- Agent Disciplinary Action and reporting process
- Sales and Marketing adherence requirements

Questions/Concerns

Operations Oversight Department

Contact:

- MHHealthComplianceOversight@memorialhermann.org
- <http://healthplan.memorialhermann.org/compliance/fdr/>

Memorial Hermann Corporate Compliance and Ethics Hotline:

- 713-338-4140 or 1-877-448-4140
- Para ayuda en Español: 800-297-8592

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