Medicare compliance FDR newsletter

Quarter 1, 2023

Welcome to our rebranded FDR newsletter

Introducing the refreshed CVS Health® first-tier, downstream and related entities (FDR) Medicare compliance newsletter. We've been working to expand our content to provide interesting and relevant newsletter articles for all of our FDRs, with a new look and feel under the CVS Health branding.

New features that will be included in every quarterly newsletter:

- **Table of contents**: This section links you directly to the article within the newsletter.
- **Quick links**: This section provides direct access to important documents not within the newsletter.
- **Looking for resources**: Find this section on the last page. It gives you information on how to report issues of noncompliance or potential fraud, waste and abuse to us in various formats.

We hope you like the new look of the newsletter! If you have any questions, feel free to reach out to us at **MedicareFDR@Aetna.com**. We're here to help answer your compliance-related questions and concerns.

Table of contents

Quick links

- Medicare managed care manual
- Medicare prescription drug benefit manual
- CVS Health® Code of Conduct (updated November 2022)

Exclusion list links:

- OIG list of excluded individuals and entities (LEIE)
- GSA System for Award Management (SAM)

Links not working? Go to **SAM.gov/SAM/** to access the site directly.

We have a robust Medicare Compliance program, including communication with our Medicare FDRs. Our dedicated Medicare Compliance Officer is Patrick Jeswald. Questions or concerns? Email **MedicareFDR@Aetna.com**.

Prevent, detect and report fraud, waste and abuse

As of January 2019, FDRs were no longer required to complete general compliance and fraud, waste and abuse (FWA) training issued by the Centers for Medicare & Medicaid Services (CMS). However, it's still a critical component of an effective Medicare compliance program. We want our FDRs to know how to prevent, detect and report FWA. You play an important role in protecting the integrity of the Medicare program. To combat FWA, you need to know how to prevent your organization from engaging in abusive practices and/or civil or criminal law violations.

Fraud, waste and abuse (FWA) defined

- **What is fraud?** Intentional misuse of information in order to persuade another to part with something of value or to surrender a legal right. It could also be an act of planned deception or misrepresentation
- **What is abuse?** Providing information or documentation for a health care claim in a manner that improperly uses program resources for personal gain or benefit, yet without sufficient evidence to prove criminal intent.
- **What is waste?** To use, consume, spend or expend thoughtlessly or carelessly.

Medicare fraud and abuse laws: Federal laws governing Medicare fraud and abuse include all of the following:

- Federal False Claims Act (FCA)
- Anti-Kickback Statute (AKS)
- Physician Self-Referral Law (Stark Law)
- Social Security Act
- United States Criminal Code

These laws state the criminal, civil and administrative remedies the government may impose when they find evidence of fraud and abuse. Violating these laws may result in nonpayment of claims, civil money penalties, exclusion from all federal health care programs and criminal and civil liability. The CMS website provides more information, including FWA training options.

How to report to us. If you identify potential FWA that affects our Medicare contracts, please notify us right away. We have a reporting poster available for you.

Exclusion lists

- **Policy** should describe the process for conducting exclusion list screenings prior to hire, then monthly.
- **Evidence** includes providing the documentation to show that a sample of employees were screened against the exclusion lists prior to hire and monthly thereafter. Examples of evidence could include screenshots of results from the applicable website (with the date of screening), documentation from an external entity that conducts screenings on your behalf (if applicable), screenshots from exclusion database files and the record of employees screened as well as the results.

Performing offshore services

Medicare plan sponsors are required to provide details to CMS about offshore services involving protected health information (PHI) performed by FDRs. We rely on our FDRs to provide us with offshore information prior to performing certain services offshore. And prior to subcontracting with downstream entities to perform certain services offshore.

What locations are considered "offshore"? Offshore refers to any country that is not one of the 50 United States (U.S.), or a U.S. territory such

as American Samoa, Guam, Northern Marianas, Puerto Rico and the Virgin Islands. Some examples of offshore countries include Mexico, Canada, India, Germany and Japan. Offshore subcontractors can be American-owned companies with portions of their operations outside of the U.S. Or they can be foreign-owned companies with operations outside of the U.S. Offshore subcontractors provide services performed by workers located in offshore countries, regardless of whether they're employed by American or foreign companies.

What offshore services does CVS Health® need to report to CMS?
Medicare plan sponsors must submit an attestation to CMS to disclose offshore services performed by CVS Health or its FDRs that involve the receipt, process, transfer, handling, storage or access to beneficiary PHI. The information can be verbal or written.

Examples of PHI include:

- Beneficiary name
- Birth date
- Address
- Social Security number
- Health insurance claim number
- Patient identifier
- Medical diagnosis
- Medical history
- Treatment records
- Type of provider visited
- Use of health care services
- Payment information
- Evidence of insurance coverage
- Any information that could reasonably identify a beneficiary

How and when do I report offshore activities to CVS Health?
Medicare plan sponsors must approve your offshore services **in advance**. Reach out to your relationship manager/business owner to notify us of offshore services prior to services beginning to get appropriate approvals.

Third-party marketing organizations

CMS released a final rule during April 2022, **Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs** (Final Rule). In the Final Rule, CMS established certain marketing and communication requirements aiming to address beneficiary and stakeholder complaints of inappropriate marketing practices by Third-Party Marketing Organizations (TPMOs) who sell multiple Medicare Advantage and Part D products.

CMS defines a TPMO to be all organizations and individuals, including independent agents and brokers, who are compensated to perform lead generation, marketing, sales and enrollment-related functions as a part of the chain of enrollment. (The chain of enrollment are the steps taken by a beneficiary from becoming aware of an MA plan or plans to making an enrollment decision.) TPMOs may be an FDRs. Our Q4-2022 FDR Newsletter contained an article, *Third-Party Marketing Organization (TPMO) final rule*, that was geared toward the requirements around marketing and communication materials and required disclaimers. In this edition, we want to provide information on our oversight expectations for TPMOs around lead generation and enrollment.

As a CVS Health FDR, if you are also a TPMO, or use a TPMO(s) to support your contract with us, then you are contractually obligated to ensure you have processes in place to:

- **Disclose subcontracted Relationship(s)** used for marketing, lead generation and enrollment to us. TPMOs **must** notify us for any discontinued or new subcontracted relationships within 30 days of the change. Use this form to report subcontracted relationships.
- **Perform oversight of all lead sources** to confirm when used to solicit Medicare

product enrollments are compliant with CMS guidelines, and all other state or federal laws, rules and regulations.
- **Provide monthly disciplinary reporting** if you identify that your organization, or your TPMO(s), are not complying with the CMS guidelines that are associated with beneficiary interaction with the plan. The monthly TPMO disciplinary report is due by the 15th of every month and submitted using the Producer World® website.
- **Provide beneficiary call recordings**, in their entirety, when they are part of the chain of enrollment into a Medicare Advantage or Part D plan. This includes the steps taken by a beneficiary from becoming aware of a Medicare plan(s), to making an enrollment decision, as well as post-enrollment discussions by phone. These call recordings must be retained and made available upon request for a minimum of 10 years.

For additional information about how you share this information with us to remain in compliance, you can refer to the Broker Blasts that were sent out in December 2022: TPMO Disciplinary Actions and TPMO Subcontracted Relationships

CMS secret shopping
CMS has been performing "secret shopping" activities by calling numbers that they saw in television advertisements, mailings, newspaper advertisements and internet searches. They're doing this to monitor the beneficiary experience. CMS has found through their reviews that some TPMOs have not been complying with current regulations.

Are you compliant with TPMO requirements?
We'll be performing oversight reviews throughout 2023 to confirm compliance with TPMO requirements. Make sure you have reviewed and are compliant with CMS guidelines, and all other state or federal laws, rules and regulations.

Questions?
If you have additional questions, you can email your Account Manager or **AgentOversight@Aetna.com**.

Looking for resources?

Our partnership with you — a first tier, downstream or related entity (FDR) — is important to us. We need you to help fulfill our contracts with the Centers for Medicare & Medicaid Services (CMS). And you can rely on us for the teamwork and support you need.

You can read **our FDR Guide**; it includes a toolbox of resources. In addition, our archived newsletters are available online. If you would like the Medicare Compliance FDR Guidebook or a past newsletter, just email us at **MedicareFDR@Aetna.com**.

Need to report noncompliance or potential fraud, waste and abuse (FWA)? We have a number of ways for you to report suspected or detected noncompliance or potential FWA.
- CVS Health Ethics Line: **1-877-287-2040 (1-877-287-2040)(TTY: 711)**
- CVS Health Online Ethics Line **CVSHealth.com/EthicsLine**
- Write us: Chief Compliance Officer, CVS Health One CVS Drive, Woonsocket, RI 02895

If you have additional questions, you can email **MedicareFDR@Aetna.com**.