



<b>MM Policy and Procedure No. MMCD- 22</b>	
<b>Department: Medicare Compliance</b>	
<b>Title: First Tier, Downstream &amp; Related Entities (FDR) Compliance Program Requirement Auditing</b>	
<b>Effective Date: June 7, 2017</b>	
<b>Reviewed and Revised Date:</b>	
<b>Reviewed Only Date:</b>	
<b>Name: John Tanner</b> <b>Title: Medicare Compliance Officer</b>	<b>Supersedes and replaces:</b>
<b>Authorized Signature:</b>  <b>Date:</b> 6/7/17	<b>Dated:</b>

**I. PURPOSE:**

This policy describes the process for auditing and oversight of Molina Medicare First Tier, Downstream, and Related entities (FDRs) for adherence to Centers for Medicare and Medicaid Services (CMS) Compliance Program requirements: CMS General Compliance Training; Fraud, Waste, and Abuse (FWA) Training; Code of Conduct distribution; and Office of Inspector General/General Services Administration (OIG/GSA) exclusion screenings.

**II. POLICY:**

The Molina Medicare Compliance Department (MCD) requires Medicare First Tier, Downstream, and Related entities (FDRs) to submit annual attestations that they are adhering to CMS Compliance Program requirements as established in policy **MMCD-20 First Tier, Downstream & Related Entities (FDR) Compliance and Fraud, Waste and Abuse (FWA) Training.**

The MCD ensures that a sample or least 10% of Molina Medicare FDRs are audited annually for:

- o CMS General Compliance Training
- o CMS FWA Training
- o Code of Conduct distribution to all FDR employees
- o Office of Inspector General/General Services Administration (OIG/GSA) exclusion screenings

Molina Healthcare conducts the FDR audits to validate that the representations made in the attestations received from FDRs are accurate, and to confirm FDR compliance with CMS regulations and documentation requirements. The audits may be conducted as desktop audits.

Selection of FDRs for audit are based on risk factors including, but not limited to: number of members associated with the delegate; the delegated function’s potential affect on member access to care; member and/or financial impact; potential for fraud, waste and abuse; and the number and severity of instances of non-compliance by the delegate.

Audit results are reported to the Medicare Compliance Delegation Oversight Director (MCDOD), the Medicare Compliance Officer (MCO) and the Medicare Compliance Committee (MCC).

The MCDOD is responsible for ensuring that the General Compliance Training, FWA Training, and Code of Conduct audits are conducted. The MHI Delegation Oversight Director and the Molina Delegation Oversight staff at each state health plan are responsible for ensuring that the OIG/GSA Exclusion Screening audits are conducted of national and state delegates, respectively.

### III. PROCEDURE:

#### A. Compliance and FWA Training, Code of Conduct

1. The MCDOD selects the FDRs to be audited based on risk factors and determines the review period, which may be 10 -12 months based on the time of year the audit is conducted.
2. The MCDOD assigns the audits to a Medicare Compliance Analyst (MCA).
3. The MCA auditor notifies the FDR selected for audit of the scope, review period, and deadline to deliver initial documentation within ten business days from audit start date. This initial or pre-audit documentation includes:
  - a. A universe of employees and staff at all levels who were newly hired/appointed during the review period including name, title and/or department and date of hire/appointment
  - b. A universe of existing (not newly hired/appointed) employees and staff at all levels for the review period including name, title and/or department and date of hire/appointment
  - c. Copies of all materials used for General Compliance Training conducted during the review period
  - d. Copies of all materials used for FWA Training conducted during the review period
  - e. Policies stating that Compliance and FWA Training will be conducted within 90 days of hire/appointment for employees and staff at all levels and annually thereafter
  - f. Policies stating that the FDR complies with the CMS ten year record retention requirement
  - g. Policies stating that the FDR's Code of Conduct and/or Policies & Procedures regarding standards of conduct will be distributed within 90 days of hire/appointment to new employees and staff at all levels, and annually thereafter
  - h. A copy of the FDR's Code of Conduct and/or Policies and Procedures articulating the FDR's standards of conduct
4. From the two submitted universes, the MCA auditor will select **for review 10 new hires and 10 existing staff, for a total of 20 staff members**. In the event the FDR has hired/appointed less than 10 new staff during the review period, additional existing staff will be selected, for a total of no more than 20 staff. The MCA auditor shall select employees and staff from multiple levels to ensure monitoring processes are consistent, regardless of position within the FDR.
5. The MCA Auditor will ask the FDR to provide the following evidence for each sample:
  - a. Evidence of the individual's completion of General Compliance Training, such as a certificate of completion, sign-in sheet, screenshot, a log/report or test results.
  - b. Evidence of the individual's completion of FWA training, such as a certificate of completion, sign-in sheet, screenshot, a log/report or test results.
  - c. Evidence of the individual's receipt of the Code of Conduct, such as a sign-sheet, screenshot, a log/report or test results.
6. If the FDR delegates any Medicare Part C or D administrative services or healthcare services to a subcontractor, the MCA auditor will request the following documents for review:

- a. A list of all subcontractors and what function(s) are delegated, and delegation effective date(s) during the review period
  - b. Completion of a downstream entity survey
  - c. Policies describing the process to monitor or audit subcontractors for compliance with CMS Compliance Program requirements for General Compliance Training, FWA Training and Code of Conduct distribution to all the downstream entity's (subcontractor's) employees *and staff at all levels* within 90 days from date of hire/*appointment* and annually thereafter
  - d. Evidence of FDR's audit of one of its downstream entities for General Compliance Training, FWA Training and Code of Conduct distribution during the review period
7. The MCA auditor will review the samples and score them with the audit tool to validate that the FDR General Compliance Training content and Fraud Waste and Abuse Training content includes all CMS Medicare Learning Network (MLN) content **at minimum**. The samples will also be reviewed and scored for timeliness: General Compliance Training, FWA Training and Code of Conduct distribution completed within 90 days of hire/**appointment** for all newly hired employees **and staff at all levels**, and annually for all existing employees **and staff at all levels**. The MCA Auditor will contact the FDR if there are any questions regarding the documentation provided and/or if additional documentation is needed.
  8. After completion of the sample review, the MCA auditor will compile all findings into the audit tools and assign a final score. Any areas of concern with General Compliance Training, FWA Training, or Code of Conduct **distribution** will be identified via a request for a Corrective Action Plan (CAP). The audit results and request for CAP will be presented to the MCDOD. The MCDOD will meet with the Medicare Compliance Officer for review and approval of the request for CAP. Upon approval of the CAP by the MCO, the MCA will send the audit report and request for CAP to the FDR and schedule an Exit Conference to review the findings. The FDR will be given thirty days from the date of the Exit Conference to submit the CAP. The MCDOD and the MCO may adjust the CAP response timeframes based on the severity of the findings.
  9. The FDR's CAP response will be submitted to the MCDOD and MCO for determination of acceptance of the CAP. Any requests for revisions will be sent to the FDR until the CAP is accepted. The MCA auditor will notify the FDR of CAP acceptance. The FDR will be asked to submit evidence of CAP completion within the requested timeframes which may be 30 to 60 days after CAP acceptance. The final CAP completion and audit report will be submitted to the Medicare Compliance Committee.

## **B. OIG/GSA Excluded Parties List System**

1. The MHI Delegation Oversight Director oversees auditing of national FDRs for OIG/GSA Exclusion Screening as per Policy and Procedure DO-0008 Sanction Monitoring Delegation Requirements. Molina Delegation Oversight staff at each state health perform audits of state FDRs for OIG/GSA Exclusion Screenings in accordance with the policy established in Policy and Procedure DO-0008 Sanction Monitoring Delegation Requirements. FDRs must attest **annually** that any employee or contracted entity found on such lists, the employee or contracted entity will be immediately removed from any work related directly or indirectly to all Federal health care programs, and that appropriate corrective actions will be taken.
2. Audits of national FDRs for OIG/GSA Exclusion Screenings are reported to the Corporate Delegation Oversight Committee which includes the MCDOD and the MCO.

3. Audits of state FDRs for OIG/GSA Exclusion Screenings are reported to the respective state health plan Delegation Oversight Committee and to the Medicare Compliance Director, Delegation Oversight.
4. The MCDOD reports both national and state FDR OIG/GSA Exclusion Screening audits to the Medicare Compliance Officer monthly and to the Medicare Compliance Committee quarterly.

#### **IV. REFERENCES**

- CMS Medicare Managed Care Manual, Chapter 21
- CMS Prescription Drug Benefit Manual, Chapter 9
- CMS Audit Protocols, Compliance Program Effectiveness

#### **V. DEFINITIONS**

**CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS):** Federal agency that administers Medicare and Medicaid programs.

**CORPORATE DELEGATION OVERSIGHT COMMITTEE (CDOC):** MHI Quality Committee made up of functional area experts that evaluate pre assessment audits, annual audits, reporting, and compliance monitoring and makes delegation decisions.

**CORRECTIVE ACTION PLAN (CAP):** A document that identifies any areas of non-compliance found during an audit.

**DESKTOP AUDITS:** Audits that occur electronically. Desktop audits require FDR to submit all materials, including files and documents, electronically.

**DOWNSTREAM ENTITY (SUBCONTRACTOR):** An organization that the FDR contracts with to perform any of the functions for which it has been delegated by Molina Healthcare.

**FIRST TIER, DOWNSTREAM AND RELATED ENTITY (FDR):**

First Tier Entity is any party that enters into a written arrangement, acceptable to CMS, with a Medicare Care Advantage Organization (MAO) or Part D plan sponsor or applicant to provide administrative services or health care services to a Medicare eligible individual under the MA program or Part D program. (See, 42 C.F.R. § 423.501).

The sponsor maintains the ultimate responsibility for fulfilling the terms and conditions of its contract with CMS, and for meeting the Medicare program requirements. Therefore, CMS may hold the sponsor accountable for the failure of its FDRs to comply with Medicare program requirements.

Medicare program requirements apply to FDRs to whom the sponsor has delegated administrative or health care service functions relating to the sponsor's Medicare Parts C and D contracts.

Downstream Entity (subcontractor) is any party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with the MA benefit or Part D benefit, below the level of the arrangement between an MAO 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 C.F.R. §, 423.501).

**V. RELATED POLICIES**

**MMCD-20 - First Tier, Downstream & Related Entities (FDR) Compliance and Fraud, Waste and Abuse (FWA) Training**

**DO-0008 – Sanction Monitoring Delegation Requirements**

