Building a Compliant FDR Oversight Process
From the Foundation Up

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What we learned from CMS Compliance Program audits

- **Understand** regulatory requirements
- **Define** current FDR oversight status – Create a compliance snapshot
- **Create** an effective, sustainable FDR oversight program
- **Monitor** oversight effectiveness & continue improvement efforts
What we learned from CMS Compliance Program audits

• **Understand** regulatory requirements
  – Interpretation
  – FDR qualities

Understanding Regulatory Interpretation

• FDR **Definitions**
• FDR **Characteristics**
• FDR **Types**
Understanding Regulatory Interpretation - **Definitions**

- **First Tier Entity** - a party that
  - enters into a written CMS-approved arrangement with a Sponsor to provide *core administrative services and/or health care services* for Medicare beneficiaries under Medicare Advantage (MA) or Medicare Part D (PDP) plans
  - provides core services that the sponsor would normally be required to provide

- **Downstream Entity** - a party that
  - enters into a written CMS-approved arrangement, below the level of the arrangement between a Sponsor and a First Tier Entity
  - performs sub-delegated core functions down to the level of ultimate provider of health and/or administrative services
Understanding Regulatory Interpretation - **Definitions**

- **Related Entity** - any entity that is related to the Sponsor by common ownership or control and either:
  - performs some of the Sponsor’s management functions under contract or delegation,
  - furnishes services to Medicare enrollees, or
  - leases real property or sells materials to the Sponsor at a cost of more than $2,500 per contract period (usually one year)
Understanding Regulatory Interpretation - **Characteristics**

- Perform “core” functions or provide services directly related to “core” functions
- MA organization would otherwise be responsible to perform the delegated activity
- Cost of delegated functions is paid from Federal funds

Understanding Regulatory Interpretation

- FDR Definitions
- FDR Characteristics
- FDR Types
Understanding Regulatory Interpretation – **Types**

- Network Providers
- External Marketing Agents
- PBM
- Customer Service Vendor
- Claims Processing Vendor
- Agent “Secret Shoppers”
- HEDIS/CAHPS/HOS Reporting Entity
- Provider Credentialing Entity
- Actuarial Services Vendor

What we learned from CMS Compliance Program audits

- Understand regulatory interpretation of FDRs
- **Define current FDR oversight status**
- Create an effective, sustainable FDR oversight program
- Monitor oversight effectiveness & continue improvement efforts
Define **Current** FDR Oversight Status

1. **Assess** the situation
2. **Define** the target
3. **Check** your alignment
4. **Adjust** your aim

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**Oversight Snapshot:**

**Step 1-** **Assess** the situation

- Define all Medicare Advantage activities
- Name business owner for each activity
- Categorize how each activity is performed – internal versus delegated
- Identify FDRs by comparing with CMS definitions and key components
Oversight Snapshot:  
Step 2 - Define the target

- Define relationship and delegated activities
- Document performance requirements & penalties
- Develop effective work instructions for all delegated work
- Create effective internal and external communication channels
- Monitor effectiveness of training (Code of Conduct & FW&A)
- Establish audit of delegated work (at least annually)
- Review/renew delegation agreement annually

Oversight Snapshot:  
Step 3 - Check your alignment

- Affirm delegated activities with Business Owners
- Identify Business Owner’s monitoring tools
- Compile CMS “entity specific” requirements
- Review delegation contract documents and P&Ps for delegated functions
- Gather compliance training documents – FWA, SOC, COI, HIPAA
Oversight Snapshot:
Step 4 - **Adjust** your aim

- Compare current contract language with required language
- Evaluate effectiveness of current controls & reports
- Analyze past/current efforts to identify & correct unsatisfactory FDR performance
- Review P&Ps for relevancy and accuracy
- Determine compliance status of each FDR – Identify gaps

What we learned from CMS compliance audits

- Understand regulatory interpretation of FDRs
- Define FDR oversight status – Create a compliance snapshot
- **Create an effective, sustainable FDR oversight program**
- Monitor oversight effectiveness & continue improvement efforts
Create effective oversight program

- Compliant FDR contracts
- Reliable FDR audit work plan
- Prompt process to correct gaps

Create effective oversight program: Compliant Contract

- Executed or updated within past 12 months
- Specifies delegated activities
- Describes reporting requirements
- Provides performance standards and financial penalties for non-compliance
**Create** effective oversight program: **Compliant Contract**

- Allows for remediation/revocation for non-satisfactory performance
- Requires compliance with Medicare laws, regulations, and CMS instructions
- Establishes right of MAO to audit (at least annually)
- Requires disclosure of downstream delegation

**Create** FDR oversight program: **Compliant Contract**

- Contains record retention (10-year minimum)
- Requires P&Ps be current & adequately address all delegated functions
- Includes unique requirements for certain FDRs, e.g., health care providers, marketing agents, provider credentialing
Create FDR oversight program: Audit Work Plan

• Create an audit checklist
• Consider requirements by FDR type
• Prioritize FDRs according to impact to beneficiaries (risk assessment)
• Develop an annual FDR audit plan according to risk

Create FDR oversight program: Correction of Gaps

• Compare existing oversight activities with CMS minimum requirements
• Prepare draft of findings & forward to business owner
• Establish due date for management response
• Collaborate with business owners to resolve deficiencies
• Establish ongoing monitoring plan
What we learned from CMS Compliance Program audits

- Understand regulatory interpretation of FDRs
- Define current FDR oversight status
- Implement an effective, sustainable FDR oversight program
- **Monitor oversight effectiveness & **continue** improvement efforts**

Monitor Oversight Effectiveness & Continue Improvement

- How can the program be continuously supported?
- How can the current oversight program be improved?
Monitor Effectiveness: Hierarchy of Support

- Business Owners
- Medicare Advantage Compliance
- Delegation Oversight Committee
- Medicare Advantage Compliance Committee
- Executive and Senior Staff
- Compliance & Audit Committee of the Board Directors
- Board of Directors

Monitor Effectiveness: Delegation Oversight Committee

- Identify delegation oversight committee (DOC) members
- Draft & approve committee charter – purpose, structure & operations, meetings, duties & powers, annual evaluation
- Determine committee reporting structure
- Schedule meetings at least quarterly
- Review dashboard reports
**Continue Improvement Efforts**

- Establish pre-delegation audit protocol for future proposed delegated work
- Establish annual audit plan for existing FDRs
- Confirm implementation and update of business owners’ P&Ps
- Establish process to monitor business owners’ oversight actions, issue audit findings, and require accountable corrective action

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**Continue Improvement Efforts**

- Quarterly FDR reporting
- Annual FDR attestation
- Tracking spreadsheet – reports, attestations, P&P updates
- PBM audit
- Agent certification & monitoring
- Network provider challenges
Summary

• **Understand** regulatory expectations for an effective FDR oversight program – CMS audits

• **Define** FDR oversight status – Develop an approach and evaluative tools

• **Create** and support an effective, sustainable FDR oversight program – With accountabilities

• **Monitor** ongoing effectiveness through efficient use of resources – Written CAPs