

Compliance Today – August 2019 Establishing a proactive MAO vendor oversight program

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For many compliance professionals, a monitoring event is a routine practice. However, there are times when a routine monitoring event can become memorable. Medicare Advantage Organizations (MAOs) expect to be asked to explain how the organization you have contracted with fits within the definition of a first tier, downstream, or related entity (FDR). However, a rather alarming question from the vendor is, “Can you give us a little more information about the General Services Administration (GSA) excluded provider list, federal contractor (SAM) exclusion list, and the OIG exclusions lists?” ... a year into the contractual relationship.

This article does not provide medical advice, but this sort of question has been known to cause side effects such as an increased heart rate, trouble sleeping, and hopes that your organization is not scheduled for an audit. Although some questions from your FDR can be extremely concerning, these questions are often found to be built on a breakdown of communication and understanding regarding each organization’s responsibility.

One of the first steps to avoiding a breakdown of communication and understanding is to fully understand your organization’s relationship with a vendor. For MAOs, the primary question will be whether the vendor that you are contracting with is an FDR. Another important consideration for a compliance professional is how and what oversight responsibility the vendor owes the MAO and also how much oversight responsibility the vendor should be tasked with. After clearly defining the relationship and defining each organization’s oversight duties, it is important to express this mutual assent in writing in the form of a contract.

The implementation of these steps does not eliminate potential breakdowns of communication, but it does provide valuable support for building a positive and productive relationship for the individuals that your organization serves. The Medicare Managed Care Manual (Chapter 21) assists an MAO with defining their relationship with a vendor and understanding the six most important questions.

What is an FDR?

To build a valuable relationship with a vendor, an MAO must answer the often-asked question: Does this vendor qualify as an FDR? To break that down, it is the terminology used by the Centers for Medicare & Medicaid Services (CMS) to identify those vendors that contract with an MAO to perform administrative and/or healthcare service functions relating to the MAO’s contract(s) for Medicare Parts C and D.^[1]

As stated in Chapter 21, “it is critical that sponsors correctly identify those entities with which they contract that qualify as FDRs.”^[2] CMS requires that MAOs conduct an analysis of all of the circumstances related to the vendor’s responsibilities, unless it is clear that an entity can be established as fitting within the FDR definition or is clearly not an FDR.^[3] To ensure that the conundrum of FDR status is ascertained by an MAO, CMS also requires that FDRs have a defined process and criteria to evaluate and categorize all vendors that are contracted to perform services on behalf of the MAO for the Medicare contract.^[4]

To assist MAOs in the evaluation of FDR status, CMS provided some areas for consideration. As a base guideline for conducting the FDR status analysis, CMS suggests that MAOs look at:

- The function being performed (see Chapter 21 for a full list)
- The impact for the enrollee
- The vendor's access to protected health information (PHI)
- Whether or not decision-making authority is being delegated
- The vendor's ability to commit fraud, waste or abuse (FWA)

The risk the vendor presents to the MAO^[5]

Because CMS does not provide the exact methodology for the determination of FDR status, a magnitude of effective methods are used for making these determinations, depending on your organization's size, structure, and processes. A few of the methodologies include using an FDR Decision Tree, hosting a decision-making committee that deliberates on whether the vendor should be designated as an FDR (Note: It is recommend to have specific criteria in place to discuss at these meetings), or a combination of these processes.

Once you have determined the best process for your organization, you need to document this in an official policy and procedure to ensure that the standard is set and you are consistent in your execution and determinations of which vendors are defined as FDRs and the vendors that are outside the FDR definition.

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