MaineHealth

Accountable Care Organization

Annual Compliance Training

Compliance Program

- A Compliance Program helps an organization abide by all applicable rules, standards and organizational policies. Organizations participating in programs governed by the Centers for Medicare & Medicaid Services (CMS) are required to have an effective Compliance Program, including conducting annual compliance training.

- The MaineHealth Accountable Care Organization (ACO) has an agreement with CMS for a Medicare Shared Saving Program (MSSP), a number of Medicare Advantage Plans, including Special Needs Programs (SNP).

- The MaineHealth ACO's Compliance Program includes promotion of the Code of Ethical Conduct, training, auditing & monitoring, and a system to report compliance concerns. The MaineHealth ACO's Employees and Participants[1] are required to report any violations of applicable law or policy. Reports may be made to the individual's immediate supervisor, Compliance or Privacy Official, or the MaineHealth Corporate Compliance Helpline at (207) 662-4646.

1 A Participant is a Tax ID Number (TIN) that is included on the ACO's participant list, and a provider/supplier is an NPI that bills Medicare under one of the TINs on the participant list.

Compliance Program

- This training provides MaineHealth ACO Employees and Participants with information and education about laws, policies and programs designed to detect and prevent fraud, waste and abuse related to federally funded governmental programs (including but not limited to healthcare reimbursement programs like Medicare and Medicaid (MaineCare)). In addition, this training will explain the compliance risks specific to the MaineHealth ACO, such as Confidentiality, Utilization and Beneficiary Assignment.

- The MaineHealth ACO must track and maintain documentation of the completion of this training by its Employees and Participants.
  - After review of this training material by all participants, an individual with signatory authority will sign the enclosed/attached 2020 Annual Compliance Attestation and return it to the MaineHealth ACO for tracking purposes.

- Participants are required to maintain documentation of all providers completing this Training, demonstrating compliance training requirements for a period of 10 years.

Compliance Program

What is Non-Compliance?

Conduct that does not conform to laws, state and/or federal health care program requirements, or MaineHealth ACO ethical and business policies.

Compliance Risk Areas:

- Beneficiary Notices
- Conflicts of Interest
- Claim submissions
- Documentation
- Data Use Agreements
- Ethics
- HIPAA- Health Insurance Portability and Accountability Act
- Quality of care

Consequences of Non-compliance

- Disciplinary action
- Contract termination
- Criminal & Civil penalties
- Refunds of overpayments
- Exclusion from participation in all Federal health care programs

Code of Ethical Conduct

- A Code of Ethical Conduct states an organizations compliance expectations, values, operational principles, and provides guidance on standards for workforce conduct.
- All Practices should have a Code of Ethical Conduct
- If you do not have a Code of Ethical Conduct the MaineHealth ACO welcomes you to adopt ours (enclosed) and to make applicable edits for your practice where necessary. E-mail MHACOinfo@mmc.org to request an electronic copy of the document if you wish to edit it for your use.
- All practices must attest to receipt of, understanding and a willingness to abide by the MaineHealth ACO Code of Ethical Conduct.

The Federal False Claims Act (FCA)

- The FCA is a law imposing liability on persons and/or companies who defraud governmental programs. It is the government's primary tool in combating fraud against the government.

- The FCA prohibits, among other things, any person or organization from knowingly submitting, or causing to be submitted, or conspiring to submit, or from making a false record or statement in connection with the submission of a false or fraudulent claim for payment to the U.S. government.

- The federal government enforces the FCA.

The Federal False Claims Act (FCA)

Examples of a false claim include, but are not limited to:

- Billing for procedures not performed
- Billing for services that are medically unnecessary
- Billing separately for services that should be bundled (or unbundling)
- Falsifying information in a medical record
- Billing more than once for the same services
- Failure to return an overpayment within 60 days of identification
- Billing an otherwise appropriate claim when the service itself resulted from an inappropriate arrangement between a provider and a hospital or other healthcare entity (Stark or Anti-kick-back).
- Inaccurate CEHRT attestations

The Federal False Claims Act (FCA)

Some points to remember about the FCA:

- False claims may result from something other than an intent to break the law. False claims may arise from repeated errors that reflect "deliberate ignorance" or "reckless disregard" of the rules.

- The FCA allows individuals to act as "whistleblowers" and sue any person or entity they believe has defrauded the government. The government may join the suit if it believes the whistleblower's case has merit. If the case is won, the whistleblower is entitled to a portion of any money recovered.

- Penalties under the FCA are significant and may include fines of millions of dollars, as well as exclusion from government health care programs.

Understanding Fraud, Waste and Abuse

Criminal Fraud:

Knowingly and willfully executing, or attempting to execute, a scheme or artifice to defraud any health care benefit program; or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program. (18 United States Code §1347)

What does this mean?

Intentionally submitting false information to the government or a government contractor in order to get money or a benefit.

Examples of actions that may constitute Fraud:

- Billing for services not furnished or provided, including cancelled appointments
- Altering claims, medical records or receipts to receive a higher payment.

Fraud, Waste and Abuse

Waste:

Over utilization of services or other practices that directly or indirectly, result in unnecessary costs to the Medicare Program. Waste is generally not considered to be caused by criminally negligent actions but rather the misuse of resources.

Examples of actions that may constitute Waste:

- Conducting excessive office visits or writing of prescriptions
- Ordering excessive laboratory tests

Abuse:

Includes actions that may, directly or indirectly, result in unnecessary costs to the Medicare Program. Abuse involves payment for items or services when there is not legal entitlement to that payment and the provider has not knowingly and/or intentionally misrepresented facts to obtain payment.

Examples of actions that may constitute Abuse:

- Unknowingly billing for unnecessary medical services
- Misusing codes on claims, up-coding or unbundling

Fraud, Waste and Abuse

Differences Between Fraud, Waste, and Abuse:

- There are differences between fraud, waste, and abuse.
  One of the primary differences is intent and knowledge.
- Fraud requires the person to have intent to obtain payment and the knowledge that their actions are wrong.
- Waste and abuse may involve obtaining an improper payment, but does not require the same intent and knowledge.

Preventing Fraud, Waste and Abuse

- Make sure you are up to date with laws, regulations, and policies.
- Ensure you coordinate with other payers.
- Ensure your data and billing is both accurate and timely.
- Verify information provided to you.
- Ensure CEHRT attestations are accurate, false EHR certifications are an OIG top priority for 2020.
- Be on the lookout for suspicious activity.
- Refund all identified overpayments within 60 days.

Correcting Fraud, Waste and Abuse

- Any questionable or potentially illegal conduct or behavior in violation of the Code by anyone working for or on behalf of the MaineHealth ACO, shall be reported immediately, fully and objectively to the Compliance or Privacy Official, the "Helpline" or to the individual's immediate supervisor.

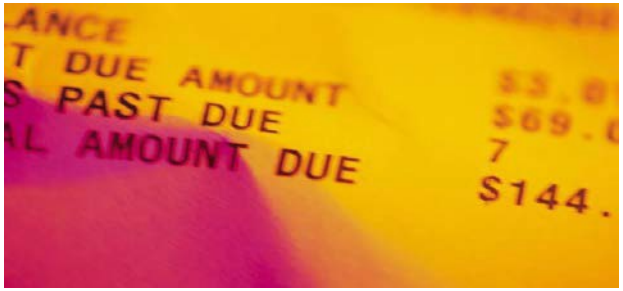
- Staff/Participant are also encouraged to immediately report any experience that made them feel uncomfortable or uneasy about the legal or ethical nature of conduct or decisions made. Every reasonable effort will be made to protect an individual's confidentiality and the information shared only with those having a need to know.

- The MaineHealth ACO has established a confidential MaineHealth Corporate Compliance Helpline on which potential violations can be reported on a confidential basis or questions asked; (207) 662-4646. Staff/Participant will not be reprimanded or subject to any discipline or retaliation for the act of making any report in good faith and without malicious intent.

- The MaineHealth ACO will report any compliance concerns to the appropriate entity including but not limited to Medicare and Medicare Advantage Plans, if applicable.

Fraud, Waste and Abuse

- Participants/Suppliers in the MaineHealth ACO will continue to submit fee-for-service claims to government programs and all existing billing and coding laws continue to apply to the MaineHealth ACO Participants(practices)/Suppliers (providers).
- The MaineHealth ACO itself submits certifications to the government to obtain payment, and will submit a large amount of data to support the certifications. The FCA prohibitions apply to the MaineHealth Accountable Care Organization when submitting the certifications.
- All MaineHealth ACO quality and other reporting must be accurate and supported by auditable records. Representatives of the MaineHealth ACO will be required to attest to the accuracy of data submissions.



Exclusion Program

- The MaineHealth ACO must make certain that each provider has been properly screened against the HHS-Office of Inspector General (OIG) Exclusion Database prior to hire. Each month after hire MaineHealth screens against the OIG Exclusion Database and 41 state exclusion databases.

- If an individual or entity is excluded from the OIG Exclusion Database or any state exclusion database, Federal and State funds cannot be used to support this person, or organization including any item or service they may have provided, ordered or prescribed whether directly or indirectly obtained and therefore cannot participation in Medicare, Medicaid and all other Federal health care programs

Financial Relationships- Kickbacks/Inducements

Other federal laws designed to prevent fraud, waste and abuse apply to arrangements where money or other items or services of value are exchanged between Physicians or given to patients, including the physician self-referral law ("Stark"), the anti-kickback statute and the prohibition on beneficiary inducements.

- The **physician self-referral law**, commonly referred to as the "**Stark Law**":
  - Applies to financial relationships involving physicians, physician-owned practices and immediate family members of physicians.
  - Prohibits a physician from making referrals to an entity for hospital, laboratory, and many other ancillary services known as "designated health services" payable by Medicare if there is a financial relationship between the entity and the physician (or an immediate family member), unless the financial relationship meets each and every element of a listed exception.

    See https://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/List_of_Codes for a list of HCPCS codes.
  - Prohibits the entity from billing for those referred services.
  - Is a technical law based on the existence or non-existence of a compliant financial relationship and does not depend on the parties' intent.

Financial Relationships- Kickbacks/Inducements

- **The anti-kickback statute**:
  - Makes it a felony to offer, pay, solicit or receive anything of value to induce or reward patient referrals or generate federal health care program business.
  - Is violated if "one purpose" of a payment is to induce or reward referrals.
  - Contains "safe harbors" describing arrangements that will not be prosecuted by the government if each and every element of the safe harbor is met.

- **The prohibition on beneficiary inducements:**
  - Prohibits offering or giving anything of value to a Medicare or Medicaid beneficiary that an entity knows or should know is likely to induce the beneficiary to seek reimbursable items or services from a particular provider or supplier.
  - Is subject to specific exceptions and safe harbors as defined in federal regulations.

Financial Relationships- Kickbacks/Inducements

Examples of activities that would violate these laws are:

- A laboratory providing a computer or other equipment to a physician's office in exchange for referrals to their lab.
- A hospital giving extra funding or free office space to private physicians to ensure that they refer beneficiaries to the hospital.
- A physician's office routinely waiving co-payments or deductibles, without consideration of financial need or providing gifts to attract beneficiaries to the practice.
- A medical device vendor giving gifts to a health care provider to boost sales of its products.
- The MaineHealth ACO giving its participants payments as a reward/incentive for referrals to a participating hospital.

Permitted Activities

Safe Harbors

Certain financial arrangements between providers (participants) are permitted under specific exceptions to the Stark law, and the Office of Inspector General (OIG) has defined "safe harbors" for which it will not treat an arrangement as violating the anti-kickback statute or beneficiary inducements prohibition if all elements of the safe harbor are met.

Examples for which an exception or safe harbor is available are

- Rental of office space to a physician at fair market value under a written lease agreement.
- Waiver of a beneficiary's co-payment or deductible based upon case-specific determination of financial need.
- Vendor discounts or rebates to a health care provider.
- Provision of certain preventive care items or services by the MaineHealth ACO to help beneficiaries meet clinical goals.

Permitted Activities

Waivers

In addition, CMS and OIG have jointly identified five circumstances where they will waive applicability of Stark, anti-kickback and the beneficiary inducements prohibition in conjunction with the MaineHealth ACO's participation in the MSSP.

They are the:

- ACO Pre-Participation Waiver
- ACO Participation Waiver
- Shared Savings Distributions Waiver
- Compliance with the Stark Law Waiver
- Patient Incentive Waiver

CMS and OIG note that any given arrangement related to the MSSP may and can qualify for more than one waiver.

The rules for applying the exceptions, safe harbors and waivers can be complicated. If you have questions or concerns, contact your supervisor, the Compliance Officer or the Helpline @ 1-207-662-4646. To access the Federal Register go to:
https://www.federalregister.gov/articles/2015/10/29/2015-27599/medicare-program-final-waivers-in-connection-with-the-shared-savings-program

ACO Risk Areas

- The MaineHealth ACO has compliance issues in common with traditional providers, but they also have compliance risks that are unique to the ACO environment.

- The MaineHealth ACO may be audited in these areas, and may incur sanctions, including mandated corrective action plans and/or termination from the ACO program.

- The MaineHealth ACO specific risk areas are described below.

Risk Area: Stinting on Care, Over-utilization

- Because ACO Programs reward lower provider expenditures, the Maine-Health ACO must ensure its Participants are not reducing necessary care to MaineHealth ACO beneficiaries in order to reduce costs.

- The MaineHealth ACO may not encourage its Participants to reduce or limit medically necessary services.

- The MaineHealth ACO Participant may not over utilize services provided to non-MaineHealth ACO beneficiaries to make up for revenues not achieved due to cost-saving measures.

Risk Area: Avoiding Certain Beneficiaries

The MaineHealth ACO's employees and participants may not avoid beneficiaries with high medical needs, or "at-risk" beneficiaries.

An "at-risk" beneficiary includes a patient who:

- has one or more chronic conditions;
- is dually eligible for Medicare and Medicaid;
- is diagnosed with a mental health or substance abuse disorder, or has had a recent diagnosis that is expected to result in increased cost;
- has had two or more hospitalizations or emergency room visits each year, or otherwise has a high utilization pattern.

Risk Area: Beneficiary Outreach and Marketing

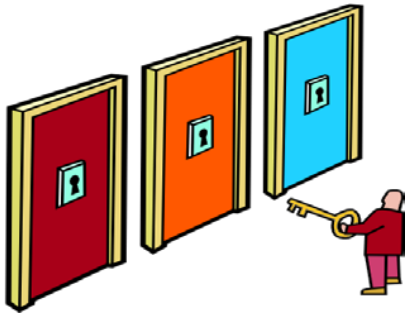
In order to prevent the MaineHealth ACO's employees and participants from seeking to attract or avoid beneficiaries with certain health profiles, and to guard against beneficiary confusion, The MaineHealth ACO's communication with beneficiaries are regulated.

- Participants must notify beneficiaries that they are participating in the MaineHealth ACO.
- Marketing materials related to governmentally funded health care programs (i.e. Medicare Advantage and Medicare Shared Savings Plans) are regulated by CMS.
- Such marketing materials must be submitted to CMS for approval before being distributed and in some cases the MaineHealth ACO must use CMS required templates.
- It is important that the MaineHealth ACO be provided with any proposed marketing materials prior to distribution to ensure it is compliant with government regulations.

Risk Area: Patient Choice

- Patients assigned to the MaineHealth ACO have full freedom of choice in selecting providers. Beneficiaries may choose any provider that accepts Medicare even if that provider is no part of the MaineHealth ACO.

- The MaineHealth ACO participants must honor patient choice and may not restrict referrals to within the MaineHealth ACO.



Risk Area: Inducements to Patients

- The MaineHealth ACO may not offer or provide gifts or other inducements to a beneficiary to encourage them to receive services from the MaineHealth ACO or any of its Participants.

- Under the ACO Patient Incentive Waiver, the MaineHealth ACO and its participants may provide in-kind items or services related to the beneficiary's medical care that are either preventive in nature or help the beneficiary achieve a clinical goal, when all waiver conditions are met. For example, a practice may provide a patient with a blood pressure monitor to better control hypertension.

- The Patient Incentive Waiver does not include cash, cash equivalents, items that are not related to medical care (beauty products or theatre tickets) or be an item or service which is a Medicare covered item or service for the beneficiary on the date the in-kind item or service is furnished to the beneficiary.

Risk Area: Privacy, Security and Confidentiality

Beneficiary Right to Opt Out of Data Sharing

- CMS beneficiaries may decline to allow their claims data be shared with the MaineHealth Accountable Care Organization. The MaineHealth Accountable Care Organization may not request data on a beneficiary who has "opted out" of data sharing.

- If a beneficiary notifies an ACO Employee or Participant they choose to opt-out of data sharing, the beneficiary must be provided with CMS number 1-800-633-4227, so the beneficiary may inform CMS their doctor is part of an ACO and they do not want Medicare to share their health care information. TTY users should call 1-877-486-2048.

Risk Area: Privacy, Security and Confidentiality

Health Insurance Portability and Accountability Act

Under federal and state privacy laws, most notably the federal Health Insurance Portability and Accountability Act, "HIPAA," a provider (participant) may use or disclose PHI or e-PHI (i.e. health information, including genetic information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual) only upon a patient's signed authorization, unless it is necessary for:

- Treatment of the patient
- Payment for services
- The regular business or operations of the provider
- Legal requirements (e.g., reporting of child abuse)
- To avert a serious threat to health or safety

Protected Health Information (PHI)

Remember

- Handle PHI in an ethical and responsible manner.
- Take reasonable measures to protect PHI and e-PHI.
- Treat all patient information as confidential in all forms (electronic or e-PHI or verbally).
- Securely store and properly dispose of confidential documents.
- Access only the information you *NEED* for approved work purposes.
- If you are not sure if you should access certain information, then do not.

You are responsible for the security and confidentiality of your:

- Tools and Screens
- Behavior
- Information
- Passwords

Risk Area: Privacy, Security and Confidentiality

As a Business Associate (BA), the MaineHealth ACO must comply with all of the privacy and security rules that apply to HIPAA covered entities and must abide by the terms contained within a business associate agreement it has executed with Participants. Among other things, this means:

- Minimum Necessary: The MaineHealth ACO will make reasonable efforts to use and disclose only the minimum amount of PHI or e-PHI necessary to accomplish the intended purpose of the use or disclosure.
- Notice of Breach: The MaineHealth ACO must cooperate with its participants to provide notice of any breach of confidentiality. If it is suspected that PHI or e-PHI has been inappropriately accessed, used or disclosed, the MaineHealth ACO's Compliance or Privacy Official, the "Helpline" or the individual's supervisor must be notified immediately.
- Role Based Access: The MaineHealth ACO and its Participants may grant role-based system access to Employees and other qualified individuals so that access is limited to only those persons requiring such access to carry out their job duties. If an Employee has a change to his or her job duties, including a termination of employment, the MaineHealth ACO's Compliance or Privacy Officer should be notified immediately so that access may be modified or terminate

Risk Area: Privacy, Security and Confidentiality

Red Flags Rule – Identity Theft

- The Red Flag Rule requires businesses, including health care providers, to develop programs to spot "Red Flags" of identity theft.

Types of Red Flags

- Suspicious Documents – ***false insurance card,*** or a ***stolen card***
- Suspicious Personal Identifying Information – ***using deceased person's information***
- Unusual Use of, or Suspicious Activity Related to Covered Accounts – ***address change***
- Notice from, Victims of Identity Theft, Law Enforcement Authorities, or Other Persons Regarding Possible Identity Theft in Connection with Accounts. – ***credit report alert, or patient call***
- Documents provided for identification appear to have been **altered or forged**
  - Photograph or physical description on the identification is **inconsistent** with the appearance of the individual presenting the identification
  - **Date of birth** seems too early or late for the age of the patient
  - The patient **fails to provide** all required documentation information

Reporting Compliance Concerns

- If you have a compliance concern, you should report your concern to any of the following:

  - Your Supervisor, or
  - MaineHealth ACO Compliance or Privacy Official, or the
    - **Compliance Official:** Rhonda Dolley (207) 482-7070
    - **Privacy Official:** Martha Ridge (207) 482-7077
  - MaineHealth Corporate Compliance Helpline is available 24/7/365 and you may remain anonymous.
    - **MaineHealth Corporate Compliance Helpline:** (207) 662-6464

Compliance Training Attestation

- It is your responsibility to complete the 2020 Compliance Training Attestation Attachment A included with this training program and return Attachment A to the MaineHealth ACO.
  - Your Attestation indicates you and your providers have reviewed the Maine-Health ACO Annual Compliance Training.
  - Your attestation indicates you and your providers have reviewed the Maine-Health ACO Code of Ethical Conduct. You agree to you and your providers understanding of and willingness to abide by the standards of conduct out-lined in the MaineHealth ACO Code of Ethical Conduct.
- Thank you for your cooperation.