

# FDR Compliance Newsletter

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## CVS acquisition of Aetna

As previously shared, CVS Health acquired Aetna in 2018. Aetna is now a CVS Health company and abides by the CVS Health Code of Conduct. Mercy Care continues to be administered by Aetna and now abides by the CVS Health Code of Conduct.

## Standards of Conduct distribution

Contracted FDRs are required to maintain an effective Compliance Program that includes Standards of Conduct as well as specific policies and procedures that implement the operations of the compliance program. The Standards of Conduct must explain your Organization's over-arching principles and the values by which your Organization operates and define the underlying framework for the compliance policies and procedures. FDR Organizations must have processes to ensure employees and sub-contractors, as a condition of employment, read and agree to comply with the standards of conduct and all written compliance policies and procedures within:

- 90 days of date of hire or contracting, or performing work for Mercy Care account
- when updated,
- annually thereafter

Employee statements or certifications must be retained for 10 years and made available upon request by Mercy Care or CMS. During audits you may be asked to provide evidence of the distribution to your employees. Evidence of distribution can vary by organization, but it must clearly demonstrate that your employees were provided appropriate training.

You have the option of distributing either your Organization's Standards of Conduct or the [CVS Health Code of Conduct](#).

# Reporting non-compliance and FWA to Mercy Care

Did you know, based on your organization's FDR status, your employees have an obligation to report suspected or detected non-compliance or suspected Fraud Waste and Abuse (FWA) to Mercy Care? This information can be found in the Medicare Managed Care Manual titled: [Chapter 21 — Compliance Program Guidelines](#),

Section 50.4.2 - Communication and Reporting Mechanisms explains that FDRs who contract with multiple plan sponsors need to train their employees on their organization's reporting processes, including emphasis that reports must be made to the appropriate plan sponsor. We include this reporting requirement in your Mercy Care contract and in the MCA FDR Compliance Packet and Attestation we require FDRs to complete annually. When we audit, we will request FDR policies, procedures and other documentation to validate FDR employees have received education on their obligation to report suspected or detected non-compliance or potential FWA. Failure to conduct timely reporting can result in significant regulatory enforcement actions for Mercy Care and contracted FDRs.

There are several ways to report suspected or detected non-compliance or potential FWA. FDR employees can use the CVS Health Ethics Line to report anonymously by calling toll-free at **(877) CVS-2040** or can make a report directly to the MCA Medicare Compliance Team via phone or by email: [MercyCareAdvantageMedicareCompliance@AETNA.com](mailto:MercyCareAdvantageMedicareCompliance@AETNA.com)

## Updates to Medicare Compliance Policies

We recently updated our Mercy Care Advantage (MCA) Medicare Compliance policies. The MCA Medicare Compliance policies are designed to assist in conducting monitoring and oversight and to help prevent, detect and correct Medicare Part C and D Program non-compliance and fraud, waste and abuse (FWA). As noted above, contracted FDRs are required to maintain an effective Compliance Program that includes Standards of Conduct as well as specific policies and procedures that implement the operations of the compliance program. Contracted FDR must have processes in place to prevent, detect, and correct identified non-compliance and fraud, waste and abuse (FWA), which includes required disclosure. FDR employees and sub-contractors must abide by federal laws related to the Medicare program as well as CMS rules, regulations and sub-regulatory guidance.

FDRs should implement similar policies or can adopt ours. You may request a copy of the following MCA Medicare Compliance policies by sending an email to Wendy Jones at [JonesW1@mercycares.org](mailto:JonesW1@mercycares.org).

Effective Lines of Communication  
Disciplinary Action and Enforcement  
Compliance Training and Education  
Compliance Monitoring and Auditing  
Maintenance and Record Retention  
Deficit Reduction Act and False Claims Act Compliance  
Federal Disaster or Public Health Emergency Declarations



## What is an FDR?

**FDR = First tier, downstream and related entities**

A **first tier** entity is any party that enters into a written arrangement with our organization to provide administrative or health care services for our Medicare business.

A **downstream** entity is any party that enters into a written arrangement with persons or entities below the level of the first tier's arrangement with our organization. These arrangements continue down to the level of the ultimate provider of both health and administrative services.

A **related** entity is an entity that is linked to our organization by common ownership or control, and provides functions to support our Medicare business.



## Overseeing your organizations downstream entities

Just as we audit and monitor our FDRs, your organization also has the obligation to audit and monitor FDRs that your organization contracts with to perform services for us. Here are a few questions and answers to help explain how your organization should be evaluating and overseeing your FDRs.

### **Q: How do we determine if a subcontractor is an FDR?**

*A: [Ch 9/Ch 21](#), Section 40, outlines areas of consideration when determining if an entity qualifies as an FDR. The chapter describes evaluating:*

- *The type of services being performed*
  - *The impact of the services on beneficiaries*
  - *Access to protected health information*
  - *Decision-making authority*
  - *The ability to commit fraud, waste, or abuse*
  - *The overall risk associated with the entity*

*While a specific methodology is not outlined in the chapter, your organization should have a process to consistently evaluate the FDR status of subcontractors performing services on your behalf.*

### **Q: What do I do if a subcontractor is an FDR?**

*A: If your evaluation process determines an entity is a downstream entity for Mercy Care, be sure to let us know about this relationship. If any of the services will be performed offshore you will need to request advance permission from Mercy Care before performing any offshore services.*

### **Q. What are oversight obligations for these subcontractors?**

*A: You need to ensure effective oversight of the compliance and operational requirements for the services the FDR is performing. This includes executing a contractual agreement that contains the CMS required provisions. Your organization can accomplish this through an oversight policy, compliance attestations, monitoring and/or auditing activities. When we audit your organization, we will request evidence of oversight of your FDRs as part of the audit.*

### **Q: What if oversight of our FDRs demonstrates they are not compliant with a Medicare requirement?**

*A: Just as we are required to hold your organization accountable for non-compliance and require remediation of deficiencies, your organization must do the same for your FDRs. [Ch 9/Ch 21](#), Section 50.7.2 outlines key components of Corrective Plans, such as the root cause of the failure, tailoring the corrective action to specifically address the deficiency, and the of validating compliance after the corrective action is in place.*

**Q: What documentation do we need to retain related to oversight of our FDRs?**

A: You must retain Medicare documentation for at least 10 years. This includes:

- Contracts with your FDRs
- Documentation of oversight activities
- Evidence of corrective action plans and remediation
- Documentation to support your FDR Evaluation Process

## Self-review: Preparing for FDR auditing and monitoring activities in 2020

When we schedule an oversight activity on FDRs, the primary purpose is to validate compliance with [Ch 9/Ch 21](#) and your contractual obligations. The following items are examples of the requirements we may look at.

Conduct a self-review of these each element to check your compliance:

1. **Code of Conduct:** My organization distributes either the CVS Health Code of Conduct or our own Code (which has substantially similar content), to applicable employees within 90 days of when an employee is hired or begins work on the Mercy Care account, when changes are made, and annually.

YES \_\_\_\_\_ NO \_\_\_\_\_

2. **Exclusion screenings:** My organization screens applicable employees and downstream entities against the OIG and GSA exclusion lists and maintains evidence that demonstrates the result of the screening, as well as the date of screening, for at least 10 years. My organization promptly removes any excluded employees from working on the Mercy Care account. We have a policy that describes how our screening process meets these requirements.

YES \_\_\_\_\_ NO \_\_\_\_\_

3. **Record retention:** My organization has a policy for retaining Medicare documents for at least 10 years.

YES \_\_\_\_\_ NO \_\_\_\_\_

4. **Oversight of downstream vendors:** My organization EITHER does not use any vendors that would meet the definition of “FDR” (as described in Ch 9/Ch 21) to perform services on behalf of Mercy Care OR we use FDRs and are able to provide documentation of effective oversight such as an FDR oversight policy, compliance attestations, evidence of auditing and monitoring activities, and/or documentation of oversight of performance).

YES \_\_\_\_\_ NO \_\_\_\_\_

5. **Corrective Actions Plans (CAPs):** My organization EITHER has not been issued a CAP by Mercy Care, OR we have been issued a CAP and we have corrected and maintained compliance and can demonstrate ongoing compliance through documented evidence.

YES \_\_\_\_\_ NO \_\_\_\_\_

***How did you do? If you were not able to answer ‘YES’ to every element, make corrections to your processes today — this may save you from a corrective action plan tomorrow!***

This newsletter is provided solely for your information and is not intended as legal advice. If you have any questions or interpretation of any law mentioned in this newsletter, please contact your attorney.

