

CMS Compliance Requirements Applicable to Certain Contractors & Vendors

This notice applies only to those contractors and vendors with UPMC which provide administrative or health care services for Medicare Advantage beneficiaries in connection with UPMC's participating provider contracts with Medicare Advantage plans.

This notice does not apply to contracts or vendors that are unrelated to UPMC's Medicare Advantage functions.

If you are unsure whether your services are related to Medicare Advantage functions, please contact UPMC ComplianceAskUs@upmc.edu.

The Centers for Medicare & Medicaid Services (CMS) has instituted compliance program requirements for First-Tier, Downstream, and Related entities ("FDRs") that provide administrative or health care services for Medical Advantage beneficiaries. UPMC providers are First Tier entities with respect to Medicare Advantage beneficiaries because they are participating providers in Medicare Advantage plan networks and directly contract with such plans.

As a First-Tier entity, UPMC is required to effectively manage and oversee the compliance of our Downstream and Related Entities. This notice provides an overview of those compliance requirements.

Who Are Our Downstream and Related Entities?

Downstream and Related Entities assist us in providing administrative and/or health care services for the Medicare Advantage beneficiaries served by UPMC providers.

- These include field marketing organizations, agents, providers, pharmacies, pharmacy benefits managers, claim administration vendors, fulfillment or other contracted vendors.
- *They do not include administrative contracts that do not relate to Medicare functions, such as real estate brokers, cafeteria vendors or office supply vendors.*
- If you are unclear or have questions about your status as a Downstream or Related Entity, please contact your UPMC contract representative.

Downstream Entity: Any party that enters into a written arrangement with UPMC, as a First Tier Entity, that involves the provision of administrative or health care services to Medicare Advantage beneficiaries is a Downstream Entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.

Related Entity: An entity is a Related Entity when it is related to a Medicare Advantage plan or a Part D plan by common ownership or control and

1. Performs some of the plan's management functions under contract or delegation;
2. Furnishes services to Medicare enrollees under an oral or written agreement; or
3. Leases real property or sells materials to the Medicare Advantage plan or Part D plan sponsor at a cost of more than \$2,500 during a contract period.

Downstream and Related Entities are required to comply with the CMS Medicare Compliance Program requirements provided below.

Compliance Program Requirements

Downstream and Related Entities must comply with the following CMS requirements. You must document and retain records of your compliance efforts for a minimum of ten (10) years from the end of your contract or arrangement with UPMC or until completion of CMS audit actions, whichever is later, and take steps to ensure that your own Downstream and Related Entities are similarly compliant, as required by CMS.

Administer Fraud, Waste, and Abuse (FWA) Training and General Compliance Trainings

- Fraud, Waste and Abuse and General Compliance trainings must be provided to new hires, board members, or vendors with within ninety (90) days of initial hiring and annually thereafter.
- The [CMS Medicare Parts C & D Fraud, Waste, and Abuse](#) and [General Compliance Trainings](#) are located on the [CMS Medicare Learning Network \(MLN\)](#).
- You must document and retain records of these trainings.

Distribute Code of Conduct and Compliance Policies

- Downstream or Related Entities must distribute a Code of Conduct and compliance policies and procedures to all employees and those of your Downstream and Related Entities within ninety (90) days of hire or contracting, annually, and when updates are made.
- The Code of Conduct and compliance policies should describe your organization's expectations that all employees conduct themselves in an ethical manner; that issues of non-compliance and potential FWA are reported through appropriate mechanisms; and that reported issues will be addressed and corrected.

- You must retain records of these distributions, including the date and method of distribution.
- If your organization does not have its own Code of Conduct, you may adopt the [UPMC Code of Conduct](#).

Undertake OIG/GSA Exclusion Screening

- Downstream or Related Entities must review the [DHHS Office of Inspector General \(OIG\) List of Excluded Individuals and Entities \(LEIE list\)](#) and the [General Services Administration \(GSA\) System for Award Management \(SAM\)](#) to ensure that any provider, supplier, employee, or FDR is not excluded by the OIG or GSA. Payment may not be made for items or services furnished or prescribed by an excluded provider or entity.
- Review should be undertaken prior to the hiring or contracting of new hires, board members, or vendors and monthly thereafter. Your monthly review should include, at a minimum, the monthly LEIE supplement file and any SAM updates.

Report FWA and Compliance Concerns

- You must inform your employees and those of your Downstream or Related Entities how to report compliance concerns and suspected misconduct and direct them to cooperate with any associated investigation.

Anyone who in good faith reports a violation is referred to as a "whistleblower" and is protected from any retaliation. A number of laws contain whistleblower protection, including the False Claims Act.

- To report confidentially compliance concerns and/or suspected or actual misconduct to UPMC, please use the following:
 - Compliance Hotline: 1-877-983-8442
 - Compliance Email: ComplianceAskUs@upmc.edu or FraudTeam@upmc.edu

Offshore Subcontractor Reporting

- Downstream or Related Entities must not engage in any new offshore operations¹ for any of UPMC's Medicare-related work² without first providing

¹ The term "offshore" refers to any country that is not one of the 50 United States or one of the United States Territories (American Samoa, Guam, Northern Marianas, Puerto Rico, and Virgin Islands). Examples of countries that meet the definition of "offshore" include Mexico, Canada, India, Germany, and Japan. Subcontractors that are considered offshore can be either American-owned companies with certain portions of their operations performed outside of the United States or foreign-owned companies with their operations performed outside of the United States. Offshore subcontractors provide services

thirty (30) days prior written notice of the offshore subcontract effective date.

- Information necessary for a CMS attestation regarding the offshore contract or vendor services provided thereunder and policies regarding PHI must be provided to UPMC within fifteen (15) calendar days from the date the contract or vendor arrangement is executed.
- Downstream or Related Entities currently engaged in offshore operations for any of UPMC's Medicare-related services must promptly provide UPMC with the information necessary for a CMS attestation regarding the offshore contract or vendor services.

Ongoing Monitoring and Auditing

- As a Downstream or Related Entity, your organization must perform ongoing compliance oversight, including ongoing monitoring, regular assessments, and regular audits, of your organization and your Downstream and Related Entities.
- UPMC and/or CMS may request that you provide evidence of your compliance with these requirements or other requirements within the scope of what UPMC may delegate to your organization. Your organization must comply with these requests within reasonable time periods determined by UPMC.

Failure to comply with the Medicare Compliance program requirements may result in remedial action from CMS or UPMC up to or including termination of your contract or vendor arrangement. If you require additional information regarding compliance requirements, please contact UPMC [insert link to email submission page].

For information regarding CMS compliance requirements for FDRs, please see:

- [42 CFR §422.503\(Medicare Advantage\) & 42 CFR §423.5035 \(Part D\)](#)
- [CMS Compliance Program Overview](#)
- [CMS Manual Ch. 9 and Ch. 21: Compliance Program Guidelines](#)
- [Compliance and FWA Training Requirement Update](#)

that are performed by workers located in offshore countries, regardless of whether the workers are employees of American or foreign companies.

² "Medicare-related work" encompasses what offshore subcontractors do when they receive, process, transfer, handle, store, or access beneficiary PHI while helping organizations such as UPMC fulfill their Medicare Part C and Part D contract requirements. It includes offshore subcontractors that receive radiological images for reading, because beneficiary PHI is included with the radiological image and the diagnosis is transmitted back to the U.S. More examples of Medicare-related work include claims processing, claims data entry services, scanning paper claims to create electronic records, receipt of beneficiary calls, and any situation where the offshore subcontractor may have access to beneficiary PHI.