

CMS REMOVES COMPLIANCE TRAINING REQUIREMENTS FOR DOWNSTREAM PROVIDERS UNDER MEDICARE ADVANTAGE AND PART D

The Centers for Medicare & Medicaid Services (“CMS”) recently enacted a [Final Rule](#) removing certain compliance training requirements previously applicable to first tier, downstream and related entities (“FDRs”) of Medicare Advantage and Part D Plan Sponsors (“Plan Sponsors”). Specifically, beginning in plan year 2019, health care providers that participate in Medicare Advantage and Part D are no longer required by CMS to complete CMS-issued general compliance and fraud, waste and abuse training. However, Plan Sponsors will still have discretion to include compliance training requirements in their provider contracts. As a result, FDRs should watch for guidance from Plan Sponsors about future compliance training requirements under each of their Medicare Advantage and Part D contracts.

BACKGROUND

Under Medicare Advantage and Part D, organizations that contract directly or indirectly with a Plan Sponsor to perform health care or administrative services to Medicare Advantage or Part D beneficiaries are considered FDRs. Previously, Plan Sponsors had to require their FDRs, including an FDR’s employees in “critical roles,” to complete fraud, waste and abuse training and general compliance training within ninety days of hire and annually thereafter.^[1] Although many FDRs were deemed exempt from fraud, waste and abuse training due to their enrollment in Medicare, all FDRs were expected to complete a standardized general compliance training module in the format specified by CMS. Many FDRs viewed this requirement as unduly burdensome given that most FDRs already required their employees to complete compliance training as part of their organization’s own internal compliance program.

REMOVAL OF THE FDR COMPLIANCE TRAINING REQUIREMENT

Beginning January 1, 2019, CMS will no longer require Plan Sponsors to ensure that their FDRs complete CMS-published training modules. CMS’s stated goal is to reduce administrative burden and to provide each Plan Sponsor with flexibility to oversee FDR compliance as it sees fit. However, compliance training is still required of Plan Sponsors, and Plan Sponsors remain obligated under their contracts with CMS to conduct routine monitoring, auditing and oversight of their FDRs. Accordingly, Plan Sponsors may continue to require some type of compliance training of their FDRs, although CMS will consider that to be a private contractual matter between the parties. As part of the transition, CMS is removing its own Medicare Advantage and Part D compliance training modules from its website.

PRACTICAL TAKEAWAYS

Although CMS will not be requiring FDRs to complete certain specified compliance training, many Plan Sponsors will likely continue to require their FDRs to implement some type of compliance training as a condition of their contracts. FDRs with robust internal compliance programs can try to negotiate with Plan Sponsors to ensure that the FDR’s employees are not subject to duplicative training requirements. In addition, given that Plan Sponsors remain responsible for their FDRs’ compliance with applicable federal laws and regulations, it is likely that Plan Sponsors will continue to require FDRs to annually attest to compliance with other Medicare requirements such as performing exclusion list screenings; maintaining a code of conduct; establishing reporting mechanisms; and complying with offshoring restrictions. In sum, FDRs should closely monitor communications from Plan Sponsors to ensure that they remain in compliance with each Plan Sponsor’s contractual requirements.

If you have any questions or would like additional information about this topic, please contact:

- [Julie K. Lappas](#) at (317) 977-1490 or jlappas@hallrender.com;
- [Amy L. Mackin](#) at (919) 447-4963 or amackin@hallrender.com;
- Your regular Hall Render attorney.

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^[1] Hall Render summarized CMS’s previous FDR compliance training requirements [here](#).