

# MEDICARE ADVANTAGE & MEDICAID MANAGED CARE COMPLIANCE

From the First Tier or Downstream Entity's Perspective



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## Agenda




# Davis Vision and Superior Vision

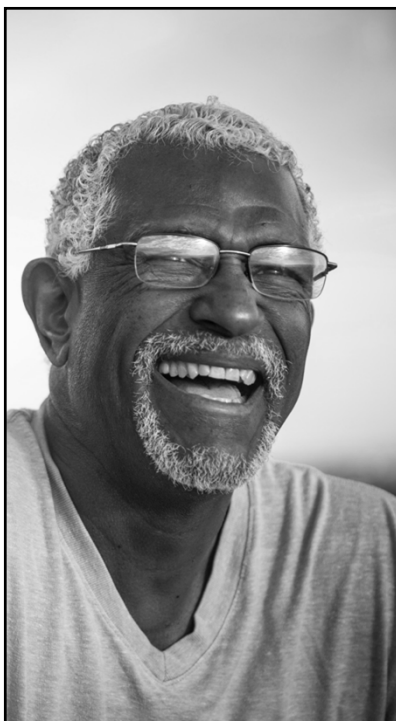
## Background

On December 1, 2017, Davis Vision and Superior Vision merged organizations, combining strength and strategy to provide opportunities in all aspects of both businesses by leveraging the expertise and services of each company in their respective market segments.

**Real Choice for Customers**  
 Combined, Superior Vision and Davis Vision can offer a larger suite of outstanding vision benefit services that best meet members' needs.

**Broadest Access in the Industry to Quality Vision Care**  
 Both Superior Vision and Davis Vision offer extensive provider networks with strengths in complementary areas. The new entity will enable/sustain multiple networks, ensuring there is a provider network that meets each customer's requirements.

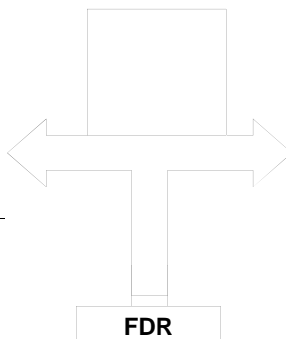
  
**Driving Value**  
 Together, the two companies manage more than 33 million members. Superior Vision and Davis Vision can leverage their position in the industry to develop new services, expand existing services and to establish provider relationships that maximize the value we deliver to our customers and their members.



# Davis Vision and Superior Vision

## Background

Medicare Advantage Organizations  
 1,236,295 members



Medicaid Managed Care Plans  
 10,815,605 members

**DAVIS VISION** EYECARE REFRAMED™ | **SUPERIOR VISION** See yourself healthy.

## Plan Oversight of First Tier, Downstream, and Related Entities (FDRs)

### CMS Requires Plan Oversight

"The sponsor maintains the ultimate responsibility for fulfilling the terms and conditions of its contract with CMS, and for meeting the Medicare program requirements. **Therefore, CMS may hold the sponsor accountable for the failure of its FDRs to comply with Medicare program requirements.**" CMS Managed Care Manual, Chapters 21, Sec. 40 (emphasis added)

### How do Plans provide oversight?

- Desk and in-person audits
- Required reporting
- Data review
- Application of Corrective Action Plans (CAPs)

## Plan Oversight of FDRs

### Observations

- Oversight and Scrutiny
  - Increase in number of audits
  - Greater intensity of audits
- Lack of Consistency
  - Between different plans
  - Within same plans
- Corrective Action Plans
  - More frequently issued
  - Inconsistent and ambiguous application



# Plan Oversight of FDRs

## FDR Best Practices

- Audit Preparation is Critical
  - Internal/mock audits to reduce surprises and correct findings proactively
  - Clear processes for ODAG tables and delivery of audit materials to increase accuracy and timeliness
- Focus on Audit Presentation
  - Knowledgeable and credible subject matter experts
  - Strong presentation skills
- Transparency is Necessary
  - Health plans should not be surprised by any findings



# Plan Oversight of FDRs

## FDR Best Practices

- CAP issuance should be addressed in the contract between the health plan and the FDR. Items to address in the contract include:
  - When a CAP may be issued (e.g., violation of law/regulation; non-compliance with business SLAs, etc.)
  - Requirements for removal of CAP (e.g., compliant performance for 3 consecutive months)
  - Health plan review and approval of remediation plan
  - Response times for both parties

# Compliance Program

## CMS Requirements for FDRs

- CMS does **not** require FDRs to implement a compliance plan
- CMS requires (through the Plan) that FDRs:
  - Issue a Code of Conduct and related compliance policies
  - Perform OIG and SAM exclusion screening
  - Report FWA to plan sponsor
  - Oversee downstream FDRs
  - Conduct training\*

*\*discussed in more detail at slide 11*



# Compliance Program

## Plan Expectations of FDR Compliance Program

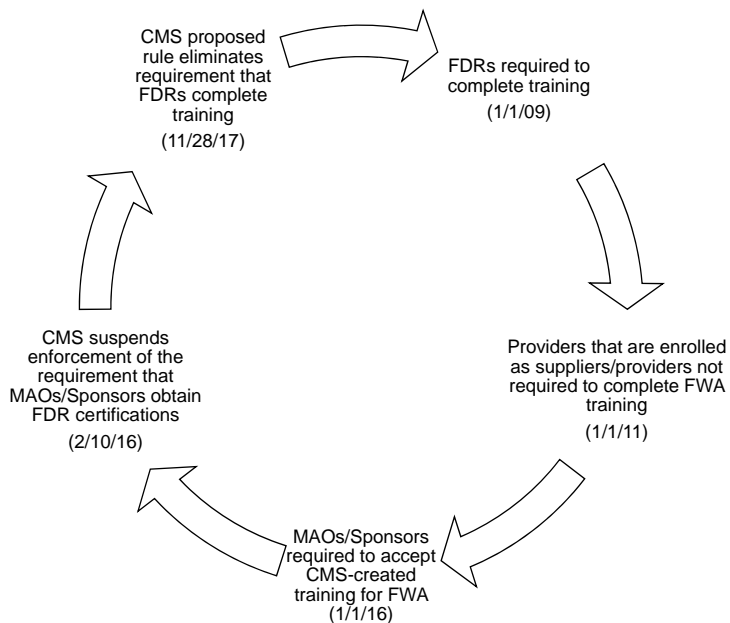
Plan often require that FDRs adopt and implement a compliance plan that meets the following 7 elements:

1. Written Policies, Procedures, and Standards of Conduct;
2. Compliance Officer, Compliance Committee, and High Level Oversight;
3. Effective Training and Education;
4. Effective Lines of Communication;
5. Well Publicized Disciplinary Standards;
6. Effective System for Routine Monitoring, Auditing, and Identification of Compliance Risks; and
7. Procedures and System for Prompt Response to Compliance Issues.

## FDR Training Requirements

### Evolution of FDR Compliance and FWA Training Requirements

CMS is proposing the elimination of the FDR training requirement.



## Compliance Program

### FDR Compliance Plan Best Practices

- Consider FDR subject to same requirements as plans
- Adopt and implement a compliance plan that meets the 7 elements
- Regularly evaluate the compliance plan against the CMS Medicare Advantage and Prescription Drug Compliance Program Effectiveness Self-Assessment Questionnaire (available at <https://www.cms.gov/Medicare/Compliance-and-Audits/Part-C-and-Part-D-Compliance-and-Audits/ProgramAudits.html>)
- Conduct an annual compliance program effectiveness audit
- Focus on training – continue FWA and General Compliance training

## Compliance and Business-Friendly FDR Contracting Strategies

Taking the Lead as the FDR

- Communicate to senior leadership the value of consistency across customer contracts
  - More efficient to negotiate and administer
  - Less likely to breach or fail to meet customer expectations
- Develop standard contract template, Service Level Agreements (SLAs), and Reporting Schedule
  - Could offer preferred pricing for use of FDR template, allowing for some modifications
  - Adjust price for custom SLAs, Reporting, or non-standard processes
- Appropriate role of lawyers = reviewing and drafting legal terms
  - Business leads should design processes, SLAs, and Reporting Schedules with legal input

## Incorporate Compliance and Contracting Strategy into Sales and Marketing

Tout Your Organization's Efficient and Compliance-Focused Approach

- Custom contract negotiations are expensive for customers and FDRs
- Showcase your Compliance Program and aligned Template Contract in sales process
  - Market your SLAs and Reporting Schedule
  - Provide overview of Compliance Program, including how you keep up with regulatory and guidance changes
  - Describe audit support and knowledge of CMS protocols
  - Describe strategy of preparing a balanced and thorough contract template
  - Create a schedule for contracting and lead the process
- Develop pre-approved fallback language for efficient contract negotiations

## Contract Template Strategy

Reasonable and Balanced

**The more balanced and customer-friendly an FDR's template agreement is, the more often it will be used.**

**Using what a customer's lawyer prepares will be worse for FDR, on many levels.**

- Be clear on the WHAT; push back on the HOW
- Comprehensive definition of Applicable Law
- SLAs reflecting critical compliance metrics
- Detailed reporting schedule
- Monitoring and Audit
  - Make it easy for them to do their job
  - Insert detail on reporting, communications, and process for customer audits

## Protecting Your Organization as an FDR in Customer Contracts

Regulatory Requirements and Beyond

- ✓ MEDICARE ADVANTAGE AND/OR PART D

Required Provisions

Provisions needed to ensure compliance
- ✓ MEDICAID MANAGED CARE

Federal Requirements

State-Specific Requirements

Needed to ensure compliance

- ✓ INDEMNIFICATION

Acts or omissions, conduct, breach of contract, negligence, gross negligence?
- ✓ LIMITATION OF LIABILITY

Specify caps in agreement

Could adjust fees for increases in cap

- ✓ OPERATIONAL REQUIREMENTS

**The WHAT** – Services, Compliance, SLAs

**The HOW** – Reference policies available for review and audit
- ✓ COMPLIANCE COMMUNICATIONS

Propose a schedule of communications built around your client relationship management process



## Defining the “What” - Applicable Law

To the Extent Applicable to FDR Services

### Statutes

- Medicare Advantage
- Part D
- Medicaid
- Anti-Kickback
- False Claims Act
- HIPAA

### Regulations

- Medicare Advantage
- Part D
- Medicare Secondary Payer
- Medicaid MCO
- State-specific Medicaid
- HIPAA

### Guidance

- Medicare Managed Care Manual
- Medicare Prescription Drug Benefit Manual
- MCO Manual
- HPMS memos
- State Medicaid Guidance

## Key Contract Flow-Down Conversations

1. Government access to records and facilities
2. Revocation by plan customer
3. Delegated activities and reporting

# Government Access to Records and Facilities

## Authorities and Contracting Tips

### Medicare Advantage

42 CFR 422.504(i)(2)(ii)

- Grant CMS, HHS, OIG right to directly audit, collect and inspect any records or systems relating to contract

### Medicaid Managed Care

42 CFR 438.230(c)(3)(i), (ii)

- Same, with addition of the state regulators

### Contracting Tips

- If permitted by law and approved by government auditors:
  - Give notice to customer of government request
  - Notify customer of what was reviewed or produced

# Revocation by Plan Customer

## Authorities and Contracting Tips

### Medicare Advantage

42 CFR 422.504(i)(4)(ii)

- Revocation of delegation or other remedies) if CMS or MAO determines subcontractor has not performed satisfactorily

### Medicaid Managed Care

42 CFR 438.230(c)(1)(iii)

- Same, with reference to state regulators

### Contracting Tips

- Tie to termination provisions because “revocation” isn’t a standard contract concept
- Cross-reference right to terminate for cause with notice
- Can expedite cure period for serious issues

## Delegated Activities and Reporting

### Medicare Advantage

42 CFR 422.504(i)(4)(i)

- Specify delegated activities government contract and reporting responsibilities

### Medicaid Managed Care

42 CFR 438.230(c)(1)(i)

- Same

### Contracting Tips

- Clear service description with reference to policies
  - Detail is in Policies
  - Available for review by customers
- Compliance with Applicable Law
- Performance standards and reporting
- Promote in sales presentations with references to regulations

## Key Takeaways for FDRs

- Be prepared to support successful customer and regulator audits
- Develop your own CAP process and include in customer contracts
- Proactively develop a strong Compliance Program and promote it to customers
- Anticipate customer needs and build a balanced, thorough template contract that customers will be able to accept

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