The A to Z's of FDR, Delegate, and Subcontractor Oversight (Session:P03)

HCCA Managed Care Conference
January 26, 2020
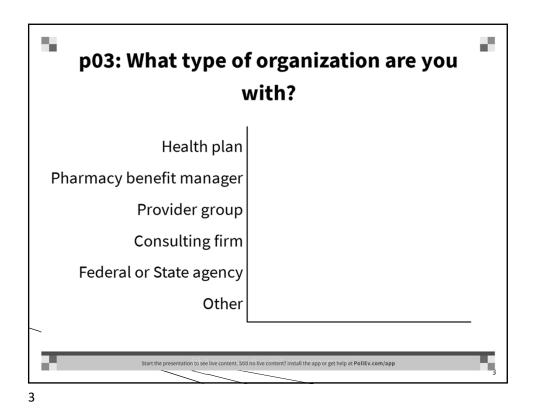
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This Session Uses Polling

To participate in polling:

Download the "HCCA Mobile" in your app store.

Then under agenda find this session,
scroll to the bottom and click "Poll Question" or go to
www.PollEv.com/hcca to answer the active poll

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p03: What type of organization are you with?

Health plan
Pharmacy benefit manager
Provider group
Consulting firm
Federal or State agency
Other

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p03: What is your understanding of First Tier, Downstream and Related Entity oversight requirements and how to apply them (1 being low)?

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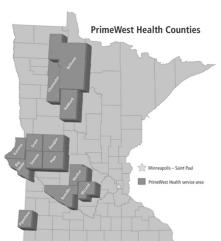4
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Learning Objectives

- ‣ Learn about CMS and State requirements for FDR, Delegate, and Subcontractor oversight and areas of audit focus
- ‣ Understand due diligence, contracting, risk assessment, and auditing and monitoring strategies – including key partnerships
- ‣ Discover what to do when issues are identified and how to incorporate those into the correct CMS Program Audit Universe

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PrimeWest Health

- ‣ PrimeWest Health was established in December 1998 as a Joint Powers entity under MN Stat. sec. 471.59. Its purpose is to manage and pay for the health care, wellness, and human services for about 40,000 residents of 13 rural Minnesota counties.
- ‣ It is composed of 13 county boards that jointly purchase or provide health care services through County-Based Purchasing (CBP) for Minnesota Health Care Programs (MHCP) recipients in their counties.
- ‣ PrimeWest Health's mission is to cost-effectively improve our members' health and health care experience through local county-based integration and coordination of health care and human services payment and service delivery.

PrimeWest Health Counties

☆ Minneapolis – Saint Paul
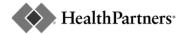
▨ PrimeWest Health service area

PrimeWest HEALTH

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HealthPartners

- HealthPartners is a Minnesota-based integrated health care organization founded in 1957
- Provides health care services and health plan administration
- Over 26,000 employees
- Non-profit & consumer governed

HealthPartners

HealthPartners

- 1.5 million+ medical and dental health plan members nationwide
  ◦ Products: Commercial, Medicare, Medicaid, Self-Insured Administration
- 1 million+ patients
- Includes hospital, primary, specialty care, dental and ancillary care services
- 1,700+ physicians

HealthPartners

Classification of Third Party Entities

- Properly identifying your third party entities at the following times is key to preventing noncompliance:
  - At initial contracting
  - When changes to the contract scope of work require reclassification
- Best practice: be proactive not reactive

Identify the Third Party Entities

Delegates

Medicaid Subcontractor

Medicare FDR

Vendor

Not representative of scale or volume

Identifying Medicaid Subcontractors

‣ A subcontractor is an individual or entity that has a contract with the plan that relates directly or indirectly to the performance of the plan's obligations under their Medicaid State contract. A network provider is not a subcontractor by virtue of the network provider agreement with the MCO.

‣ Ask yourself the following questions to identify your subcontractors:
  ◦ Is the entity performing Medicaid administrative or health care services on behalf of your plan?
  ◦ Is your plan paying the entity through Medicaid funding?
  ◦ Are the services the entity is providing directly related to your Medicaid beneficiaries?
  ◦ Does the entity have delegated decision-making authority?

‣ If the answer is "**YES**" to any of the above, the entity is considered your Medicaid subcontractor.

Title 42 Code of Federal Regulations (CFR) Part 438.2

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What Are FDRs?

First Tier Entity	Downstream Entity	Related Entity
• Any party that enters into a written arrangement, acceptable to CMS, with an MAO or Part D plan sponsor or applicant to **provide administrative services or health care services** to a Medicare eligible individual under the MA program or Part D program. (42 CFR 422.2 and 423.501)	• Any party that enters into a written arrangement, acceptable to CMS, with **persons or entities involved with the MA benefit or Part D benefit, below the level of the arrangement between an MAO or applicant or a Part D plan sponsor or applicant and a first-tier entity**. These written arrangements continue down to the level of the ultimate provider of both health and administrative services. (42 CFR 422.2 and 423.501)	• Any entity that is related to the sponsor by common ownership or control and either: (1) performs some of the sponsor's management of functions under a contract of delegation; (2) furnishes services to Medicare enrollees under an oral or written agreement; or (3) leases real property or sells materials to the sponsor at a cost of more than $2,500 during a contract period. (42 CFR 422.2 and 423.501)

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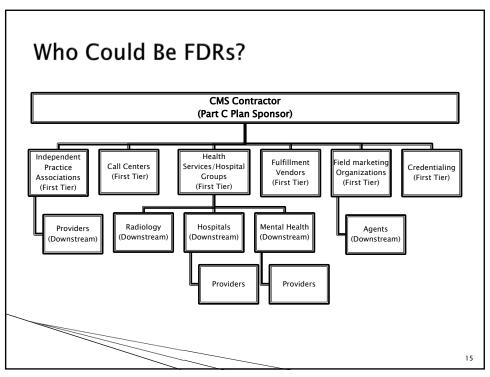
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Identifying FDRs

‣ **Factors** to consider when determining whether an entity is an FDR:
  ◦ What is the function to be performed?
  ◦ Is the function something you are required to do or provide under your contract with CMS, applicable Federal regulations, or CMS guidance?
  ◦ To what extent does the function directly affect enrollees?
  ◦ To what extent does the entity interact with enrollees, either verbally or in writing?
  ◦ Does the entity have access to enrollee information or personal health information?
  ◦ Does the entity have delegated decision-making authority? Or does it strictly take direction from you?

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Identifying FDRs

‣ **Factors** (continued)
  ◦ To what extent does the function the entity is performing place it in a position to commit health care fraud, waste, and abuse (FWA)?
  ◦ What is the risk the entity could harm enrollees or otherwise violate Medicare program requirements or commit FWA?
‣ You have discretion over the method and analysis you use to identify FDRs
‣ Unless it is very clear that an entity IS or IS NOT an FDR, **determination requires analysis of all the circumstances**
‣ **Develop clearly defined processes and criteria to evaluate and categorize FDRs**

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Who Could Be FDRs?

CMS Contractor (Part C Plan Sponsor)

Independent Practice Associations (First Tier)	Call Centers (First Tier)	Health Services/Hospital Groups (First Tier)	Fulfillment Vendors (First Tier)	Field marketing Organizations (First Tier)	Credentialing (First Tier)

Providers (Downstream)	Radiology (Downstream)	Hospitals (Downstream)	Mental Health (Downstream)	Agents (Downstream)

Providers	Providers

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Are Third Party Entities Delegates Too?

Medicaid Subcontractor

FDR

Delegate

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Delegation

▸ Delegates are entities that perform or handle all or a portion of your administrative or health care services on your behalf

▸ Examples
  ◦ Claims administration
  ◦ Enrollment, disenrollment, and membership
  ◦ Call center operations
  ◦ Credentialing
  ◦ Financial services

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Vendors

▸ A vendor is an entity with which you contract to help with your business operations, but such contract does not affect your administrative or health care responsibilities under your contracts with Medicaid or Medicare

▸ Examples
  ◦ Service vendors
    · Plumbing and heating
    · Cleaning services

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p03: Do you have a process to identify and classify vendors as FDRs?

Yes - informal

Yes - formal

No

Considering a process

Really considering a process after hearing the information that was just presented

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P03: Do you plan to go Harry Potter or Star Wars theme park?

I do!

I don't!

Already did

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FDRs and Compliance Programs

FDRs (center)

- Oversight and P&P's
- Communication Channels and Responses to Compliance Issues
- Education
- Monitoring and Auditing

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FDR Considerations

Pre-contracting Considerations

Vendor identification
RFP
References
Vetting and selection
Security assessment
Sanction/exclusion check

Contracting Considerations

- Delegated responsibilities
- Pricing terms
- Compliance requirements (regulations, sanctions, etc.)
- Right to audit
- Termination

Ongoing Considerations

- Maintain and update FDR list and assess risk
- Monitor and audit plan and frequency
- Resource consideration
- Documentation
  - FDRs
  - Monitoring and Auditing evidence

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Due Diligence/Pre-contracting

- Don't delegate compliance function
- Maintain responsibility for compliance
- Determine FDRs
- Selection process and assessment
- Documentation and retention

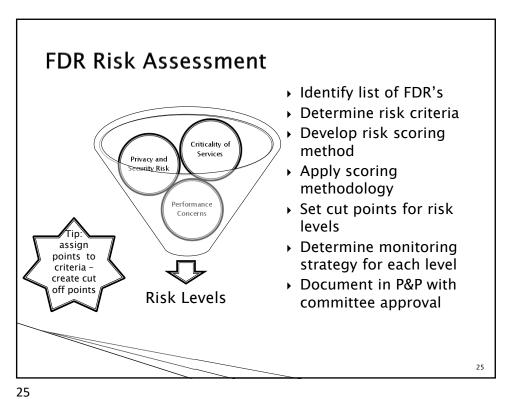Tip: refer to CMS Pub. 100–16, Medicare Managed Care Manual, chapter 11, §110

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Contracting

- Services
- Pricing
- CMS requirements
- Right to Audit
- Termination clause
- BAA, if necessary

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FDR Risk Assessment

Risk Levels

- Identify list of FDR's
- Determine risk criteria
- Develop risk scoring method
- Apply scoring methodology
- Set cut points for risk levels
- Determine monitoring strategy for each level
- Document in P&P with committee approval

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P03: Do you perform an FDR risk assessment?

Yes, integrated as part of a general compliance risk assessment

Yes, separate from a general compliance risk assessment

No

Considering it

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P03: Who is involved in ensuring FDR contracts include required CMS language?

Operational leaders

Compliance

Legal

All of the above

Other

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Auditing and Monitoring Oversight

Internal Audit

Risk Support Areas
Compliance, Legal, Risk Management, IS&T Security

Operations

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Risk Assessment Determines Approach

High
- All of below, plus
- Internal Audits (with cycle times)

Moderate
- All of below, plus
- Security Assessments (with cycle times)

Low
- Operational Monitoring (annually)
- Compliance Attestation (annually)*

*Included in appendix

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Operations Oversight

- Performance Reports
- Document Oversight
- Downstream entity oversight
- Issue Communication
- Compliance and FWA Programs
- External Audit Results
- Audit Readiness

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Risk Support Areas Oversight

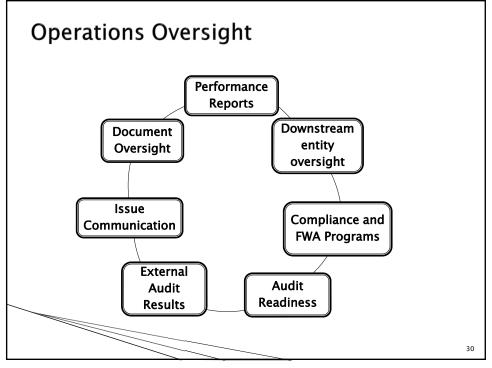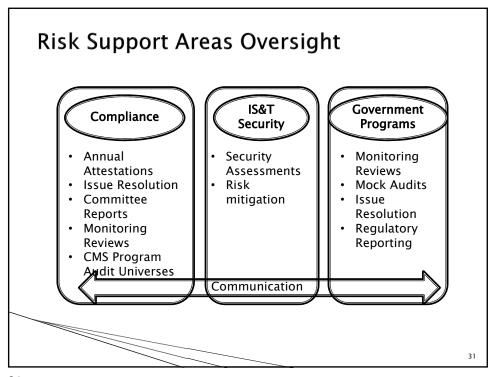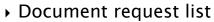| Compliance	IS&T Security	Government Programs
• Annual Attestations • Issue Resolution • Committee Reports • Monitoring Reviews • CMS Program Audit Universes	• Security Assessments • Risk mitigation	• Monitoring Reviews • Mock Audits • Issue Resolution • Regulatory Reporting

Communication

Internal Audit Oversight

‣ Desk reviews and onsite audits
  ◦ Announcement memo
  ◦ Planning
  ◦ Engagement memo
  ◦ Questionnaire
  ◦ Document request list
  ◦ Document review
  ◦ Interviews
  ◦ Conclusion and reporting

Internal Audit Oversight

‣ Questionnaire
  ◦ Privacy
  ◦ Security
  ◦ Compliance
  ◦ Operations
  ◦ Business continuity and disaster recovery

Tip: pre–populate with prior year information

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Internal Audit Oversight
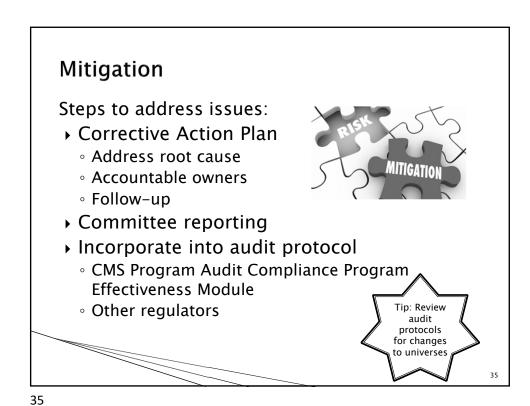
DOCUMENTS

‣ Document request list
  ◦ Code of Conduct
  ◦ Compliance program description
  ◦ FWA policy
  ◦ Training policy or summary of training
  ◦ Conflicts of interest policy
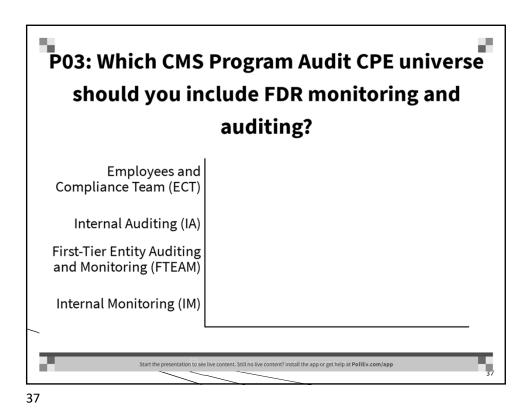 ◦ BCP/DR plan evidence
  ◦ Sanction/exclusion policy
  ◦ Etc…

Tip: maintain evidence of FDR oversight, including FDR documents

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Mitigation

Steps to address issues:
- Corrective Action Plan
  - Address root cause
  - Accountable owners
  - Follow-up
- Committee reporting
- Incorporate into audit protocol
  - CMS Program Audit Compliance Program Effectiveness Module
  - Other regulators

Tip: Review audit protocols for changes to universes

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P03: What is the highest level that FDR issues are reported to?

- Operational Leaders
- Senior Leadership at FDR
- Compliance Committee
- Governing Body
- All of the above
- Depends on the significance of the issue

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P03: Which CMS Program Audit CPE universe should you include FDR monitoring and auditing?

Employees and Compliance Team (ECT)

Internal Auditing (IA)

First-Tier Entity Auditing and Monitoring (FTEAM)

Internal Monitoring (IM)

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p03: What is your understanding of First Tier, Downstream and Related Entity oversight requirements and how to apply them (1 being low)?

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