



1

Establishing Operational Risk Dashboards and Strategies for Monitoring FDRs in Managed Care

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Agenda

2

- Oversight
- Enforcement
- Regulatory Basis
- Dashboard Solutions
- Other Considerations in Monitoring FDRs – First Tier, Downstream & Related Entities
- Recommendations

Federal Government Oversight

3

- Department of Justice
 - Justice Department
 - US Attorneys' Offices
 - FBI
- Congress
- Department of Health and Human Services

Federal Government Oversight Continued

4

- Department of Health and Human Services
 - Centers for Medicare & Medicaid Services
 - ✦ Center for Program Integrity; Note also Center for Consumer Information & Insurance Oversight / Contractors
 - ✦ FDR Oversight Guidelines
 - Medicare Managed Care Manual (MMC)
 - Chapter 21 Compliance Program Guidelines (Also Chapter 9 Part D); See Section 50.6.6 Monitoring and Auditing FDRs
 - Chapter 11 MA Application Procedures and Contract Requirements; See Sections 100 – 120
 - ✦ HPMS Program Audits
 - See Questions 64-80 in 2015 CPE Self Assessment Questionnaire

Federal Government Oversight Continued

5

- Department of Health and Human Services
 - Office of Inspector General
 - ✦ Compliance Program Guidance for Medicare + Choice Organizations
 - ✦ <http://oig.hhs.gov/fraud/docs/complianceguidance/111599.pdf>
 - Office of Civil Rights
 - ✦ OCR Should Strengthen Its Oversight of Covered Entities' Compliance with the HIPAA Privacy Standards
 - ✦ <http://oig.hhs.gov/oei/reports/oei-09-10-00510.asp>

State Government Oversight

6

- State Insurance Regulators
 - State Contracts
- State Attorney General Offices / Medicaid Fraud Control Units (MFCUs)
 - Investigates and prosecutes cases of Medicaid fraud
 - Consider state specific False Claims Act that provides financial incentives for establishing liability to the state for submitting false claims
- Single State Agency: Program Integrity Unit
 - Promotes program integrity through preventative measures, as well as data reviews and evaluations
- State Auditor, Comptroller, or Inspector General
 - Reviews, investigates, and recovers funds (i.e., NY)

Recent Whistleblower Activities

7

- *U.S. ex rel. Ramsey-Ledesma v. Censeo Health, LLC, Case No. 3:14-cv-0118 (N.D.Tx.)* CenseoHealth LLC
 - Whistleblower case filed by medical billing coder against former employer
 - Health assessments exaggerated how ill patients were thereby inflating risk scores
 - Resulted in inflated Medicare payments
 - Names 30 Medicare Advantage plans in 15 states
 - According to suit, CenseoHealth used an algorithm to identify patients with previously unidentified medical conditions, conducted outreach to schedule in home doctors visits to increase risk scores
 - DOJ declined to join CenseoHealth, LLC relator / whistleblower actions

Recent Whistleblower Activities

8

- *U.S. ex rel. Slinigo v. Mobile Medical Examination Services, et.al, Case No. 8:13-cv-01348-FMO (C.D. Cal.)*
 - Alleges Medicare MCOs submitted false risk adjustment data to increase capitation payments
 - ✦ Alleges that several MCOs hired third-party (FDR) MedXM to perform targeted home visits / in-home assessments for Medicare adjustment reporting purposes.
 - ✦ Alleges that MCOs knew or should have known FDR's data was false; poor supervision of individuals conducting assessments
 - Alleged failure to detect non-compliance with CMS regulations / no CMS mandated CP implemented
 - Filed by former compliance officer
 - DOJ declined to join MedXM relator's / whistleblower actions

Medicare Regulatory Basis

9

- See Chapters 11, 21 / 9 of Medicare Managed Care Manual
- 42 C.F.R. §§ 422.503(b)(4)(vi)(E)(F), 423.504(b)(4)(vi)(E)(F)
- CMS Part C and D contracts
 - Element VI: Effective System for Routine Monitoring, Auditing and Identification of Compliance Risks. Sponsors Must:
 - ✦ Establish and implement an effective system for **routine monitoring** and identification of compliance risks
 - ✦ **Develop a monitoring and auditing work plan**
 - ✦ Compliance officer and committee are key participants
 - ✦ Establish and implement policies and procedures to conduct a formal baseline assessment of the sponsor's major compliance and FWA risk areas, such as through a risk assessment

Medicaid / State Contract Requirements

10

- Medicaid state laws
- Medicaid contracts & related regulations / guidance
 - Largely follow or are analogous to CMS regulations
 - See 42 CFR §438.608, Program Integrity Requirements (7 elements)
 - See 42 CFR §438.230, Sub contractual relationships and delegation
 - State Guide to CMS Criteria for Managed Care Contract Review and Approval 2015
 - ✦ <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/delivery-systems/managed-care/downloads/mce-checklist-state-user-guide.pdf>
- Added challenges to the position
 - Consider the Exchanges / ACA (CMS in process of streamlining)
 - Consider added state specific regulations beyond fed regulations

CMS Areas of Audit

11

- HPMS Medicare Advantage & Prescription Drug Program Audits – 2015
 - Formulary and Benefit Administration
 - Part D Coverage Determinations, Appeals, Grievances (CDAG)
 - Compliance Program –Section to FDRs
 - Part C Organization Determinations, Appeals, and Grievances (ODAG)
 - Special Need Plan-Model of Care
- FDR questions throughout review protocol
- Review program audit best practices and common findings

CMS CPE Self Assessment Questionnaire

12

- For each question be prepared to address the following
 - Yes / No
 - Specify responsible party of compliance department
 - **Documentation – how would you provide evidence?**
 - ✦ Consider developing dashboard per criteria

HPMS FDR Questions

13

Have you identified FDRs?

Do you have a process or criteria for determining which delegated entities (and their employees) are properly identified as FDRs subject to Medicare compliance requirements?

Do you identify and communicate to your FDRs which FDR employees are subject to Medicare compliance requirements? *See MMCM Chapter 11, Section 100 and Chapter 21, Section 40*

Medicare program requirements apply to FDRs to whom the MA Sponsor has delegated administrative or health care service functions relating to the Sponsor's Medicare Part C and D contracts.

- Sales and Marketing
- Utilization Management
- Quality Improvement
- Applications Processing
- Enrollment, disenrollment, membership functions
- Claims administration, processing and coverage adjudication
- Appeals and grievances
- Licensing and credentialing
- Pharmacy benefit management
- Hotline operations
- Health care services
- Customer service
- Bid preparation
- Outbound enrollment verification
- Provider network management
- Processing of pharmacy claims at the point of sale
- Negotiation with prescription drug manufacturers and others for rebates, discounts or other price concessions on prescription drugs
- Administration & tracking of enrollees' drug benefits
- Coordination with other benefit programs
- Entities that generate claims data

HPMS FDR Questions

14

<p>Policies, Procedures & Code?</p>	<p>Do you ensure that either your Standards of Conduct and P&Ps or comparable Standards of Conduct and P&Ps are distributed to FDR's employees within 90 days of hire / contracting and annually thereafter?</p> <p><i>See MMCM Chapter 21, Section 50.1</i></p>
<p>Training of FDRs?</p>	<p>Do you ensure that general compliance and FWA training is completed by your FDR?</p> <p>Do you ensure that your non-deemed FDRs' employees receive FWA training within 90 days of hiring/contracting and annually thereafter?</p> <p>Do you require your FDRs to maintain records of the FWA training of their employees for ten years, as required?</p> <p><i>See MMCM Chapter 21, Section 50.3</i></p>

HPMS FDR Questions

15

System to Audit and Monitor FDRs?

Do you have a strategy to monitor and audit your first tier entities?

Does your strategy for monitoring and auditing your first tier entities include: Ensuring that they are in compliance with Medicare Parts C and D requirements? Ensuring that they are monitoring their downstream entities?

Do you monitor and audit your related entities?

Does your monitoring and auditing work plan include the number of first tier entities that will be audited and how the entities will be identified for auditing?

If you do not monitor and audit all of your first tier entities, do you perform a risk assessment to identify the high risk first tier entities and then select a reasonable number to audit from the highest risk groups?

See MMCM Chapter 21, Section 50.6

HPMS FDR Questions

16

<p>Sanctioned Screening / Exclusions?</p>	<p>Do you have procedures to ensure that your FDRs are not excluded from participation in Federal health care programs? (42 CFR § 1001.1901)</p> <p>Does your system include review of the OIG and GSA exclusion lists prior to hiring or contracting and monthly thereafter for FDRs and their employees either by you, your first entities, or the downstream entities themselves?</p> <p><i>See MMCM Chapter 21, Section 50.6.8</i></p>
<p>Corrective Actions?</p>	<p>Do you ensure that corrective actions are taken by first tier entities?</p> <p>Do you continue to monitor FDR corrective actions after their implementation to ensure that they are effective?</p> <p>Do you ensure that noncompliance or FWA committed by FDRs is well-documented and includes ramifications should the FDR fail to satisfactorily implement the corrective action?</p> <p>Do you maintain thorough documentation of all deficiencies identified and the corrective actions taken?</p> <p><i>See MMCM Chapter 21, Section 50.7</i></p>

Dashboard Solutions

17

- Establish tool (e.g., excel based / homegrown or other)
- Define parameters or criteria
 - Use identified criteria or metric by regulation / HPMS module / CMS findings
 - Establish a performance standard / regulatory criteria
 - Establish a metric owner
 - Establish data owner
 - Compliance should own and report upon Jan – Dec / YTD recording of results in aggregate

Example

18

Medicare Credentialing	Performance Standard	Source	Metric Owner	Data Prepared By	Q1
Initial Credentialed Part C Physical Health	100 % within 60 Days	See Credentialing Policy 42 CFR §422.204	[Name]	[Name]	# credentialed
Initial Credentialed Part C Behavioral Health	100 % within 60 Days	See above.	[Name]	[Name]	# credentialed
Re-Credentialed Part C	95 % in 36 months	See above.	[Name]	[Name]	100%

Dashboards Continued

19

- Aggregating monitoring activities in the form of a dashboard enables compliance program to:
 - Identify trends and deficiencies
 - Mitigate against deficiencies
 - Focus resources on higher risk areas
 - Document powerful evidence of compliance
- Consider establishing dashboards that are:
 - Easy to update and report
 - Ensure back-up documentation for each reportable criteria / monitored activity is available for review

Other Considerations

20

- Consider budgetary restrictions for oversight
 - CMS prefers onsite audits of FDRs
 - Expectation that compliance has “boots on the ground”
- How to effectively conduct monitoring with limited resources
 - Consider available compliance department resources?
 - Consider available operational personnel / delegate and make operations accountable for specific monitoring activities with reporting line to compliance
 - Consider leveraging staffing for specific tasks across a variety of products

Common Conditions Identified by CMS

21

- Most recent common conditions, improvement strategies and best practices identified by CMS
 - Program areas where multiple sponsors were non-compliant with Medicare regulations and guidance
 - Top five common conditions / audit findings for each audit area

EXAMPLE:

Part D Formulary and Benefit Administration

22

- Sponsors failed to:
 - properly administer its CMS-approved formulary by applying unapproved quantity limits
 - properly administer its CMS-approved formulary by applying unapproved utilization management practices
 - properly administer the CMS transition policy
 - properly effectuate a prior authorization or exception request
 - provide a continuing beneficiary a transition supply of a non-formulary medication
- Consider reviewing cause summaries and implementing CMS suggested improvement strategies and best practices

Other Considerations

23

- Consider authority to take action
- Ensure that contracts are good and reviewed by counsel
 - Is there someone to talk to? Do you have an account manager?
 - Is there a “practical” actionable course if not satisfied with contractor?
 - Does the contract permit authority for dismissal?
 - IT vendors, NO hold harmless clauses & need to test before buying
 - Does the vendor meet all applicable regulations and incorporate criteria by reference at minimum / *See MMCM Chapter 11*

Recommendations

24

- Consider establishing an FDR oversight program
 - Develop and implement an FDR oversight program policy and procedure
 - Develop and implement an FDR oversight Committee
 - Develop and implement an FDR contracting process that meets applicable criteria (including CMS, Medicaid, NCQA) including pre-delegation audit
 - Develop and maintain list of FDRs utilized to meet contractual requirements
 - Develop and implement a risk assessment of FDRs to determine highest risk

Recommendations

25

- Consider establishing an FDR oversight program - continued
 - Develop and implement a work plan for monitoring and conduct audits of FDRs
 - Develop and implement dashboards to monitor compliance
 - Conduct mock CMS audit on FDRs using HPMS questions
 - Develop and implement an Annual Certification of Compliance

Questions?

26

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