

Compliance Guidance for First-Tier and Downstream Entities



Introduction and purpose

Encompass Health is committed to conducting business in compliance with all applicable federal, state and local laws and regulations, and to acting at all times in conformance with the highest standards of business conduct. This Compliance Guidance for First-Tier and Downstream Entities, herein referred to as the “Guide,” is designed to help us accomplish these objectives by establishing a general framework for acting with honesty, openness and integrity in accordance with a shared set of principles.

Encompass Health (either directly or through its hospitals or other affiliates) contracts with certain health plans for purposes of delivering services to their beneficiaries. Under these contracts, Encompass Health has agreed to certain obligations consistent with federal standards, and to require the same of vendors that are utilized to assist with the related healthcare and administrative functions for beneficiaries. Our vendors may, in turn, contract with other individuals or entities to help them provide healthcare or administrative services to Encompass Health and our patients. As such, our vendors play an integral role in helping us maintain compliance with our regulatory obligations.

As defined by CMS, a “First Tier Entity” is any party that enters into a written agreement with a Medicare Advantage (MA) or Medicare Part D Plan to provide certain administrative services or healthcare services to a Medicare eligible beneficiary under the MA or Part D Plan. A “Downstream Entity” is any contractor or subcontractor to a First Tier Entity that enters into a written agreement to provide certain administrative services or healthcare services to a Medicare-eligible beneficiary under the MA or Part D Plan. These agreements with Downstream Entities continue down to the level of the ultimate party providing the administrative and healthcare services.

The Encompass Health entity that contracts with the health plan is considered the First Tier Entity. Other Encompass Health entities as well as vendors and subcontractors that provide administrative and healthcare services are considered Downstream Entities. The information provided in the Guide applies to all Downstream Entities. Accordingly, our vendors are responsible for distributing this Guide to its Downstream Entities and notifying Encompass Health of such Downstream Entities that they utilize.

We ask that you familiarize yourself, your employees and your applicable Downstream Entities with the Guide, and follow its guidance in your work with Encompass Health. No single document can address every issue that may arise in the course of business; therefore, should you have questions or need additional information, you should consult one of the resources listed in the important contact information and resources section of the Guide.

Downstream Entity oversight

If your organization chooses to subcontract with other individuals/parties to provide healthcare services or certain administrative services on your behalf (i.e. Downstream Entities), you are responsible for ensuring these Downstream Entities abide by all laws and regulations that apply to you as a First-Tier entity, including those standards set forth in this Guide. You must conduct appropriate oversight of your Downstream Entities to ensure compliance with applicable laws and regulations including routine monitoring and auditing to identify compliance risks. You must also develop and implement procedures for prompt response to identified issues. You should track and document these efforts, including any actions taken to resolve identified issues.

As a First Tier Entity, Encompass Health may conduct audits and other monitoring activities from time to time to ensure that all Downstream Entities are meeting their obligations. Encompass Health requires vendors to retain and make available records related to business with Encompass Health in accordance with applicable law, regulation and contract requirements.

Consequences of noncompliance

Failure to comply with federal and state healthcare regulations could lead to serious consequences for you, your employees and Encompass Health. These may include termination of your contract, personal or corporate fines, incarceration, exclusion from Medicare and other healthcare programs, and loss of respect by our patients and the community.

Because the consequences of a compliance failure are so serious, action will be taken against any individual or entity who:

- Authorizes or participates in any violation of law, the Guide or Encompass Health policies and procedures, including the *Standards of Ethics and Business Conduct*;
- Fails to report or conceals a violation;
- Refuses to cooperate with an internal investigation or audit; or
- Threatens or retaliates against any other individual who reports a violation or participates in an investigation.

Failure to take reasonable actions to prevent or promptly report and correct a violation is also subject to action by Encompass Health.

Code of Conduct and/or compliance policies

Encompass Health requires all First-Tier and Downstream Entities to distribute either Encompass Health's Standards of Ethics and Business Conduct and compliance policies (available at www.encompasshealth.com/vendorcompliance), or your own comparable code of conduct and compliance policies (collectively, "standards of conduct") to applicable employees and your Downstream Entities within 30 days of hire or contracting, when there are material updates to the standards of conduct, and annually thereafter. The standards of conduct must at a minimum contain all of the elements set forth in federal regulations at 42 C.F.R. §§ 422.503 and 422.504 and in Section 50.1 and its subsections of Chapter 21 of the Medicare Managed Care Manual Compliance Program Guidelines.¹

Your organization must retain evidence of your distribution of the standards of conduct for 10 years in accordance with the Centers for Medicare and Medicaid Services' (CMS) records retention requirements.

Compliance with laws and Encompass Health policies

You are expected to know and follow the laws and regulations that apply to your organization. See Appendix A for a list of laws to consider and include in your standards of conduct and related training.

Encompass Health expects all vendors to promptly investigate any reports of suspected violations of applicable laws and regulations, including any suspected violations by Downstream Entities. In addition, vendors must take appropriate action against employees and Downstream Entities who have been found to have violated

applicable laws and regulations. Confirmed compliance violations must be promptly reported to Encompass Health's Ethics & Compliance Department.

Competitive pressure or "industry practice" is never a valid reason for violating the law or a regulatory

¹CMS, Chapter 21, Medicare Managed Care Manual Compliance Program Guidelines: <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/mc86c21.pdf>

standard. If you believe that a competitor is achieving a commercial advantage by ignoring legal or regulatory requirements, contact Encompass Health's Ethics & Compliance Department for assistance.

Getting answers or reporting a possible violation of law to Encompass Health

Vendors are required to report suspected compliance violations (including patient complaints) internally through their established reporting mechanisms. In the event that the suspected violation (including any violations by a Downstream entity) relates to services provided to Encompass Health, such concerns must be reported to Encompass Health through one of the avenues noted below:

Encompass Health Ethics & Compliance Department

Questions or concerns relating to suspected compliance violations should be brought to the attention of the Encompass Health Ethics & Compliance Department by phone at 205.970.5900 or by email at compliance@encompasshealth.com. Reports directly made to the ethics & compliance department are confidential, and anyone who, in good faith, reports known or suspected incidents of noncompliance will not be subject to retaliation. All credible reports of noncompliance will be investigated.

Compliance Hotline

You may also report suspected compliance violations anonymously, confidentially and without fear of retaliation via the toll-free Encompass Health Compliance Hotline at 888.800.2577 or online at www.encompasshealth.ethicspoint.com. The Encompass Health Compliance Hotline operates 24 hours a day, seven days a week. It is staffed by an independent company with no other relationship to Encompass Health. Your call will not be traced or recorded, and your anonymity will be protected up to the limits of the law if you wish to remain anonymous. The Compliance Hotline has a Spanish-speaking staff member available at all times, and its staff has access to interpreters of numerous other foreign languages as well.

By mail

You may also raise a concern via letter or fax at:

Encompass Health
Ethics & Compliance Department
9001 Liberty Parkway
Birmingham, AL 35242
(F) 205.970.4854

Encompass Health will not retaliate against anyone who, in good faith, reports a compliance or financial integrity concern. We require all Guidance for First-Tier and Downstream Entities to adopt a comparable non-retaliation policy in connection with any reports of potential noncompliance it may receive.

Compliance training

Vendors are expected to provide employees with compliance and fraud, waste and abuse training at hire and at least annually. The training content should be tailored to the organization's operations, resources and compliance risks. Examples of content that should be considered for inclusion in compliance training are:

- A review of the standards of conduct and compliance policies;
- The requirement to report actual or suspected compliance violations and fraud, waste and abuse;
- An overview of how to report suspected compliance and fraud, waste and abuse issues;

- Examples of noncompliance or fraud, waste and abuse that employees might observe;
- A review of disciplinary guidelines for non-compliant or fraudulent behavior;
- Attendance and participation in compliance training programs is mandatory;
- An overview of corporate policies and where they can be accessed;
- An overview of HIPAA/HITECH (if applicable); and
- A review of the laws that govern employee conduct in the Medicare program (Anti-Kickback Statute, False Claims Act, etc.)

Vendors should maintain records for a period of 10 years of the time, attendance, topic, certificates of completion (if applicable) and test scores of any tests administered to their employees.

Excluded providers

Medicare payment may not be made for items or services furnished or prescribed by an excluded provider or entity. You are to report any criminal conviction or other action that could result in exclusion. In addition, you are expected to review the DHHS OIG List of Excluded Individuals and Entities (LEIE list), the GSA Excluded Parties Lists System (EPLS), and applicable state exclusion lists prior to the hiring or contracting of any new employee (including temporary employees and volunteers), subcontractors or vendors, and monthly thereafter, to ensure that none of these persons or Entities are excluded or become excluded from participation in federal programs. Monthly screening is essential to prevent inappropriate payment to individuals or Entities that have been added to exclusions lists since the last time the lists were checked. Proof of verification should be maintained for a period of 10 years, in accordance with CMS records retention requirements.

Fraud, waste and abuse (FWA)

Encompass Health will investigate all reports of alleged violations of law, regulations or Encompass Health policies involving you or your employees, and, where appropriate, will take corrective action, including, but not limited to, contract termination, civil action, and/or reporting to law enforcement for criminal investigation. You and your employees are expected to fully cooperate in any investigation and, where appropriate, take corrective actions in response to confirmed violations. The next few sections provide a brief overview of certain key FWA laws.

Anti-kickback Statute (AKS)

The AKS prohibits anyone from paying or receiving anything of value to or from anyone for the referral of a patient covered under a federal healthcare program or for the purchase of a healthcare item or service payable by a federal healthcare program. Improper payments or inducements can take many forms. In addition to cash, and kickbacks, inducements may include, but are not limited to:

- Above fair market value payments to a referral source for services, items or leased space or equipment (or the provision of free items to a referral source or accepting below fair market value payments from a referral source)
- Loans to referral sources with below market interest rates or other terms that do not meet commercial lending standards
- Professional services contracts (e.g., medical director agreements) for more services than are needed or at rates in excess of fair market value
- Management fees that fail to cover the full cost of services furnished to a referral source
- Excessive gifts or entertainment.

The statute applies to your employees, as well as the employees of Encompass Health, and assigns criminal liability to parties on both sides of an impermissible “kickback” transaction. Violation of the AKS may result in a felony punishable by a maximum fine of \$100,000, imprisonment up to 10 years, or both. There are also civil and exclusion remedies that may be brought against violators. Alleged violations of the AKS are also increasingly used as the underlying basis for cases brought under the federal False Claims Act and such cases can result in treble damages and penalties up to \$23,000 per claim.

The AKS includes certain safe harbors to address various arrangements with referral sources. We structure our relationships to satisfy such safe harbors when appropriate.

The Stark Law

The physician self-referral or Stark Law prohibits physicians from making referrals for “designated health services” to an entity with which the physician (or an immediate family member) has a direct or indirect financial relationship, subject to certain exceptions. A prohibited financial relationship may be an ownership or investment interest or a compensation arrangement. Designated health services include the following (many of which are provided by Encompass Health): inpatient and outpatient hospital services, physical therapy services, occupational therapy services, radiology services, laboratory services, and home health services. The Stark Law also prohibits Entities from filing claims or billing Medicare or Medicaid for the referred services. Violators of the Stark law may be subject to recoupments, civil monetary sanctions (up to \$25,000 for each violation and assessments up to three times the amount claimed for each prohibited service) and exclusion from any federal, state, or other governmental health care programs. In addition, Stark Law violations may lead to cases brought under the federal False Claims Act and such cases can result in treble damages and penalties up to \$23,000 per claim.

The Stark Law includes certain exceptions to account for customary financial arrangements among referral sources. Our relationships with referral source physicians are structured to fall within such exceptions.

The False Claims Act (FCA)

The FCA prohibits the act of knowingly submitting a false claim for payment to the federal government. It also prohibits the use of false statements or records for the purpose of obtaining an improper payment or concealing the receipt of an improper or over-payment. The FCA applies to all claims for payment of an item or service furnished to a beneficiary of Medicare, Medicaid or other federally financed healthcare program.

Penalties imposed under the FCA may equal up to three times the actual amount of any overpayments plus up to approximately \$23,000 per claim. In addition, the FCA allows private persons, known as “relators” or “whistleblowers,” to report noncompliance or fraud complaints to the government under seal and provides a period of time for the government to investigate such complaints and determine whether to intervene in them and take over the handling of all or part of such complaints. The FCA protects these “relators” “whistleblowers” from retaliation. Encompass Health also prohibits retaliation of any kind against individuals exercising their rights under the FCA or similar state laws.

A number of states have adopted laws similar to the FCA covering claims and statements relating to state government payments. These generally include items and services furnished to state Medicaid beneficiaries or beneficiaries of other state-sponsored health care programs. Penalties for violation of state false claims acts vary, but are generally designed to be large enough to pose a significant deterrent to fraudulent behavior. Many state acts also include whistleblower provision and protections.

Physician documentation

Encompass Health is committed to providing a working environment reflective of our mission and values not only for our employees and patients, but also for the physicians and other practitioners with whom we contract to provide administrative or health care services to Encompass Health patients. These medical director, program medical director and medical consultant vendors are expected to conduct their services in compliance with these standards of conduct, and all applicable laws, rules and regulations, including, but not limited to, the Stark Law and Anti-Kickback Statute. In addition, all credentialed and privileged physicians must ensure that their documentation is accurate, meaningful, and compliant with CMS regulations and Encompass Health standards, practices, and policies.

Practitioners in the role of rehabilitation physician must follow specific Medicare documentation requirements that include the following elements:

- Fulfillment of Medicare coverage criteria that the patient:
 - Requires multiple therapy disciplines (one must be PT or OT);
 - Requires an intensive rehabilitation program generally consisting of at least three hours of therapy per day, five days per week;
 - Must be reasonably expected to actively participate in, and significantly benefit from, an intensive therapy program;
 - Requires supervision of a rehabilitation physician who must conduct and document face-to-face visits at least three days a week; and
 - Requires an interdisciplinary team approach.
- Post-admission physician evaluation (PAPE) documented within 24 hours of admission. The PAPE can be combined with the history and physical (H&P) only if it is done by a rehabilitation physician, and properly labeled.
- Interdisciplinary plan of care (IPOC) developed and signed no later than day four of the admission.
- Interdisciplinary team conference conducted weekly.
- Face-to-face visits by physician with patient at least three days a week covering medical issues, functional issues, the relationship of those issues to progress toward care goals, and any modifications appropriate for care plan.

In addition to CMS documentation requirements for rehabilitation physicians, Encompass Health has established the following standards which apply to all medical record entries:

- All entries must be documented completely and legibly (if handwritten).
- Errors should be corrected in accordance with hospital policy.
- Entries must be dated, timed and signed at the time they are entered.
- Entries should be made in a timely fashion – e.g., H&P dictated and on chart in 24 hours.
- Keep notes lean and concise – fewer words, less bulk and targeted on what's most important.
- Use extreme caution when cutting and pasting any element of an electronic note to avoid clutter, misattribution or outdated information. Documentation that has been cut and pasted does not meet medical necessity requirements for coverage of services. Identification of this type of documentation will lead to denial of services for lack of medical necessity and recoupment of all overpayments made.
- Write real content – accurate, objective and specific to the individual patient.
- Psychological/psychiatric notes meant to be kept confidential should not be included in a paper medical record. A summary note should instead be inserted.
- Confidential psychological/psychiatric notes may be stored in the “Confidential” folder of the electronic medical record (ACE IT), which has very limited access.

Privacy and security

During the course of business, your employees and/or your Downstream Entities may have access to protected health information (PHI) of Encompass Health's patients. All PHI must be treated as confidential and in compliance with the Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH). Patients' PHI should only be used or disclosed with the attending physician, with persons authorized by the patient to receive such information, and with other employees who require access to the information to perform their job duties. Remember, only those who require specific patient information to furnish care, perform quality control activities, bill or collect charges for services, or furnish other administrative services are permitted access to PHI unless authorized under the law or by the patient.

In the event of any security incident or impermissible use or disclosure of PHI you must notify Encompass Health, in accordance with time frame specified in your contract, of the discovery of such breach or suspected breach.² Reports can be made to Encompass Health's Information Technology Group at 800.646.9404, its Privacy Office at 205.969.6882, or Support@encompasshealth.com.

Conflicts of interest

Conflicts of interest between vendors and Encompass Health employees, or the appearance thereof, should be avoided. Examples of activities that may create a conflict of interest include, but are not limited to, the following:

- Giving to or receiving gifts, gratuities, loans or other special treatment of value from third parties doing business with or wishing to do business with Encompass Health in a manner that is not in accordance with Encompass Health policy;
- Using Encompass Health facilities or resources for other than Encompass Health activities;
- Using Encompass Health's name to promote or sell non-Encompass Health services; and
- Contracting for goods or services with family members of Encompass Health personnel directly involved in purchasing decisions.

Your organization is responsible for implementing processes and procedures to review and disclose potential conflicts of interest. When an actual conflict of interest arises, that conflict must be disclosed to Encompass Health's Ethics & Compliance Department for further review.

Gifts and business courtesies

Encompass Health discourages you and your employees from providing gifts, meals or entertainment or other business courtesies to our employees or patients in order to avoid actual or perceived impropriety, conflicts of interest, or the perception that the quality of care furnished is dependent on the offering of gifts or other gratuities. You and your employees should refrain from:

- Providing personal gifts to Encompass Health employees;
- Providing non-routine meals and/or entertainment to Encompass Health employees;
- Providing cash or cash equivalents such as checks or debit or credit cards;
- Providing gifts that violate the law or Encompass Health policy;
- Providing gifts or entertainment that reasonably could be perceived as a bribe, payoff, deal or any other attempt to gain an advantage;
- Providing gifts or entertainment to Encompass Health employees involved in Encompass Health purchasing and contracting decisions;
- Offering gifts or other financial benefits to patients to induce them to choose an Encompass Health hospital, home health agency or hospice to receive care; and

- Accepting gifts from patients of more than nominal value. No cash or cash equivalents may be accepted from a patient or patient's family.

Visitation and marketing activities

When visiting Encompass Health, your employees must comply with the applicable Encompass Health visitation policy, which is available at the Encompass Health hospital upon request. Vendor representatives are required to schedule appointments and must register prior to visiting Encompass Health. Vendors will be required to specify the areas to be visited, and visits must be restricted to those locations only. Visitor badges provided by Encompass Health must be worn at all times. Vendors should not disrupt workflow, and should not distribute advertisements or information on your products or services unless such items are approved by Encompass Health prior to distribution. Generally, only materials that educate patients concerning their health will be permitted.

Investments and use of inside information

Your employees may become aware of information concerning Encompass Health that is not available to the public, but that would be considered important by an investor in deciding whether to buy or sell Encompass Health stock or the stock of another company with a significant business relationship to Encompass Health. You should never use such non-public information for investment or other personal gain. Any person who discloses confidential information to others may still be held accountable under federal law for any misuse of such information even if that "tipping" person does not buy or sell any securities. This requires caution in discussing Encompass Health information with anyone, including, but not limited to, friends, family or acquaintances, or participating in Internet "chat rooms" or blogs. You are strongly discouraged, and in some cases legally prohibited, from buying and selling Encompass Health securities or other companies with which Encompass Health does significant business.

Offshore operations

You may not engage in offshore operations or utilize offshore services without the prior express written consent of an authorized Encompass Health representative. In the event that you intend to use an offshore entity to perform services involving the receipt, processing, transferring, handling, storing or access of PHI, we must be notified and submit an attestation to CMS about the offshore operations.

Important contact information and resources

To report suspected compliance violations:

Corporate Ethics & Compliance Department

Chief Compliance Officer

205.970.5900

Fax: 205.970.4854

compliance@encompasshealth.com

Encompass Health Corporation

Compliance Hotline

888.800.2577

www.encompasshealth.ethicspoint.com

To report a HIPAA Privacy violation:

Deputy Chief Compliance Officer,
Privacy Officer
205.969.6882
privacy@encompasshealth.com

To report an Information Security Breach:

Information Technology Group
800.646.9404
support@encompasshealth.com

To ask a contract-related question:

Legal Services
800.765.4772
legal.services@encompasshealth.com

Appendix A: Federal laws and regulations to consider in standards of conduct and/or training

- Title XVIII of the Social Security Act
- Medicare regulations governing Parts C and D found at 42 C.F.R. §§ 422 and 423 respectively
- Patient Protection and Affordable Care Act (Pub. L. No. 111-148, 124 Stat. 119)
- False Claims Acts (31 U.S.C. §§ 3729-3733)
- Federal Criminal False Claims Statutes (18 U.S.C. §§ 287,1001)
- Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b))
- The Beneficiary Inducement Statute (42 U.S.C. § 1320a-7a(a)(5))
- Civil monetary penalties of the Social Security Act (42 U.S.C. § 1395w-27 (g))
- Physician Self-Referral (“Stark”) Statute (42 U.S.C. § 1395nn)
- Privacy, Security, and Breach Notification Provisions of the Health Insurance Portability and Accountability Act, as modified by the HITECH Act and Omnibus Rule
- Prohibitions against employing or contracting with persons or entities that have been excluded from doing business with the Federal Government (42 U.S.C. §1395w-27(g)(1)(G))
- Fraud Enforcement and Recovery Act of 2009
- All sub-regulatory guidance produced by CMS and HHS such as manuals, training materials, HPMS memos, and guides