

Ethics and Compliance Program Guidance for Vendors



Contents

Introduction	1
Compliance with Laws and Regulations	2
Standards of Conduct	3
Compliance Training	4
Reporting a Possible Violation of Law	4
Excluded Providers	5
Offshore Operations	5
Oversight of Vendors	5
Privacy and security	5
Conflicts of Interest	6
Gifts and Business Courtesies	6
Visitation and Marketing Activities	6
Investments and Use of Inside Information	7
Important Contact Information and Resources	7
Appendix A: Federal Laws and Regulations to Consider in Standards of Conduct and/or Training	8

Introduction

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 Ethics and Compliance Program Guidance for Vendors, herein referred to as the Guide, helps to accomplish these objectives by establishing a general framework for acting with honesty, openness, and integrity in accordance with a shared set of principles.

As defined by CMS, a “first tier entity” is any party that enters into a written agreement with a Medicare Advantage Organization (MAO) or Medicare Part D Plan Sponsor or applicant to provide administrative or health care services to a Medicare eligible individual under the Medicare Advantage program or Part D program. Encompass Health (either directly or through its hospitals or other affiliates) contracts with certain health plans for purposes of delivering health services to Medicare Advantage beneficiaries; Encompass Health is a first tier entity. As such, Encompass Health has agreed to comply with certain federal standards, including requiring the same of vendors providing administrative or health care services on behalf of Encompass Health. These vendors are downstream entities. CMS defines a “downstream entity” as any party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with the Medicare Advantage benefit or Part D benefit, below the level of the arrangement between a Medicare Advantage Organization or applicant or a Part D plan sponsor or applicant and a first tier entity.

The Guide applies to all vendors identified as downstream entities. The Guide summarizes Medicare Compliance Program responsibilities and expected standards of conduct. We ask that you familiarize yourself

and your employees, who provide administrative or health care services in connection with your Encompass Health contract, with the Guide. Please note that all references to “employee(s)” include temporary workers, subcontractors, and volunteers. 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.

Compliance with Laws and Regulations

Encompass Health expects vendors to operate and conduct business in accordance with all applicable federal, state, and local laws, and CMS requirements, including but not limited to:

- **Title XVIII of the Social Security Act**
 - Enacted in 1965, Title XVIII of the Social Security Act established regulations for the Medicare program, which guarantees access to health insurance for all Americans, aged 65 and older, younger people with specific disabilities, and individuals with end stage renal disease.
- **Title 42 C.F.R. §§ 422 and 423**
 - The United States Code dealing with public health, social welfare, and civil rights including Medicare regulations governing parts C and D.
- **False Claims Acts (FCA) (31 U.S.C. §§ 3729-3733)**
 - The FCA prohibits any person from submitting a claim to the federal government that he or she knows (or should know) is false. The FCA is a law that provides a cause of action to the United States and private whistleblowers for treble damages and civil penalties when false or fraudulent claims for payment are made to the federal government.
- **Federal Criminal False Claims Statutes (18 U.S.C. §§287,1001)**
 - Under this law the Federal Government makes it a criminal offense for any person to make or present a false, fictitious, or fraudulent claim to a department of the United States; knowing such claim was false, fictitious or fraudulent; and doing so with the specific intent to violate the law or with a consciousness that what he was doing was wrong.
- **Fraud Enforcement and Recovery Act (FERA) of 2009**
 - This comprehensive legislation expands the reach of federal law and increases funding for federal agencies to combat financial fraud. FERA expands potential liability for false claims by applying the FCA to more entities and a broader range of transactions, reducing the proof required to establish liability, and expanding the pool of potential whistleblowers that may bring retaliation claims.
- **Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b))**
 - The federal Anti-Kickback Statute (“Anti-Kickback Statute”) is a criminal statute that prohibits the exchange (or offer to exchange), of anything of value, in an effort to induce (or reward) the referral of federal health care program business.
- **The Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a)**
 - Among other prohibitions; prohibits against offering or transferring remuneration to a Medicare or State health care program beneficiary that the person knows or should know is likely to influence beneficiary selection of a particular provider, for which payment may be made in whole or part by Medicare or State health care program.

- **Stark Law (42 U.S.C § 1395nn)**
 - o Prohibits a physician from making referrals for certain designated health services (DHS) payable by Medicare to an entity with which he or she (or an immediate family member) has a financial relationship (ownership, investment, or compensation), unless an exception applies.
 - o Prohibits the entity from presenting or causing to be presented claims to Medicare (or billing another individual, entity, or third party payer) for those referred services.
 - o Establishes a number of specific exceptions and grants the Secretary the authority to create regulatory exceptions for financial relationships that do not pose a risk of program or patient abuse.
- **Health Insurance Portability and Accountability Act**
 - o A federal law that allows persons to qualify immediately for comparable health insurance coverage when they change their employment relationships. Title II, Subtitle F, of HIPAA gives HHS the authority to mandate the use of standards for the electronic exchange of health care data; to specify what medical and administrative code sets should be used within those standards; to require the use of national identification systems for health care patients, providers, payers (or plans), and employers (or sponsors); to specify the types of measures required to protect the security and privacy of personally identifiable health care information; and limits how companies can use your pre-existing medical conditions to keep you from getting health insurance coverage.

Failure to comply with applicable laws and 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 health care programs, and loss of respect by our patients and the community. Because the consequences of a compliance failure are so serious, Encompass Health takes action 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 Business Ethics and 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.

Encompass Health expects vendors to promptly investigate all reports of suspected violations of applicable laws and regulations, and take reasonable steps to prevent, or promptly report and correct violations.

Standards of Conduct

Encompass Health requires vendors to distribute either Encompass Health’s Standards of Business Ethics and 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 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

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

Compliance Training

Vendors must provide employees with compliance and fraud, waste and abuse training at hire and annually thereafter. Vendors should tailor training content to address the organization's operations, resources and compliance risks. Compliance training topics for consideration include:

- 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 Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH) (if applicable); and
- a review of the laws that govern employee conduct in the Medicare program (see Appendix A for a list of laws to consider and include in your standards of conduct and related training).

Vendors must 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.

Reporting a Possible Violation of Law

Vendors must report suspected compliance violations (including patient complaints) through internally established reporting mechanisms. Suspected violations related to services provided to Encompass Health must be reported to Encompass Health through one of the avenues noted below:

Ethics & Compliance Department

Questions or concerns relating to suspected compliance violations should be brought to the attention of Encompass Health's 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, 7 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 vendors to adopt a comparable non-retaliation policy regarding reports of potential noncompliance.

Excluded Providers

Medicare prohibits payments for items or services furnished or prescribed by an excluded provider or entity. Vendors must report any criminal conviction or other action that could result in exclusion. Vendors must review the DHHS OIG List of Excluded Individuals and Entities (LEIE list), the GSA Excluded Parties List System (EPLS), and applicable state exclusion lists prior to the hiring or contracting of any new employee and monthly thereafter. Monthly screening is essential to prevent inappropriate payment to excluded individuals. Vendors must maintain records of monthly exclusion screening for a period of 10 years.

Offshore Operations

Vendors may not engage in offshore operations or utilize offshore services without the prior express written consent of an authorized Encompass Health representative. You must notify Encompass Health of any intentions to use an offshore entity to perform services involving the receipt, processing, transferring, handling, storing or access of PHI.

Oversight of Vendors

If your organization chooses to subcontract with other individuals or entities to provide administrative or health care services in connection with your Encompass Health contract, you are responsible for ensuring these entities abide by the standards set forth in this Guide. You must conduct appropriate oversight of these 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. Encompass Health may conduct audits and other monitoring activities from time-to-time to ensure vendors are satisfying these 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.

Privacy and security

During the course of business, vendors may have access to the protected health information (PHI) of Encompass Health's patients. Vendors must treat all PHI 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 timeframe specified in your contract, of the discovery of such breach or suspected breach. 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

Encompass Health and our vendors must act appropriately to avoid conflicts of interest, or the appearance thereof. 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 purposes 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.

Vendors are responsible for implementing processes and procedures to review and disclose potential conflicts of interest. When an actual conflict of interest involving Encompass Health arises, you must disclose the conflict 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, gift cards, 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.

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 should schedule appointments and register prior to visiting Encompass Health. Vendors must specify the areas to be

visited, and restrict visits to those locations only. Vendors must wear visitor badges provided by Encompass Health at all times. Vendors should not disrupt workflow, and should not distribute advertisements or information regarding products or services unless approved by Encompass Health prior to distribution. Encompass Health generally permits only health related educational materials.

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.

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