MaineHealth
Accountable Care Organization

MHACO
Annual Compliance Training

Non MaineHealth Employed Participants
2023

August 29, 2023

Compliance Program

- A Compliance Program helps organizations abide by all applicable rules, standards and organizational policies. Organizations participating in programs governed by the Centers for Medicare & Medicaid Services (CMS) are required to have an effective Compliance Program, including conducting annual compliance training.
- The MaineHealth Accountable Care Organization (ACO) has an agreement with CMS for a Medicare Shared Saving Program (MSSP), a number of Medicare Advantage Plans, including Special Needs Programs (SNP).
- The MaineHealth ACO's Compliance Program includes promotion of the Code of Ethical Conduct, training, auditing & monitoring, and a system to report compliance concerns. The MaineHealth ACO's Participants* are required to report any violations of applicable law or policy. Reports may be made to the individual's immediate supervisor, MHACO Compliance or Privacy Official, or the MaineHealth Corporate Compliance Helpline at (207) 662-4646.

** A Participant is a Tax ID Number (TIN) that is included on the ACO's participant list, and a provider/supplier is an NPI that bills Medicare under one of the TINs on the participant list.*

Compliance Program

- This training educates MaineHealth ACO Participants on laws, policies and programs designed to detect and prevent fraud, waste and abuse related to federally funded governmental programs (including but not limited to healthcare reimbursement programs like Medicare and Medicaid (MaineCare)). In addition, this training explains compliance risks specific to the MaineHealth ACO, such as Avoidance of at Risk Beneficiaries, Utilization and Beneficiary Assignment.
- The MaineHealth ACO must track and maintain documentation of the completion of this training by its Participants.
    - After review of this training material by all participants, an individual with signatory authority will sign the 2023 Annual Compliance Attestation form and return it to the MaineHealth ACO for tracking purposes.
- Participants are required to ***maintain documentation*** of all providers completing this training and the date, demonstrating compliance training requirements for a ***period of 10 years***.

Compliance Program

What is Non-Compliance?

Conduct that does not conform to laws, state and/or federal health care program requirements, or MaineHealth ACO ethical and business policies.

Compliance Risk Areas:

- Beneficiary Notices
- Conflicts of Interest
- Claim Submissions
- Documentation
- 2015 Certified Electronic Health Record Technology
- HIPAA- Health Insurance Portability and Accountability Act
- Quality Data Submissions
- Data Use Agreements

Consequences of Non-compliance

- Disciplinary Action
- Refunds of Overpayments
- Criminal & Civil Penalties
- Contract Termination
- Exclusion from Participation in all Federal Health Care Programs

Compliance Program

Code of Ethical Conduct

- A Code of Ethical Conduct states an organizations compliance expectations, values, operational principles, and provides guidance on standards for workforce conduct.
- All Practices should have a Code of Ethical Conduct.
- If you do not have a Code of Ethical Conduct the MaineHealth ACO welcomes you to adopt ours (enclosed) and to make applicable edits for your practice where necessary.
  - E-mail contactmhaco@mainehealth.org to request an electronic copy of the document if you wish to edit it for your use.
- All practices must attest to receipt of, understanding and a willingness to abide by the MaineHealth Code of Ethical Conduct.

False Claims Act (FCA)

- The FCA law imposes liability on persons and/or companies who defraud governmental programs. It is the government's primary tool in combating fraud against the government.

- A person who *knowingly submits a false or fraudulent* claim to Medicare, Medicaid or other federal healthcare program is *liable* to the federal government *for three times the amount of the federal government's damages plus penalties* up to $27,018 per false or fraudulent claim.

- The federal government enforces the FCA.

U.S. Department of JUSTICE

U.S. Department of Health and Human Services
Office of Inspector General

31 U.S.C. §§ 3729-3733

The Federal False Claims Act (FCA)

Examples of a false claim include, but are not limited to:

- Billing for services not rendered and/or supplies not provided
- Billing for medically unnecessary services
- Billing separately for services that should be bundled (or unbundling)
- Falsifying information in a medical record
- Billing more than once for the same services
- Billing an otherwise appropriate claim when the service itself resulted from an inappropriate arrangement between a provider and a hospital or other healthcare entity (Stark or Anti-kick-back).
- Inaccurate CEHRT attestations
- Failure to return an overpayment within 60 days of identification

The Federal False Claims Act (FCA)

Some points to remember about the FCA:

- False claims may result from something other than an intent to break the law. False claims may arise from repeated errors that reflect "deliberate ignorance" or "reckless disregard" of the rules.
- The FCA allows individuals to act as "whistleblowers" and sue any person or entity they believe has defrauded the government. The government may join the suit if it believes the whistleblower's case has merit. If the case is won, the whistleblower is entitled to a portion of any money recovered.
- Penalties under the FCA are significant and may include fines of millions of dollars, as well as exclusion from government health care programs.

Fraud, Waste and Abuse

Understanding Fraud, Waste and Abuse

- **Criminal Fraud:**
  - Knowingly and willfully executing, or attempting to execute, a scheme or artifice to defraud any health care benefit program; or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program.
  - **What does this mean?**
  - Intentionally submitting false information to the government or a government contractor in order to get money or a benefit.
- **Examples of actions that may constitute Fraud:**
  - Billing for services not furnished or provided, altering claims or medical records to receive a higher payment.
  - Making prohibited referrals for certain designated health services

18 U..S.C. §1347

Fraud, Waste and Abuse

- **Waste**:
  - Over-utilization of services or other practices that directly or indirectly result in unnecessary costs to the Medicare Program. Waste is generally not considered to be caused by criminally negligent actions, but rather the misuse of resources.

Examples of actions that may constitute Waste:

- Conducting excessive office visits or writing of prescriptions
- Ordering excessive laboratory tests

- **Abuse**:
  - Includes actions that may, directly or indirectly, result in unnecessary costs to the Medicare Program. Abuse involves payment for items or services when there is not legal entitlement to that payment and the provider has not knowingly and/or intentionally misrepresented facts to obtain payment.

Examples of actions that may constitute Abuse:

- Unknowingly billing for unnecessary medical services
- Misusing codes on claims, up-coding or unbundling

Fraud, Waste and Abuse

Differences Between Fraud, Waste, and Abuse:

- There are differences between fraud, waste, and abuse.
- One of the primary differences is *intent and knowledge*.
- Fraud requires the person to *have intent to obtain payment* and the *knowledge that their actions are wrong.*
- Waste and abuse may involve obtaining an improper payment, but does not require the same intent and knowledge.

Fraud, Waste and Abuse

Preventing Fraud, Waste and Abuse

- Make sure you are up to date with laws, regulations, and policies.
- Ensure you coordinate with other payers.
- Ensure your data and billing is both accurate and timely.
- Verify information provided to you.
- Ensure CEHRT attestations are accurate, false EHR certifications were a OIG top priority for 2020.
- Accurate submission of Quality Data.
- Provision of care meeting professionally recognized standards.
- Refund all identified overpayments within 60 days.

MHACO Fraud, Waste and Abuse

Correcting Fraud, Waste and Abuse

- Any questionable or potentially illegal conduct or behavior in violation of the Code by anyone working for or on behalf of the MaineHealth ACO, shall be reported immediately, fully and objectively to the to the individual's immediate supervisor, MHACO Compliance or Privacy Official, or the MaineHealth "Helpline".
- Staff/Participant's are also encouraged to immediately report any experience that made them feel uncomfortable or uneasy about the legal or ethical nature of conduct or decisions made. Every reasonable effort will be made to protect an individual's confidentiality and the information shared only with those having a need to know.
- The MaineHealth ACO has established a confidential MaineHealth Corporate Compliance Helpline on which potential violations can be reported on a confidential basis or questions asked; (207) 662-4646. Staff/Participant's will not be reprimanded or subject to any discipline or retaliation for the act of making any report in good faith and without malicious intent.
- The MaineHealth ACO will report any compliance concerns to the appropriate entity including but not limited to Medicare and Medicare Advantage Plans, if applicable.

MHACO Fraud, Waste and Abuse

- Participants/Suppliers in the MaineHealth ACO will continue to submit fee-for-service claims to government programs and all existing billing and coding laws continue to apply to the MaineHealth ACO Participants (practices)/Suppliers (providers).
- The MaineHealth ACO itself submits certifications to the government to obtain payment, and will submit a large amount of data to support the certifications. The False Claims Act prohibitions apply to the MaineHealth ACO when submitting the certifications.
- All MaineHealth ACO quality and other reporting must be accurate and supported by auditable records.
- Representatives of the MaineHealth ACO are required to attest to the accuracy of data submissions annually.

Exclusions Program

- The MaineHealth ACO and Participants must make certain all providers and employees are properly screened against the HHS-Office of Inspector General (OIG) List of Excluded Individuals and Entities (LEIE) website, U.S General Services Administration (GSA) Excluded Parties List System (EPLS) and any applicable State exclusion lists prior to hire and routinely* thereafter. MaineHealth screens ACO employees and participants monthly following hire. ** The OIG does not define routinely, monthly is best practice, but not statutorily required.*
- If an individual or entity is excluded from the OIG LEIE, GSA EPLS or a state exclusion database, Federal and State funds cannot be used to support this person, or organization including any item or service they may have provided, ordered or prescribed whether directly or indirectly obtained and therefore cannot participation in Medicare, Medicaid and any other Federal health care programs.

OIG LEIE https://exclusions.oig.hhs.gov

GSA EPLS https://sam.gov/content/exclusions

ME State https://mainecare.maine.gov/mhpviewer.aspx?FID=MEEX

Financial Relationships- Physician Self-Referral or Stark Law

Other federal laws designed to prevent fraud, waste and abuse apply to arrangements where money or other items or services of value are exchanged between physicians or given to patients, including the physician self-referral law ("Stark"), the anti-kickback statute and the prohibition on beneficiary inducements.

- The **physician self-referral law**, commonly referred to as the "**Stark Law**":
  - Applies to financial relationships involving physicians, physician-owned practices and immediate family members of physicians.
  - Prohibits a physician from making referrals to an entity for hospital, laboratory, and many other ancillary services known as "designated health services" payable by Medicare if there is a financial relationship between the entity and the physician (or an immediate family member), unless the financial relationship meets each and every element of a listed exception. See https://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/List_of_Codes for a list of HCPCS codes.
  - Prohibits the entity from billing for those referred services.
  - Is a technical law based on the existence or non-existence of a compliant financial relationship and is not dependent on the parties' intent.

42 U.S.C § 1395nn

Financial Relationships- Kickbacks/Inducements

The Anti-kickback statute:

- Makes it a felony to offer, pay, solicit or receive anything of value to induce or reward patient referrals or generate federal health care program business.
- Is violated if "one purpose" of a payment is to induce or reward referrals.
- Contains "safe harbors" describing arrangements that will not be prosecuted by the government if each and every element of the safe harbor is met.

MHACO Stark and Anti-Kickback Statute Policy

42 U.S.C § 1320a-7b(b))

Financial Relationships- Inducements

The prohibition on beneficiary inducements:

- Prohibits offering or giving anything of value to a Medicare or Medicaid beneficiary that an entity knows or should know is likely to induce the beneficiary to seek reimbursable items or services from a particular provider or supplier.
- Is subject to specific exceptions and safe harbors as defined in federal regulations.

MHACO Beneficiary Incentives Policy

42 U.S.C. § 1320a-7a(a)(5))

Financial Relationships- Kickbacks/Inducements

Examples of activities that would violate these laws are:

- A laboratory **providing a** computer or other equipment to a physician's office **in exchange** for referrals to their lab.
- A hospital **giving extra funding or free** office space to private physicians **to ensure that they refer** beneficiaries to the hospital.
- A physician's office **routinely waiving co-payments or deductibles, without consideration of financial need** or **providing gifts to attract beneficiaries** to the practice.
- A medical device vendor giving **gifts** to a health care provider **to boost sales** of its products.
- The MaineHealth ACO giving its participants **payments as a reward/incentive for referrals** to a participating hospital.
- An ACO participant **providing a patient with** a blood pressure cuff and scale for self reporting of vitals during a telehealth visit, **allowing the participant to bill** a Medicare annual wellness visit.

Permitted Activities

Safe Harbor Regulations

- Certain financial arrangements between providers (participants) are permitted under specific exceptions to the Stark law, and the Office of Inspector General (OIG) has defined "safe harbors" for which it will not treat an arrangement as violating the anti-kickback statute or beneficiary inducements prohibition if all elements of the safe harbor are met.
- Examples for which an exception or safe harbor is available are
  - Rental of office space to a physician at fair market value under a written lease agreement.
  - Waiver of a beneficiary's co-payment or deductible based upon case-specific determination of financial need.
  - Vendor discounts or rebates to a health care provider.
  - Provision of certain preventive care items or services by the MaineHealth ACO to help beneficiaries meet clinical goals.

ACO Compliance Risks

The MHACO has compliance risks that are unique to the ACO environment. ACO's may be audited in these areas, may incur sanctions, including mandated corrective action plans and/or termination from the ACO Medicare Shared Savings (MSSP) program.

MHACO's employees and participants are prohibited from seeking to attract or avoid beneficiaries with certain health profiles.

Stinting on Care, Over-utilization:

- The MaineHealth ACO may not encourage its Participants to reduce or limit medically necessary services for ACO beneficiaries, over utilize services on non ACO beneficiaries and may not avoid beneficiaries with high medical needs, or "at-risk" beneficiaries.

MHACO Beneficiary Avoidance and Referrals Policy

ACO Compliance Risks

Avoiding Certain Beneficiaries:

The MaineHealth ACO's employees and participants ***may not avoid*** beneficiaries with high medical needs, or "at-risk" beneficiaries.

An "at-risk" beneficiary includes a patient who:

- has one or more chronic conditions;
- is dually eligible for Medicare and Medicaid;
- is diagnosed with a mental health or substance abuse disorder, or has had a recent diagnosis that is expected to result in increased cost;
- has had two or more hospitalizations or emergency room visits each year, or otherwise has a high utilization pattern.

Patient Choice:

- MSSP patients assigned to the MaineHealth ACO have full freedom of choice in selecting providers and may choose providers outside of the ACO with no penalty. Participating providers must honor patient choice and may not restrict referrals to within the ACO.

ACO Compliance Risk

Patient Inducements

- The MaineHealth ACO may not offer or provide gifts or other inducements to a beneficiary to encourage them to receive services from the MaineHealth ACO or any of its Participants.
- Under the Beneficiary Inducement Safe Harbor Provisions, the MaineHealth ACO and its participants ***may*** provide in-kind items or services related to the beneficiary's medical care that are either preventive in nature or help the beneficiary achieve a clinical goal, when all safe harbor provisions are met. For example, a practice may provide a patient with a blood pressure monitor to better control hypertension. *(Must be unrelated to reporting vitals required for some telehealth encounters.)*
- The Beneficiary Inducement Safe Harbor Provisions ***do not*** include cash, cash equivalents, items that are not related to medical care (beauty products or theatre tickets) or be an item or service which is a Medicare covered item or service for the beneficiary on the date the in-kind item or service is furnished to the beneficiary.

ACO Compliance Risk

Notification to Beneficiaries:

- **MHACO will** provide beneficiary notices, as required by CMS MSSP regulations.
  - » The standardized written notice will be provided once per agreement period, prior to the beneficiaries primary care visit.
  - » A follow up communication will provided within 180 days of the delivery of the standardized written notice.

- **ACO participants must** notify beneficiaries at the point of care that their ACO providers are participating in the Shared Savings Program by;
  - Prominently display MHACO MSSP Beneficiary Notice posters in a public area for beneficiary viewing.
  - Make a copy of the MHACO standard written notice available to beneficiaries upon request.

ACO Compliance Risk

Beneficiary Outreach and Marketing:

To prevent the MaineHealth ACO's employees and participants from seeking to attract or avoid beneficiaries with certain health profiles, and to prevent materially inaccurate or misleading information and/or discriminatory practices, CMS regulates marketing communications with beneficiaries.

- Marketing materials related to governmentally funded health care programs (i.e. Medicare Advantage and MSSP) are regulated by CMS.
- In some cases, the MaineHealth ACO is required to use CMS templates.
- The MaineHealth ACO's communications team **must** be provided with any proposed marketing materials prior to distribution.

ACO Compliance Risk

Beneficiary Right to Opt out of Data Sharing

- CMS beneficiaries may decline to allow their claims data be shared with the MHACO. The MaineHealth ACO may not request data on a beneficiary who has "opted out" of data sharing.
- If a beneficiary notifies a MHACO Employee or Participant that he or she chooses to opt-out of data sharing, instruct them to call Medicare and tell the representative that their doctor is part of an ACO and that they don't want Medicare to share their health care information.
- If they change their mind and want to let Medicare share their health information again, they will need to let Medicare know.
  - **Beneficiary Number** - 1-800-MEDICARE (1-800-633-4227)
  - **TTY Number-** 1-877-486-2048.

The ACO may not notify Medicare on behalf of the beneficiary.

Risk Area: Privacy, Security and Confidentiality

Health Insurance Portability and Accountability Act

- Under federal and state privacy laws, most notably the federal Health Insurance Portability and Accountability Act, "HIPAA," a provider (participant) may use or disclose PHI or e-PHI (i.e. health information, including genetic information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, pre-sent, or future payment for the provision of health care to an individual) only upon a patient's signed authorization, unless it is necessary for:
  - Treatment of the patient
  - Payment for services
  - The regular business or operations of the provider
  - Legal requirements (e.g., reporting of child abuse)
  - To avert a serious threat to health or safety

Risk Area: Privacy, Security and Confidentiality

Protected Health Information (PHI)

- *Remember*
  - Handle PHI in an ethical and responsible manner.
  - Treat all patient information as confidential in all forms (paper, verbal or electronic (e-PHI)).
  - Take reasonable measures to protect PHI and e-PHI from unauthorized disclosure. *Do not forward confidential information, unless it is encrypted.*
  - Securely store and properly dispose of confidential documents. *Ensure confidential information provided by the ACO is stored in a secure location.*
  - Access only the information you *NEED* for approved work purposes. *If you are not sure if you should access certain information, then do not.*
- *You are responsible for the security and confidentiality of your:*
  - Electronic Devices, Computers, Tools
  - Passwords, Information and its Transmission
  - Behavior

Risk Area: Privacy, Security and Confidentiality

As a Business Associate (BA), the MaineHealth ACO must comply with all of the privacy and security rules that apply to HIPAA covered entities and must abide by the terms contained within a business associate agreement it has executed with participants. Among other things, this means:

- **Minimum Necessary**: The MaineHealth ACO will make reasonable efforts to use and disclose only the minimum amount of PHI or e-PHI necessary to accomplish the intended purpose of the use or disclosure.
- **Notice of Breach**: The MaineHealth ACO must cooperate with its participants to provide notice of any breach of confidentiality. If it is suspected that PHI or e-PHI has been inappropriately accessed, used or disclosed, the MaineHealth ACO's Compliance or Privacy Official, the MaineHealth "Helpline" or the individual's supervisor must be notified immediately.
- **Role Based Access**: The MaineHealth ACO and its participants may grant role-based system access to employees and other qualified individuals so that access is limited to only those persons requiring such access to carry out their job duties. If an employee has a change to his or her job duties, including a termination of employment, the MaineHealth ACO's Compliance or Privacy Officer should be notified immediately so that access may be modified or terminated.

Risk Area: Red Flags Rule- Identity Theft

The Red Flag Rule requires businesses, including health care providers, to develop programs to spot "Red Flags" of identity theft.

Types of Red Flags

- Suspicious Documents – *false insurance card,* or a *stolen card*
- Suspicious Personal Identifying Information – *using deceased person's information*
- Unusual Use of, or Suspicious Activity Related to Covered Accounts – *address change*
- Notice from, Victims of Identity Theft, Law Enforcement Authorities, or Other Persons Regarding Possible Identity Theft in Connection with Accounts. – *credit report alert, or patient call*
- Documents provided for identification appear to have been *altered or forged*
- Photo or physical description on the ID is *inconsistent* with the *appearance* of the individual
- *Date of birth* seems too early or late for the age of the patient
- The patient *fails to provide* all required documentation information

Reporting MHACO Compliance Concerns

- If you have a compliance concern, you should report your concern to any of the following:
  - Your Supervisor, or
  - MaineHealth ACO Compliance or Privacy Official,
    - **Compliance Official:** Rhonda Dolley @ (207) 482-7070
    - **Privacy Official:** Martha Ridge @ (207) 482-7077
- MaineHealth Corporate Compliance Helpline is available 24/7/365 and you may remain anonymous.
  - **MaineHealth Corporate Compliance Helpline:** @ (207) 662-6464

Compliance Training Attestation

- It is your responsibility to complete the 2023 Compliance Training Attestation Attachment A included with this training program.
  - Your Attestation indicates you and your providers have reviewed the MaineHealth 2023 ACO Annual Compliance Training.
  - Your attestation indicates you and your providers have reviewed, have an understanding of and willingness to abide by the standards outlined in the MaineHealth Code of Ethical Conduct 2022.
- Return your signed attestation to MaineHealth ACO, Sherry Peck, Compliance at Sherry.Peck@mainehealth.org or fax number (207) 661-8568. *Please note this is a secure fax number.*

Thank you for your cooperation.

Contact
Sherry Peck,
MHACO Compliance Analyst
at
Sherry.Peck@mainehealth.org