FDR
Newsletter

Anthem

A Quarterly Guide to FDR Compliance

Anthem's First Tier, Downstream and Related Entities | September 2016 (Q3)

Section 1557 of the Affordable Care Act: A Civil Rights Overview

On May 18, 2016 the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) issued the implementation of Section 1557 of the Affordable Care Act. The regulation builds upon longstanding nondiscrimination regulations and provides important new protections, including prohibitions against sex discrimination in health programs and activities, and nondiscrimination requirements for health insurance programs and activities. The below information provides you with an important overview of Section 1557, including summary information, nondiscrimination requirements, and helpful resources. If you have any questions or require additional information related to Section 1557, please contact Anthem's Medicare Compliance Team at FDRSharedMailbox@anthem.com.

Summary of Section 1557

- Section 1557 is the nondiscrimination law in the Affordable Care Act (ACA) and prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. Individuals may not be excluded in participating, denied benefits, or be subjected to any type of discrimination in any health program.
- Section 1557 is important to achieving the ACA's goals of expanding access to health care and coverage, eliminating barriers, and reducing health disparities.
- Section 1557 is the first Federal civil rights law to broadly prohibit sex discrimination in health programs and activities.
    - Sex discrimination includes, but is not limited to, discrimination based on an individual's sex, including pregnancy, related medical conditions, termination of pregnancy, gender identity and sex stereotypes.
- Section 1557 applies to all health programs and activities receiving Federal financial assistance from HHS. This includes but is not limited to –
    - Medicare Parts A, C, and D (including Third Party Administrators of self-funded group health plans).
    - Plans participating in the Health Insurance Marketplace.
    - Any program or entity created by Title I of ACA (i.e. State-based and Federally-facilitated Health Insurance Marketplaces).

Article continued on next page

Helpful Compliance Links...

To review regulatory references to monitoring requirements:

- CMS Medicare Managed Care Manual Ch. 11
- Medicare Managed Care Manual Ch. 21 & Prescription Drug Benefit Manual Ch. 9
- CMS Medicare Learning Network

Summary of Section 1557 Continued

- Examples of types of covered entities impacted by Section 1557 include: hospitals, health clinics, provider medical groups, community health centers, nursing homes, rehabilitation centers, pharmacy benefit managers, health insurance issuers, State Medicaid agencies, etc.
- Beginning on July 18, 2016 Section 1557 is in effect and all requirements should be applied by October 16, 2016 or on the first date of the plan year (*i.e. no later than January 1, 2017*).

Critical Elements of Section 1557

- ***Covered entities must*** have neutral standards and administer them in a non-discriminatory manner.
- ***Covered entities must not*** deny, cancel, limit, or refuse to issue or renew a health-related insurance plan or other health-related coverage based on race, color, national origin, sex, age, or disability.
- ***Covered entities must not*** deny or limit coverage of a claim or impose additional cost-sharing or other limitations or restrictions on coverage based on race, color, national origin, sex, age, or disability; have or implement discriminatory practices or benefit designs.
- ***Covered entities must not*** exclude, deny or limit benefits and services based on an individual's sex.
    - Covered entities must provide equal access to health care, health insurance coverage, and other health programs without discrimination based on sex, including pregnancy, gender identity, or sex stereotypes (*i.e. expectations of individuals acting in conformity with gender expressions associated with being male or female, such as appropriate roles of a certain sex).*
    - Covered entities must treat individuals consistent with their gender identity, including with respect to access to facilities, such as bathrooms and patient rooms.
- ***Covered entities must not*** exclude, deny or limit benefits and services based on an individual's age.
- ***Covered entities must not*** exclude, deny or limit benefits and services based on an individual's disability.
    - Covered entities are required to ensure health programs and activities provided through electronic and information technology are accessible, communications with individuals with disabilities are as effective as communications with others and modify policies, practices and procedures to avoid discrimination based on disability.
- ***Covered entities must not*** exclude, deny or limit benefits and services based on an individual's Limited English Proficiency (LEP).
    - Covered entities must take reasonable steps to provide meaningful access to each individual with LEP. This includes language services, which must be provided free of charge, be accurate, be provided within a reasonable amount of time, and protect the privacy and independence of the individual with LEP.

Article continued on next page

Procedural Requirements of Section 1557

Covered entities, which include Plan Sponsors, must take steps to notify individuals of their rights under Section 1557, as well as the covered entities' corresponding responsibilities. More specifically, covered entities must:

✓ Have a procedure in place to notify individuals (*including beneficiaries, enrollees, and prospective members*) of their rights, and of the covered entity's nondiscrimination obligations. A Nondiscrimination Notice is required to be posted on member communications in English and taglines in at least the top 15 non-English languages spoken by individuals with LEP in the relevant state.

- The Notice and Taglines must be posted in a conspicuously-visible font size (i.e. at least size 12 font) in a conspicuous location of covered entity websites accessible from the home page, in significant communications and significant publications, and where appropriate, in conspicuous physical locations where the entity interacts with the public.
- **Please note** – Contract Year 2017 member materials are permitted for distribution beginning September 30, 2016 and are required to contain the above mentioned notice and/or taglines.
- More details and resources related to CMS' Nondiscrimination Notice requirements, including the mandatory seven (7) elements required within the Notice, can be found here: http://www.hhs.gov/civil-rights/for-individuals/section-1557
- Have a grievance procedure in place which incorporates due process standards and provides a means for the entity to promptly and equitably resolve complaints related to compliance with Section 1557. Additionally, covered entities with more than 15 employees must designate an employee to investigate grievances and coordinate efforts to comply with the regulation.

Anthem's 1557 Grievance Contact:
Compliance Coordinator
4361 Irwin Simpson Rd (Mailstop: OH0205-A537)
Mason, OH 45040-9498.

Enforcement of Section 1557

- Section 1557 is enforced by the U.S. Department of Health and Human Services' Office for Civil Rights (OCR)
- OCR receives, investigates and resolves complaints from the public alleging discrimination in health services and health coverage.
- When OCR finds violations, a covered entity will be required to take corrective actions, which may include revising policies and procedures, implementing training and monitoring programs, and/or pay compensatory damages. The OCR may take proceedings to suspend or terminate Federal financial assistance from HHS if a covered entity refuses to take corrective actions.

Helpful Section 1557 Resources:

- OCR's website: www.hhs.gov/ocr
- OCR's resources specific to Section 1557: http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html
- Summary of Section 1557 by HHS
- Full version of Section 1557 published in the Federal Register

Falling Leaves and Flow Down Provisions: An Autumn Refresher on Monitoring Downstream Entities

Autumn is upon us -- the leaves are turning, the air is crisp, and everything tastes like pumpkin spice. This time of year not only offers a perfect opportunity to break out your beloved flannel shirt, but it is also the perfect time to review your Downstream Entities to ensure they are in compliance with all contractual and regulatory requirements. Similar to the autumn leaves falling into your yard, all CMS requirements fall to your subcontractors who support Anthem's Medicare business. So its time to get out the rake and get to work! The following provides you with a refresher on monitoring downstream entities, including an overview of terminology, requirements, and oversight tips.

Before we jump into downstream monitoring requirements, it will be helpful to review the terminology used when referring to the relationships discussed within this article. In simplistic terms, 'FDR' is used to refer to a first tier, downstream, *or* related entity. However, these are actually three (3) distinct groups of contractors defined by their relationship to Anthem:

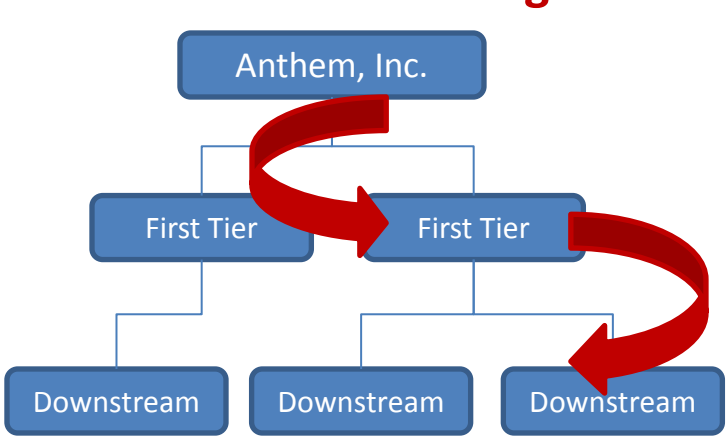
First Tier Entity: A vendor or provider contracted directly with Anthem to provide administrative or health care services on behalf of our Medicare business (*Medicare Advantage, Prescription Drug, and Medicare-Medicaid Plans*). This describes the majority of our contractors reading this article (*i.e. Provider Management Groups, Sales/Marketing Organizations; Health Services Vendors; Pharmacy Benefit Managers; etc.*).

Downstream Entity: A vendor or provider contracted directly with a 'first tier' to provide services on behalf of the contract described above. This designation applies to companies used by Anthem's first tiers to help fulfill obligations associated with the first-tier's contract with Anthem (*i.e. agents/brokers, pharmacies, data input vendors, etc.*).

Related Entity: An entity related to Anthem by common ownership or control, and performs some of Anthem's Medicare functions under contract or delegation.

Downstream Monitoring Requirements

As a Plan Sponsor, Anthem is required to follow all applicable Medicare compliance program requirements. This also rings true for all of our first tier and downstream entities, which must follow the same requirements in the administration of Anthem's Medicare business. We know many of you are well versed in the FDR compliance requirements you follow as an Anthem first tier entity (*i.e. General Compliance & FWA Training, OIG/GSA Exclusion Screenings, etc.*); however, it is important to remember all FDR compliance requirements also flow down to the downstream entities you use to support Anthem's Medicare business. Furthermore, it is your responsibility as an Anthem first tier entity to monitor and/or audit your downstream entities to confirm they are in compliance with all applicable Medicare program requirements. This can be thought of as "trickle-down oversight", whereby Anthem monitors and/or audits our first tiers, and our first tiers monitor and/or audit their downstreams.



Article continued on next page

Downstream Monitoring Requirements Continued

As part of Anthem's oversight of our Medicare FDRs, we are required to evaluate our first tier entities to confirm appropriate monitoring and/or auditing of downstream entities is occurring. One way we accomplish this is to use the annual FDR Monitoring Survey to request confirmation from first tier entities they are monitoring and/or auditing, and those identified downstreams are complying with all applicable laws and requirements. Additionally, all first tier entities with downstreams must be able to demonstrate their downstream oversight through supporting documentation upon request. Below are a few examples of documentation to support compliance with this requirement:

- Formalized Monitoring/Auditing Plan detailing the first tier's downstream entity oversight policies, including details such as monitoring/auditing frequency, scope, requirements reviewed, follow-up actions for identified issues, etc.
- Policies and Procedures similar to the above, which detail steps taken to comply with the requirements to monitor downstream entity's compliance with Medicare requirements.
- Monitoring/Auditing Reports which document the oversight activity conducted to assess compliance of a downstream entity. This may include a final audit report, monitoring review results, communication with a downstream entity specific to their compliance, etc.
- Downstream Contract containing provisions requiring the downstream entity to meet all applicable laws and requirements, including FDR compliance program requirements (*i.e. General Compliance & FWA Training; OIG/GSA Exclusion Screenings; Record Retention; etc.*).

Downstream Oversight Tips

So you may be asking, what is the best way to monitor and/or audit our downstream entities? Well, downstream entities can be monitored and/or audited in much the same way Anthem monitors and audits our FDRs. Anthem utilizes our annual FDR Monitoring Survey, which is a compliance questionnaire and documentation request, to monitor and confirm our first tier entities are in compliance with Medicare program requirements. If non-compliance is identified, the first tier entity is tracked until all issues are validated as remediated. We expect our first-tier entities to have a similar oversight process in place for their downstream entities supporting Anthem's Medicare business. The following provides some examples of oversight activities and helpful tips you can use for monitoring your downstream entities:

1. Review CMS guidance detailing Medicare program requirements to ensure understanding with compliance requirements. CMS guidance can be found within the Prescription Drug Benefit Manual Chapter 9 and Medicare Managed Care Manual Chapter 21.
2. Routinely review your downstream entities' compliance with Medicare program requirements via monitoring reports and/or compliance attestations. Verify downstream entity compliance by requesting documentation to evidence requirements are being followed. This could include training certificates to confirm associates are completing annual Compliance and FWA Trainings, OIG/GSA screening reports to confirm associates are verified against exclusion lists prior to hire and monthly thereafter, record retention policies to confirm all records related to Medicare are maintained for a minimum of 10 years, etc.
3. Develop a process to track and ensure any identified compliance issues with downstream entities are addressed and corrected within a specified time frame.
4. Maintain thorough documentation to show your downstream entities are adequately monitored and/or audited against all relevant CMS compliance program requirements. All first tier entities should be able to furnish supporting documentation related to the oversight of downstreams upon request by Anthem.

Please remember, as you review your organization's oversight processes related to downstream entities, please reach out to the FDRSharedMailbox@anthem.com with any questions. We are here to support your oversight efforts!

Questions from Readers

This section of the Quarterly FDR Newsletter focuses on common questions we receive from FDRs related to the FDR Oversight Program, the FDR Monitoring Survey, and CMS requirements. We realize a lot of our FDRs have similar questions, so we hope this section provides you with helpful information and useful tips! In this edition, we are focusing on some popular questions related to **General Compliance and FWA Training** –

1. Is there a difference between General Compliance Training and FWA Training?
Yes, General Compliance Training and FWA Training are separate trainings containing distinctive material. General Compliance Training was designed to ensure FDRs have a basic knowledge and understanding of compliance program requirements. FWA Training covers compliance and FWA issues and how to appropriately address them. CMS requires all associates at a FDR who support Medicare business to complete both General Compliance Training and FWA Training within 90 days of hire and annually thereafter. Direct links to the separate training materials are noted below:

- Medicare Parts C & D General Compliance Training Download
- Combating Medicare Parts C & D FWA Training Download

2. Do I need to utilize CMS' training content for my organization's General Compliance and FWA Trainings?
Yes. In an effort to minimize burden on Plan Sponsors and FDRs, CMS implemented new training requirements effective January 1, 2016. FDRs are now required to utilize CMS' training content issued through the CMS Medicare Learning Network (MLN) for both General Compliance and FWA Trainings. FDRs have the option of utilizing the web-based training modules available through the MLN system (https://learner.mlnlms.com/), or can download and incorporate the unmodified content of CMS' training modules from MLN into their organizations' existing training materials/systems.

3. What does CMS mean by 'unmodified' training content?
Under CMS' new training guidance, FDRs can download and incorporate the unmodified content of CMS' training modules from MLN into their own existing training materials. CMS' training content cannot be modified, but changes to the appearance of the content are allowed (i.e. font, color, etc.). When referencing "training content", CMS means the substantive training information contained within the "Lessons" and "Assessment" sections of the training material. The training content contains introductory slides explaining the functionality of the web-based training modules (slides 3-12 of the FWA Training download; slides 4-11 of the General Compliance Training download); however, this information is not applicable to FDRs incorporating the content into their own training program and does not need to be included.

4. Do all of my associates need to take General Compliance Training and FWA Training?
No, only the associates who support the services you are delegated to provide on behalf of Anthem's Medicare business are required to complete training (e.g. If you are delegated to provide credentialing services, then Anthem requires the associates who support the credentialing process to complete training).

***If you have a question related to General Compliance and FWA Training, please reach out to the FDRSharedMailbox@anthem.com.**

FDR Oversight Clinic

Are you a new Anthem Medicare FDR? Do you have questions on how to complete Anthem's FDR Monitoring Survey via the Ariba system? Are you wondering what type of documentation is needed to close out your open remediation items? If you have any questions surrounding Anthem's FDR Oversight Program, including our monitoring and auditing processes, please join us at an upcoming **FDR Oversight Clinic**. The Clinic is a monthly meeting hosted by the Anthem FDR Oversight Team where we provide an overview of the Oversight Program, review the monitoring process and provide helpful information and tips related to Ariba, the web-based system we utilize to issue the annual FDR Monitoring Survey. Reach out to the **FDRSharedMailbox@anthem.com** and we will send you the invitation for an upcoming Clinic!

Upcoming FDR Oversight Clinic Meetings:
October 12, 2016
November 9, 2016
December 14, 2016

How to Report Compliance and/or Fraud, Waste and Abuse Issues

There are several ways to report violations:

- Anthem's Fraud Hotline: **1-866-847-8247**
- Anthem's Ethics and Compliance Helpline: **1-877-725-2702**
- Ethics & Compliance E-mail box: **ethicsandcompliance@anthem.com**
- Send a letter to: **Post Office Box 791**
  Indianapolis, IN 46206
- You may report an issue to your Anthem contact (Business Owner) or directly to:

Sarah Lorance, Vice President of Compliance, Medicare
Sarah.J.Lorance@anthem.com, 303-764-7277
700 Broadway, Denver CO 80203 **MedicareProgramsComplOfficer@anthem.com**

** Anthem enforces a strict policy of non-retaliation. Retaliation against anyone who reports compliance issue in good faith is strictly prohibited, including reports made by contracted vendors (FDRs). If you see retaliation or believe it has occurred, you must report it.*

Questions? Please send us an email: FDRSharedMailbox@anthem.com