

MDH POLICY

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OFFICE OF THE INSPECTOR GENERAL (OIG)

MDH POLICY 01.03.01

Effective: 10/16/19

CORPORATE COMPLIANCE PROGRAM

I. EXECUTIVE SUMMARY

The Maryland Department of Health (MDH, the Department) is committed to maintaining an effective compliance program in accordance with the Compliance Program Guidance published by the U.S. Department of Health and Human Services Office of the Inspector General (HHS-OIG). The MDH Corporate Compliance Program (CCP) has been designed to help prevent and detect violations of and compliance with applicable federal and state laws. This policy defines the roles and purpose of the MDH CCP.

The MDH CCP consists of: 1) the Inspector General (MDH-IG) who reports to the Secretary of MDH; 2) the Assistant Inspector General of Audits and Compliance who reports to the MDH-IG; and 3) the Chief Compliance Officer, who reports to the MDH-IG and the Assistant Inspector General of Audits and Compliance on the progress of the program and its efforts.

The Division of Corporate Compliance and Privacy (DCCP) within the MDH Office of the Inspector General (MDH-OIG) is responsible for administering this program.

II. BACKGROUND

The purpose of the MDH CCP is to promote conformity with federal and state laws, the Standards of Conduct for Executive Branch Employees, and the MDH Code of Conduct. More specifically, this policy is intended to promote the detection and prevention of fraud, waste and abuse in rendering health care services to the community, providing quality care to patients and maintaining a professional and informed workforce. The HHS-OIG has issued several guidelines to encourage providers to voluntarily develop Corporate Compliance Programs. These guidelines detail recommendations for Medicare, Medicaid and other health care program providers to develop effective internal controls that promote adherence to applicable federal and state laws and program requirements.

In an effort to incorporate these recommendations, the Department has developed a CCP and established the MDH DCCP to oversee and implement this program. The Chief of the Division serves as the Chief Compliance Officer and carries out various functions of the position (e.g., providing education and training programs for employees, responding to inquiries from any employee regarding appropriate business practices, and investigating any allegations of possible impropriety).

This version of MDH Policy 01.03.01 dated, September 9, 2019, updates the appearance of the policy and streamlines and simplifies the policy as well as the Code of Conduct. This version

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replaces the earlier versions dated August 31, 2016, January 12, 2012, September 25, 2006 and August 17, 2001.

III. POLICY STATEMENTS

A. DEFINITIONS.

1. **“Chief Compliance Officer”** means the individual designated by the MDH-IG and reporting both to the IG and Assistant IG of Audits and Compliance to coordinate the Department’s compliance activities, including compliance with the Health Insurance Portability and Accountability Act (HIPAA), while overseeing and monitoring the implementation and effectiveness of the MDH CCP.
2. **“Corporate Compliance Program”** means, for the purposes of this program, a mechanism put in place by the Department to achieve the goals of reducing fraud and abuse; improving operational quality; and improving the quality and reducing the costs of health care.
3. **“Cumulative Sanction Report”** means a list, published by the HHS-OIG, of individuals excluded from providing services to Medicaid or Medicare recipients.
4. **“Sanctioned Individuals”** mean health care providers and their officers, employees and agents who are penalized through disciplinary actions recommended by the HHS-OIG.
5. **“State and Federal Government Authorities”** mean officials including, but not limited to, representatives from the State Medicaid Agency, Medicaid Fraud Control Unit (MFCU), Medicare Fiscal Intermediary, HHS-OIG, Centers for Medicare & Medicaid Services (CMS), Department of Justice (DOJ), and U.S. Attorney’s Office.

B. MISSION STATEMENT.

1. The mission of the MDH is to work together to promote and improve the health and safety of all Marylanders through disease prevention, access to care, quality management and community engagement. The MDH CCP furthers this mission by:
 - a. Educating and training personnel on their legal and ethical obligations under Federal and State laws; and
 - b. Ensuring that all policies and procedures applicable to the delivery of quality healthcare are effectively communicated to the Department’s workforce by way of regular reviews and updates of those policies and procedures as deemed appropriate by the Department’s management.
2. All employees are expected to conduct the Department’s business in a consistent and professional manner while carrying out the Department’s mission, adhering to the principles established in the MDH Code of Conduct.

OFFICE OF THE INSPECTOR GENERAL**C. DUTIES AND RESPONSIBILITIES OF THE CHIEF COMPLIANCE OFFICER.**

The duties and responsibilities of the Chief Compliance Officer shall include, but are not limited to, the following:

1. Report to the Assistant IG of Audits and Compliance on issues of compliance with the Code of Conduct and MDH CCP procedures;
2. Investigate and report on allegations concerning suspected unethical or improper activities by members of the MDH workforce or its contractors;
3. Ensure that all affected personnel are kept apprised of proper billing and payment procedures through dissemination of the Code of Conduct, training, and distribution of internal and external updates, guidelines, and other relevant resources;
4. Monitor compliance with federal and other billing requirements when the Department is the provider of services;
5. Monitor the issuance of fraud alerts (advisory opinions, reports, etc.) by the HHS-OIG as needed so that the MDH CCP policy may be amended in response thereto;
6. Provide guidance and serve as a resource to program and institution directors and local health officers on issues relating to compliance;
7. Maintain a system for the reporting of suspected incidences of fraud, waste, or abuse in the Department, which encourages employees to file complaints without fear of retaliation;
8. Manage the MDH Privacy Office to perform functions related to compliance with State and federal privacy standards, policies, laws, and regulations;
9. Oversee the OIG's Corporate Compliance Fraud Hotline; and
10. Other duties as assigned by the MDH-IG or the Assistant IG of Audits and Compliance.

D. THE MDH CODE OF CONDUCT.

The MDH DCCP has developed a Code of Conduct to provide guidance and assist MDH personnel to act with integrity and honesty in carrying out their daily operational activities. The Code of Conduct incorporates standards and strategies to address areas identified as high priority for compliance oversight. From time to time, the Code of Conduct may be amended. The Code of Conduct is an addendum to this Policy.

E. REPORTING BY THE CHIEF COMPLIANCE OFFICER.

In general, the Chief Compliance Officer will make recommendations regarding compliance matters directly to the appropriate MDH managers. If the Chief Compliance Officer is not satisfied with the action taken in response to the recommendations, he/she shall report such concern to the MDH IG or Assistant IG of Audits and Compliance, who may then advise the appropriate Director, Deputy Secretary or the Secretary of MDH.

F. REPORTING OF VIOLATIONS.

1. The Chief Compliance Officer shall have an “open door” policy to:
 - a) Accept from any employee reports of violations or suspected violations of the law or Policy; and
 - b) Answer employees’ questions concerning adherence to the law and this policy.

2. Corporate Compliance Reporting Hotline: 1-866-770-7175.
 - a) MDH shall establish and maintain a Corporate Compliance Reporting Hotline (the **Hotline**) to allow employees direct access to the Chief Compliance Officer, through Hotline attendants, for reporting or questions.
 - b) The **Hotline** telephone number, along with the Corporate Compliance Policy, shall be distributed to all MDH employees and shall be posted in conspicuous locations throughout all MDH offices.
 - c) The **Hotline** shall be Limited English Proficient (LEP) compliant consistent with MDH Policy, whereby individuals calling into the Hotline who are limited in their English proficiency as a result of national origin and/or ancestry, will be provided translation services to the extent that such services are available either through Departmental staff or an outside vendor as contracted by MDH, at no fee to the individual.

3. Caller Anonymity:
 - a) Callers using the **Hotline** can choose to remain anonymous.
 - b) All information reported to the **Hotline** by any MDH employee shall be kept confidential, to the extent that confidentiality is possible, throughout any resulting investigation.
 - c) Callers shall be made aware that, despite the **Hotline’s** efforts to maintain anonymity, a caller’s identity may eventually become known as a result of the investigation.
 - d) Except as provided in this policy, no retaliatory action, including employee discipline, shall be taken against an employee or other individual solely on the basis of his or her reporting of information or possible impropriety to the **Hotline**.

- e) Any MDH employee who makes an intentionally false statement or otherwise misuses the *Hotline* shall be subject to disciplinary action through the appropriate process.

G. RESPONSE TO REPORTS OF VIOLATIONS.

The Chief Compliance Officer shall ensure the prompt response to reports of alleged instances of wrongdoing by MDH employees.

1. Upon the discovery that a material violation of the law or Policy may have occurred, the Chief Compliance Officer shall take immediate action to preserve potential evidence, collect additional information on the violation if possible, report the suspected violation to the MDH IG or Assistant IG of Audits and Compliance, appropriate law enforcement and regulatory bodies, and consult with the Office of Human Resources (OHR) regarding appropriate administrative disciplinary action.
2. If an investigation of an alleged violation is undertaken and the integrity of the investigation may be compromised by the on-duty presence of an employee under investigation, the Chief Compliance Officer or designee may recommend that the employee be placed on administrative leave until the investigation is completed.
3. The Chief Compliance Officer and the employee's supervisors shall take any steps necessary to prevent the destruction of documents or other evidence relevant to the investigation.
4. Following the investigation, when warranted, disciplinary action will be imposed in accordance with the applicable disciplinary policy.

H. CORPORATE COMPLIANCE EDUCATION PROGRAM.

1. The OIG's DCCP is responsible for implementing a Corporate Compliance Education Program (education program) for MDH employees that may include training on ethical and legal standards, applicable laws and regulations, coding and billing practices, standards for documentation, and procedures to carry out the MDH CCP policy. The education program is intended to provide a good faith effort for the training of all employees with the appropriate level of information and instruction.
2. Each education and/or training program hereunder shall emphasize the importance of compliance with the law and that the MDH CCP policy may be viewed as a condition of employment with the Department.
3. Program Content.
 - a. The Chief Compliance Officer shall be responsible for determining the level of Corporate Compliance education needed by MDH employees or classes of employees.

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- b. The education program shall explain pertinent applicable laws, including, but not limited to:
 - i. The False Claims Act;
 - ii. The Social Security Act;
 - iii. The patient anti-dumping statutes;
 - iv. The laws pertaining to the provision of medically necessary items and services provided by MDH units;
 - v. The criminal offenses concerning false statements relating to health care matters;
 - vi. The criminal offense of health care fraud;
 - vii. The Federal Anti-Referral/Anti-Kickback Laws;
 - viii. The Health Insurance Portability and Accountability Act (HIPAA) and its implementing regulations, including the Health Information for Economic and Clinical Health (2009) and the Omnibus Final Rule (2013);
 - ix. The Maryland Confidentiality of Medical Records Act (MCMRA) (1990); and
 - x. Confidentiality of Substance Use Disorder Patient Records (Part 2).
 - a. Each educational program presented by MDH DCCP shall allow for a question and answer period at the end of each session.
 - b. A program evaluation questionnaire may be administered to solicit feedback on the education provided.

I. SPECIAL REVIEWS AND MONITORING.

The MDH DCCP will periodically conduct special reviews and monitor the compliance activities of MDH and its employees.

1. Regular reviews shall evaluate adherence to the MDH CCP policy and determine what, if any, compliance issues exist.
2. Such reviews shall be designed and implemented to follow the MDH CCP policy and all applicable federal and state laws. Special Reviews shall be conducted in accordance with comprehensive audit procedures established by the Chief Compliance Officer and may include:
 - a. Interviews with relevant personnel;

- b. Reviews as to whether the MDH CCP's elements have been satisfied;
 - c. Reviews of MDH records with special attention given to procedures relating to documentation, coding, claim submissions, and reimbursement; and,
 - d. Reviews of written materials and documentation used by MDH staff.
3. Formal reports shall be prepared and submitted to Department management so that necessary steps can be taken to correct past problems and prevent them from reoccurring.
 4. The special review and other analytical reports shall specifically identify areas where corrective actions are needed and should identify in which cases, if any, subsequent audits or studies would be advisable to ensure that the recommended corrective actions have been implemented and are successful.

J. MDH WILL NOT EMPLOY OR RETAIN SANCTIONED INDIVIDUALS.

MDH programs shall not knowingly employ or contract with any individual who, or entity that has been convicted of a criminal offense related to health care or is listed by a Federal agency as debarred, excluded, or otherwise ineligible for participation in federally-funded health care programs, to provide items or services reimbursed by a federal health care program.

In addition, until resolution of such criminal charges or proposed debarment or exclusion, any individual who is charged with criminal offenses related to health care or proposed for exclusion or debarment, shall be removed from direct responsibility for, or involvement in, documentation, coding or billing practices. If resolution results in a felony conviction or exclusion of the individual, MDH shall take appropriate disciplinary action.

K. DOCUMENTATION.

1. The MDH DCCP shall document its efforts to comply with applicable statutes, regulations and federal health care program requirements.
2. All records and reports developed in response to the Corporate Compliance Policy are confidential and shall be maintained by the Chief Compliance Officer in a secure location.
3. All MDH DCCP records shall be managed in accordance with the State's Records Management Program and the Department's Records Management Policy. Upon satisfaction of the records management criteria, the Chief Compliance Officer, in consultation with the Office of the Attorney General, shall determine when and if the destruction of such documentation is appropriate.

IV. REFERENCES.

- Health Insurance Portability and Accountability Act (HIPAA); Public Law §104-191
<http://aspe.hhs.gov/admsimp/pl104191.htm>.
- Health Information Technology for Economic and Clinical Health Act (HITECH) as part of the American Recoveries and Reinvestment Act of 2009; Public Law 111-5
<https://www.govinfo.gov/content/pkg/PLAW-111publ5/pdf/PLAW-111publ5.pdf>
- Social Security Act, 42 USC §§1171-1179
<http://www.gpo.gov/fdsys/pkg/FR-2010-07-14/html/2010-16718.htm>
- Guidance for Corporate Compliance Programs, US Department of Health & Human Services (HHS), Office of the Inspector General
<http://oig.hhs.gov/compliance/compliance-guidance/index.asp>
- False Claims Act, 31 USC §§3729-33
http://www.falseclaimsact.com/FCA_Statute.pdf
- Maryland False Health Claims of 2010
<http://www.falseclaimsact.com/wp-content/uploads/2013/02/Maryland.pdf>
- Civil Monetary Penalties Law, 42 USC §1320a7
<http://oig.hhs.gov/fraud/enforcement/cmp/index.asp>
- Health Care Fraud Act, 18 USC§1347
<https://www.gpo.gov/fdsys/pkg/USCODE-2014-title18/pdf/USCODE-2014-title18-partI-chap63-sec1347.pdf>
- Federal Anti-Referral/Anti-Kickback Laws
<http://oig.hhs.gov/fraud/docs/safeharborregulations/safefs.htm>
- Patient Anti-Dumping Statutes
<http://oig.hhs.gov/fraud/docs/alertsandbulletins/frdump.pdf>
- State Government Article, §10-633, Annotated Code of Maryland
<http://law.justia.com/codes/maryland/2013/>
- Maryland Ethics Law, State Government Article, §15-101, Annotated Code of Maryland
<http://ethics.maryland.gov/wp-content/uploads/filebase/general/Ethics-Law-10-1-15.pdf>
- State Records Management Program, COMAR 14.18.02
http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=14.18.02.*
- MDH Records Management Policy
<http://dhmh.maryland.gov/Pages/op02.aspx>
- MDH HIPAA Webpage
<http://www.dhmh.state.md.us/hipaa/>
- MDH OIG-Corporate Compliance Program
<http://dhmh.maryland.gov/Pages/op02.aspx>

V. MDH Code of Conduct.

I. INTRODUCTION

The Maryland Department of Health (MDH) is committed to maintaining the highest level of professional and ethical standards in delivering quality health care services to the citizens of Maryland. These standards can only be achieved and sustained through the actions and conduct of all MDH personnel. MDH employees have an obligation to familiarize themselves with, and adhere to, all applicable federal and state laws and regulations that apply to the delivery and reimbursement of services provided by MDH for Medicare and Medicaid.

As part of this effort, MDH has joined with other State and federal agencies in developing initiatives to prevent potential fraud, abuse and waste in programs funded by Medicare and Medicaid. One specific initiative adopted by the U.S. Department of Health and Human Services (HHS) is the creation of voluntary corporate compliance programs. MDH has established the MDH Corporate Compliance Program and this Code of Conduct to provide guidance to employees on their responsibilities and to help them determine appropriate conduct in performing their duties. The Chief Compliance Officer will oversee and monitor the implementation of the MDH Corporate Compliance Program.

While all MDH employees are obligated to follow this Code, management will provide the information, training and resources needed by staff to comply with applicable federal and state laws, including ethics laws, regulations, and policies. All employees must help create a culture within MDH that promotes the highest standards of ethics and compliance, and which encourages everyone in MDH to address concerns consistent with this Code, if and when they arise. Where any question or uncertainty regarding such requirements exists, each affected employee is required to seek guidance from his or her supervisor or the MDH Chief Compliance Officer.

Each MDH employee is obligated to conduct himself/herself in a manner to ensure their compliance with the MDH Code of Conduct.

II. CODE OF CONDUCT OBLIGATIONS

EMPLOYEE OBLIGATIONS

While carrying out the Department's mission, all employees are expected to conduct the Department's business in a consistent and professional manner, adhering to the following principles:

- a. Perform all activities in compliance with pertinent laws and regulations, including those applying to fraud and abuse, false claims, self-referral prohibitions, anti-trust,

- employment discrimination, environmental protection, lobbying and political activity, and the Maryland Public Ethics Law;
- b. Participate in and promote high standards of business ethics and integrity. MDH employees must not engage in any activity intended to defraud anyone of money, property or services;
 - c. Perform all duties accurately and honestly;
 - d. Maintain appropriate levels of confidentiality as it relates to the public and other MDH employees by protecting personal information and referring inquiries to designated officials;
 - e. Conduct business transactions with suppliers, vendors, contractors and other third parties free from offers or solicitations of gifts and favors, or other improper inducements;
 - f. Avoid conflicts of interest, in appearance or fact, in the conduct of all activities. In the event that there are conflicts, MDH employees must take prompt, appropriate action to make full disclosure to the appropriate authorities;
 - g. Preserve and protect the Department's assets by making prudent and effective use of resources, property, and accurate financial reporting.
 - h. Refrain from presenting or causing to be presented, any claim or billing for services not provided, or that the individual knows to be false or fraudulent.
 - i. Follow the guidelines established in the State of Maryland Executive Order detailing standards of conduct for executive branch employees and reporting of misconduct.

All employees are required to acknowledge receipt of the Code of Conduct by completing the acknowledgement statement using this link:

<https://www.cognitofrms.com/MDH3/CodeOfConductAcknowledgementStatement>

APPROVED:


Robert R. Neall, Secretary, MDH

10/16/19
Effective Date