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Compliance TODAY

October 2015

A PUBLICATION OF THE HEALTH CARE COMPLIANCE ASSOCIATION

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Combating healthcare fraud in New Jersey

an interview with Paul J. Fishman

United States Attorney for the District of New Jersey

See page 16

27

Final rule for Accountable Care Organizations: Enabling technologies, Part 1

Paul R. DeMuro

35

Narrow network health plans: New approaches to regulating adequacy and transparency

Michael S. Adelberg

43

OIG offers new guidance for healthcare governing boards

Paul P. Jesep

49

Telemedicine arrangements: Trends and fair market value considerations

Jen Johnson and Mary Fan

by Robert Weinberg, JD, MBA

CMS implements uniform compliance training requirements

» New requirements for first-tier, downstream, and related entities (FDR) compliance training and education begin January 1, 2016.
» FDRs are required to take the CMS standardized training and education module.
» Contracting organizations must accept a certificate of completion of the CMS module as satisfaction of training requirements.
» Contracting organizations may no longer develop or implement their own training.
» Contracting organizations must collect and track compliance amongst their FDRs.

Robert Weinberg *(rweinberg@polsinelli.com) is a shareholder with Polsinelli and a member of its Health Care Practice Group.*

On May 23, 2014, the Centers for Medicare & Medicaid Service (CMS) finalized changes to the compliance program training requirements for first-tier, downstream, and related entities (FDRs).[1] Under the final rule, MA organizations and Part D sponsors may no longer develop and implement their own compliance training and education for their FDRs, but rather must now require all FDRs to take the CMS Standardized General Compliance Program Training and Education Module and accept a certificate of completion of this CMS training as the only means of meeting compliance training oversight requirements.[2] MA organizations and Part D sponsors have until January 1, 2016 to comply with the new requirements.[3]


Weinberg

CMS' primary purpose for establishing this change is to reduce the administrative burden of the compliance training and education requirements for FDRs. In finalizing the change, CMS reiterated its concern that under current regulations, FDRs potentially have to participate in (largely duplicative) training for each organization with whom they contract.[4] But for MA organizations and Part D sponsors with established compliance training and education processes, this change may only increase the administrative burden by requiring these organizations to develop new processes and procedures for collecting and cataloging attestations of training completion from their FDRs. Implementing a standardized general compliance training module also eliminates the ability for plan sponsors to work in concert with their FDRs to design and develop effective training to meet their specific needs and compliance oversight purposes.

For those commenters concerned with the investment in resources already committed by organizations that have developed internal training and efficient processes for both delivering and tracking training, CMS appears to be of the mindset that uniformity in approach to compliance training is the most efficient and effective method for the majority of FDRs and contracting organizations.[5] Moreover, in CMS' view, retaining any flexibility for plan sponsors to continue the ability to modify or utilize their own training in lieu of using CMS standardized compliance training would not ensure the elimination of duplication of effort issues for FDRs,[6] which was the impetus for the rule change. In the end, for CMS, the goal of reducing this duplication of effort burden for FDRs

was paramount to the concerns raised by those plan sponsors desiring greater flexibility.

Challenges

While CMS couched the overarching purpose for the rule change in terms of increased efficiencies and reduced administrative burdens, CMS offered little by way of administrative relief when it comes to collecting and tracking attestations. In response to commenters' recommendations that CMS establish a centralized electronic repository to hold attestations of training completion that is searchable in order for plan sponsors to track compliance with training requirements (which seems a logical extension of CMS' centralized location for FDRs to take part in the training at the Medicare Learning Network), CMS simply acknowledged its inability at this time to provide for such a searchable database[7] and expressed its belief that plan sponsors are in the best position to determine the most effective way to collect and track compliance among their FDRs.[8]

While CMS couched the overarching purpose for the rule change in terms of increased efficiencies and reduced administrative burdens, CMS offered little by way of administrative relief when it comes to collecting and tracking attestations.

Where the rule may very well simplify training requirements by eliminating the duplication concerns, it seems to only go halfway in its promise to reduce administrative burdens when it comes to assisting MA organizations and Part D sponsors in meeting their compliance oversight responsibilities. In the end, CMS' only response to the concerns raised by plan sponsor commenters as to the burden of setting up new processes to collect and track attestations, as well as potentially having to update contracts to reflect the new requirements, is to recognize that doing so may take time, leading CMS to grant a delay in implementation of the new rule until January 1, 2016.[9]

Summary

With CMS' new rule regarding compliance training for FDRs, MA organizations and Part D sponsors with established compliance training processes, whether through their own developed training or through established training companies, now need to shift focus from training itself to implementing processes to track and catalog the attestation of training completion received by FDRs for completing the CMS Standardized General Compliance Program Training. The new rule requires MA organizations and Part D sponsors to accept a certificate of completion of the CMS training as the only acceptable means of meeting the compliance training requirements. MA organizations and Part D sponsors should not look to CMS for retrieving and cataloging solutions, as CMS made very clear when finalizing the rule that it is the responsibility of these organizations to determine how best to collect and track this information from their FDRs.

1. Medicare Program; Contact Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs; Final Rule, 79 Fed. Reg. 29844, 29853 (May 23, 2014) (Reducing the Burden the Compliance Program Training Requirements) (to be codified at 42 C.F.R. §§ 422.503(b)(4)(vi)(C) and 423.504(b)(4)(vi)(C)).
2. 42 C.F.R. §§ 422.503(b)(4)(vi)(C)(3) and 423.504(b)(4)(vi)(C)(4).
3. CMS did not propose any changes to the FWA training module or the associated deeming requirements. 79 FR 29855. Deemed FDRs must still complete the general compliance training and education module, but are exempt from FWA training via certification or enrollment in Part A or B.
4. 79 FR 29854.
5. Id.
6. Id.
7. Id.
8. Id. at 29855.
9. Id.