

## Policy and Procedure

Steward Health Care Network			
<b>Department</b>	Governance	<b>Unit/Division</b>	Governance
<b>Policy/Procedure Name</b>	SHCN Partner Enforcement and Discipline	<b>Policy/Procedure Number</b>	7.08
<b>Effective Date</b>	09/10/2020	<b>Review Date</b>	April, 2022

### 1.0 Scope/Purpose

The purpose of this policy is to consistently enforce the Steward Health Care System LLC (“Steward” or “System”) Code of Conduct, applicable Steward Health Care Network, Inc. (“SHCN”) and Steward policies and procedures, Participating Provider Agreement (“PPA”) provisions, and applicable laws and regulations through appropriate disciplinary mechanisms.

This policy applies to all SHCN Partners, defined below.

### 2.0 Definitions

**SHCN Partner** – Any SHCN entity board member, officer, physician, contractor, vendor, agent, participating provider, and such staff of SHCN performing certain operational functions for SHCN entities and programs. SHCN’s Accountable Care Organization (“ACO”) Participants; First-Tier, Downstream, and Related Entities (“FDRs”) under Medicare; and Material Subcontractors under the Massachusetts Executive Office of Health and Human Services (“EOHHS”) are included in this definition.

- **ACO Participant** – An entity identified by a Medicare-enrolled billing TIN through which one or more ACO Providers/Suppliers bill Medicare, that alone or together with one or more other ACO Participants compose an ACO, and that is included on the list of ACO Participants that is required under 42 C.F.R. § 425.118.
  - **ACO Provider** – A hospital, skilled nursing facility, outpatient rehabilitation facility, home health agency, or hospice that is Medicare-enrolled and bills for items and services furnished to Medicare fee-for-service beneficiaries under a Medicare billing number assigned to the TIN of an ACO Participant in accordance with applicable Medicare regulations, and is included on the list of ACO Providers/Suppliers that is required under 42 CFR § 425.118.
  - **ACO Supplier** – A physician or other practitioner, or an entity other than a provider, who is Medicare-enrolled and bills for items and services furnished to Medicare fee-for-service beneficiaries under a Medicare billing number assigned to the TIN of an ACO Participant in accordance with applicable Medicare regulations, and is included on the list of ACO Providers/Suppliers that is required under 42 CFR § 425.118.
- **First-Tier, Downstream, and Related Entity (“FDR”)** under 42 C.F.R. § 423.501 –
  - A **First Tier Entity** is any party that enters into a written arrangement, acceptable to the Centers for Medicare and Medicaid Services (“CMS”), with a Medicare Advantage Organization (“MAO”) or Part D plan sponsor or applicant to provide administrative services or health care services to a Medicare eligible individual under the MA program or Part D program.
  - A **Downstream Entity** is any party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with the MA benefit or Part D benefit, below the level of the arrangement between an MAO or applicant or a Part D plan sponsor or applicant and a First-Tier

Entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.

- A **Related Entity** means any entity that is related to an MAO or Part D sponsor by common ownership or control and (1) Performs some of the MAO or Part D plan sponsor’s management functions under contract or delegation; (2) Furnishes services to Medicare enrollees under an oral or written agreement; or (3) Leases real property or sells materials to the MAO or Part D plan sponsor at a cost of more than \$2,500 during a contract period.
- **Material Subcontractor** – Any entity for which Steward Medicaid Care Network (“SMCN”), a subsidiary of SHCN, procures, or proposes to subcontract with, for the provision of all, or part, of its contractual responsibilities for care delivery, care coordination, care management, data analysis, enrollee services, and/or risk stratification, or any other contractual responsibilities defined by EOHHS.

#### **Fraud, Waste, and Abuse (“FWA”) under 18 U.S.C. § 1347 –**

- **Fraud** is 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.
- **Waste** is the overutilization 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.
- **Abuse** includes actions that may, directly or indirectly, result in: unnecessary costs to the Medicare Program, improper payment, payment for services that fail to meet professionally recognized standards of care, or services that are medically unnecessary. Abuse involves payment for items or services when there is no legal entitlement to that payment and the provider has not knowingly and/or intentionally misrepresented facts to obtain payment.

#### **Fraud and Abuse under the EOHHS Primary Care ACO Second Amended and Restated Contract –**

- **Fraud** – An intentional deception or misrepresentation made by a person or corporation with the knowledge that the deception could result in some unauthorized benefit under the MassHealth program to himself, the corporation, or some other person. It also includes any act that constitutes fraud under applicable federal or state health care fraud laws.
- **Abuse** – Actions or inactions by providers (including the contractor) and/or members that are inconsistent with sound fiscal, business, or medical practices, and that result in unnecessary cost to the MassHealth program, including, but not limited to practices that result in MassHealth reimbursement for services that are not medically necessary, or that fail to meet professionally recognized standards for health care.

### **3.0 Policy**

SHCN Partners are subject to appropriate disciplinary action, up to and including termination from participation in SHCN programs, for failure to comply with the Steward Code of Conduct, applicable SHCN and Steward policies and procedures, PPA provisions, and applicable laws and regulations.

### **4.0 Procedure**

SHCN may be notified of possible breaches, noncompliance, or FWA via a variety of methods including, but not limited to:

1. Reports made to the SHCN Compliance and Privacy Officer, SHCN compliance lead, and/or the Steward Office of Corporate Compliance & Privacy (“OCCP”).
2. Anonymous reports received through the Compliance Support Line.
3. Results of a compliance audit.
4. Complaints/grievances made by patients/members to the SHCN Member Services Center.
5. Notification from a government agency such as the Centers for Medicare and Medicaid Services (“CMS”), Center for Medicare and Medicaid Innovation (“CMMI” or “the Innovation Center”), or the Massachusetts Executive Office of Health and Human Services (“EOHHS”).
6. Screenings of ineligible party listings resulting in confirmation of exclusion, debarment, suspension, or other declaration of ineligibility from participating in any federal and state funded health care program.

If it is concluded after an investigation that the Steward Code of Conduct, applicable SHCN and Steward policies and procedures, PPA provisions, and/or applicable laws and regulations have been violated, SHCN leadership will meet to review the seriousness of the violation and determine disciplinary actions, if necessary.

SHCN leadership may include, as needed:

- President, SHCN
- Applicable SHCN Entity Board Chair
- Chief Medical Officer, SHCN
- VP, SHCN Compliance & Privacy Officer
- SVP, SHCN Human Resources
- Deputy General Counsel, SHCN

SHCN leadership may also choose to engage outside counsel, as determined necessary.

### ***Remediation and Disciplinary Actions***

Remediation and disciplinary actions are aligned with the severity of the violation as described in the following table.

Level of Violation	Minimum Recommended Disciplinary Action(s)
<u>Level I</u> – low risk exposure; low impact or damage incurred; correctable	<ul style="list-style-type: none"> <li>• Retraining and re-evaluation</li> <li>• Documented verbal warning with discussion of policies, procedures, and requirements</li> </ul>
<u>Level II</u> – medium-to-high risk exposure; medium-to-high impact or damage incurred; correctable	<ul style="list-style-type: none"> <li>• Retraining and re-evaluation</li> <li>• Written warning with discussion of policies, procedures, and requirements</li> <li>• Scheduled on-site visit to review and retrain all staff on policies, procedures, and requirements</li> </ul>
<u>Level III</u> – repeat occurrence of Level II violation	<ul style="list-style-type: none"> <li>• Retraining and re-evaluation</li> <li>• Written warning with discussion of policies, procedures, and requirements</li> </ul>

Level of Violation	Minimum Recommended Disciplinary Action(s)
	<ul style="list-style-type: none"> <li>• Scheduled on-site visit to review and retrain all staff on policies, procedures, and requirements</li> <li>• Unannounced on-site visit(s) to oversee and review office procedures</li> </ul>
<p><u>Level IV</u> – high risk exposure; high impact or damage incurred; willful act; reckless disregard</p> <p><i>Includes: (1) any SHCN Partner identified as excluded from federal or state programs; and/or (2) confirmed compliance and/or fraud, waste, and abuse violation(s).</i></p>	<ul style="list-style-type: none"> <li>• Termination</li> <li>• Probation</li> <li>• Suspension</li> <li>• Demotion</li> <li>• Termination of contract</li> <li>• Notification to impacted MAO or Part D plan sponsor(s) when SHCN Partner qualifies as an FDR</li> </ul>

### Appeal Process

SHCN Partners have the right to contest or appeal the decision made by SHCN leadership. To formally contest or appeal the SHCN leadership decision, the SHCN Partner must state in writing within 30 days:

- The reasons for disagreeing with the SHCN leadership decision and remediation action.
- Documentation to support the SHCN Partner’s position. Examples of supporting documentation might include, but are not limited to:
  - information obtained from CMS/CMMI/EOHHS
  - information obtained from SHCN
- A contact name, title, and contact information including a phone number, address, and email address.

Appeals can be submitted by emailing [StewardACO@steward.org](mailto:StewardACO@steward.org) or by mailing the required information stated above to:

Steward Health Care Network  
 89 A Street  
 Needham, MA 02494  
 Attn: Chief Medical Officer

Appeals will be reviewed by members of SHCN leadership and the Chief Medical Officer. SHCN leadership may also choose to engage outside counsel, as determined necessary.

The SHCN Partner should expect a response within 30 days of receipt of the appeal.

**5.0 References (Regulatory or Accreditation) and Related Policies**

- 42 C.F.R. § 422.503(b)(4)(vi)(E), § 423.501
- 18 U.S.C. § 1347
- 31 U.S.C. § 3730(h)
- Federal Sentencing Guidelines, Chapter 8 - §8B2.1. Effective Compliance and Ethics Program
- U.S. Dept Health & Human Services, Office of Inspector General, Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs (May 8, 2013)
  - § 42 C.F.R 1001.1901
  - § 42 C.F.R. 1003.102(a)(2) and (a)(3)
- EOHHS Primary Care ACO Second Amended and Restated Contract
- Steward Health Care System LLC Code of Conduct
- Individual SHCN Entity Compliance and Privacy Program Plans
- SHCN Compliance Reporting and Non-Retaliation Policy and Procedure

**6.0 Attachment[s]**

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**7.0 Review and Approval**

Content By	SHCN Compliance Department SMEs and Leadership	
Reviewed By	SHCN Leadership	DATE
Approved By	SHCN Compliance Committee	4/15/21

**8.0 Revision History – Policies and procedures are reviewed on an annual basis**

Date	Reason for Change

**SHCN Template v 1.0 eff 12/12/2019**

**9.0 Contact**

Dr. Daniel Brown