



# Steward Medicare ACO

Compliance & Privacy Education

# The Purpose of this Training: Your Guide to SHCN's Compliance and Privacy Program

In pursuit of delivering high-quality, efficient care to Medicare beneficiaries, Steward Health Care Network (SHCN) providers are participating in a Centers for Medicare and Medicaid Services (CMS)\* payment innovation model.

**As a condition of participation, CMS expects providers to complete a training in compliance & privacy principles** that apply to these innovation programs.

As a benefit to participating in CMS' innovation programs through SHCN, providers can attest their compliance to CMS' requirements by completing this training.

# Steward Medicare ACO Compliance & Privacy Program

# Introduction to Steward Medicare ACO Programs

- Steward National Care Network (**SNCN**) is a Medicare Shared Savings Program (**MSSP**). SNCN is one of hundreds of MSSPs across the country selected by CMS to participate in the MSSP program.
- This Steward Medicare ACO model provides an opportunity to apply the Steward Community Care Model to Medicare beneficiaries. By working together, we can provide high quality care to our Medicare beneficiaries in a cost-efficient and coordinated manner.

# Medicare ACO Compliance and Privacy Policies

- **Steward Health Care Network (SHCN) Partners** include SNCN board members, officers, employees, vendors, agents, ACO participating providers, and such staff of SHCN acting as agent(s) for SNCN and performing certain operational functions for or doing business related to the Steward Programs.
- All **SHCN Partners** are expected to be aware of, and comply with, the CMS rules and regulations summarized and outlined by the SNCN Compliance and Privacy Program and associated policies and procedures.
- The information presented in this training includes key elements of the CMS rules and regulations that govern the Medicare ACO.

# Steward Medicare ACO Compliance & Privacy Program Documents

# Accessing Steward Medicare ACO Compliance & Privacy Program Documents

- **SNCN Compliance and Privacy Program Description**

- A written document describing the SNCN Compliance and Privacy Program can be found here: <https://www.steward.org/MedicareACO/MSSP>

- **Code of Conduct**

- Every person conducting business for Steward must follow Steward Code of Conduct, together with all applicable laws and Steward policies. This includes every board member, officer, employee, physician, volunteer, vendor, and agent. The Code of Conduct also applies to all of Steward's locations, affiliates, and subsidiaries. It can be accessed here: <https://www.steward.org/vendors>

- **Policies and Procedures**

- SHCN maintains the following policies and procedures for its Partners, which can be found here: <https://www.steward.org/MedicareACO/MSSP>
  - ACO Participant Compliance Training
  - Compliance Reporting and Non-Retaliation
  - SHCN Partner Enforcement and Discipline

# Applicable Laws



# CMS expectations of SHCN Partners

## CMS expects SHCN Partners to:

- **Comply with:**
  - The CMS Program Participation Agreement (for MSSP)
  - All applicable contracts, such as the Steward Participating Provider Agreement (PPA)
- **Remain subject to all federal laws governing Medicare fraud and abuse including the:**
  - False Claims Act (FCA)
  - Anti-Kickback Statute (AKS)
  - Physician Self-Referral Law (Stark Law)
  - Exclusion Statute
  - Social Security Act, which includes the Exclusion Statute and the Civil Monetary Penalties Law (CMPL)
  - Criminal Health Care Fraud Statute

# The False Claim Act (FCA)

- **The civil FCA, [31 United States Code \(U.S.C.\) Sections 3729–3733](#)**, protects the Federal Government from being overcharged or sold substandard goods or services. The civil FCA imposes civil liability on any person who **knowingly** submits, or **causes** the submission of, a false or fraudulent claim to the federal government.
- The terms “knowing” and “knowingly” mean a person has actual knowledge of the information or acts in deliberate ignorance or reckless disregard of the truth or falsity of the information related to the claim. **No specific intent to defraud is required to violate the civil FCA.**
- **Examples:** A physician knowingly submits claims to Medicare for medical services not provided or for a higher level of medical services than actually provided.
- **Penalties:** Civil penalties for violating the civil FCA may include recovery of up to **three** times the amount of damages sustained by the government as a result of the false claims, plus penalties up to \$22,927 (in 2019) per false claim filed.
- Additionally, under **the criminal FCA, [18 U.S.C. Section 287](#)**, individuals or entities may face criminal penalties for submitting false, fictitious, or fraudulent claims, including fines, imprisonment, or both.

# The Anti-Kickback Statute (AKS)

- **The AKS, [42 U.S.C. Section 1320a-7b\(b\)](#)**, makes it a crime to **knowingly and willfully** offer, pay, solicit, or receive any remuneration directly or indirectly to induce or reward patient referrals or the generation of business involving any item or service reimbursable by a federal health care program. When a provider offers, pays, solicits, or receives unlawful **remuneration**, the provider violates the AKS. **NOTE:** Remuneration includes anything of value, such as cash, free rent, expensive hotel stays and meals, and excessive compensation for medical directorships or consultancies.
- **Example:** A provider receives cash or below-fair-market-value rent for medical office space in exchange for referrals.
- **Penalties:** Criminal penalties and administrative sanctions for violating the AKS may include fines, imprisonment, and exclusion from participation in the federal health care program. Under the CMPL, penalties for violating the AKS may include **three** times the amount of the kickback, plus up to \$100,000 (in 2018) per kickback.
- The “safe harbor” regulations, [42 Code of Federal Regulations \(C.F.R.\) Section 1001.952](#), describe various payment and business practices that, although they potentially implicate the AKS, are not treated as offenses under the AKS if they meet certain requirements specified in the regulations. Individuals and entities remain responsible for complying with all other laws, regulations, and guidance that apply to their businesses.

# The Physician Self-Referral (“Stark”) Law

- **The Physician Self-Referral Law, [42 U.S.C. Section 1395nn](#), often called the Stark Law**, prohibits a physician from referring patients to receive “designated health services” payable by Medicare or Medicaid to an entity with which the physician or a member of the physician’s immediate family has a financial relationship, unless an exception applies.
- **Example**: A physician refers a beneficiary for a designated health service to a clinic where the physician has an investment interest.
- **Penalties**: Penalties for physicians who violate the Stark Law may include fines, civil monetary penalties (CMPs) up to \$24,478 (in 2018) for each service, repayment of claims, and potential exclusion from participation in the federal health care programs.

# Exclusion Statute

- **The Exclusion Statute, [42 U.S.C. Section 1320a-7](#)**, requires the OIG to exclude individuals and entities convicted of any of the following offenses from participation in all federal health care programs:
  - Medicare or Medicaid fraud, as well as any other offenses related to the delivery of items or services under Medicare or Medicaid
  - Patient abuse or neglect
  - Felony convictions for other health care-related fraud, theft, or other financial misconduct
  - Felony convictions for unlawful manufacture, distribution, prescription, or dispensing controlled substances
- The OIG also may impose permissive exclusions on other grounds, including:
  - Misdemeanor convictions related to health care fraud other than Medicare or Medicaid fraud, or misdemeanor convictions for unlawfully manufacturing, distributing, prescribing, or dispensing controlled substances
  - Suspension, revocation, or surrender of a license to provide health care for reasons bearing on professional competence, professional performance, or financial integrity
  - Providing unnecessary or substandard services
  - Submitting false or fraudulent claims to a federal health care program
  - Engaging in unlawful kickback arrangements
  - Defaulting on health education loan or scholarship obligations
- Excluded providers may not participate in the federal health care programs for a designated period. If you are excluded by OIG, then federal health care programs, including Medicare and Medicaid, will not pay for items or services that you furnish, order, or prescribe. Excluded providers may not bill directly for treating Medicare and Medicaid patients, and an employer or a group practice may not bill for an excluded provider's services. At the end of an exclusion period, an excluded provider must seek reinstatement; reinstatement is not automatic.
- The OIG maintains a list of excluded parties called the [List of Excluded Individuals/Entities \(LEIE\)](#).

# Civil Monetary Penalties Law

- **The CMPL, [42 U.S.C. Section 1320a-7a](#)**, authorizes OIG to seek CMPs and sometimes exclusion for a variety of health care fraud violations. Different amounts of penalties and assessments apply based on the type of violation. CMPs also may include an assessment of up to **three** times the amount claimed for each item or service, or up to **three** times the amount of remuneration offered, paid, solicited, or received. Violations that may justify CMPs include:
  - Presenting a claim you know, or should know, is for an item or service not provided as claimed or that is false and fraudulent
  - Violating the AKS
  - Making false statements or misrepresentations on applications or contracts to participate in the Federal health care programs

# Criminal Health Care Fraud Statute

- **The Criminal Health Care Fraud Statute, [18 U.S.C. Section 1347](#)** prohibits **knowingly and willfully** executing, or attempting to execute, a scheme or lie in connection with the delivery of, or payment for, health care benefits, items, or services to either:
  - Defraud any health care benefit program
  - Obtain (by means of false or fraudulent pretenses, representations, or promises) any of the money or property owned by, or under the control of, any health care benefit program
- **Example**: Several doctors and medical clinics conspire in a coordinated scheme to defraud the Medicare Program by submitting medically unnecessary claims for power wheelchairs.
- **Penalties**: Penalties for violating the Criminal Health Care Fraud Statute may include fines, imprisonment, or both.

# Beneficiary Rights and Protections



# Beneficiary Freedom of Choice

**CMS requires that Medicare Beneficiaries maintain freedom of choice.**

CMS requires that SHCN Partners may communicate the benefits of receiving care from members of our ACO but may not adopt policies that inhibit patients from exercising their right to obtain services from any Medicare provider.

# Opt-out of Data Sharing

- CMS shares beneficiary claims data unless the beneficiary opts out of data sharing.
- CMS requires that:
  - SHCN Partners discuss the benefits of Medicare data sharing with a beneficiary (i.e., to ensure coordinated care and to avoid unnecessary duplication of services) but must honor a beneficiary's request to opt out of data sharing.
  - SHCN Partners must notify Medicare ACO Management if any beneficiary communicates their desire to opt out of data sharing (or to opt back in).

# SHCN Partner Requirements

# Medical Necessity

## CMS requires:

- SHCN Partners to make medically necessary covered services available to all ACO beneficiaries and to not withhold any medically necessary care, and
- SHCN Partners to not take any action to avoid at-risk beneficiaries.

# Marketing Materials or Activities

- It is important that Steward Medicare Program-related communications and marketing materials accurately reflect the services and quality of care available within Steward.
- CMS requires that Steward obtains prior approval from CMS of any ACO marketing materials or beneficiary communications used by SHCN Partners.
- You must submit any proposed Steward Medicare Program marketing activities or written communications to beneficiaries to Steward Medicare ACO management for submission to CMS for approval.
- Such materials or activities may include, but are not limited to brochures, advertisements, outreach events, letters to beneficiaries, Web pages, data sharing opt-out letters, mailings, social media, or other activities conducted by or on behalf of SHCN when used to educate, solicit, notify, or contact Medicare patients regarding the MSSP ACO.

## Marketing Materials or Activities (cont.)

- If you are unsure if your materials require CMS approval, it is always best to ask questions. Questions and materials for review can be directed to the Medicare ACO Program Team by emailing [StewardACO@steward.org](mailto:StewardACO@steward.org)
- Prior to submission to CMS, the Medicare ACO Program Team will:
  - Reach out to you to review your proposed materials with you
  - Recommend edits as necessary
  - Share the materials with the Steward ACO Management Team for internal review and approval
- After approval by CMS, the Medicare ACO Program Team can support publication and distribution of the approved materials.

# Additional Notification Requirements

## CMS requires:

- SHCN Partners to inform the Steward Medicare ACO Compliance Officer immediately if any of the following occurs:
  - Exclusion from any federal or state health care program—you, your practice, and your providers. *Note: Providers are required by law to ensure members of their staff are not excluded from participation in any federal and state health care programs.*
  - Any action taken by HHS or the DOJ related to significant misconduct or allegations of fraud.
  - Any formally initiated claim or allegation of malpractice, professional misconduct, or grounds for licensure or clinical privilege disciplinary action raised against a provider or physician group practice by any payer, governmental agency, professional organization, health care facility, health care practice or plaintiff.
- Steward is required to report probable violations of law to an appropriate law enforcement agency.

# Compliance with Privacy Regulations

## CMS requires:

- SHCN Partners may only access, use, or disclose patient information and medical claims data (provided by CMS) as permitted by law.
- Steward and SHCN Partners must protect patient information and CMS medical claims data from being accessed, used, or disclosed inappropriately.
- SHCN Partners must distribute their Notice of Privacy Practices (NOPP) to Medicare patients. The NOPP must describe the Medicare ACO Provider Partner participation in the Steward Organized Health Care Arrangement (OHCA), including access to the current list of Steward Medicare ACO participating providers.
- SHCN Partners must distribute and maintain copies of the NOPP in accordance with the requirements of Steward's PPA and HIPAA.



# Document Retention and Access

## CMS requires:

- Records relating to any aspect of former Steward ACO programs (i.e., Pioneer ACO, Next Generation ACO, the Bundled Payment for Care Improvement program) and current programs (Medicare Shared Savings Program) must be retained for at least ten (10) years after the end of each respective Agreement.
- CMS requires SHCN Partners to cooperate with evaluation, review, and monitoring activities, providing CMS and independent evaluators access when requested.
- SHCN Partners may not share any data or findings specific to beneficiaries or reference the Steward Medicare ACO Program in publications without approval from Steward Medicare ACO Compliance Officer (who will consult with CMS if required).

# Investigation, Audit, & Remediation

- Investigation – The Steward Medicare ACO Compliance Officer will facilitate the investigation of each compliance and/or privacy complaint or concern related to Steward Medicare ACO activity. Based on the results of an investigation, the Steward Medicare ACO Compliance Officer will work with Steward Medicare ACO Management in developing and executing their remediation plan.
- Audit – As appropriate from time to time, the Steward Medicare ACO team will conduct audit or review activities confirming compliance with certain requirements.
- Remediation – If the Steward Medicare ACO Compliance Officer concludes, after investigation or audit, that the Steward Code of Conduct, Steward Medicare ACO Compliance & Privacy Program policies, or other applicable laws and regulations may have been violated, Steward Medicare ACO Management will be notified. Remediation may include appropriate remediation, discipline, and penalties, up to and including termination from participation in Steward Medicare ACO Program.

*Note: The Steward Medicare ACO Compliance Officer is not legal counsel to the ACO and reports directly to the SNCN Board of Directors.*

# SHCN Partner Enforcement & Discipline

## CMS requires that...

- Every SHCN Partner conducting business related to the operations of the Steward Medicare ACO Programs comply with the Steward Code of Conduct, SNCN policies, Participating Provider Agreements (PPAs), and all applicable laws and regulations.
- Examples of compliance issues that can be reported to the Steward Medicare ACO Compliance Officer include but are not limited to:
  - Notifications of possible breaches of information or known noncompliance with the stated policies;
  - Complaints made by patients; and
  - Results of an internal audit to review the SHCN Partner's practice.
- All reports received of possible breaches or noncompliance will be investigated by Steward Medicare ACO Management and remediation will be aligned with the severity of the violation.
- Providers have the right to contest or appeal a decision made by the Steward Medicare ACO and can formally do so by submitting the required information in writing within 30 days of the initial decision.

# Compliance Questions and Reporting

- **Open Lines of Communication** – SHCN Partners may ask questions related to the Steward Medicare ACO Compliance & Privacy Program by contacting:

## Steward Medicare ACO Compliance Liaison

Michael Monsegur

[michael.monsegur@steward.org](mailto:michael.monsegur@steward.org)

Telephone: 781-493-7824

## Steward Medicare ACO Compliance Officer

Amy Paul

[amy.paul3@steward.org](mailto:amy.paul3@steward.org)

Telephone: 781-493-7844

- **Reporting** – SHCN Partners are required to report suspected compliance and privacy concerns. Reports must be made to the Steward Medicare ACO Compliance Officer. A hotline has been established for individuals who wish to report their concerns anonymously. The toll-free hotline number is **(800) 699-1202**, available 24 hours a day, 7 days a week.
- You may also anonymously report your concern online at: <https://reportanissue.com/>.
- SHCN Partners who report a concern in good faith will be protected against retaliatory action.