Compliance Program FDR and Management Contractor Oversight Policy

Policy Number:	A20140128003
Effective Date:	2/4/2014
Sponsoring Department:	Compliance
Impacted Department(s):	All Independent Health, and its affiliated organizations (Nova, Reliance Rx, PBD)

Type of Policy: ☒ Internal ☒ External

Data Classification: ☐Confidential ☒Restricted ☐Public

Applies to:

☒ Corporate (All)
☐ State Products, if yes which plan(s): ☐MediSource; ☐MediSource Connect; ☐Child Health Plus; ☐Essential Plan
☐ Medicare, if yes, which plan(s): ☐MAPD; ☐PDP;☐ISNP;☐CSNP
☐ Commercial, if yes, which type: ☐Large Group; ☐Small Group; ☐Individual
☐ Self-Funded Services *(Refer to specific Summary Plan Descriptions (SPDs) to determine any pre-authorization or pre-certification requirements and coverage limitations. In the event of any conflict between this policy and the SPD of a Self-Funded Plan, the SPD shall supersede the policy.)*

Specific Line of Business Applicability

N/A

Applicable to Vendors? Yes ☒ No☐

Purpose and Applicability:

To identify and comply with governmental and regulatory requirements relating to Independent Health's delegation of services, responsibilities and/or core functions to **management contractors** and **first tier**, **downstream** and **related entities** (**FDRs**), collectively referred to as "**vendors**" throughout this policy. Independent Health is ultimately responsible for compliance with regulatory requirements and for the effective delivery of any services or products performed on behalf of Independent Health or our affiliate organizations by those vendors delegated to perform services. This policy does not apply to providers of health care services (e.g. Physicians, Pharmacies, Hospitals and/or Ambulatory Medical Facilities).

The requirements set forth within this policy apply to **Vendor/Business Owners** and other impacted departments/personnel whose have contracted with a vendor providing services for the following products: Medicare Part C and Part D, Medicaid Managed Care, Commercial, Essential Health Plans and Qualified Health Plans.

Policy:

Independent Health's Responsibility for Vendor Oversight:

Independent Health maintains ultimate responsibility for adhering to, and otherwise fully complying with, all terms and conditions of its contract(s) with all Federal and State governmental and/or regulatory entities (e.g. Centers for Medicare and Medicaid Services [CMS]; New York State's Department of Health [DOH], etc.), notwithstanding any relationship Independent Health has with vendors.

Independent Health oversees and is accountable for all functions or responsibilities and applicable operations that it delegates to vendors. Independent Health, by written contract, may delegate any activity required under, or governed by, its CMS and DOH contracts (or any other contract with a governmental body), other than compliance program administrative functions, to another entity, in accordance with these policy standards.

Vendor Compliance Oversight Requirements:

Compliance maintains requirements for both the Vendor and the Independent Health **Vendor/Business Owner** as follows:

- When onboarding a Vendor, Independent Health's Vendor/Business Owner should work with Compliance and other impacted operational department(s) to perform a pre-delegation audit on that entity. The pre-delegation audit determines if operational and regulatory requirements and considerations will be met and maintained by any potential vendor. Independent Health is obligated to ensure, through documentation and by other means (testing controls and systems), that the vendor is capable of performing the delegated service.
- The Compliance department will perform a vendor risk assessment using the vendor management tracking system (RSAM) and review the Vendors compliance policies and program documents to validate whether the vendor has appropriate compliance controls in place and to ensure the vendor has not been sanctioned or excluded. See the Sanction, Exclusion, Preclusion and Medicare Opt Out Review Policy (A20130905076) for more detail on this requirement.
    - In the event the vendor's Compliance policies and procedures and standards of conduct (Code of Conduct and Ethics) are not able to meet Independent Health's standards, or they do not maintain their own, Independent Health will make our documents available for implementation.
    - Additionally, the Independent Health Code of Conduct and Ethics is always available on the Vendor Compliance page of the Independent Health website which is shared with vendors as part of the Vendor Attestation process.
- Independent Health will issue an annual Vendor Compliance Attestation to all vendors.

- Compliance will work with the Vendor/Business Owner to ensure Vendor Compliance reporting is captured on the Compliance dashboard. The Compliance Department reserves the right to audit any vendor activity that relates to compliance with applicable laws and regulations.
- Compliance expects Vendor/Business Owners to establish regular reoccurring meetings with the vendor to outline procedures for regular monitoring/auditing.
    - To ensure vendor's good faith participation with our compliance program, Independent Health expects a timely, consistent, and effective response to any issues of non-compliance or illegal/unethical behavior. The Compliance Department should be promptly informed when issues of non-compliance arise.
    - The Vendor/Business Owner, in collaboration with Compliance, is responsible for overseeing, facilitating, and enforcing the corrective action plan with the vendor and the vendor is responsible for meeting the requirements outlined within Independent Health's *Compliance Program: Mechanisms for Reporting/Disclosing Noncompliance and Corrective Action Policy* (#A990801007).
    - Additional privacy and security considerations (i.e., data sharing, business continuity) need to be reviewed with the Information Risk Office (IRO) to be in compliance with all Health Insurance Portability and Accountability Act (HIPAA) requirements. The **Vendor/Business Owner** is required to identify and report on what data will be shared with the vendor and subcontractor as well as how information will be shared and protected. These provisions are outlined within the Compliance, Privacy and Security Event Scoring, (Policy # A20140630001). In support of these considerations, additional documentation may be needed to perform vendor resiliency and security assessments.
- Compliance requires Vendors to:
    - Document and disclose reports of noncompliance and/or **Fraud, Waste, and Abuse (FWA)** events immediately following incidents with member impact or significant operational issues;
    - Develop, implement, and share corrective action plans (CAPs) with Independent Health for review and approval when deficiencies are identified;
    - Include disciplinary measures for enforcement in their corrective action plans;
        - Vendors are expected to have their own disciplinary criteria and policies that are consistent with Independent Health's internal standards (as documented in Independent Health's Progressive Discipline Policy - #A040628200 and the Compliance, Privacy and Security Event Scoring Policy - #A20140303001). These standards include:
            - Timely, consistent, and effective enforcement of disciplinary standards when non-compliant behavior is identified; and
            - Ensure that disciplinary action is commensurate with the seriousness of the violation.
    - Complete all required General Compliance and FWA Training, including Medicare training, when applicable, within 90 days of contracting and annually thereafter.
    - Disclose if they utilize or subcontracts services to any downstream entities. If downstream entities are used, the same requirements set forth throughout this policy are to be applied;

- Disclose if any **downstream entity** or **subcontractor** is located offshore. See the Offshore *Contracting Policy*, # A110418118 for additional details and requirements.

Additional Vendor Considerations:

Independent Health is obligated to notify regulatory agencies in advance of delegating any administrative or health care services to a vendor. Specifically, Independent Health is required to notify the DOH a minimum of 90 days prior to the **delegation** of any **management services contract** to a vendor. CMS also requires advance notice (60 days preferred), prior to contracting for any FDR delegation agreement. It is essential that the Compliance Department is notified to ensure all regulatory notification and process requirements are met (submit to: compliance@independenthealth.com). Failure to notify regulatory entities may result in delayed start dates and/or compliance actions against Independent Health.

Definitions

- **Abuse** means provider practices that are inconsistent with sound fiscal, business or medical practice and result in an unnecessary cost to the state or federal government or Independent Health, IPA/WNY and/or an affiliated company in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care in a managed care setting. It also includes member or enrollee practices that result in unnecessary cost to the state or federal government or Independent Health, IPA/WNY or an affiliated company.
- **Contract Owner:** typically the Senior Vice President, Vice President or Director overseeing a particular operational area. In general, the Contract Owner is responsible for onboarding the relationship and in utilizing a vendor's service to supplement their current workforce. The Contract Owner has been delegated authority from the **Executive Owner** to manage the relationship in terms of output, performance, service levels, compliance adherence and return on investment. The Contract Owner should determine the effectiveness of the vendor engagement, and advocate for continuing or separating from the relationship.
- **Delegated Function:** transferring the responsibility to perform a function or service (defined under: an agreement, contract, the law or regulations) from Independent Health to another entity.
- **Downstream Entity** means any 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.
- **Executive Owner:** In most the cases the Executive Owner is one of the following: Chief Financial Officer; Chief Operating Officer; Chief Engagement & Servicing Officer; Chief Medical Officer; Senior Vice President of Human Resources & Organizational Development; or General Counsel. Ultimately the authority to onboard and maintain a relationship with a vendor rests with the Executive Owner. Although fully responsible for the productivity of the relationship, the Executive Owner delegates their authority to the Contract Owner to manage the relationship throughout its lifecycle.
- **First Tier Entity** means any party that enters into a written arrangement, acceptable to CMS, with Independent Health to provide administrative services or health care services for a Medicare eligible individual.

- **Fraud** means any type of intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person in a managed care setting, including any act that constitutes fraud under applicable federal or state law, committed by a provider, member or enrollee or other person(s).
- **Management Contractor:** means any person, other than staff employed by the Medicaid Managed Care Organization (MMCO), entering into an agreement with the governing authority of an MMCO for the purpose of managing the day-to-day operations of the MMCO.
- **Management Services Contract:** means any entity other than staff employed by Independent Health, entering into an agreement with the governing authority of Independent Health for the purpose of managing delegated aspects of day-to-day operations of the health plan.
- **Offshore** refers to any country that is not one of the fifty United States or one of the United States territories (such as American Samoa, Guam, Puerto Rico, US Virgin Islands, etc.); collectively referred to as United States. Vendors that are considered offshore can either be American-owned enterprises with divisions of their operations performed outside the United States or foreign-owned enterprises with operations or services provided outside the United States. Additionally, an American citizen who works remotely from a country other than the United States is also considered offshore.
- **Related Entity (also known as an affiliate)** means any entity that is related to Independent Health by common ownership or control and:

    1. Performs some of the Independent Health's management functions under contract or delegation; or
    2. Furnishes services to Medicare enrollees under an oral or written agreement; or
    3. Leases real property or sells materials to Independent Health at a cost of more than $2,500 during a contract period.
- **Subcontractor/subcontracted** means any organization that Independent Health contracts with to fulfill or help fulfill requirements in its Medicare (Part C and/or Part D) contracts, Medicaid Managed Care and Child Health Plus Model contracts, Qualified Health Plan contract, and any other legally binding agreement. Additionally, this term could also refer to one of Independent Health's direct subcontractors, that then itself subcontracts work or services to yet another entity.
- **Vendor** means any business, entity or person that Independent Health enters into a written arrangement (or similar agreement) to provide administrative, consultative, health care, data storage, and application development services. A vendor could also be a delegated and/or **a First Tier and Downstream (FDR) entity**, a **Business Associate**, and/or a **Subcontractor** (see definitions above).
- **Vendor/Business Owner** (terms used synonymously): the associate who has been assigned to manage the day-to-day relationship with the vendor. In general, this associate interacts with their vendor counterpart (account representative, relationship manager, etc.) to facilitate operations and to ensure assigned work and requirements are being met at regular intervals. Updates and general correspondence to/from the vendor are funneled through the Business Owner.
- **Waste** means provider practices that involve useless consumption or expenditures; use without adequate return; or acts or instances of neglect instead of use.

References

Related Policies, Processes and Other Documents

- Vendor Selection Policy, # A20140611001
- Contract Summary Form (RSAM)
- Legal Review and Signing of Contracts Policy, # A020000068
- Offshore Contracting Policy, #A110418118
- Delegated Vendor Management Vendor Annual Audit Policy, #A20180314030
- Delegated Vendor Management Vendor Monitoring Policy, #A20180314031
- Delegated Vendor Management Vendor Oversight Policy, #A20180314032
- Sanction, Exclusion and Medicare Opt Out Review Policy, # A20130905076
- Associate Training Policy, # A20151013076
- Compliance Program Internal Monitoring and Auditing Policy, # A090819335
- Mechanisms for Reporting/Disclosing Noncompliance and Corrective Action Policy, #A990801007
- Compliance Privacy and Security Event Scoring Policy, #A20140630001
- Progressive Discipline Policy, #A040628200
- Independent Health Code of Conduct and Ethics
- Independent Health's Vendor Compliance Attestation

Regulatory References

- 42 CFR 422.504(e)(2), (i)
- 42 CFR 423.505(e)(2), (i)
- 42 CFR 422.2
- 42 CFR 423.501
- 42 CFR 422.503 (b)(4)(vi) et seq.
- 42 CFR 423.504 (b)(4)(vi) et seq.
- Medicare Managed Care Manual, Chapter 11, §100.1-100.5 and §110 et seq. (Delegation Requirements)
- Medicare Managed Care Manual, Chapter 21 / Medicare Prescription Drug Benefit Manual, Chapter 9, §30, §40, §50.1.1, §50.1.3, §50.2 et seq., §50.3 et seq., §50.4.1, §50.4.2, §50.5.2, §50.6.2, §50.6.5, §50.6.6, §50.6.7, §50.6.8, §50.6.11, §50.7.1, §50.7.2, §50.7.3
- 10 NYCRR § 98-1.11(k)
- 10 NYCRR § 98-1.2(z)
- Medicaid Managed Care and Family Health Plus Model Contract – §22 et seq.
- CMS memo dated August 26, 2008 from Cynthia Tudor, "Offshore Subcontractor Data Module in HPMS"

Version Control

Sponsored By:

Name sponsor: Nicole Britton

Title of sponsor: VP-Chief Compliance Officer

Signature of sponsor:

Revision Date	Owner	Notes
3/3/2015	D. Odrzywolski	Reviewed
3/1/2016	D. Odrzywolski	Revised
1/1/2017	D. Odrzywolski	Revised, minor changes
1/1/2018	D. Odrzywolski	Revised, minor changes
1/1/2019	N. Britton	Revised, minor changes
1/1/2020	N. Britton	Updated definitions to match other policies, added RSAM information, added vendor delegation oversight policy owned by HCS
1/1/2021	N. Britton	Revised, minor updates to the availability of compliance policies.
1/1/2022	N. Britton	Revised, minor changes (policy reference updates)
1/1/2023	N. Britton	Reviewed, minor changes (Definition updates)
1/1/2024	N. Britton	Revised, policy renamed, clarified policy is related to FDRs and Management Contractors.
1/1/2025	N. Britton	Revised, removed leased network provider termination language.
3/1/2025	N. Britton	Updated policy sponsor