



## Oversight of your Vendors for Medicare Advantage and Part D Plan Sponsors

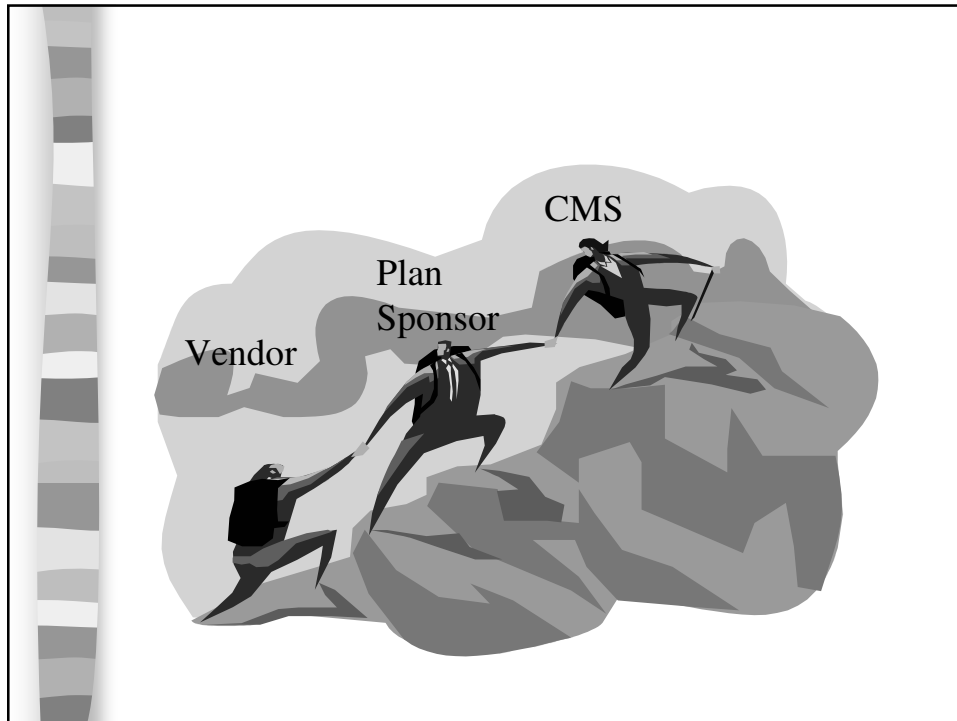
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## Disclaimer

- The content of this presentation does not constitute legal advice, but the ramblings of an overworked, tired Medicare Compliance Officer.
- Please seek the advice of your corporate counsel on any and all interpretations of regulations and contractual language discussed in this presentation.



## Resources

- Medicare Advantage (MA):

  - 42 CFR section 422.504(i)

  - MA Managed Care Manual- Chapter 11: sections 100.5 and 110

- Part D:

  - 42 CFR section 423.505(i)



## Focus

- “written arrangements (between Sponsor and vendor) must provide for revocation of the delegation activities and reporting requirements or specify other remedies in instances where CMS or MA (or Part D Sponsor) determines such parties have not performed satisfactorily.”



## What does this provision mean?

- Sponsors need to be able to revoke vendor delegation arrangements in situations where vendor is not performing adequately and/or at the direction of CMS.
- In addition, this provision allows for “other remedies,” (e.g. Corrective Action Plans, additional reporting and oversight) to occur, in situations of unsatisfactory vendor performance.

## What this provision does NOT do:

- Allow Plan Sponsor to recoup from Vendor the costs of all CMS/OIG penalties or fines imposed on Plan Sponsor due to Vendor's failure to perform or perform adequately.

## Suggested Contract language

- Vendor will indemnify and hold Sponsor harmless from and against any loss, cost, damage, expense or other liability, including, without limitation, reasonable costs and attorney fees ("Costs") incurred in connection with any and all third party claims, suits, investigations or enforcement actions (including but not limited to any fines or penalties or costs of compliance with any investigation of a state or federal agency) which may be asserted against, imposed upon or incurred by Sponsor and arising as a result of (A) Vendor's negligent acts or omissions or willful misconduct, or (B) Vendor's breach of this Agreement.
- *This is OVER and ABOVE performance guarantees.*



If you decide to incorporate such a strong indemnification provision in your vendor agreements.....

- Don't sit back and think you don't have to do anything.
- **WRONG!**



Where do you want to be?

- A. Trust but verify (Ronald Reagan)
- B. Trust but Not verify (aka jump off a cliff)
- C. Not Trust and Not Verify (aka jump off a cliff with a skeptical look on one's face)
- D. Not Trust and Verify (you decide....)



## GOAL:

- The Gipper's Trust but Verify
- Reality: probably some in every category.




## How do you verify???

- Two choices:
  - 1. One department does it all (e.g. Medicare Compliance or Vendor Management)
  - 2. Many departments monitor different "bits and pieces." (e.g. Claims-claims, Pharmacy- formulary, Clinical-clinical)



Either way is ok, BUT.....

- SOMEONE has to make sure complete, regular oversight of vendor is occurring! (Need quarterback)



To make sure you're thoroughly monitoring vendor activity, you need to determine several things:

- Identify **each** and **every** delegated operational function performed by vendor
- Identify who's monitoring each function
- How do they monitor to ensure compliance? What CMS resources (regs? Audit guides?) do they consult?
- Are reports developed and to whom in Plan are they sent?
- Are Corrective Action Plans (CAPs) put into place and who makes sure they are implemented?

<u>Vendor</u>	<u>Delegated Function(s)</u>	<u>Monitored? Yes/No</u>	<u>If Yes, By Whom?</u>	<u>Which Products Apply? MA/MAPD/PDP</u>	<u>By What Device Are You Monitoring? CMS Audit Guide/Other (Specify)</u>	<u>Frequency?</u>	<u>Report Developed? Yes/No</u>	<u>Recipient</u>	<u>How Are Reports Distributed?</u>	<u>Who puts CAPs in Place Where Necessary?</u>	<u>Who Makes Sure Corrective Action, When Applicable, Is Implemented?</u>

## Could have holes in several places:

- Function not being monitored at all or infrequently.
- CMS rules/regs not being consulted correctly –if at all—during monitoring process
- No reports are being issued and/or sent to the right place
- No follow through on deficiencies



## Huge undertaking, but necessary

- The goal is to **KNOW** what's wrong before CMS tells you!



## Tips for success

- Get buy in from Senior Management to do assessment and to implement changes, with assistance from operational areas, if there are holes.
- Enlist support of your Audit Department to complete project.

# Kitchen Sink

