

		Policy & Procedure	
Company:	Moda Health	Department Name:	Legal
Subject:	Medicare First Tier, Downstream and Related Entities		
Adopted Date:	1/1/13	Review/Revision Date:	1/28/2022
Reference Number:	MA016	Next Annual Review Date:	1/28/2023
Business Unit:	Medicare Compliance		
<input checked="" type="checkbox"/> Medical <input checked="" type="checkbox"/> Dental <input checked="" type="checkbox"/> Pharmacy	<input checked="" type="checkbox"/> Advantage Medicare <input type="checkbox"/> Commercial Group <input type="checkbox"/> Commercial Individual <input type="checkbox"/> Medicaid <input type="checkbox"/> Other		

I. Policy

Moda Health may delegate functions to third parties related to its Medicare Advantage (Part C) and Medicare Prescription Drug (Part D) plans. Medicare program requirements apply to third parties who contract with Moda Health to provide certain administrative or health care services for enrollees on behalf of Moda Health. This policy establishes how Moda Health identifies third parties that qualify as a First Tier, Downstream, or Related Entity (FDR), describes how Moda Health complies with Medicare program requirements for FDRs, and states Moda Health’s expectations and requirements of its FDRs.

Moda Health may enter into contracts with FDRs to provide administrative or health care services for Medicare members on behalf Moda Health. However, Moda Health retains ultimate responsibility for complying with all CMS requirements and may not assign this obligation via contract. CMS may hold Moda Health accountable for the failure of its FDRs to comply with Medicare program requirements. Moda Health requires all FDRs to comply with applicable Medicare program requirements and, with respect to a First Tier Entity, to ensure that such First Tier Entity’s downstream entities also comply with applicable Medicare program requirements.

II. Definitions

- A. **Abuse:** 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. Abuse cannot be differentiated categorically from fraud because the distinction between “fraud” and “abuse” depends on specific facts and circumstances, intent and prior knowledge, and available evidence, among other factors.
- B. **Audit:** A formal review of compliance with a particular set of standards (e.g., policies and procedures, laws and regulations) used as base measures.
- C. **CMS:** Centers for Medicare and Medicaid Services.
- D. **Downstream Entity:** A party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with Moda Health’s Part C or Part D contract, below the level of the arrangement between Moda Health and one of its First Tier Entities. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.

- E. **FDR:** First Tier, Downstream or Related Entity.
- F. **First Tier Entity:** A party that enters into a written arrangement, acceptable to CMS, with Moda Health to provide administrative services or health care services to a Medicare-eligible individual under Moda Health's Part C or Part D program.
- G. **Fraud:** 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.
- H. **FWA:** Fraud, waste and abuse.
- I. **Monitor:** Conduct regular reviews as part of normal operations to confirm ongoing compliance and to ensure that corrective actions are undertaken and effective.
- J. **Related Entity:** An entity that is related to Moda Health by common ownership or control and
 1. Performs some of Moda Health'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 Moda Health at a cost of more than \$2,500 during a contract period.
- K. **Waste:** 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.

III. Contracting with FDRs

- A. **Identifying an FDR.** A combination of the Delegated Entity Review Committee (DERC), Medicare Compliance Department, and or Legal will conduct an analysis to determine whether the third party qualifies as an FDR. In determining whether an entity is an FDR and thus subject to the FDR requirements as detailed by CMS, the DERC must consider: (a) the function to be performed by the delegated entity; (b) whether the function is something Moda Health is required to do or to provide under its contract with CMS, the applicable federal regulations or CMS guidance; (c) the extent to which the function directly impacts members; (d) the extent of direct member interaction, either orally or in writing; (e) whether the delegated entity has access to member information, including personal health information; (f) whether the delegated entity has decision-making authority or simply takes direction from Moda Health; (g) the extent to which the function places the delegated entity in a position to commit health care FWA; and (h) the risk that the entity could harm enrollees or otherwise violate Medicare program requirements or commit FWA.
- B. **Pre-Contract Exclusion Screening.** If it is determined that the entity is an FDR, before Moda Health enters into a contract with the FDR, the Compliance Department will review the DHHS OIG List of Excluded Individuals and Entities (LEIE list) and the System for Award Management (SAM) (formerly known as the Excluded Parties Lists System (EPLS)) to ensure that the FDR is not sanctioned or excluded. If the entity appears on either list, Legal will contact the Medicare Compliance Officer to initiate an analysis of whether or to what extent the proposed contract may be executed.

If the FDR is not excluded or sanctioned, and the contract between Moda Health and the FDR is executed, the Medicare Compliance Department will add the contracting party to its list of FDR's. This list will be made available to the Medicare Compliance team to allow Compliance (i) to conduct its periodic assessments with respect to FDR risk exposure, and (ii) to screen the FDR monthly in accordance with the Medicare Compliance/Human Resources *OIG/SAM Exclusion Checks* policy. The results of the screening will be kept for a minimum of 10 years in accordance with the above-referenced policy, the Medicare Compliance Plan, and Moda Health's record retention policy.

- C. Contract Addendum. Inclusion of FDR Addendum.** Every contract with an FDR must contain the provisions required by CMS in its rules, regulations and guidelines. Legal will review every FDR contract to confirm compliance with Medicare program requirements. Legal may use the checklist attached as Exhibit 1 to this policy to ensure that all required provisions are in the FDR contract and may attach or use as a reference the Medicare Advantage Contract Addendum attached to this Policy as Exhibit 2.
- D. FDR Training Requirement:** All employees of each FDR must complete all training and education required by Moda Health and CMS, including but not limited Medicare Part C and Part D Compliance and FWA Training. This training must be completed by all employees annually and within 90 days of hire for all new employees. FDR must be capable of producing records demonstrating the completion of training by each employee, related entity, contractor and subcontractor. Records may include copies of the training, attendance logs, completion certificates, or other evidence including the name and date each individual completed the training. These records must be maintained for a minimum of ten (10) years and furnished to Moda upon request. A copy of training created by CMS may be obtained on the Moda Health Compliance website: www.modahealth.com/compliance and can be used by the FDR in lieu of creating their own training.

Note: effective January 1, 2019, Moda will not require providers to attest to the training.

IV. Compliance with Moda Health Policies.

FDRs must comply with the Moda Health Medicare Compliance Plan, Code of Conduct, and this Policy. These documents may be found on the Moda Health Web site at <https://www.modahealth.com/compliance>.

V. FDR Oversight and Monitoring.

The Moda Health Medicare Compliance Department will Monitor and Audit Moda Health's First Tier Entities to ensure that they are in compliance with all applicable laws, rules and regulations with respect to Medicare Parts C and D delegated responsibilities, and to ensure that the First Tier Entities are monitoring the compliance of entities with which they contract (their downstream entities). The Medicare Compliance Department will also monitor Related Entities to ensure those entities are compliant with all applicable Medicare laws, regulations, and policies. Moda Health may request proof of downstream monitoring activities.

- A. Risk Assessment and Auditing.** To ensure that FDRs are following the applicable laws, rules and regulations, Moda Health will utilize risk assessment, monitoring and auditing tools.
 - i. Risk Assessment: On not less than an annual basis, the Medicare Compliance Department will

conduct a risk assessment of the FDRs. The assessment will take into account the types and levels of risk that the FDRs pose to the Medicare program and to Moda Health. Factors considered in determining the risks associated with the FDRs include the amount of work completed by the FDR, complexity of work, training, and past compliance issues. The formal risk assessment is not a static document and shall be reviewed throughout the year to determine if the priorities remain accurate in light of changes to CMS requirements and any identified issues of non-compliance.

ii. *Auditing and Monitoring*: The Medicare Compliance Department will use a monitoring and auditing work plan that will identify the number of First Tier Entities that will be audited and will describe the scope and timing of each audit. The work plan will include:

- The number of audits to be performed;
- The FDRs to be audited and audit schedules, including start and end dates;
- Necessary resources;
- Person(s) responsible;
- Final audit report due date to Compliance Officer; and
- Follow up activities from findings.

Each FDR work plan will contain a process for responding to all monitoring and auditing results and for conducting follow-up reviews of areas found to be non-compliant to determine if the implemented corrective actions have fully addressed the underlying problems. Corrective action and follow-up shall be led or overseen by the Medicare Compliance Officer and include actions such as reporting findings to CMS or to the National Benefit Integrity Medicare Drug Integrity Contractor (MEDIC), if necessary.

Audits shall utilize a randomized selection process for sample selection and sample selection size shall reflect the then-current CMS audit guidelines. Where appropriate, the audit shall assess the FDR's compliance with relevant policies and procedures.

- B. Reporting of Compliance Issues and FWA.** All FDRs and their employees are required to report any suspected or potential compliance issue. FDRs may report suspected compliance violations anonymously through EthicsPoint (1-866-294-5591 or www.ethicspoint.com) or by calling Moda Health's anonymous compliance and FWA reporting hotline (1-855-801-2991). In addition to or in lieu of submitting a report via EthicsPoint, FDRs may also directly report compliance issues to the Moda Health Medicare Compliance Officer at medicarecompliance@modahealth.com and suspected fraud, waste and abuse to the Special Investigations Fraud Unit at stopfraud@modahealth.com.
- C. Moda Health Plan Disciplinary Policies.** Failure to report suspected Medicare program violations and/or fraud, waste and abuse concerns may result in disciplinary action up to and including termination of your contract with Moda Health. Moda Health has a strict policy of non-intimidation and non-retaliation against FDRs and employees for good faith reporting and participation in the compliance program, including but not limited to reporting potential issues, investigating issues, conducting self-evaluations, audits and remedial actions, and reporting to appropriate officials. This policy is in all FDR contracts as well as in the Moda Health Code of Conduct. Moda Health expects FDRs to have disciplinary standards in place and publicized for employees and downstream entities and related entities, and the Moda Health Medicare Compliance Department may ask to see them.
- D. Identifying and Investigating Compliance Issues.** Compliance issues with respect to FDRs may be discovered through auditing and monitoring or otherwise disclosed to Moda Health. Regardless of the source of notification, Moda Health will investigate such matters to determine if a true issue of non-

compliance exists. The FDR will be required to fully cooperate with Moda Health in any such investigation. Moda Health will immediately report any issue of non-compliance to CMS and will report FWA to the MEDIC. In the instance of any non-compliance, all FDRs are subject to the enforcement of disciplinary actions, up to and including termination of the underlying agreement with Moda Health.

E. Corrective Action: When identified compliance issues are confirmed, including FWA, Moda Health will determine the appropriate corrective action, with such action designed to correct the underlying problem that results in program violations and to prevent future noncompliance. A root cause analysis determines what caused or allowed the non-compliance, FWA, problem or deficiency to occur. A corrective action must be tailored to address the particular non-compliance, FWA, problem or deficiency identified, and must include timeframes for specific achievements. The elements of the corrective action will be detailed in writing and include ramifications if the FDR fails to implement the corrective action satisfactorily. Moda Health will work with the applicable FDR to develop a corrective action plan designed to address the deficiencies. Confirmation that a corrective action plan has been successfully completed will be required from any FDR that is assigned such a plan. All FDR contracts include language allowing Moda Health to continually monitor FDRs, including FDRs that have completed a compliance action plan, to ensure compliance and to ensure that any problems previously identified will not reoccur. All FDR contracts include language setting forth the consequences for failing to maintain compliance, or engaging in FWA, up to and including contract termination.

VI. Revision Activity

New P & P /Change / Revision and Rationale	Final Review/Approval	Approval date	Effective Date of Policy/Change
Updated CMS Training Location. Added information regarding incorporation of required Compliance and FWA trainings into FDRs’ internal training systems. Updated Exhibit 2		06/12/2017	N/A
Update Section III. A (review entities), update job title.	Brenda Noble	12/11/2018	12/11/2018
Annual review. Placed note that Compliance and FDR training is not required for providers.	Brenda Noble	12/31/2019	12/31/2019
Added Dental to the line of business impacted. Dental is a supplemental benefit under the Medicare Advantage plans with network providers.	Brenda Noble	1/12/2021	1/1/2021
Update made to training section.	Brenda Noble	4/22/2021	1/1/2021
Annual review – modify exclusion policy reference.	Brenda Noble	1/28/2022	1/28/2022

VII. Affected Departments

All Moda Health employees that manage contractual relationships with FDRs; all First Tier, Downstream and Related Entities.

VIII. References

Medicare Managed Care Manual, Chapter 21
Medicare Prescription Drug Benefit Manual, Chapter 9
FDR Compliance Checklist (Exhibit 1 to this policy)
FDR Contract Addendum (Exhibit 2 to this policy)

EXHIBIT 1
FDR Compliance Checklist

On an at least annual basis, the following items must be reviewed with respect to each First Tier, Downstream, and related Entity:

A. *Training, Education and Exclusion List Checking*

- Evidence that general compliance training was timely provided to the FDR.
- Evidence that sampled non-deemed first tier entities' employees received timely FWA training.
- Evidence that Moda Health provided FWA training or training materials to the non-deemed first tier entity for its employees' timely FWA training.
- Evidence that Moda Health requires the sampled first tier entities to maintain records for ten years of the training of their employees, including the following details: time, attendance, topic, certificate of completion, if applicable and test scores, if any.
- Evidence that sampled first tier entities' employees were timely checked against the OIG/GSA exclusion lists.

(**Note:** Effective January 1, 2019, Compliance and FDR training may not apply if the FDR is a provider of care.)

B. *Effective Communication*

- Evidence that Moda Health's compliance/FWA reporting mechanism(s) are accessible to its FDRs.
- Evidence that Moda Health's compliance/FWA reporting mechanism(s) has been publicized and/or provided to its FDRs
- Evidence that a sampled subset of FDRs' employees have been notified of the no-retaliation policy for reporting potential FWA.
- Evidence that either Moda Health or the first tier entity has communicated to the FRD employees of the obligation to report compliance concerns and potential FWA.

C. *Disciplinary Standards*

- Evidence that Moda Health has published its disciplinary standards to its FDRs, including the duty and expectation to report.

D. *Monitoring/ Auditing Records*

- Evidence that Moda Health audited first tier entities to determine whether the FDRs are monitoring / auditing downstream entities' compliance with Medicare regulations and requirements.

Exhibit 2
FDR Contract Addendum

The following definitions are added to the Agreement:

Centers for Medicare and Medicaid Services (“CMS”): the agency within the Department of Health and Human Services that administers the Medicare program.

Code of Conduct: is a document(s) that states overarching principles and values by which the company operates, defines the underlying framework for the compliance policies and procedures, describes company’s expectations that all employees conduct themselves in an ethical manner, dictates that issues of noncompliance and potential fraud, waste, and abuse be reported through appropriate mechanisms, and requires that reported issues be addressed and corrected.

Completion of Audit: completion of audit of Moda, Moda contractor or related entity by the Department of Health and Human Services, the Government Accountability Office, or their designees.

Comptroller General: Director of the Government Accountability Office, which was established to ensure the fiscal and managerial accountability of the federal government.

Downstream Entity: any party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with the MA benefit, below the level of the arrangement between Moda and a First Tier Entity. These written arrangements continue down to the level of the ultimate FDR of both health and administrative services.

Final Contract Period: the final term of the contract between CMS and Moda.

First Tier Entity: any party that enters into a written arrangement, acceptable to CMS, with Moda or applicant to provide administrative services or health care services for a Medicare eligible individual under the MA program.

Department of Health and Human Services (“HHS”): The part of the federal government that is responsible for administering services relating to health and welfare.

Medicare Advantage (“MA”): an alternative to the traditional Medicare program in which private plans run by health insurance companies provide health care benefits that eligible beneficiaries would otherwise receive directly from the Medicare program.

Medicare Advantage Organization (“MA organization”): a public or private entity organized and licensed by a State as a risk-bearing entity (with the exception of FDR-sponsored organizations receiving waivers) that is certified by CMS as meeting the MA contract requirements.

Member or Enrollee: a Medicare Advantage eligible individual who has enrolled in or elected coverage through a Medicare Advantage Organization.

Oregon Health Authority (OHA): The Oregon government entity that governs Medicaid for Oregon.

PHI: Protected Health Information.

Related Entity: any entity that is related to the MA organization by common ownership or control and (1) performs some of the MA organization'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 MA organization at a cost of more than \$2,500 during a contract period.

To the extent the base contract affects in any way Moda's Medicare or a Medicaid contract, or the Federally Facilitated Market Place, the following terms are added to the Agreement to the extent applicable to the services provided by the Delegate:

1. Delegate agrees that Moda, HHS, the Comptroller General, the OHA or their designees have the right to audit, evaluate, and inspect any books, contracts, computer or other electronic systems, including medical records and documentation of the First Tier, Downstream, and Related Entities related to the Medicaid contract or the CMS contract with Moda. This right to audit, evaluate and inspect includes any pertinent information, and exists for a minimum of 10 years from the final date of the contract between CMS and Moda or from the date of completion of any audit, whichever is later. [42 CFR 422.504(i)(2)(i and ii)]
2. Delegate will comply with the confidentiality and enrollee record accuracy requirements, including: (1) abiding by all Federal and State laws regarding confidentiality and disclosure of PHI or other health and enrollment information, (2) ensuring that PHI is released only in accordance with applicable Federal or State law, or pursuant to court orders or subpoenas, (3) maintaining the PHI and other related records in an accurate and timely manner, and (4) ensuring timely access by Enrollees to the PHI that pertains to them and to Moda with respect to its Enrollee's PHI. [42 C.F.R. §§ 422.504(a)(13) and 422.118]
3. Delegate agrees that it will not hold Enrollees liable for payment of any fees that are the legal obligation of Moda. [42 C.F.R. §§ 422.504(i)(3)(i) and 422.504(g)(1)(i)]
4. For any Enrollee eligible for both Medicare and Medicaid, Delegate will not hold such enrollee liable for Medicare Part A and B cost-sharing when the State is responsible for paying such amounts. Delegate will be informed of Medicare and Medicaid benefits and rules for enrollees eligible for Medicare and Medicaid. Delegate must not impose cost-sharing that exceeds the amount of cost-sharing that would be permitted with respect to the individual under title XIX if the Enrollee was not enrolled in such a plan. Delegate agrees to: (1) accept the MA plan payment as payment in full, or (2) bill the appropriate State source. [42 C.F.R. §§ 422.504(i)(3)(i) and 422.504(g)(1)(i)]
5. Any services or other activity performed in accordance with a contract or written agreement by Delegate must be consistent with and comply with the Moda's contractual obligations with CMS and OHA. [42 C.F.R. § 422.504(i)(3)(iii)]
6. Moda agrees to promptly pay Delegate in accordance with the requirements in the Base Agreement and 42 C.F.R. § 422.520 (b)(1) and (2). [42 C.F.R. § 422.520(b)(1) and (2)]
7. Delegate and any related entity, contractor or subcontractor will comply with all applicable CMS and OHA laws, rules, regulations, and guidelines. [42 C.F.R. §§ 422.504(i)(4)(v)]
8. Moda delegates to Delegate those duties specifically set forth in the attached Agreement. Regarding all delegated activities, the following requirements apply:
 - (i) Every contract entered into between Delegate and any related entity, contractor or subcontractor related to one or more of the contracts between CMS or OHA and Moda must specify the delegated activities and reporting responsibilities. In every case, regardless the delegated activities and regardless to what entity the activities are delegated, Moda will be

ultimately responsible to ensure that all CMS and OHA rules, regulations and guidelines are followed. In addition, all contracts between Delegate and any related entity, contractor or subcontractor related to the Medicaid contract must contain a provision stating that the related entity, contractor or subcontractor must comply with all applicable CMS and OHA laws, rules, regulations, and guidelines[42 C.F.R. §§ 422.504(i)(4) and (5)].

- (ii) Moda reserves the right to revoke the delegation activities or specify other remedies in instances where CMS, OHA or Moda determines that Delegate or its related entities, contractors or subcontractors related to an MA contract with Moda have not performed satisfactorily.
 - (iii) Moda has the right to monitor the performance of Delegate and its related entities, contractors and subcontractors, related to all MA contracts with Moda on an ongoing basis and Delegate will cooperate with this process.
 - (iv) Moda has the right to review the credentials of medical professionals affiliated with Delegate and the right to approve the credentialing process. Moda will have the right to audit the credentialing process on an annual basis, or more frequently if necessary and Delegate will cooperate with the effort.
 - (v) All contracts between Delegate and any related entity, contractor or subcontractor related to the MA or OHA contract must contain a provision stating that the related entity, contractor or subcontractor must comply with all applicable CMS and OHA laws, rules, regulations, and guidelines.[42 C.F.R. §§ 422.504(i)(4) and (5)]
9. All employees of Delegate and any related entity, contractor or subcontractor related to the MA or OHA contract who have any involvement with the administration or delivery of Medicare services must receive Fraud, Waste, and Abuse and General Compliance training (the "Training") within 90 days of their hiring date and annually thereafter, or for those already employed and who have not received Training within the past year, within 90 days of the effective date of this Addendum and annually thereafter, or in the case of a related entity, contractor or subcontractor, within 90 days of executing a contract, and annually thereafter. Delegate may create their own training or use available CMS training. Delegate must be capable of producing records demonstrating the completion of training by each employee, related entity, contractor and subcontractor. Records may include copies of the training, attendance logs, completion certificates, or other evidence including the name and date each individual completed the training. These records must be maintained for a minimum of ten (10) years and furnished to Moda upon request.
10. Delegate and any related entity, contractor or subcontractor related to the MA or OHA contract must provide notice to its employees throughout its facilities through the use of posters, table tents, mouse pads, or other forms of notice to inform its employees of their duty to report any observed or suspected noncompliance or potential fraud, waste, or abuse. The notice must provide the alternative to contact EthicsPoint (toll free number 866-294-5591 or online at www.ethicspoint.com) provided by Moda or the Moda Medicare compliance officer at medicarecompliance@modahealth.com or some other third-party reporting service provided by Delegate so that a reporting party can remain anonymous. The notice must make it clear that there are strict rules forbidding any retaliation against anyone for making such a report.
11. Delegate and any related entity, contractor or subcontractor who provides services for Medicare beneficiaries on behalf of Moda are prohibited from employing or contracting with persons or entities that have been excluded from doing business with the Federal Government. Upon hiring or contracting and monthly thereafter, Delegate and any related entity, contractor or subcontractor

must verify their employees, including temporary employees, contractors, and volunteers, are not excluded by comparing them against the Office of the Inspector General (OIG) List of Excluded Individuals and Entities and the General Services Administration Excluded Parties List System. No payment will be made by Moda, Medicare, Medicaid or any other Federal or state health care program for any item or service furnished on or after the effective date specified in the notice period, by an excluded individual or other authorized individual who is excluded when the person furnishing the item or service knew or had reason to know of the exclusion. If requested, Moda will provide assistance with implementation of the exclusion process.

The websites in which excluded persons can be found are:

Excluded Party List System: www.sam.gov

List of Excluded Individuals and Entities: <http://exclusions.oig.hhs.gov>

12. Sub-delegation occurs when a Moda delegated FDR gives another entity the authority to carry out a delegated responsibility that Moda has delegated to the FDR. If Delegate sub-delegates any currently delegated function, it must obtain advance written approval from Moda and the contract between Moda and Delegate must be amended to reflect the sub-delegation. Any sub-delegation will be subject to requirements required of Delegate.
13. The term “Offshore” refers to any country that is not one of the 50 United States or one of the United States Territories. Subcontractors that are considered “Offshore” can be either American-owned companies with certain portions of their operations performed outside of the United States or foreign owned companies with their operations performed outside of the United States. Offshore subcontractors provide services that are performed by workers located in Offshore countries, regardless whether the workers are employees of American or foreign companies. Delegate must ensure its employees and downstream and related entities have read and understand all requirements pertaining to the regulations for services that are performed by workers located in Offshore countries, regardless of whether the workers are employees of American or foreign companies. This applies to entities Delegate may contract or sub-contract with to receive process, transfer, handle, store, or access beneficiary protected health information in oral, written, or electronic form. If Delegate Sub-Delegates any Moda Medicare activities to an Offshore subcontractor, it must adhere to the approval process outlined for Sub-Delegation activities and complete an additional Offshore attestation.
14. Delegate must provide either (i) Moda’s Code of Conduct and its compliance policies and procedures available at <https://www.modahealth.com/compliance> or other website as updated from time to time, or (ii) the Delegate’s Code of Conduct and compliance policies and procedures that are compliant with CMS laws, rules, regulations and guidelines to all employees within 90 days of their hiring date and annually thereafter, or for those already employed and who have not received these documents within the past year, within 90 days of the effective date of this Addendum and annually thereafter, or in the case of a related entity, contractor or subcontractor, within 90 days of executing a contract; and annually thereafter.
15. To the extent any services under the base Agreement are applicable to the Federally Facilitated Marketplace, the following will apply:
 - a. All delegated activities related to the Federally Facilitated Marketplace may be revoked at

any time if the United States Health and Human Services (HHS) or Moda Health Plan, Inc. determines that Delegate has not performed the delegated activities satisfactorily.

- b. Delegate agrees that it will comply with all applicable laws and regulations relating to the standards specified in CFR § 156.340(a).
- c. Delegate agrees that it will permit access to the Secretary of HHS and the United States Office of Inspector General or their designees in connection with their right to evaluate through audit, inspection, or other means, to Delegate's books, contracts, computers, or other electronic systems, including medical records and documentation, relating to Moda Health Plan, Inc.'s obligations in accordance with Federal standards under CFR § 156.340(a) until 10 years from the final date of the agreement period.