

## FEDERAL FLOW-DOWN REQUIREMENTS FOR VENDORS, CONTRACTORS AND SUPPLIERS

The Federal Flow-Down Requirements for Vendor, Contractors and Suppliers contains the additional provisions required by The Centers for Medicare and Medicaid Services (CMS) and by the U.S. Office of Personnel Management (OPM) to be included in Health Plan agreements with vendors, contractors and suppliers where the services provided support Health Plan's contracts with CMS and OPM.

**A. Definitions.** As used herein, the following definitions shall apply:

"CMS" means The Centers for Medicare and Medicaid Services.

"FEHBP" means the Federal Employees Health Benefits Program.

"FEHBP Members" means Health Plan members enrolled in the FEHBP.

"Health Plan" means Kaiser Foundation Health Plan, Inc. and each of its subsidiary health plans.

"Kaiser Permanente" means the integrated health care delivery organization doing business as Kaiser Permanente®, which includes Health Plan, Kaiser Foundation Hospitals and each of the respective Permanente Medical Groups.

"MA Members" means Health Plan members enrolled in the Medicare Advantage program.

"MC Members" means Health Plan members enrolled in the Medicare Cost program.

"OPM" means the U.S. Office of Personnel Management.

"Order" means a purchase order, contract or other agreement for the supply of services by Supplier to Health Plan.

"Supplier" means a vendor, contractor or supplier providing services to Health Plan.

**B. Federal Employee Health Benefits Program**

Health Plan has a contract with OPM to provide health care services to FEHBP. When the services provided by Supplier support Health Plan's contract with OPM, the following provisions shall apply and are incorporated into the Order by this reference:

1. **Hold Harmless.** In the event of (a) insolvency of Health Plan or of Supplier, or (b) Health Plan's or Supplier's inability to pay expenses for any reason, Supplier shall not look to FEHBP Members for payment, and shall prohibit health care Suppliers from looking to FEHBP Members for payment.

2. **Confidentiality.** In the performance of its agreement with Health Plan, if Supplier and its subcontractors, as applicable, acquire the medical record or other information of FEHBP Members that is protected by law from disclosure, Supplier and its subcontractors shall hold confidential all medical records and other protected information of FEHBP Members, and information relating thereto, except (a) as may be reasonably necessary for administration of the FEHBP contract, (b) as authorized by the FEHBP Member or his or her guardian, (c) as disclosure is necessary to permit government officials having authority to investigate and prosecute alleged civil or criminal actions, (d) as necessary to audit the FEHBP contract, (e) as necessary to carry out the coordination of benefit provisions of the FEHBP contract, and (f) for bona fide medical research or educational purposes (only if aggregated), all as consistent with applicable law regarding confidentiality.

**3. Maintenance and Audit of Records.** OPM and other government officials have the right to inspect and evaluate the work performed or being performed under the FEHBP contract, records involving work or transactions related to the FEHBP contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If government officials or their authorized representatives request access, inspection or evaluation of such Supplier records or premises, Supplier shall cooperate by providing access to records and facilities until six years after final payment or settlement under the FEHBP contract.

**4. Other Reports and Records.** Supplier and its subcontractors, as applicable, shall furnish statistical reports and other reports as may be requested by Health Plan to fulfill statistical reporting obligations under the FEHBP contracts.

**5. Notice of Significant Events.** Supplier agrees to notify Health Plan of any Significant Event within seven business days after the Supplier becomes aware of it. A “Significant Event” is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon Supplier’s ability to meet its obligations under the Agreement.

**6. Compliance.** Supplier and Health Plan shall comply with the Health Care Consumer Bill of Rights (at <http://www.opm.gov/insure/archive/health/cbrr.htm>), as amended from time to time, which addresses Members’ ability to participate fully in treatment decisions, respecting Members’ rights (including nondiscrimination), and protecting Members’ privacy. Supplier shall not employ or contract with any Suppliers that provide Services to FEHBP Members and have been debarred, suspended or proposed for debarment by the federal government during the term of the Agreement. Health Plan shall not be liable for payment to Supplier for services rendered by a Supplier debarred, excluded or suspended from participation in any federal program.

## **7. Equal Opportunity and Affirmative Action**

(a) Health Plan is subject to various federal laws, executive orders and regulations regarding equal opportunity and affirmative action. This Section constitutes notice that Supplier may be subject to the following Federal Acquisition Regulations (each a “FAR”) at 48 CFR Part 52 and the Office of Federal Contract Compliance Regulations at 41 CFR Part 60, which are incorporated herein by reference: (i) FAR 52.222-26 – Equal Opportunity (APR 2015) and 41 CFR 60.1.4(a); (ii) FAR 52.222-21 – Prohibition of Segregated Facilities (APR 2015) and 41 CFR 60-1.8; (iii) FAR 52.222-37 – Employment Reports on Veterans (OCT 2015); (iv) **FAR 52.222-35** Equal Opportunity for Veterans (OCT 2015) and 41 CFR 60-300.5(a) (v) FAR 52.222-36 – Equal Opportunity for Workers with Disabilities (JUL 2014) and 41 CFR 60-741.5(a), which provide (and are required to be stated in bold print): **“This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.”** In addition, Executive Order 11246 regarding nondiscrimination in employment decisions, as amended by Executive Order 13665 regarding non-retaliation for disclosure of compensation information, and Executive Order 13496 (codified at 29 CFR Part 471, Appendix A to Subpart A) concerning the obligations of federal contractors and subcontractors to provide notice to employees about their rights under Federal labor laws shall be incorporated herein by reference. As part of Health Plan’s efforts to comply with these requirements, Health Plan has developed and implemented equal employment opportunity and affirmative action policies and programs designed to ensure that all qualified applicants and employees are treated without

regard to such factors as race, color, religion, sex, sexual orientation, gender identify, national origin, disability, veteran status, or any other reason prohibited by law. As one of Health Plan's subcontractors, Health Plan requests that Supplier take appropriate action, as necessary, to support Health Plan's commitment to these requirements, as required by 41 CFR 60-300.44(f)(1)(ii) and 60-741.44(f)(1)(ii).

(b) This Section constitutes notice that Supplier may be subject to additional FARs, which are incorporated herein by reference: (a) FAR 52.227-1 -- Authorization and Consent (DEC 2007) and FAR 52.227-2 -- Notice and Assistance Regarding Patent and Copyright Infringement (DEC 2007); (b) FAR 52.223-18 -- Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011); (c) FAR 52.203-13 -- Code of Business Ethics and Conduct (OCT 2015); (d) FAR 52.203-7 -- Anti-Kickback Procedures (MAY 2004); FAR 52.203-12 -- Limitation on Payments to Influence Certain Federal Transactions (OCT 2010); (f) FAR 52.203-17 -- Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (APR 2014); (g) FAR 52.222-50 -- Combatting Trafficking in Persons (MAR 2015); and (h) FAR 52.222-54 -- Employment Eligibility Verification (OCT 2015).

(c) If Supplier is not otherwise subject to compliance with the laws and executive orders specified in this Section 7, the inclusion of this Section 7 shall not be deemed to impose such requirements upon Supplier.

#### **C. Medicare Cost Program**

Health Plan has a Medicare Cost contract with CMS. When the services provided by Supplier support Health Plan's Medicare Cost contract with CMS, the following provisions shall apply and are incorporated into the Order by this reference:

1. **Records.** Supplier shall maintain the confidentiality of medical records of MC Members and abide by all federal and state laws regarding confidentiality and disclosure.
2. **Member Hold Harmless.** Supplier agrees that in no event including, without limitation, nonpayment by or insolvency of or cessation of operations by Health Plan or breach of this Agreement, shall Supplier bill, charge, collect from, or have any recourse against a MC Member or a person acting on behalf of a MC Member for fees that are the legal obligation of Health Plan.
3. **Quality Assurance and Utilization Review.** Supplier shall participate in and cooperate with Health Plan's utilization review program and its quality assurance and improvement programs.

#### **D. Medicare Advantage Program**

Health Plan has a Medicare Advantage Organization contract with CMS. When the services provided by Supplier support Health Plan's Medicare Advantage Organization contract with CMS, the following provisions shall apply and are incorporated into the Order by this reference:

1. **Maintenance and Audit of Records.** Supplier will maintain, and make available to Health Plan, the Department of Health and Human Services, the Comptroller General, or their designees, for evaluation, audit, collection and inspection any relevant contracts, books, documents, papers, and records, including but not limited to medical records and patient care documentation, as applicable, related to the Agreement for ten (10) years from the final date of the Agreement or from the date of completion of any audit, whichever is longer, or longer if so required by the CMS.

2. **Supplier Performance and Reporting.** Supplier will provide services to Health Plan in accordance with the requirements in the Agreement. Supplier acknowledges that Health Plan is ultimately responsible to CMS for complying with the terms of its contract with CMS and for providing oversight in the administration of the Medicare program as to its members. At the request of Health Plan, Supplier will certify the accuracy, completeness and truthfulness of data requested by Health Plan or CMS regarding Supplier's performance of services under the Agreement that will enable Health Plan to comply with the requirements of its contract with CMS. At the request of Health Plan, Supplier will provide reliable and complete records, data and certifications as required by Health Plan or CMS to verify that Supplier's obligations under the Agreement have been met. Upon request, Supplier will make such information available to Health Plan and other state and federal governmental agencies and accrediting organizations.

3. **Compliance with Medicare Laws and Additional Contract Terms.** Services or other activities performed by Supplier and any subcontractors must be consistent and comply with Health Plan's contract with CMS, a copy of which is available upon request. Supplier will comply with all applicable Medicare laws, regulations and CMS instructions as well as additional terms and conditions that CMS imposes on Health Plan, as amended from time to time.

4. **Delegations and Subcontracting.** Supplier will not subcontract or delegate to a third party any part of the services provided to Health Plan under the Agreement without Health Plan's prior written consent. If Health Plan consents to such delegation or subcontracting, Supplier will provide periodic and other reports as reasonably required by Health Plan to comply with the Medicare Advantage Program. Health Plan will at all times retain the right to monitor Supplier's performance of such delegated functions. Health Plan reserves the right to revoke such delegation for inadequate performance pursuant to Section 5 below.

5. **Termination and Right to Revoke.** In addition to the termination rights set forth in the Agreement, Health Plan may terminate the Agreement in whole or in part or may revoke or suspend Supplier's right to provide certain services under the Agreement, including but not limited to the delegation of the selection of Suppliers, in the event of a material breach by Supplier that has not been cured within thirty (30) days after receipt of a written notice from Health Plan for one of the following reasons: (i) if in Health Plan's or CMS's determination, Supplier has failed to perform services in accordance with the Agreement; or (ii) if Supplier has failed to comply with the reporting, certification and disclosure requirements set forth in this Section D (Medicare Advantage Program requirements).

6. **Confidentiality.** Supplier will comply with applicable state and federal law regarding the use and disclosure of confidential information, including, but not limited to the confidentiality and disclosure of medical records or other health and enrollment information. Supplier will comply with CMS' guidance and requirements and Health Plan policies regarding the use and disclosure of confidential information, as amended and updated from time to time.

7. **Credentialing.** If Supplier provides credentialing services under this Agreement, Supplier will comply with all applicable Medicare Advantage credentialing requirements. If applicable, Health Plan shall review the credentials of medical professionals, or review, approve and audit the credentialing process.

8. **Vendor Code of Conduct.** Supplier will comply with, and make available annually to its Employees and any subcontractors involved in providing services under the Agreement, the Kaiser Permanente Vendor Code of Conduct, which is available for review at <http://supplier.kp.org/compliance/VendorCodeOfConduct.pdf>. Employees shall be defined as those

employees (including temporary workers and volunteers) who have involvement in the administration or delivery of services under this Agreement.

9. **General Compliance Training and Fraud, Waste and Abuse (FWA) Training.** Supplier will provide employees and any subcontractors involved in providing services under this Agreement CMS general compliance and FWA training within 90 days of hire (or contracting in the case of subcontractors) and annually thereafter. If Supplier has not provided CMS general compliance and FWA training to its employees and subcontractors as of the effective date of this Exhibit, Supplier will provide its employees and appropriate subcontractors CMS general compliance and FWA training within 90 days of the effective date of this Exhibit/Amendment. CMS general compliance and FWA training is the CMS Medicare Learning Network (MLN) Medicare Parts C & D General Compliance Training course and the Combatting Medicare Parts C and D Fraud, Waste and Abuse Training course available at <https://learner.mlnlms.com>. Information about these training courses, methods for completing the training, and who must complete the training is available on Kaiser Permanente's Supplier Information site under REQUIREMENT: Compliance Training at: <http://supplier.kp.org/compliance/training.html>. Employees shall be defined as those employees (including temporary workers and volunteers) who have involvement in the administration or delivery of services under this Agreement.

10. **Federal Program Participation.** Supplier is not and shall not be debarred, suspended, excluded or have otherwise opted out from receiving a contract or subcontract funded in whole or in part by federal or State funds, including without limitation Medicare and Medicaid funds. Supplier shall ensure that no persons or entities employed by or contracted with Supplier to provide services under the Agreement are sanctioned by or debarred, suspended, excluded or have opted out from, participation in Medicare or Medicaid under Sections 1128 or 1128A of the Social Security Act; and if Supplier becomes aware that it has employed or contracted with such a person or entity, Supplier will take prompt and appropriate remedial action to remove the Employee or contractor from providing services under this Agreement. Supplier will review DHHS OIG List of Excluded Individuals and Entities (LEIE list) and the GSA Excluded Parties Lists System (EPLS) prior to initial hiring or contracting and monthly thereafter to ensure that employees and contractors providing services under the Agreement are not so sanctioned, debarred, suspended, excluded, or have otherwise opted out of participating in Medicare. Employees shall be defined as those employees (including temporary workers and volunteers) who have involvement in the administration or delivery of services under this Agreement.

11. **Downstream Subcontracts.** Supplier will include the obligations set forth in this Section D in its subcontracts, including the requirement that these obligations be applicable to all downstream subcontractors.

12. **Federal Funds.** Health Plan is required to give notice that payments made to Supplier under the Agreement are derived in whole or in part from Federal funds.

13. **Certifications and Attestations.** Supplier shall certify on an annual basis, in the format specified by Health Plan, as to Supplier's compliance with the requirements of Sections 2 (Supplier Performance and Reporting), 8 (Vendor Code of Conduct), 9 (General Compliance Training and Fraud, Waste and Abuse Training), 10 (Federal Program Participation) and 11 (Downstream Subcontracts) of this Section D (Medicare Advantage Program requirements).

**E. Affordable Care Act – Federally-Facilitated Marketplaces.**

Health Plan is a Qualified Health Plan (“QHP”) issuer that is certified and contracted to offer QHPs on certain State and Federal facilitated exchanges using the Federally-facilitated Marketplace technology platform (hereafter “FFM”). When the services provided by Supplier support Health Plan’s role as a QHP using the FFM, the following provisions shall apply and are incorporated into the Order by this reference:

1. **Delegated Entity.** In the course of performing the duties and obligations set forth in the Agreement (collectively referred to as “Duties”), Supplier may constitute a “delegated entity” and may contract with other entities that constitute “downstream entities,” as such terms are defined in 45 C.F.R. § 156.20, to assist in performing its Duties;
2. **Compliance with Laws.** Supplier shall comply with all applicable laws and regulations, including but not limited to the provisions of 45 C.F.R. Parts 155 and 156, to the extent relevant, in performing its Duties;
3. **Access to Books and Records.** Supplier shall grant access to its books, contracts, computers, or other electronic systems (including medical records and documentation), relating to Supplier’s compliance with applicable provisions under 45 C.F.R. Parts 155 and 156 in connection with its Duties, to Health Plan and the U.S. Department of Health and Human Services (“HHS”) and its Office of Inspector General (or their designees), for the duration of the period in which the Agreement is effective, and for a minimum of ten (10) years from the date the Agreement terminates;
4. **Downstream Subcontracts.** Supplier shall include in its contract with any downstream entities, and require such downstream entities to include in their contracts with other downstream entities, language that is the same or substantially similar to that contained in this Section E and which expressly requires each downstream entity to: (i) comply with all applicable laws and regulations, including but not limited to the provisions of 45 C.F.R. Parts 155 and 156, to the extent relevant, in performing or assisting in the performance of Duties; and (ii) grant access to its books, contracts, computers, or other electronic systems (including medical records and documentation), relating to such downstream entity’s compliance with applicable provisions under 45 C.F.R. Parts 155 and 156, in connection with Duties, to Health Plan and HHS and its Office of Inspector General (or their designees), for the duration of the period in which the Agreement is effective, and for a minimum of ten (10) years from the date the Agreement terminates; and
5. **Termination and Right to Revoke.** In the event that Health Plan or HHS determines that Supplier, or any downstream entity with whom Supplier contracts as described in Section D, subsection 1, has not satisfactorily performed the Duties, Health Plan shall have the right to revoke such Duties and immediately terminate the Agreement or give the Defaulting Party thirty (30) days within which to cure the default (in which case the Agreement shall terminate if the default is not cured to Health Plan’s satisfaction).

**F. Conflicts Between Clauses.** In the event of a conflict or inconsistency between the clauses in this document applicable to an Order, the most stringent clause will apply.

**G. Modifications.** The Federal Flowdown Requirements set forth herein are subject to change by Health Plan from time to time as a result of changes required by OPM and/or CMS. These requirements shall not be construed to require any violation of federal or state law or collective bargaining agreements.