

**COMMONSPIRIT HEALTH  
ACCOUNTABLE CARE ORGANIZATION AND CLINICALLY INTEGRATED NETWORK  
ADMINISTRATIVE POLICY**

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<b>SUBJECT:</b> Beneficiary Referrals	<b>POLICY NUMBER:</b> TBD
<b>EFFECTIVE DATE:</b> July 1, 2021	<b>ORIGINAL EFFECTIVE DATE:</b> July 1, 2021
<b>REPLACES:</b> CHI Corporate Responsibility Policy No. 12, Prohibitions on Required Referrals and Cost Shifting	Dignity Health Policy: Clinical Integration – Medicare Shared Savings Program Prohibited Referrals and Arrangements

- Accountable Care Organizations (MSSP) in the Medicare Shared Savings Program (MSSP)
- Clinically Integrated Networks (CIN)

**PURPOSE**

The purpose of this policy is to outline the policies of the MSSP or CIN to comply with all laws pertaining to fraud, waste and abuse in federal and state health care programs, including Medicare and Medicaid. This includes compliance with the Physician Self-Referral Law (Stark Law) and the Anti-Kickback Statute. The MSSP or CIN, its Participants and Providers/Suppliers shall not engage in referrals prohibited by law or restrict referrals in a manner that is otherwise prohibited by law.

**POLICY**

Federal and state laws make it unlawful to pay or give anything of value to any individual or entity in a manner that takes into account the value or volume of patient referrals or other business for which payment may be made in whole or in part under Medicare, Medicaid, or other federal or state health care program. As such, the MSSP or CIN, its Participants and Providers/Suppliers shall not solicit, receive, offer, or pay anything of value in exchange for referring patients, products, or services for which payment may be made under a federal or state healthcare program.

In addition, the distribution or use of any shared savings under the MSSP or CIN programs shall not be based, either directly or indirectly, on referrals between the MSSP or CIN, its Participants and Providers/Suppliers.

**AFFECTED AREAS OR DEPARTMENTS**

CommonSpirit Health ACOs participating in the Medicare Shared Savings Program  
CommonSpirit Health Clinically Integrated Networks

## PROCEDURE OR PROCESS

1. CommonSpirit Health legal counsel shall review and approve all arrangements between the MSSP or CIN, its Participants, Providers/Suppliers, and other potential referral sources for compliance with laws and regulations before the execution of such arrangements. This requirement includes the use of or reliance on any fraud and abuse waivers under the MSSP program.
2. All distributions of shared savings or other incentive-based payments connected with the MSSP, CIN or any other performance-based plan shall be made in accordance with methodologies approved by the appropriate Governing Body. Distributions of shared savings under the MSSP or CIN shall be reasonably related to the purpose of the MSSP or CIN as determined by the appropriate Governing Body. No distributions will be based on the value or volume of referrals between the MSSP or CIN, its Participants, Providers/Suppliers, or other potential referral sources.
3. The MSSP or CIN, its Participants, Providers/Suppliers, and other individuals or entities performing functions or services related to MSSP or CIN activities shall not condition their participation in the MSSP or CIN on referrals of federal health care program business that is or would be provided to beneficiaries who are not assigned to the MSSP or CIN.
4. The MSSP or CIN, its Participants, Providers/Suppliers and other individuals or entities performing functions or services related to MSSP or CIN activities shall not require that beneficiaries be referred only within the MSSP or CIN and its network of Participants or Providers/Suppliers, except when:
  - i. a beneficiary expresses a preference for a different provider or supplier;
  - ii. a beneficiary's insurer determines the provider or supplier; and
  - iii. the referral is not in the beneficiary's best medical interests.

## DEFINITIONS

**Beneficiary:** beneficiary attributed to the ACO or CIN

**Medicare Shared Savings Program (MSSP):** Medicare Shared Savings Program, established under section 1899 of the Social Security Act.

**MSSP Activities:** Activities related to promoting accountability for the quality, cost, and overall care for a population of attributed Medicare fee-for-service Beneficiaries, including managing and coordinating care, encouraging investment in infrastructure and redesigned care processes for high quality and efficient service delivery; or carrying out any other obligation or duty of the ACO under the Medicare Shared Savings Program.

**MSSP Participant:** An ACO entity identified by a Medicare-enrolled billing TIN through which one or more providers/suppliers bill Medicare. The providers/suppliers must be included on the list of ACO participants that is required under 42 C.F.R. § 425.118.

**MSSP Provider/Supplier:** An individual or entity that: (1) is a provider or supplier under Medicare regulations; (2) is enrolled in Medicare; (3) bills for items and services furnished to Medicare fee-for-service beneficiaries during the agreement period under a Medicare billing number assigned to the TIN of an ACO participant; and (4) is included on the list of ACO providers/suppliers that is required under 42 C.F.R. §425.118.

## **REFERENCES**

National Association of ACOs (NAACOS) MSSP Compliance Program Policies and Procedures Manual - MSSP

## **STATUTORY/REGULATORY AUTHORITIES**

- 42 U.S. Code §1395nn. *Physician Self-Referral Law (Stark Law)*
- 42 U.S. Code §1320a-7b(b). *Federal Anti-Kickback Statute*
- 42 C.F.R §425.304(c). *Other program requirements. Prohibition on certain required referrals and cost shifting*