

**RESOLUTION OF BOARD OF TRUSTEES ADOPTING A COMPLIANCE AND
ETHICS PLAN FOR FY 2016**

WHEREAS, the Board of Trustees (“Board”) of the Maryland Health Benefit Exchange (“MHBE”) has the power to adopt policies governing the conduct of the Maryland Health Benefit Exchange, Md. Code, Ann., Insurance Article, § 31-106(c)(1)(iii);

WHEREAS, the Board and the MHBE recognize that it is a best practice for a board to maintain executive oversight over agency compliance and ethics;

WHEREAS, the Board has considered the Maryland Health Benefit Exchange Compliance and Ethics Plan for FY 2016 and finds it desirable to adopt the plan;

NOW, THEREFORE, IT IS:

RESOLVED, that the Board hereby adopts the Maryland Health Benefit Exchange Compliance and Ethics Plan for FY 2016.

I HEREBY CERTIFY that the foregoing resolution was adopted this 16th day of June, 2015, by the Board of Trustees of the Maryland Health Benefit Exchange.

Van T. Mitchell, Chair



A service of Maryland Health Benefit Exchange

**Maryland Health Benefit Exchange
Compliance and Ethics Plan
FY 2016**

A. Scope of Plan

Established under Title 31 Maryland Insurance Code Ann. § 31-102, the Maryland Health Benefit Exchange (MHBE) provides Maryland residents and small businesses the forum from which to explore health insurance plans, compare rates, and determine their eligibility for tax credits, cost sharing reductions (CSR) and public assistance programs such as Medicaid and the Maryland Children's Health Insurance Program (MCHP). In order to provide such determinations, consumers and small businesses entrust the MBHE with confidential personally identifiable information, federal agencies entrust MBHE with highly confidential federal tax information and State and Federal agencies entrust MHBE to ensure effective and efficient use of funds while minimizing fraud, waste and abuse.

Each MHBE representative/stakeholder has the responsibility to act with integrity, honesty and transparency. The Compliance and Ethics program provides an organizational framework of compliance that impacts MHBE's stakeholders, including employees, Board members, vendors, brokers, connector entities, and insurers/qualified health plans. At its core, the goal of MHBE's Compliance and Ethics program is to instill a sense of public trust by providing its services with the highest level of ethical, business and legal standards. In furtherance of promoting public trust, MHBE collaborates with a variety of State agencies to create an effective program to detect and prevent fraud, waste and abuse.

B. Definitions

1. "Compliance Officer" means the individual designated to serve as the focal point for the MHBE's compliance activities while overseeing and monitoring the implementation of the Compliance Program.
2. "Compliance and Ethics Program" means for the purposes of this program, a mechanism put in place by MHBE to achieve the goals of reducing fraud and abuse; improving operational quality; and adhering to federal and state guidelines regarding use of public funds.
3. "Compliance and Ethics Committee" means a committee established to advise the Compliance Officer and assist in the implementation of the Compliance Program.
4. "Cumulative Sanction Report" means a list, published by the DHHS- Office of Inspector General, of individuals excluded from providing services to Medicaid or Medicare recipients.

5. "Sanctioned Individuals" means vendors and their officers, employees and agents who are penalized through disciplinary actions specified by the HHS Office of Inspector General or Maryland Department of Public Works debarment list

C. Components of an Effective Compliance and Ethics Plan

1. Create an Oversight Structure and Culture of Accountability, Compliance and Ethics

The MHBE Board of Trustees has primary responsibility to ensure that MHBE's Compliance and Ethics Plan is reasonably designed, implemented, enforced and resourced so that the program promotes a culture of compliance and ethics while deterring criminal conduct. The U.S. Federal Sentencing Guidelines mandate seven key elements that the Board of Trustees and Agency must implement and monitor in order to consider the Compliance and Ethics program to be effective:

1. Create an Oversight Structure and Culture that promotes compliance
2. Establish Standards and Procedures to Promote Compliance
3. Exercise Due Diligence in the Hiring Process to not hire employees who have criminal backgrounds or have been excluded from participating in federally funded programs
4. Provide Compliance Awareness Education and Training
5. Audit, Monitor and Evaluate Program Effectiveness
6. Reinforce Compliance through Incentives for positive behavior and disciplinary actions for non-compliance
7. Perform Risk Assessments to Mitigate Risk

The Chief Compliance Officer has day to day responsibility for the design, implementation, communication, operation and effective monitoring of the Compliance Plan. Appointed by the Board of Trustees, the Chief Compliance Officer reports administratively to the MHBE Executive Director and functionally to the Board of Trustees. This structure allows unfettered access and communication with the Board of Trustees about compliance issues while ensuring continuous, collaborative and proactive compliant and ethical practices across the MBHE. The Chief Compliance Officer provides formal reports to the Board of Trustees on the effectiveness of the Compliance and Ethics program and is authorized to investigate instances of suspected non-compliance with laws or regulations or other aspects of the Compliance and Ethics Plan. Additionally, the Chief Compliance Officer maintains records related to the administration of the Compliance Plan including suspected non-compliance with the Compliance Plan and a record of the disposition of these matters.

The Chief Compliance Officer serves as Chair of the Compliance and Ethics Committee which consists of the following individuals:

- Executive Director
- Deputy Executive Director
- Director of Operations
- Chief Financial Officer
- Chief Information Officer
- DHMH Inspector General, or designee,
- Assistant Attorney General
- IT Security Officer
- Training Manager

- Procurement Manager
- Director of Policy and Government Relations
- Director of Plan and Partner Management
- Human Resources Manager, and
- Others designated by the Chair

Through active engagement by leaders and representatives across functional areas, the Compliance and Ethics Committee serves as the oversight committee for the Compliance and Ethics Program. Each leader is accountable to model, communicate and incorporate compliance and ethics into the operation of their respective areas. The Committee meets at least four times per year (or more often as necessary) and is charged with the following:

1. Ensure development, ongoing review and updating of the Compliance Plan and Code of Conduct.
2. Provide guidance in the development of policies and standards related to compliance awareness, training, monitoring and response (including corrective actions, sanctions and enforcement) to identify, avoid and/or minimize non-compliance with applicable laws, regulations and policies.
3. Monitor and review effectiveness of compliance communications, education and training.
4. Promote integration of compliance plan and code of conduct into hiring and performance review processes.
5. Oversee the hotline function and other systems that solicit, evaluate, and respond to reported allegations of non-compliance while ensuring non-retaliation for reports made in good faith.
6. Review the results of risk assessments of MHBE programs and operations
7. Review the need for and oversee the development of corrective actions and program improvements designed to ensure implementation of internal controls and mitigation of risks.
8. Provide guidance to executives and managers on how to promote behaviors of accountability and compliance in the work environment.
9. Oversee uniform enforcement of infractions and ensure timely reporting to authorities as appropriate.
10. Evaluate compliance program effectiveness.
11. Review annual Compliance and Ethics Report which contains an evaluation of compliance program effectiveness and recommendations for improvements.
12. Collaborate with a variety of State agencies to create an effective fraud, waste and abuse program.

2. Establish Policies and Procedures to Promote Compliance

A. Code of Conduct

MHBE adopted a Code of Conduct to establish behavioral expectations for employees in order to promote a culture of compliance and accountability and prevent non-compliance with laws, regulations and policies. After review of the Code of Conduct, employees sign the Code to represent their commitment to comply with the Code's standards of conduct and follow policies and procedures that support a culture of accountability and compliance. Key provisions in the Code of Conduct include the expectation to: act in an ethical and professional manner, report any actual or suspected illegal or unethical behaviors, maintain confidentiality of information during and after-employment with MHBE, refrain from and report potential conflicts of interest,

and maintain the accuracy, integrity and availability of data and documents. Signature also represents their understanding that disciplinary actions may result from non-compliance and/or failure to report non-compliance.

While carrying out the MHBE's mission, all employees are expected to conduct the MHBE's business in a consistent and professional manner, adhering to the following principles:

1. Perform all activities in compliance with pertinent laws and regulations, including those applying to fraud and abuse, the Affordable Care Act, false claims, prohibitions, anti-trust, employment discrimination, lobbying and political activity, and the Maryland Public Ethics Law.
2. Participate in and promote high standards of business ethics and integrity. MHBE employees must not engage in any activity intended to defraud anyone of money, property or services.
3. Perform all duties accurately and honestly.
4. Maintain appropriate levels of confidentiality as it relates to the public and other MHBE employees by protecting proprietary information and referring inquiries to designated officials.
5. Conduct business transactions with suppliers, vendors, contractors and other third parties free from offers or solicitations of gifts and favors, or other improper inducements.
6. Avoid conflicts of interest, in appearance or fact, in the conduct of all activities. In the event that there are conflicts, MHBE employees must take prompt, appropriate action to make full disclosure to the appropriate authorities.
7. Preserve and protect the MHBE's assets by making prudent and effective use of resources, property, and accurate financial reporting.

3. Due Diligence in Hiring and Contracting Process

MHBE's requires pre-employment and pre-contracting screenings of candidates, contractors and vendors to determine the status of their criminal backgrounds and whether they are sanctioned individuals or otherwise excluded from participating in a state or federally funded program. Maryland Article § 21 - 08 disallows using State funds with any individual or entity which is listed by the State as debarred, excluded or otherwise ineligible for participation in state funded programs. US Sentencing guidelines require that agencies use reasonable due diligence and take reasonable actions not to include anyone with substantial authority within the organization who has engaged in illegal activities or other conduct inconsistent with an effective compliance program. The Cumulative Sanction Report, published the DHHS Office of Inspector General, provides information on individuals and entities sanctioned and/or debarred for Medicaid and Medicare.

4. Compliance Awareness, Education and Training

Compliance and Ethics programs are only as good as the beliefs of and behaviors exhibited by employees. Therefore, MBHE provides employees with robust compliance training and materials that set expectations in a wide variety of compliance matters. At a minimum, training frequency for employees is initially within 90 days of hire, annually and when ability to comply with changes in risk level, laws, regulations or policies requires additional training. As stated, maintenance of confidentiality is essential to public trust and required by numerous laws and regulations. Therefore, upholding the highest level of privacy and security standards for

personally identifiable information (PII), protected health information (PHI) and federal tax information (FTI), as appropriate, is paramount.

Training informs employees of their obligations and responsibilities with applicable laws, regulations and policies. A key component of MHBE's compliance training includes the "to whom, by whom, what, when, where and why" for reporting of actual or suspected illegal or unethical acts or breaches of privacy and information security. Participants learn of disciplinary measures that may result from failure to act and/or report actual or suspected non-compliance.

To ensure continuous learning, MHBE utilizes a variety of venues, such as web-based training, emails, posters, and staff meetings, to reinforce compliance knowledge and adherence. Training materials undergo review to ensure they contain relevant content and information related to the audience's job responsibilities, lessons learned, the mitigation of identified risks, and changes or updates in laws, regulations or policies.

5. Audit, Monitor and Evaluate Program Effectiveness

As a State-Based Marketplace (SBM), the ACA requires MHBE "to provide oversight and monitoring of financial and programmatic activities to proactively verify that established procedures are being consistently implemented, identify and investigate instances of program violations, and identify gaps/weaknesses in established procedures." As such, functional departments perform auditing on their respective processes and protocols to ensure adherence. Auditing may be performed by individuals within the agency, contract monitors, in collaboration with the Compliance department, by State agencies (e.g. DHMH) or other independent external parties. Governmental agencies, such as the Office of Legislative Audits, Centers for Medicaid and Medicare Services and the US Department of Health and Human Services, Office of Inspector General, perform compliance audits to ensure the MBHE is compliant with applicable regulations and laws.

The Chief Compliance Officer coordinates monitoring activities to ensure that MHBE's functional departments complete performance improvement audits, create improvement plans that contain actions, timelines and objective measures of compliance for identified deficiencies or areas in need of improvement, and sustain improvements on an on-going basis. The MHBE Compliance department creates a schedule of compliance reviews for Connector entities and qualified health plans in a collaborative effort to promote adherence to requirements, regulations and procedures and prevent and/or detect fraudulent or non-compliant activities.

6. Reporting Requirements

A. Reporting Responsibility

Per the Code of Conduct, employees are to report any actual or suspected illegal or unethical behaviors promptly to their supervisor, the Compliance Officer, or through the Compliance Hotline. The Compliance Officer shall have an "open door" policy to accept reports of violations or suspected violations of the law or Policy and answer employees' questions concerning adherence to the law and to the policy.

B. Compliance Hotline

MHBE contracts with a vendor to maintain its Compliance Reporting Hotline (the Hotline) to allow employees direct access to the Compliance Officer or Hotline attendants for reporting or

questions. Employees have the option of reporting directly to a Hotline attendant or reporting using a confidential website.

The Hotline number is (855) 260-9703. The website URL is www.marylandhbe.ethicspoint.com.

The Hotline telephone number, along with the Compliance Policy, shall be distributed to all MHBE employees and shall be posted in conspicuous locations throughout all MHBE offices.

Callers who wish to remain anonymous will be provided with an ID number which identifies one individual case. Employees may use the ID numbers to report additional information and to inquire about the status of an investigation.

All information reported to the Hotline by any MHBE employee, in accordance with the MHBE Compliance Hotline Policy, shall be kept confidential to the extent that confidentiality is possible, throughout any resulting investigation. Despite the Hotline's efforts to maintain anonymity, callers are to be made aware that a caller's identity may eventually become known as a result of the investigation.

C. Non-Retaliation Policy

MHBE may not retaliate against or intimidate an employee for making a report in good faith. To do so would be to restrict the amount of transparency in which the Agency operates. State Personnel and Pensions Article of the Md. Code, Title 5, subtitle 3 disallows personnel actions to be taken as reprisal against an employee who discloses information that the employee reasonably believes evidences (1) an abuse of authority, gross mismanagement, or gross waste of money; (2) a substantial and specific danger to public health and safety; or, (3) a violation of law. Additionally, the MD Senate Bill 374 and 31 U.S.C. § 3729 et seq., False Claims Act, allows a private person, known as a relator, to bring a lawsuit on behalf of the government, where the relator "has information that the named defendant has knowingly submitted or caused the submission of false or fraudulent claims" to the government.

Any MHBE employee who makes an intentionally false statement or otherwise misuses the hotline shall be subject to disciplinary action through the appropriate channels.

7. Risk Assessments

Given the numerous stakeholders that provide services to Maryland citizens to support their use of the MBHE, mitigation of risk related to internal and external stakeholders is imperative to the integrity of the program. To be effective, MHBE's Compliance program utilizes information obtained from auditing, monitoring, and reporting to determine levels of risk and then acts so as to mitigate such risk. Annually, the Compliance Committee will prioritize risk factors, develop mitigation strategies, implement audit plans and utilize metrics to measure the effectiveness of compliance efforts. Outcomes will be reported to the Compliance Committee, Board of Trustees, and other State agencies, as required.

D. CROSS REFERENCE

- 45 CFR Part 155- Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act [45 CFR 155]
http://cfr.regstoday.com/45CFR155.aspx#45_CFR_155p260
- Health Insurance Portability and Accountability Act (HIPAA); Public Law §104-191
- Health Information Technology for Economic and Clinical Health Act (HITECH) as part of the American Recoveries and Reinvestment Act of 2009; Public Law 111-5
- 45 CFR Parts 160 and 164, Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule
- Social Security Act, 42 USC §§1171-117945 CFR Parts 160 and 164
- Guidance for Corporate Compliance Programs, US Department of Health & Human Services (HHS), Office of Inspector General.
- False Claims Act, 31 USC §§3729
- Maryland Senate Bill 374 – False Claims Act
- State Government Article, Title 10, Subtitle 13--Protection of Information by Government Agencies
- Civil Monetary Penalties Law, 42 USC §1320a7
- Health Care Fraud Act, 18 USC §1347
- Federal Anti-Referral/Anti-Kickback Laws
- State Government Article, §10-633, Annotated Code of Maryland
- Title 21 State Procurement Regulations Subtitle 08 Suspension and Debarment
- Executive Order 01.01.2015.08 Standards of Conduct for Executive Branch Employees and Reporting of Misconduct
- State Personnel and Pensions Article of the Md. Code, Title 5, subtitle 3.
- Maryland Ethics Law. State Government Article, § 15-101, Annotated Code of Maryland
- State Records Management Program, COMAR 14.18.02
- DHMH OIG-CCP