



June 27, 2013

The Honorable Thomas M. Middleton  
Chair, Finance Committee Miller  
Senate Office Building  
East Wing  
11 Bladen Street  
Annapolis, MD 21401

The Honorable Peter A. Hammen  
Chair, Health and Government Operations  
House Office Building  
Room 241  
6 Bladen Street  
Annapolis, MD 21401

**RE: Insurance Article §31-119(d)(2)(iv) Legislative Report on the Maryland Health Benefit Exchange Fraud, Waste and Abuse Detection and Prevention Program**

Dear Chairmen Middleton and Hammen:

The Maryland Health Benefit Exchange Act of 2012 requires Maryland Health Benefit Exchange (“MHBE”), which is charged with providing a marketplace for individuals and small businesses to purchase high quality, affordable health coverage, to establish a full-scale Fraud, Waste, and Abuse Detection and Prevention Program designed to ensure MHBE’s compliance with federal and State laws for the detection and prevention of fraud, waste, and abuse, including whistleblower and confidentiality protections and federal anti-kickback prohibitions, and to promote transparency, credibility, and trust on the part of the public in the integrity of its operations (Md. Code Ann., Insur. §31-119(b)(1)).

The Fraud, Waste, and Abuse Detection and Prevention Program also must meet the following requirements:

- Establish a framework for internal controls;
- Identify control cycle;
- Conduct risk assessments;
- Document processes; and
- Implement controls.

In accordance with §2-1246 of the State Government Article, MHBE is required to submit a Fraud, Waste, and Abuse Prevention and Detection Program to the Senate Finance Committee and the House Health and Government Operations Committee to allow the committees 60 days for review and comment before establishing the Program.



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The Honorable Peter A. Hammen  
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MHBE adopted the following criteria for determining how the Fraud, Waste, and Abuse Detection and Prevention Program should be structured and what actions should be implemented:

1. Meet state mandated requirements for a Fraud, Waste, and Abuse Detection and Prevention Program.
2. Meet federally recommended elements for a Compliance Program.
3. Assist MHBE Board of Trustees and Executive Director in conducting oversight and determining the effectiveness of Compliance Program in detecting and preventing Fraud, Waste, and Abuse.
4. Promote transparency, credibility, and trust in the integrity of the operations of MHBE.
5. Employ the “Best Practices” used in implementing effective Compliance Programs.

MHBE submits the enclosed Report and Recommended Actions to implement an effective Fraud, Waste, and Abuse Detection and Prevention Program and to satisfy the above program criteria. The Report and Recommended Actions implement the elements of a Compliance Program to meet the requirement that MHBE complies with federal and State laws for the detection and prevention of fraud, waste, and abuse while promoting transparency, credibility, and trust on the part of the public in the integrity of its operations. The recommended Compliance Program has been designed to be effective in preventing and detecting violations of law and addressing compliance risks.

We welcome your comments and suggestions for improving the program.

If you have any questions regarding this information, please contact the Chief Compliance Officer, Russell A. Smith at (410) 547-1816 or russell.smith@maryland.gov.

Sincerely,

Rebecca Pearce,  
Executive Director  
Maryland Health Benefit Exchange

**RECOMMENDED  
FRAUD, WASTE, AND ABUSE DETECTION AND PREVENTION  
PROGRAM**

**A Report and Recommended Actions to Senate Finance  
Committee and House Health and Government Operations  
Committee**

**Maryland Health Benefit Exchange**

**June 27, 2013**



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# **EXECUTIVE SUMMARY**

The Maryland Health Benefit Exchange Act of 2012 requires Maryland Health Benefit Exchange (“MHBE”), which is charged with providing a marketplace for individuals and small businesses to purchase high quality, affordable health coverage, to establish a full-scale Fraud, Waste, and Abuse Detection and Prevention Program designed to ensure MHBE’s compliance with federal and State laws for the detection and prevention of fraud, waste, and abuse, including whistleblower and confidentiality protections and federal anti-kickback prohibitions, and to promote transparency, credibility, and trust on the part of the public in the integrity of its operations (Md. Code Ann., Insur. §31-119(b)(1)).

The Fraud, Waste, and Abuse Detection and Prevention Program also must meet the following requirements:

- Establish a framework for internal controls;
- Identify control cycle;
- Conduct risk assessments;
- Document processes; and
- Implement controls.

In accordance with §2-1246 of the State Government Article, MHBE is required to submit a Fraud, Waste, and Abuse Detection and Prevention Program to the Senate Finance Committee and the House Health and Government Operations Committee to allow the committees 60 days for review and comment before establishing the Program.

MHBE submits the enclosed Report and Recommended Actions to implement an effective Fraud, Waste, and Abuse Detection and Prevention Program.

## **MHBE FRAUD, WASTE, AND ABUSE DETECTION AND PREVENTION PROGRAM CRITERIA**

MHBE adopted the following criteria for determining how the Fraud, Waste, and Abuse Detection and Prevention Program should be structured and what actions should be implemented:

1. Meet state mandated requirements for a Fraud, Waste, and Abuse Detection and Prevention Program.
2. Meet federally recommended elements for a Compliance Program.
3. Assist MHBE Board of Trustees and Executive Director in conducting oversight and determining the effectiveness of Compliance Program in detecting and preventing Fraud, Waste, and Abuse.
4. Promote transparency, credibility, and trust in the integrity of the operations of MHBE.
5. Employ the “Best Practices” used in implementing effective Compliance Programs.

## RECOMMENDED ACTIONS

The Report and Recommended Actions implement the elements of a Compliance Program to meet the requirement that MHBE complies with federal and State laws for the detection and prevention of fraud, waste, and abuse while promoting transparency, credibility, and trust on the part of the public in the integrity of its operations. The recommended Compliance Program has been designed to be effective in preventing and detecting violations of law and addressing compliance risks.

The Report and Recommended Actions provide the reasons for each required element of a Compliance Program and delineates the specific recommended actions and implementation schedule that MHBE believes are necessary to satisfy the criteria for implementing and maintaining an effective Fraud, Waste, and Abuse Detective and Prevention Program. You will note, at times, that MHBE has already begun to implement some of the recommended actions in order to address compliance risks that may occur prior to your completed review of the recommended Fraud, Waste, and Abuse Detection and Prevention Program.

### Summary of Compliance Program Required Actions and Implementation Schedule

Compliance Program Actions	Implementation Schedule
<b>Written Policies and Procedures</b>	
1. MHBE has adopted and implemented a Code of Conduct that contains ethical and compliance principles that guide individual and organizational behavior.	Completed
2. MHBE is developing a Contract Oversight Policy and Procedure that will provide monitoring and other controls used in conducting oversight over contractors and other third parties to ensure attainment of compliance and performance goals.	July 12, 2013
3. MHBE has adopted a Compliance Records Policy and Procedure that provides standards for maintaining compliance office records.	Completed
4. MHBE has adopted a Compliance Investigations Policy and Procedure that describes the process and standards for conducting compliance investigations to detect possible violations in laws,	Completed

regulations, policies and procedures, and the Code of Conduct.	
5. MHBE has adopted a Confidentiality of Protected Health Information Policy and Procedure that protects the confidentiality of Protected Health Information (PHI) and ensures compliance with HIPAA and state privacy requirements.	Completed
6. MHBE has adopted a Policy and Procedure Approval and Oversight Policy and Procedure that establishes an approval process for operational policies and procedures.	Completed
7. MHBE shall obtain through a competitive solicitation and implement an Automated Policy and Procedure Document Management and Control System that contains the following features: search capability, display and update approval status and history, and links to laws and regulatory database. Compliance programs should provide for the implementation of a records system that provides for the creation, distribution, retention, storage, retrieval, and destruction of documents.	September 13, 2013
<b>Compliance Officer and Executive Compliance Committee</b>	
1. MHBE has appointed a Chief Compliance Officer who reports directly to the MHBE Executive Director and the Board of Trustees.	Completed
2. MHBE has adopted an Executive Compliance Committee Policy and Procedure that defines the responsibilities of the compliance committee and its role in conducting risk assessments and provides for the development of risk management plans.	Completed
3. MHBE has established an Executive Compliance Committee, which consists of the Chief Compliance Officer, who will	Completed

serve as chair; the Chief Operating Officer; the Chief Financial Officer; the Chief Information Officer; the Director-Plan Management and Channel Partner Services; the Assistant Attorney General; the Human Resources Manager; and the Inspector General of the Department of Health and Mental Hygiene.	
4. MHBE will develop and implement Compliance Resource Plan, which will be based on identified risks through risk assessments to ensure that sufficient and appropriate resources address high-risk areas.	November 29, 2013
<b>Education and Training Programs</b>	
1. MHBE has adopted a Compliance Education and Training Policy and Procedure that details annual training requirements and requires disciplinary actions for those who do not complete training requirements.	Completed
2. MHBE will incorporate compliance curriculum in required training for Application Counselors, Assisters, Caseworkers, MHBE employees, Navigators, and Producers.	September 20, 2013
3. MHBE will adopt training topics that mitigate risks associated with the implementation of the Maryland Health Benefit Exchange Act of 2012 -- HIPAA Privacy and Security Standards, Federal and State Fraud Laws, Federal and State Conflict of Interest regulations, and Anti-Kickback Law.	September 20, 2013



<b>Lines of Communication</b>	
1. MHBE has adopted a Hotline Policy and Procedure that defines the operation of MHBE Hotline.	Completed
2. MHBE will adopt a Non-Retaliation Policy and Procedure that protects employees who report problems and concerns in good faith from retaliation, retribution, or harassment.	July 19, 2013
3. MHBE will obtain through a competitive solicitation hotline services.	September 13, 2013
4. MHBE will require Connector Entities to implement lines of communication for reporting fraud, waste, and abuse.	August 9, 2013
<b>Audits, Monitoring, and Risk Assessments</b>	
1. MHBE has executed a Memorandum of Agreement with Department of Health and Mental Hygiene (“DHMH”) Office of Inspector General to provide resource support for suspected fraud investigations. MHBE will work with the DHMH OIG to operate its fraud, waste and abuse detection and prevention program. The DHMH OIG is well-suited for this role because it is currently the agency primarily responsible for preventing and detecting fraud and abuse in Medicaid eligibility determinations.	Completed
2. MHBE will adopt and implement the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Control – Integrated Framework, which sets out the components and principles for an effective system of internal control.	November 1, 2013

<p>3. MHBE will conduct risk assessments of Maryland Health Benefit Exchange activities. Because there is no state entity that currently has direct experience with potential fraud issues involving many of the activities of MHBE, conducting risk assessments will be critical to identifying vulnerabilities and developing internal controls.</p>	<p>December 6, 2013</p>
<p>4. MHBE will develop and implement a Risk Based Audit Plan based on the results of the risk assessments.</p>	<p>December 6, 2013</p>
<p><b>Prohibition against hiring sanctioned and barred Individuals and Companies</b></p>	
<p>1. MHBE has adopted a Sanctions and Exclusion Policy and Procedure that excludes entities and individuals from doing business with the MHBE that have been prohibited from participating in federal health program or debarred from State contracts.</p>	<p>Completed</p>
<p>2. MHBE conducts background checks on all prospective employees.</p>	<p>Completed</p>
<p>3. MHBE will adopt an Enforcement and Discipline Policy and Procedure that provides uniform enforcement and discipline for violations of Code of Conduct, regulations, and policies and procedures.</p>	<p>July 19, 2013</p>

<b>Prompt and Proper Response to Detected Offenses</b>	
1. MHBE has adopted a Corrective Action Policy and Procedure that establishes a process for correcting noncompliance.	Completed
2. MHBE will adopt a Misconduct and Disclosure Policy and Procedure that establishes a process for addressing potential or actual misconduct.	July 19, 2013
<b>Compliance Program Effectiveness</b>	
1. The MHBE Compliance Officer will submit annually a Compliance Performance Report to MHBE Board of Trustees and Executive Director.	January 17, 2014
2. MHBE Board of Trustees will adopt performance measures for evaluating the Compliance Program: <ul style="list-style-type: none"> <li>• Number of Hotline Complaints</li> <li>• Employee Hours of Compliance Training</li> <li>• Number of Investigations and Referrals</li> <li>• Actions taken on Investigations and Referrals</li> <li>• Compliance Audits and Corrective Actions</li> <li>• Stakeholder Compliance Questionnaire Results</li> <li>• Employee Compliance Questionnaire Results</li> <li>• Financial Recoveries</li> </ul>	September 6, 2013
3. The MHBE Compliance Officer will estimate annually the financial impact of not implementing a Compliance Program.	January 17, 2014

## **I. INTRODUCTION**

### **A. Legislative Requirements**

The Maryland Health Benefit Exchange Act of 2012 requires Maryland Health Benefit Exchange (“MHBE”), which is charged with providing a marketplace for individuals and small businesses to purchase high quality, affordable health coverage, to establish a full-scale Fraud, Waste, and Abuse Detection and Prevention Program designed to ensure MHBE’s compliance with federal and State laws for the detection and prevention of fraud, waste, and abuse, including whistleblower and confidentiality protections and federal anti-kickback prohibitions, and to promote transparency, credibility, and trust on the part of the public in the integrity of its operations (Md. Code Ann., Insur. §31-119(b)(1)).<sup>1</sup>

The Fraud, Waste, and Abuse Detection and Prevention Program also must meet the following requirements:

- Establish a framework for internal controls;
- Identify control cycle;
- Conduct risk assessments;
- Document processes; and
- Implement controls.

In accordance with §2-1246 of the State Government Article, MHBE is required to submit Fraud, Waste, and Abuse Prevention and Detection Program to the Senate Finance Committee and the House Health and Government Operations to allow the committees 60 days for review and comment before establishing the Program.

### **B. Development of Fraud, Waste, and Abuse Program**

In determining what elements should be included in an effective Fraud, Waste, and Abuse Detection and Prevention Program, MHBE identified and used three sources — U.S. Sentencing Commission Compliance Guidelines for Organizations; Department of Health and Human Services, Office of the Inspector General Compliance Guidelines; and Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight (“CCIIO”), Fraud, Waste, and Abuse Program Requirements:

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#### <sup>1</sup> **Fraud, Waste, and Abuse Definitions —**

**Fraud** — An intentional act of deception, misrepresentation or concealment in order to gain something of value.

**Waste** — Involves the taxpayers not receiving reasonable value for money in connection with any government funded activities due to an inappropriate act or omission by persons with control over or access to government resources (e.g., executive, judicial or legislative branch employees, grantees or other recipients). Importantly, waste goes beyond fraud and abuse and most waste does not involve a violation of law. Rather, waste relates primarily to mismanagement, inappropriate actions and inadequate oversight (Department of Defense, OIG).

**Abuse** — Involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate. Abuse does not necessarily involve fraud, violation of laws, regulations, or provisions of a contract or grant agreement. (Department of Defense, OIG)

## **U.S. Sentencing Commission**

The primary impetus behind the development of compliance programs was the creation of the United States Sentencing (“Commission”) in the 1980s. The Commission developed Compliance Guidelines for Organizations (“Guidelines”) that are mandated in the sentencing process. The Guidelines encourage organizations to develop “effective programs to prevent and detect violations of law” and prescribe seven “types of steps” that should be included in an effective program. Under the Guidelines, “compliance and ethics program” means a program designed to prevent and detect criminal conduct. The Guidelines stated that such compliance and ethics program shall be reasonably designed, implemented, and enforced so that the program is generally effective in preventing and detecting criminal conduct.

## **U.S. Department of Health and Human Services, Office of the Inspector General Compliance Guidelines**

The U.S. Department of Health and Human Services, Office of the Inspector General (“Inspector General”) incorporates the Guidelines from the U.S. Sentencing Commission in its compliance guidance documents. Beginning in February 1997, the Inspector General began adapting the seven steps, or elements, of the Guidelines into its compliance guidance for hospitals and other entities. The Inspector General Compliance Plan Guidance assists in the development of effective internal controls that promote adherence to applicable federal and state laws and regulations, mitigate risks, and prevent and detect fraud, waste, and abuse.

## **Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, Fraud, Waste, and Abuse Program Requirements**

In developing the Fraud, Waste, and Abuse Detection and Prevention Program, MHBE sought guidance from the CCIIO, which is the federal oversight agency for MHBE, on what criteria would satisfy its requirements for a Fraud, Waste, and Abuse Detection and Prevention Program. In response to MHBE’s request for guidance, CCIIO recommended that MHBE implement the elements of a compliance program, which would meet the requirements for a Fraud, Waste, and Abuse Detection and Prevention Program.

## **C. Maryland Health Benefit Exchange Fraud, Waste, and Abuse Detection and Prevention Program Criteria**

MHBE adopted the following criteria for determining how the Fraud, Waste, and Abuse Detection and Prevention Program should be structured and what actions should be implemented:

1. Meet state mandated requirements for a Fraud, Waste, and Abuse Detection and Prevention Program.
2. Meet federally recommended elements for a Compliance Program.
3. Assist MHBE Board of Trustees and Executive Director in conducting oversight and determining the effectiveness of Compliance Program in detecting and preventing Fraud, Waste, and Abuse.
4. Promote transparency, credibility, and trust in the integrity of the operations of MHBE.
5. Employ the “Best Practices” used in implementing effective Compliance Programs.

## **II. Compliance Program Requirements (Seven Elements)**

MHBE believes that following Compliance Elements satisfy the criteria that the MHBE has established for an effective Fraud, Waste, and Abuse Detection and Prevention Program. MHBE recommends that the following actions be implemented.

### **A. Compliance Program Element One — The development and distribution of written standards of conduct and written policies and procedures that memorialize the organization’s commitment to compliance and integrity and address specific areas of Fraud, Waste, and Abuse.**

#### **Discussion — Written Policies and Procedures**

The United States Sentencing Guidelines identify the establishment of compliance standards and procedures as the first of the seven essential elements of an effective compliance program. The organization must have documented compliance standards and procedures that are followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal conduct. Reducing the prospect of criminal conduct is accomplished by developing and adhering to policies and procedures that are designed to address and mitigate inherent risks for the organization.

Another purpose of policies and procedures is to document and to implement the other elements of an effective compliance plan.

#### **Required Actions**

1. MHBE has adopted and implemented a Code of Conduct that contains ethical and compliance principles that guide individual and organizational behavior.
2. MHBE is developing a Contract Oversight Policy and Procedure that will provide monitoring and other controls used in conducting oversight over contractors and other third parties to ensure attainment of compliance and performance goals.
3. MHBE has adopted a Compliance Records Policy and Procedure that provides standards for maintaining compliance office records.
4. MHBE has adopted a Compliance Investigations Policy and Procedure that describes the process and standards for conducting compliance investigations to detect possible violations in laws, regulations, policies and procedures, and the Code of Conduct.
5. MHBE has adopted a Confidentiality of Protected Health Information Policy and Procedure that protects the confidentiality of Protected Health Information (PHI) and ensures compliance with HIPAA and state privacy requirements.
6. MHBE has adopted a Policy and Procedure Approval and Oversight Policy and Procedure that establishes an approval process for operational policies and procedures.
7. MHBE will obtain through a competitive procurement and implement an Automated Policy and Procedure Document Management and Control System that contains the following features: search capability, display and update approval status and history, and links to laws and regulatory database. Compliance programs should provide for the

implementation of a records system that provides for the creation, distribution, retention, storage, retrieval, and destruction of documents.

**B. Compliance Program Element Two — Designation of a Compliance Officer who reports directly to the Executive Officer and has direct access to the Board of Trustees and an Executive Compliance Committee charged with the responsibility for developing, operating, and monitoring the effectiveness of the Compliance Program.**

**Discussion — Compliance Officer and Executive Compliance Committee**

**Compliance Officer**

The U.S. Sentencing Commission 2012 Guidelines provide that “the organization’s governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program.

High-level personnel of the organization shall ensure that the organization has an effective compliance and ethics program, as described in this guideline. Specific individual(s) within high-level personnel shall be assigned overall responsibility for the compliance and ethics program.

Specific individual(s) within the organization shall be delegated day-to-day operational responsibility for the compliance and ethics program. Individual(s) with operational responsibility shall report periodically to high-level personnel and, as appropriate, to the governing authority, or an appropriate subgroup of the governing authority, on the effectiveness of the compliance and ethics program. To carry out such operational responsibility, such individual(s) shall be given adequate resources, appropriate authority, and direct access to the governing authority or an appropriate subgroup of the governing authority.”

The Compliance Officer ultimately is responsible for implementing each of the elements of the Compliance Program. In order to perform that responsibility, the compliance officer should also have sufficient authority and resources to implement the compliance program. His authority is assured by his location in the organization and accessibility to the Board.

The Compliance Officer must have the authority to conduct independent reviews and evaluations of any and all management operations and activities to determine the organization’s achievement of objectives:

- Efficient and effective program operations;
- Reliability, consistency, and integrity of financial and operating information; and
- Compliance with policies, plans, standards, laws, and regulations that could have a significant impact upon operations.

In order to perform this responsibility, the compliance officer must have access to contracts, personnel records, and financial and program documents.

**Executive Compliance Committee**

The Executive Compliance Committee is an interdepartmental group formed to assist in the design, implementation, and operation of a compliance program. The compliance committee

brings together managers and resources from various parts of the organization. The committee may provide an advisory role — serving as a sounding board for the consideration of ideas and concerns.

The Executive Compliance Committee should also be structured to address the various areas of significant organizational risks. Individuals with varying responsibilities and areas of knowledge in the organization, such as operations, finance, audit, human resources, and legal should be represented on the compliance committee.

### **Required Actions**

1. MHBE has appointed a Chief Compliance Officer who reports directly to the MHBE Executive Officer and the Board of Trustees.
2. MHBE has adopted an Executive Compliance Committee Policy and Procedure that defines the responsibilities of the compliance committee and its role in conducting risk assessments and provides for the development of risk management plans.
3. MHBE has established an Executive Compliance Committee, which consists of the Chief Compliance Officer, who will serve as chair; the Chief Operating Officer; the Chief Financial Officer; the Chief Information Officer; the Director-Plan Management and Channel Partner Services; the Assistant Attorney General; the Human Resources Manager; and the Inspector General of the Department of Health and Mental Hygiene.
4. MHBE will develop and implement Compliance Resource Plan, which will be based on risks identified through risk assessments to ensure that adequate and cost effective levels of resources and personnel are available to address high-risk areas.

### **C. Compliance Program Element Three — The Development and Implementation of the regular, effective education and training programs for affected employees.**

#### **Discussion — Education and Training Programs**

The U.S. Sentencing Commission 2012 Guidelines provide that “the organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals referred to in the following paragraph by conducting effective training programs and otherwise disseminating information appropriate to such individuals respective roles and responsibilities.

Every employee, contractor, or any other individual that functions on behalf of the organization must possess the necessary skills and knowledge to perform his/her role in compliance with laws, regulations, and other standards.”

The HHS Inspector General in his compliance guidance recommends that attendance and participation in training programs should be considered a factor in performance evaluation and that failure to comply with training requirements should result in disciplinary action.



## **Required Actions**

1. MHBE has adopted a Compliance Education and Training Policy and Procedure that details annual training requirements and requires disciplinary actions for those who do not meet training requirements.
2. MHBE will incorporate compliance curriculum in required training for Application Counselors, Assistants, Caseworkers, MHBE employees, Navigators, and Producers.
3. MHBE will adopt training topics that mitigate specific risks associated with the implementation of the Maryland Health Benefit Exchange Act of 2012 — HIPAA Privacy and Security Standards, Federal and State Fraud Laws, Federal and State Conflict of Interest regulations and Anti-Kickback Law.

### **D. Compliance Program Element Four — The creation and maintenance of an effective lines of communication to receive complaints and questions and the adoption of policies and procedures to protect the confidentiality of complainants and to protect whistleblowers from retaliation.**

#### **Discussion — Lines of Communication**

The U.S. Sentencing Commission 2012 Guidelines provide that “the organization shall take reasonable steps to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization’s employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.”

The use of anonymous hotlines, e-mails, written memoranda, newsletters, and other forms of information should be used to facilitate open lines of communication.

Several important policies must be adopted and communicated to employees to ensure the mechanism’s effectiveness. These policies deal with:

- Ensuring the confidentiality of the information in the report and the individual making the report;
- Guaranteeing that no retaliatory disciplinary actions will be taken against an individual making a “good-faith” report; and
- Detailing the steps of the investigatory process to ensure consistency and completeness.

Lastly, the organization must undertake efforts to publicize the lines of communication.

## **Required Actions**

1. MHBE has adopted a Hotline Policy and Procedure that defines the operation of MHBE Hotline.
2. MHBE will adopt a Non-Retaliation Policy and Procedure that protects employees who report problems and concerns in good faith from retaliation, retribution, or harassment.
3. MHBE will obtain through a competitive procurement hotline services.
4. MHBE will require Connector Entities to implement lines of communication for reporting fraud, waste, and abuse.

**E. Compliance Program Element Five — The use of audits and/or other risk evaluation techniques to monitor compliance, identify problem areas and assist in the reduction of identified problems.**

**Discussion — Audits, Monitoring, and Risk Assessments**

The U.S. Sentencing Commission 2012 Guidelines provide that “the organization shall take reasonable steps to ensure that the organization’s compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct.” Guidelines also provides “The organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each requirement to reduce the risk of criminal conduct identified through this process.”

The HHS Inspector General defines auditing as “an ongoing evaluation process is critical to a successful compliance program.

The legislation that authorizes the establishment of a Fraud, Waste, and Abuse Detection and Prevention Program requires the adoption of a framework for internal control. Internal control is a process, effected by an entity’s board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting, and compliance. The Internal Control Framework sets out the components and principles for an effective system of internal control.

In 1992 the Committee of Sponsoring Organizations of the Treadway Commission (COSO) released its Internal Control-Integrated Framework. The COSO Internal Control Framework is widely used around the world for designing, implementing, and conducting internal control and identifying and controlling risks.

**Required Actions**

1. MHBE has executed a Memorandum of Agreement with Department of Health and Mental Hygiene (“DHMH”) Office of Inspector General to provide resource support for suspected fraud investigations. The MHBE will work with the DHMH OIG to operate its fraud, waste and abuse detection and prevention program. The DHMH OIG is well-suited for this role because it is currently the agency primarily responsible for preventing and detecting fraud and abuse in Medicaid eligibility determinations.
2. MHBE shall adopt and implement the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Control – Integrated Framework, which sets out the components and principles for an effective system of internal control.
3. MHBE shall conduct risk assessments of activities. Because there is no state entity that currently has direct experience with potential fraud issues involving many of the activities of MHBE, conducting risk assessments will be critical to identifying vulnerabilities and developing internal controls.
4. MHBE shall develop and implement a Risk Based Audit Plan based on the results of the risk assessments.

## **Discussion — Prohibition against hiring sanctioned and barred Individuals and Companies**

**Compliance Program Element Six — The development of policies and procedures addressing the non-employment or retention of individuals from participation in federal health programs, and the enforcement of appropriate disciplinary actions against employees and contractors who have violated Exchange policies and procedures and/or applicable federal health care program and state debarment requirements.**

The U.S. Sentencing Commission 2012 Guidelines provide that “The organization shall use reasonable efforts not to include within the substantial authority personnel of the organization any individual who the organization knew, or should have known through the exercise of due diligence, has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics program.

The organization’s compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; and (B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.”

The Inspector General Guidelines suggest that reasonable and prudent background investigations, including reference checks, should be made a part of the employment application process for new employees who have discretionary authority involving compliance with the law or compliance oversight. Background investigations are also recommended for vendors and contractors that provide supplies and /or services to the organization.

The Inspector General Guidelines also suggest that organizations use screening mechanisms to preclude employing or engaging in business relationships with individuals and entities previously convicted of criminal violations or formerly the subject of sanctioning, debarment, exclusion, or other adverse action that could affect their compliance with applicable laws and regulations.

The Maryland Board of Public Works maintains a list of barred individuals and companies that public agencies and the State of Maryland are prohibited from hiring and contracting with.

### **Required Actions**

1. MHBE has adopted a Sanctions and Exclusion Policy and Procedure that excludes entities and individuals from doing business with the MHBE that have been prohibited from participating in federal health program or debarred from State contracts.
2. MHBE conducts background checks on all prospective employees.
3. MHBE will adopt an Enforcement and Discipline Policy and Procedure that provides uniform enforcement and discipline for violations of Code of Conduct, regulations, and policies and procedures.

**Compliance Program Element Seven — The development of policies and procedures for the investigation of identified instances of non-compliance or misconduct. These should include directives regarding the prompt and proper response to detected offenses, such as**

**the initiation of appropriate corrective actions and preventive measures and processes to report the offense to relevant authorities in appropriate circumstances.**

### **Discussion – Prompt and Proper Response to Detected Offenses**

The U.S. Sentencing Commission 2012 Guidelines provide that “after criminal conduct has been detected, the organization shall take reasonable steps to respond appropriately to the criminal conduct and to prevent further similar criminal conduct, including making any necessary modifications to the organization’s compliance and ethics program.”

The Inspector General calls for uniform enforcement that takes into consideration the gravity of the infraction and progressive penalties or repeat offenders. It also calls for publishing and disseminating the range of disciplinary standards for improper conduct and educating officers and other staff regarding these standards.

The Compliance Officer should handle all issues consistently to ensure that the integrity of the office is maintained and that all matters receive appropriate attention.

Intentional or reckless non-compliance warrants the meting out of significant sanctions. Such sanctions could range from oral warnings to suspension, financial penalties, or termination, as appropriate.

### **Required Actions**

1. MHBE has adopted a Corrective Action Policy and Procedure that establishes a process for correcting noncompliance.
2. MHBE will adopt a Misconduct and Disclosure Policy and Procedure that establishes a process for addressing potential or actual misconduct.

### **III. Compliance Program Effectiveness**

#### **Discussion**

The U.S. Sentencing Commission 2012 Guidelines provide that “the organization shall take reasonable steps to evaluate periodically the effectiveness of the organization’s compliance and ethics program.” An effective compliance program should incorporate periodic reviews of whether the program’s compliance elements have been satisfied.

#### **Required Actions**

1. The Chief Compliance Officer will submit annually a Compliance Performance Report to MHBE Board of Trustees and Executive Director.
2. MHBE Board of Trustees will adopt the performance measures for evaluating the Compliance Program:
  - Number of Hotline Complaints
  - Employee Hours of Compliance Training
  - Number of Investigations and Referrals
  - Actions taken on Investigations and Referrals
  - Compliance Audits and Corrective Actions
  - Stakeholder Compliance Questionnaire Results
  - Employee Compliance Questionnaire Results
  - Financial Recoveries
3. The Chief Compliance Officer will estimate annually the financial impact of not implementing a Compliance Program.

#### IV. Summary of Compliance Program Required Actions and Implementation Schedule

Compliance Program Actions	Implementation Schedule
<b>Written Policies and Procedures</b>	
1. MHBE has adopted and implemented a Code of Conduct that contains ethical and compliance principles that guide individual and organizational behavior.	Completed
2. MHBE is developing a Contract Oversight Policy and Procedure that will provide monitoring and other controls used in conducting oversight over contractors and other third parties to ensure attainment of compliance and performance goals.	July 12, 2013
3. MHBE has adopted a Compliance Records Policy and Procedure that provides standards for maintaining compliance office records.	Completed
4. MHBE has adopted a Compliance Investigations Policy and Procedure that describes the process and standards for conducting compliance investigations to detect possible violations in laws, regulations, policies and procedures, and the Code of Conduct.	Completed
5. MHBE has adopted a Confidentiality of Protected Health Information Policy and Procedure that protects the confidentiality of Protected Health Information (PHI) and ensures compliance with HIPAA and state privacy requirements.	Completed
6. MHBE has adopted a Policy and Procedure Approval and Oversight Policy and Procedure that establishes an approval process for operational policies and procedures.	Completed
7. MHBE shall obtain through a competitive procurement and implement an Automated Policy and Procedure Document Management and Control	September 13, 2013

System that contains the following features: search capability, display and update approval status and history, and links to laws and regulatory database. Compliance programs should provide for the implementation of a records system that provides for the creation, distribution, retention, storage, retrieval, and destruction of documents.	
<b>Compliance Officer and Executive Compliance Committee</b>	
1. MHBE has appointed a Chief Compliance Officer who reports directly to the MHBE Executive Director and the Board of Trustees.	Completed
2. MHBE has adopted an Executive Compliance Committee Policy and Procedure that defines the responsibilities of the compliance committee and its role in conducting risk assessments and provides for the development of risk management plans.	Completed
3. MHBE has established an Executive Compliance Committee, which consists of the Chief Compliance Officer, who will serve as chair; the Chief Operating Officer; the Chief Financial Officer; the Chief Information Officer; the Director-Plan Management and Channel Partner Services; the Assistant Attorney General; the Human Resources Manager; and the Inspector General of the Department of Health and Mental Hygiene.	Completed
4. MHBE will develop and implement Compliance Resource Plan, which will be based on identified risks through risk assessments to ensure that sufficient and appropriate resources address high-risk areas.	November 29, 2013

<b>Education and Training Programs</b>	
1. MHBE has adopted a Compliance Education and Training Policy and Procedure that details annual training requirements and requires disciplinary actions for those who do not complete training requirements.	Completed
2. MHBE will incorporate compliance curriculum in required training for Application Counselors, Assisters, Caseworkers, MHBE employees, Navigators, and Producers.	September 20, 2013
3. MHBE will adopt training topics that mitigate risks associated with the implementation of the Maryland Health Benefit Exchange Act of 2012 -- HIPAA Privacy and Security Standards, Federal and State Fraud Laws, Federal and State Conflict of Interest regulations, and Anti-Kickback Law.	September 20, 2013
<b>Lines of Communication</b>	
1. MHBE has adopted a Hotline Policy and Procedure that defines the operation of MHBE Hotline.	Completed
2. MHBE will adopt a Non-Retaliation Policy and Procedure that protects employees who report problems and concerns in good faith from retaliation, retribution, or harassment.	July 19, 2013
3. MHBE will obtain through a competitive procurement hotline services.	September 13, 2013
4. MHBE will require Connector Entities to implement lines of communication for reporting fraud, waste, and abuse.	August 9, 2013
<b>Audits, Monitoring, and Risk</b>	



<b>Assessments</b>	
<p>1. MHBE has executed a Memorandum of Agreement with Department of Health and Mental Hygiene (“DHMH”) Office of Inspector General to provide resource support for suspected fraud investigations. MHBE will work with the DHMH OIG to operate its fraud, waste and abuse detection and prevention program. The DHMH OIG is well-suited for this role because it is currently the agency primarily responsible for preventing and detecting fraud and abuse in Medicaid eligibility determinations.</p>	<p>Completed</p>
<p>2. MHBE will adopt and implement the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Control – Integrated Framework, which sets out the components and principles for an effective system of internal control.</p>	<p>November 1, 2013</p>
<p>3. MHBE will conduct risk assessments of Maryland Health Benefit Exchange activities. Because there is no state entity that currently has direct experience with potential fraud issues involving many of the activities of MHBE, conducting risk assessments will be critical to identifying vulnerabilities and developing internal controls.</p>	<p>December 6, 2013</p>
<p>4. MHBE will develop and implement a Risk Based Audit Plan based on the results of the risk assessments.</p>	<p>December 6, 2013</p>
<b>Prohibition against hiring sanctioned and barred Individuals and Companies</b>	
<p>1. MHBE has adopted a Sanctions and Exclusion Policy and Procedure that excludes entities and individuals from doing business with the MHBE that have been prohibited from participating in</p>	<p>Completed</p>

federal health program or debarred from State contracts.	
2. MHBE conducts background checks on all prospective employees.	Completed
3. MHBE will adopt an Enforcement and Discipline Policy and Procedure that provides uniform enforcement and discipline for violations of Code of Conduct, regulations, and policies and procedures.	July 19, 2013
<b>Prompt and Proper Response to Detected Offenses</b>	
1. MHBE has adopted a Corrective Action Policy and Procedure that establishes a process for correcting noncompliance.	Completed
2. MHBE will adopt a Misconduct and Disclosure Policy and Procedure that establishes a process for addressing potential or actual misconduct.	July 19, 2013
<b>Compliance Program Effectiveness</b>	
1. The MHBE Compliance Officer will submit annually a Compliance Performance Report to MHBE Board of Trustees and Executive Director.	January 17, 2014
2. MHBE Board of Trustees will adopt following performance measures for evaluating the Compliance Program: <ul style="list-style-type: none"> <li>• Number of Hotline Complaints</li> <li>• Employee Hours of Compliance Training</li> <li>• Number of Investigations and Referrals</li> <li>• Actions taken on Investigations and Referrals</li> <li>• Compliance Audits and Corrective</li> </ul>	September 6, 2013

<p>Actions</p> <ul style="list-style-type: none"> <li>• Stakeholder Compliance Questionnaire Results</li> <li>• Employee Compliance Questionnaire Results</li> <li>• Financial Recoveries</li> </ul>	
<p>3. The MHBE Compliance Officer will estimate annually the financial impact of not implementing a Compliance Program.</p>	<p>January 17, 2014</p>

## **V. References**

Center for Consumer Information and Insurance Oversight (CCIIO) Fraud, Waste, and Abuse Program Requirement.

The Committee of Sponsoring Organizations of the Treadway Commission (COSO)'s Internal Integrated Framework May 2013.

OIG Compliance Program for Hospitals 70 FR 4858 (January 31, 2005), OIG Supplemental Compliance Program for Hospitals.

2012 Federal Sentencing Guidelines Manual, Chapter 8, §8B2.1. "Effective Compliance and Ethics Program".