# 101 – MARKETING

EFFECTIVE DATE: 10/01/10, 01/19/12, 08/01/13, 05/01/14, 10/01/15

REVISION DATE: 11/08/10, 01/19/12, 08/01/13, 03/20/14, 06/30/14, 08/20/15

STAFF RESPONSIBLE FOR POLICY: DHCM OPERATIONS

## I. PURPOSE

This Policy applies to Acute Care, ALTCS/EPD, CRS, and DES/DDD (DDD) Contractors. This Policy establishes guidelines and restrictions for Contractors regarding marketing activities related to the AHCCCS program.

## II. DEFINITIONS

**DUAL ELIGIBLE** A member who is eligible for both Medicare and Medicaid.

**DUAL MARKETING** Marketing efforts specifically targeting a Contractor enrollee who is eligible for Medicare and Medicaid.

**ENROLLEE** A Medicaid recipient who is currently enrolled with a Contractor 42 CFR 438.10(a).

**FINANCIAL SPONSOR** Any monies or in kind contributions provided to an organization, other than attendance fees or table fees, to help offset the cost of an event.

**HEALTH MESSAGE** A slogan or statement on marketing materials to promote healthy lifestyles, situations that affect or influence health status, behaviors that affect or influence health status, or methods or modes of medical treatment.

**MARKETING** Any communication from Contractors to a member that can reasonably be interpreted as intended to influence the member to enroll or disenroll with that particular Contractor as described in 42 CFR 438.104. For the purposes of this Policy, Marketing contrasts with Member Information found in Policy 404, which addresses guidelines and restrictions for Contractors related to member and potential enrollee information and activities and can be distinguished as identified in Figure 2.

| | |
|---|---|
| **MARKETING MATERIALS** | Materials produced in any medium, by or on behalf of the Contractor that can reasonably be interpreted as intended for marketing purposes. This includes general audience materials such as general circulation brochures, Contractor's web site and other materials that are designed, intended, or used to increase Contractor membership or establishing a brand. Examples include, but are not limited to: scripts or outlines for member services representatives, provider directories, brochures or leaflets that are distributed or circulated by any third party (including providers), and posters. |
| **POTENTIAL ENROLLEE** | A Medicaid-eligible recipient who is not yet enrolled with a Contractor as described in 42 CFR 438.10 (a); or an Enrollee during Annual Enrollment Choice (AEC). |
| **PROMOTION** | Any activity in which marketing materials are given away or displayed where the intent is to increase the Contractor's membership. |
| **SOCIAL NETWORKING APPLICATIONS** | Web based services (excluding the Contractor's State mandated website content, member portal, and provider portal) that provide a variety of ways for users to interact, such as e-mail, comment posting, image sharing, invitation and instant messaging services. |

## III. POLICY

Contractors' marketing activities are limited to those defined by this Policy. As required within 42 CFR 438.104, marketing materials may only be utilized if they are approved by AHCCCS and comport to this Policy. In addition to approval of advertising copy, approval of the publication in which the ad will be placed is also required.

### A. MARKETING MATERIALS, GIVE-AWAYS, SPONSORSHIP AND EVENTS

1. Materials and Give-Aways

   Member materials that have been previously approved as member information under ACOM Policy 404 may be used during marketing activities only if included in a specific activity request submitted to AHCCCS.

   The Contractor shall ensure that:

   a. Any marketing item (give-away) to the general public by the Contractor shall not exceed $10.00.

b. Give-away items are health related (e.g. toothbrush, dental floss) or if non-health related (e.g. cups, key chains, buttons, t-shirts), include a health message (e.g. Don't Smoke, Get Your Flu Shot).
c. All materials identify the Contractor as an AHCCCS provider and are consistent with the requirements for information to members described in the contract and AHCCCS policies.
d. All materials that have been produced by the Contractor and refer to contract services shall specify: **"Contract services are funded in part under contract with the State of Arizona"**.
e. Marketing materials that are distributed by the Contractor shall be distributed to its entire contracted Geographic Service Area (GSA). Exclusion of any particular group or class of members would be considered to be a discriminatory marketing practice and subject to sanction.
f. The Contractor does not encourage or induce a member to select a particular Contractor when completing the application and may not complete any portion of the application on behalf of the potential enrollee. This prohibition covers all situations, whether sponsored by the Contractor, their parent company, or any other entity.
g. The Contractor is responsible for ensuring its subcontractors comply with this Policy. Failure of a subcontracted provider to adhere to this Policy may result in sanctions/penalties to the Contractor contracted with such a provider.

2. Events

The Contractor may participate in health-related marketing events that are listed in Figure 1 in the "Pre-Approved" column. However, all events that are listed in this "Pre-Approved" column must either be health related or have a health education component (e.g., celebration events.). If the event is not listed as a "Pre-Approved" event, the Contractor must submit a request including the event name and date with the location and address to the AHCCCS Marketing Committee for prior approval. The Contractor's participation in events must be substantive; an unmanned booth with handouts is not acceptable. The Contractor is not required to obtain approval from AHCCCS to attend pre-approved events listed in Figure 1 of this Policy, with the following exceptions:

a. Contractor pays sponsorship fees,
b. Contractor donates benefits or items (e.g. raffle items, gift baskets, cash), and/or
c. Contractor distributes materials not previously approved by AHCCCS within the last two years.

The Contractor may not attend events that are listed in the "Not-Approved" column in Figure 1 of this Policy, or any event determined by AHCCCS to not be in the best interest of the State of Arizona.

If the Contractor is not certain if an event would qualify as "Pre-Approved", the Contractor must submit a request for approval to the AHCCCS Marketing Committee prior to the event. The request shall include the Name and date of the Event, the location and the address.

***Example**:*

*Roosevelt Shot Clinic (Name of Event)*
*Phoenix Ranch Market (Location)*
*1602 E Roosevelt St (Address)*
*Phoenix, AZ 85006*
*9AM-1PM (Start and End Time)*
*Flu Shots (Service)*

*We will distribute the following:*
*Tooth Brush Approved 12/10/08*

*We will be handing out the tooth brush kits as the Roosevelt Clinic has been stressing dental hygiene this month.*

**FIGURE 1 - PRE-APPROVED AND NOT-APPROVED EVENTS**

| PRE-APPROVED EVENTS (*Must Be Health Related*) | NOT-APPROVED |
|---|---|
| Back to School Events | Events that are not health related or do not have a health education component |
| College/University Events | |
| DES Health and/or Resource Events – if open to all AHCCCS plans | DES offices (except those listed on the approval list) |
| WIC Health and/or Resource Events – if open to all AHCCCS plans | WIC Offices (except those listed on the approval list) |
| Events where health education is a component (e.g. Celebration events – Angeles Del Barrio, etc.) | Job Fairs |
| Community Center/Recreational Events (e.g. Golden Gate, Boys and Girls Club, YMCA, parks and senior center) | County/State Fairs |
| Community/Family Resource Events (e.g. Food banks, food distribution locations, homeless and/or women's shelters) | Bi-national Health Events (e.g. Mexican consulate on their premises) |
| Provider Events (e.g. Doctors, hospitals, and/or specialist) that the Contractor is contracted with | Political Events |
| Faith Based Events | Pharmacy Events not open to all Contractors |
| Farmers Market Events | |
| Health Educational Forum (community sponsored) (e.g. Nutritional, health benefits, and prevention topics) | Swap Meets |
| Safety Events (e.g. Sun safety, water safety, and fire safety) | AHCCCS Contractor's Event that is created and sponsored by the Contractor or through its affiliates for AHCCCS members not enrolled with the Contractor, or for the general public |
| Immunization Clinics | |
| Senior Events | |
| Shopping Mall Events | |
| AHCCCS Contractor's Event that is created and sponsored by the Contractor for its own members only | |

3. Sponsorships

   The Contractor may participate as a financial sponsor of health-related marketing events that are listed in Figure 1 of this Policy in the "Pre-Approved" column. In addition to the information required to be submitted for events, the request must include the dollar amount of the participation, and either a copy or description of any materials (including websites) on which the Contractors name or logo will appear prior to production.

   Sponsorship requests shall be submitted, separately by type, for approval 30 days prior to dissemination of the event. If 30 day notice is not possible, the request must indicate the reason for the shortened timeframe.

   Requests must be submitted electronically to:

   Marketing Committee Chair
   Division of Health Care Management
   Email: MarketingCommittee@azahcccs.gov

4. Contractor Logos and Name Inclusion

   The Contractor is responsible for preventing misuse of their name and logo. Upon receiving AHCCCS approval for an event, the Contractor logo can be included on event flyers or websites that are produced by hosting organizations without prior approval. The use of the Contractor name or logo is prohibited for television advertising of the event. If the Contractor is a financial sponsor for the event, event flyers or websites will require prior approval by AHCCCS.

## B. AHCCCS APPROVAL

AHCCCS will attempt to approve or deny requests within 30 days of receipt of the complete request. Approval shall only apply to the form of communication or specific date described with the initial submission. Modifications of any type shall be resubmitted.

If a Contractor wishes to contest AHCCCS' decision, it may do so by filing a grievance in accordance with 9 A.A.C. 34.

## C. RESTRICTIONS

The following restrictions apply to all marketing activities [42 CFR 438.104].

1. The following shall ***not*** be allowed:
   a. Solicitation of any individual face-to-face, door-to-door, or over the telephone or other cold-call marketing activities,
   b. References to competing Contractors,

c. Promotional materials, incentives, or any other activity to influence enrollment in conjunction with the sale or offering of any private insurance,
d. Television advertising,
e. Direct mail advertising,
f. Social Networking Applications (see ACOM Policy 425 for requirements regarding social networking),
g. Marketing of non-mandated services,
h. Utilization of the word "free" in reference to covered services,
i. Listing of providers in marketing materials who do not have signed contracts with the Contractor,
j. Use of the AHCCCS logo,
k. Inaccurate, misleading, confusing or negative information about AHCCCS or the Contractor; and any information that may defraud members or the public,
l. Discriminatory marketing practices as specified in the Arizona Administrative Code 9 A.A.C. 22, Article 5, 9 A.A.C. 28, Article 5, 9 A.A.C. 31, Article 5,
m. Contractors providing services in a GSA where its enrollment is capped to prohibit members from selecting the Contractor may not engage in marketing activities in that GSA, but may engage in outreach and retention activities with its current members.

2. Any activities, materials, or mediums in violation of this Policy will be subject to sanction regardless of previous approval or terms of privately held contractual agreements.

3. AHCCCS will review the restrictions of the following activities on an annual basis:
   a. Radio advertising,
   b. Billboard advertising,
   c. Bus advertisements (including bus stops and city and school busses).

4. AHCCCS reserves the right to impose additional restrictions.

## D. DUAL ELIGIBLE MARKETING

Dual marketing focuses on enrollment in the Contractor's Medicare Dual Special Needs Plan (D-SNP). The State understands that the Medicare D-SNP is able to enroll any dual eligible member, but to increase alignment, encourages the Contractor to only market to individuals enrolled in its AHCCCS plan. Marketing to dual eligible Contractor enrollees may include print advertisements, radio advertisements, billboards, bus advertising, and television.

1. In the case of marketing materials for dual eligible enrollees the process will be as follows:
   a. AHCCCS reviews and approves dual marketing materials that have not been approved by CMS and/or that do not include reference to AHCCCS benefits and/or service information. However, **all** dual marketing materials that include

reference to AHCCCS benefits and/or service information require submission to AHCCCS.

While AHCCCS may accept CMS approval of dual marketing materials as sufficient for distribution of materials, AHCCCS retains and reserves the right to review before or after the fact, materials that have received CMS approval.

2. The Contractor must adhere to the following regarding use of billboards which use the terms 'Medicaid' or 'AHCCCS':
   a. Limited to two in each urban county (Maricopa and Pima), and
   b. Limited to one in each rural county.

## E. CONTRACTOR RESPONSIBILITIES

1. The Contractor is required to report their marketing costs on a quarterly basis as a separate line item in the quarterly financial statements. This requirement also applies to any marketing costs included in an allocation from a parent or other related corporation.

   Additionally, any Contractor not in compliance with the AHCCCS viability criteria indicators, as defined in the contract, may be restricted from further marketing until the Contractor is in compliance with the viability criteria indicators.

   The Contractor CEO (or designee) shall sign and submit Attachment A, Marketing Attestation Statement within 45 days of the beginning contract year as specified in Contract, Section F, Attachment F3, Contractor Chart of Deliverables.

2. Marketing materials that have received approval from AHCCCS must be resubmitted to the Marketing Committee for re-approval every two years.

3. The Contractor shall review and revise all materials on a regular basis in order to reflect current practices. Any changes or amendments to previously approved materials (e.g., prior leaflet approved, but subsequently modified) must also be submitted in advance to AHCCCS for approval as indicated above.

4. The Contractor shall submit on the 10th of every month a Marketing Activities Report of the previous month's marketing activities as specified in Contract, Section F, Attachment F3, Contractor Chart of Deliverables. This includes events in which the Contractor was a participant. Participation includes but is not limited to having a booth at the event, and/or having a presence at the event. The report must be submitted using the excel format in Attachment B, Marketing Activities Report of this Policy.

   The AHCCCS Marketing Committee will review the Contractor's monthly submission to determine if the Contractor's participation in the events was in

compliance with this Policy. If AHCCCS determines a violation has occurred, the Contractor may be subject to sanctions. Failure to disclose an event attended may also result in Administrative Action.

5. Submission Requirements

All Marketing materials and giveaways must be submitted to the AHCCCS Marketing Committee for approval at least 30 days prior to dissemination as specified in Contract, Section F, Attachment F3, Contractor Chart of Deliverables. All event requests must be submitted to the AHCCCS Marketing Committee for approval at least 30 days prior to the event. Sponsorship requests must be submitted for approval at least 30 days prior to the event as specified in Contract, Section F, Attachment F3, Contractor Chart of Deliverables. If 30 day notice is not possible for events or sponsorships, the request must indicate the reason for the shortened timeframe. Below Figure 2 provides a quick guideline overview.

**FIGURE 2 – GUIDELINES OVERVIEW**

| AUDIENCE | POLICY REFERENCE | DEFINITION | SUBMIT TO: | AHCCCS APPROVALS |
|---|---|---|---|---|
| **MEMBERS** | ACOM Policy 101 & 404 | Any materials given to the Contractor's current members. | Send to Operations Compliance Operator (OCO) who if needed will forward to the Marketing Committee. | File and Use rules apply for many materials. |
| **THE PUBLIC** *(THE PUBLIC IS SOMEONE OTHER THAN PERSONS WHO ARE CURRENTLY ENROLLED WITH THE CONTRACTOR)* | ACOM Policy 101 & 404 | Materials such as:<br>• Brochures<br>• Giveaway's<br>• Anything distributed to the public that can reasonably be interpreted as intended to influence enrollment with the Contractor. | Send to Marketing Committee. | No file and use, except when information targets dual members and is already approved by CMS. |

**EXAMPLES**

| MARKETING FOR MEMBERS INCLUDE | | | |
|---|---|---|---|
| Health and wellness brochures | Member Newsletters | Mass communication sent to a member's phone | Member handbook |
| Incentives to members for health-related notifications | Member network notifications | Information to existing members facing open enrollment | |
| **EXCEPTIONS FOR MEMBERS DOES NOT INCLUDE** | | | |
| Customized letters to members | | Information sent to dual members unrelated to their Medicaid services | |
| **MARKETING FOR THE PUBLIC INCLUDE** | | | |
| Public events and sponsorships of public events that can reasonably be interpreted to influence contractor enrollment | | Includes billboards to encourage enrollment for D-SNP | |
| **MARKETING FOR THE PUBLIC DOES NOT INCLUDE** | | | |
| Marketing for non-AHCCCS Medicaid contractors | | D-SNP billboards that do not include "Medicaid" or "AHCCCS" | |
| Marketing that influences the contractor's current members, or is sent exclusively to AHCCCS-eligible members who have not chosen a contractor (see "Members") | | | |

### F. SANCTIONS/PENALTIES

Any violation of this Policy may result in Administrative Action, including but not limited to, sanctions as described in ACOM Policy 408.

## IV. REFERENCES

- Acute Care Contract Section D
- ALTCS/EPD Contract Section D
- CRS Contract Section D
- DES/DDD Contract Section D
- Contract, Section F, Attachment F3, Contractor Chart of Deliverables
- ACOM Policy 404
- ACOM Policy 408
- ACOM Policy 425
- Attachment A, Marketing Attestation Statement
- Attachment B, Marketing Activities Report
- 9 A.A.C. 22 Article 5

- 9 A.A.C. 28 Article 5
- 9 A.A.C. 31 Article 5
- 9 A.A.C. 34
- 42 CFR 438.10(a)
- 42 CFR 438.104

## ATTACHMENT A, MARKETING ATTESTATION STATEMENT

**SEE THE ACOM WEBPAGE FOR ATTACHMENT A OF THIS POLICY**

**ATTACHMENT B, MARKETING ACTIVITIES REPORT**

**SEE THE ACOM WEBPAGE FOR ATTACHMENT B OF THIS POLICY**

# 102 - RESERVED

# 103 – FRAUD, WASTE, AND ABUSE

EFFECTIVE DATE: 10/01/94, 10/25/12, 12/01/12, 09/01/14

REVISION DATE: 11/01/12, 02/07/13, 08/21/14

STAFF RESPONSIBLE FOR POLICY: OFFICE OF INSPECTOR GENERAL

## I. PURPOSE

This Policy applies to Acute Care, ADHS/DBHS, ALTCS/EPD, CRS, DCS/CMDP (CMDP), and DES/DDD (DDD) Contractors. The purpose of this Policy is to outline the corporate compliance requirements regarding the reporting responsibilities for alleged fraud, waste, and abuse involving AHCCCS program funds. This Policy also addresses additional responsibilities regarding compliance with broader program integrity regulatory and programmatic requirements.

## II. DEFINITIONS

**ADMINISTRATIVE SERVICES SUBCONTRACTS**

An agreement that delegates any of the requirements of the contract with AHCCCS, including, but not limited to the following:

1. Claims processing, including pharmacy claims,
2. Credentialing, including those for only primary source verification (i.e. Credential Verification Organization).
3. Management Service Agreements;
4. Service Level Agreements with any Division or Subsidiary of a corporate parent owner;
5. DDD acute care and behavioral health subcontractors;
6. ADHS/DBHS subcontracted Tribal/Regional Behavioral Health Authorities and the Integrated Regional Behavioral Health Authority.

Providers are not Administrative Services Subcontractors.

**ABUSE OF THE PROGRAM**

Provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the AHCCCS program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes beneficiary practices that result in unnecessary cost to the AHCCCS Program 42 C.F.R. 455.2.

**AGENT**

Any person who has been delegated the authority to obligate or act on behalf of a provider. [42 CFR 455.101]

**COMPLIANCE OFFICER**

The on-site official designated by each Contractor to

implement, oversee and administer the Contractors' compliance program. The Compliance Officer shall be an on-site management official, available to all employees, with designated and recognized authority to access and provide records and make independent referrals to the AHCCCS Office of Inspector General.

**CREDIBLE ALLEGATION OF FRAUD**

A credible allegation of fraud may be an allegation, which has been verified by the State, from any source, including but not limited to the following:

1. Fraud hotline complaints;
2. Claims data mining, and
3. Patterns identified through provider audits, civil false claims cases, and law enforcement investigations.

Allegations are considered to be credible when they have indicia of reliability and the State Medicaid agency has reviewed all allegations, facts and evidence carefully and acts judiciously on a case-by-case basis 42 C.F.R. 455.2.

**FISCAL AGENT**

A Contractor that processes or pays vendor claims on behalf of the Medicaid agency. [42 CFR 455.101]

**FRAUD**

An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable State or Federal law, as defined in 42 CFR 455.2.

**MANAGING EMPLOYEE**

A general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an institution, organization, or agency. [42 CFR 455.101]

**PROVIDER**

Any person or entity that contracts with AHCCCS or a Contractor for the provision of covered services to members according to the provisions A.R.S. §36-2901.

**SUBCONTRACTOR**

1. A provider of health care who agrees to furnish covered services to members.

2. A person, agency or organization with which the Contractor has contracted or delegated some of its management/administrative functions or responsibilities.
3. A person, agency or organization with which a fiscal agent has entered into a contract, agreement, purchase order or lease (or leases of real property) to obtain space, supplies equipment or services provided under the AHCCCS agreement.

**WASTE** Over-utilization or inappropriate utilization of services, misuse of resources, or practices that result in unnecessary costs to the Medicaid Program.

## III. POLICY

### A. AUTHORITY

The AHCCCS Office of Inspector General (AHCCCS-OIG) is the State Medicaid authority to conduct preliminary and full investigations relating to fraud, waste, and abuse. AHCCCS-OIG works under an agreement with the State Medicaid Fraud Control Unit to refer cases for appropriate legal action and it also has the authority to make independent referrals to other law enforcement entities [42 CFR 455.21].

1. AHCCCS-OIG has the authority to issue subpoena and enforce the attendance of witnesses, administer oaths or affirmations, examine witnesses under oath, and take testimony as the Inspector General deems relevant or material to an investigation, examination, or review undertaken by the Office (A.R.S. §36-2918).

2. AHCCCS-OIG has the authority to impose civil monetary penalties and assessments of up to $2,000.00 for each item or service claimed and an assessment of an amount not to exceed twice the amount claimed (A.R.S. §36-2918; A.A.C. R9-22-11).

3. AHCCCS-OIG has been designated as a Criminal Justice Agency through the Federal Bureau of Investigations (FBI). This designation authorizes AHCCCS-OIG to access the National Crime Information Center (NCIC) data base as well as the Arizona Criminal Justice Information System. Additionally, OIG is authorized to receive and share restricted criminal justice information with other federal, state and local agencies.

4. Under the Affordable Care Act, if AHCCCS-OIG determines that a credible allegation of fraud exists, AHCCCS-OIG may suspend payments to providers [42 CFR 455.23].

### B. CONTRACTOR RESPONSIBILITIES

The Contractor must:

1. Have in place internal controls, policies and procedures to prevent, detect, and report fraud, waste, and abuse activities to AHCCCS-OIG

2. Have a Corporate Compliance Program. The program must be developed by a plan that includes goals and objectives and descriptions of the internal and external controls, activities, milestones and roles and responsibilities. The Contractor's written Corporate Compliance Plan must be submitted to AHCCCS-OIG annually as specified in Contract, Attachment F3, Contractor Chart of Deliverables

3. The plan must also include a program integrity audit/review program in place designated to identify fraud, waste and abuse. Such program will ensure that the contractor is tracking inadequate billing practices and identifying emerging trends to provide technical assistance to providers and avoid future occurrences.

4. Obtain and disclose the information regarding Ownership and Control and Disclosure of Information on Persons Convicted of Crimes in accordance with the contractual provisions contained in Section D of the contract. [42 CFR 455.104 through 106](SMDL09-00). The Contractor must also, with regard to its fiscal agents, obtain and disclose the same information regarding ownership and control. [42 CFR 455.104] The results of the Disclosure of Ownership and Control and the Disclosure of Information on Persons Convicted of Crimes shall be held by the Contractor.

5. Require Administrative Services Subcontractors adhere to the requirements regarding Disclosure of Ownership and Control and Disclosure of Information on Persons Convicted of Crimes as outlined in 42 CFR 455.101 through 106, 42 CFR 436 and State Medicaid Director Letter 08-003 and 09-001. Administrative Services Subcontractors shall disclose to AHCCCS-OIG the identity of any excluded person.

6. Submit annually, Attachment A, Attestation of: Disclosure of Ownership and Control and Disclosure of Information of Persons Convicted of a Crime, as specified in Contract, Attachment F3, Contractor Chart of Deliverables, attesting that the information has been obtained and verified by the Contractor, or upon request, provide this information to AHCCCS.

7. Ensure all employees, providers and members receive adequate training and ongoing education on the following aspects of the Federal False Claims Act provisions:
   a. The administrative remedies for false claims and statements;
   b. Any State laws relating to civil or criminal penalties for false claims and statements; and
   c. The whistleblower protections under such laws.
8. Ensure adequate training addressing fraud, waste, and abuse prevention, recognition and reporting, and encourage employees, providers, and members to report fraud, waste, and abuse without fear of retaliation.

9. Ensure an internal reporting process that is well defined and made known to all employees.

10. Conduct research and proactively identify changes for program integrity that are relevant to their program, and periodically review and revise the fraud, waste, and abuse policies or guidance from AHCCCS to reflect such changes due to rules, regulations or new initiatives.

11. Regularly attend and participate in AHCCCS-OIG work group meetings.

12. Respond promptly and no later than 30 days to requests for information from AHCCCS-OIG

13. Cooperate with AHCCCS-OIG regarding any allegation of member billing in violation of A.R.S. §36-2903.01(L) and A.A.C. R9-22-702.

14. Ensure compliance with federal and contractual obligations with regards to Disclosure of Ownership and Control, and Disclosure of Information on Persons Convicted of Crimes including Administrative subcontractors and fiscal agents.

15. In addition to the specific requirements stated above, it is required that the Contractor be in compliance with all State and Federal regulations related to fraud, waste, and abuse not directly detailed in this Policy.

## C. REPORTING RESPONSIBILITIES

1. Fraud, Waste, and Abuse
   a. If a Contractor discovers, or is made aware, that an incident of alleged fraud, waste, or abuse has occurred by any party, the Contractor shall immediately report the incident to AHCCCS-OIG within one business day, by completing and submitting the reporting form available on the AHCCCS-OIG webpage: Report Suspected Fraud or Abuse of the Program. All pertinent documentation that would assist AHCCCS in its investigation shall be attached to the form.
   b. If a Contractor, Subcontractor, or Provider identifies an incident which warrants self-disclosure, they must report it immediately within one business day, to AHCCCS-OIG by completing and submitting the Provider Self-Disclosure form available on the AHCCCS-OIG webpage. All pertinent documentation that would assist AHCCCS in its investigation shall be attached to the form.
   c. Once the Contractor has referred a case of alleged fraud, waste, or abuse to AHCCCS-OIG, the Contractor shall take no action to recoup or otherwise offset any suspected overpayments.
   d. In accordance with 42 CFR 455.14, AHCCCS-OIG will then conduct a preliminary investigation to determine if there is sufficient basis to warrant a full investigation.
   e. AHCCCS-OIG will notify the Contractor in the appropriate fashion safeguarding the integrity and confidentiality of the investigation, when the investigation concludes.

f. If it is determined by AHCCCS-OIG to not be a fraud, waste, or abuse case, the Contractor shall adhere to the applicable AHCCCS policy manuals for disposition.
g. For purposes of this Policy and in accordance with the Contractual provision contained in Section D, Corporate Compliance, in the event that AHCCCS-OIG, either through a civil monetary penalty, or assessment, a global civil settlement or judgment, or any other form of civil action, including the recovery of an overpayment, receives a monetary recovery from an entity, the entirety of such monetary recovery belongs exclusively to AHCCCS and the Contractor has no claim to any portion of this recovery.
h. The Contractor is fully subrogated to AHCCCS for all civil recoveries.
i. The Contractor must also report to AHCCCS, as specified in Contract and AMPM Policy 950, any credentialing denials including, but not limited to those which are the result of licensure issues, quality of care concerns, excluded providers, and which are due to alleged fraud, waste, or abuse.

## D. AHCCCS-OIG RESPONSIBILITIES RELATED TO FRAUD, WASTE AND ABUSE

1. Investigate all allegations of member and provider fraud, under the authority of A.R.S. §§36-2918, 36-2932, and §36-2905.04;

2. Oversee, monitor and be the focal point for the AHCCCS' compliance program, with the authority to review all documents and functions as they relate to fraud, waste and abuse prevention, detection and reporting;

3. Maintain and monitor a tracking system of fraud, waste and abuse investigations;

4. Ensure all employees, contractors and providers and members receive adequate training and information regarding fraud, waste and abuse prevention, identification and reporting, and encourage employees, contractors, providers, and members to report fraud and abuse without fear of retaliation;

5. Suspend provider payments when there is a credible allegation of fraud 42 CFR 455.23;

6. Develop and maintain open channels of communication with Contractors to combat fraud, waste, and abuse at all levels in the System;

7. Develop and maintain open channels of communication with other law enforcement agencies in the prevention and detection of fraud, waste, and abuse;

8. Investigate cases of potential member billing in violation of A.R.S. §36-2903.01(L) and A.A.C. R9-22-702;

9. Perform all functions required by Section 6032 of the Deficit Reduction Act, including the auditing of providers to ensure their compliance; and

10. Ensure that AHCCCS is in compliance with its federal obligations with regard to Disclosure of Ownership and Control, Managing Employees Database Exclusion, and Checks, and Criminal Convictions Checks, and all other federal requirements related to Provider Screening and Enrollment.

## IV. REFERENCES

- 42 CFR Chapter 455
- A.R.S. §36-2901
- A.R.S. §36-2903.01(L)
- A.R.S. §36-2905.04
- A.R.S. §36-2918
- A.R.S. §36-2932
- A.R.S. §46-451
- A.A.C. R9-22 -11
- A.A.C. R9-22-702
- Deficit Reduction Act, Section 6032
- State Medicaid Director Letter (SMDL) 08-003
- State Medicaid Director Letter (SMDL) 09-001
- Acute Care Contract, Section D
- ADHS/DBHS Contract, Section D
- ALTCS/EPD Contract, Section D
- CRS Contract, Section D
- DES/DDD Contract, Section D
- DCS/CMDP Contract, Section D
- Contract Attachment F3, Contractor Chart of Deliverables
- AMPM Policy 950
- Attachment A, Attestation of: Disclosure of Ownership and Control and Disclosure of Information of Persons Convicted of a Crime

## ATTACHMENT A, ATTESTATION OF: DISCLOSURE OF OWNERSHIP AND CONTROL AND DISCLOSURE OF INFORMATION OF PERSONS CONVICTED OF A CRIME

**SEE THE ACOM WEBPAGE FOR ATTACHMENT A OF THIS POLICY**

# 104 – BUSINESS CONTINUITY AND RECOVERY PLAN

EFFECTIVE DATE: 10/01/04, 10/01/12, 06/01/14

REVISION DATE: 01/01/11, 09/27/12, 05/29/14

STAFF RESPONSIBLE FOR POLICY: DHCM OPERATIONS

## I. PURPOSE

This Policy applies to Acute Care, ADHS/DBHS, ALTCS/EPD, CRS, DCS/CMDP (CMDP) and DES/DDD (DDD) Contractors. AHCCCS requires in contract that each of its Contractors have a Business Continuity and Recovery Plan. The purpose of this Policy is to outline the required components of the Business Continuity and Recovery Plan. Refer to the Resources section of this Policy for additional information in developing an emergency management plan.

## II. DEFINITION

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|---|---|
| **CONTINUITY OF OPERATIONS PROGRAMS (COOP)** | An effort within the individual executive departments and agencies to ensure that essential functions continue to be performed during a wide range of emergencies. |

## III. POLICY

AHCCCS is mandated to provide health care benefits to its enrollees. In order to provide benefits, the Contractor must be able to recover from any disruption in services as quickly as possible. This recovery can be accomplished by the development of a Business Continuity and Recovery Plan that contains strategies for recovery. The Business Continuity and Recovery Plan is part of the Federal Government's Continuity of Operations Programs (COOP) requirements.

### A. CONTRACTOR RESPONSIBILITIES

The Contractor shall develop and maintain a Business Continuity and Recovery Plan which assures AHCCCS that the provision of covered services will occur as stated in contract [42 C.F.R. 438.207 and 42 C.F.R. 438.208]. A comprehensive summary of the Contractor's Business Continuity and Recovery Plan must be evaluated, updated and submitted with Attachment A to the designated Operations and Compliance Officer, within 15 days from the start of each contract year. The summary shall be no longer than five pages and shall address all Business Continuity and Recovery Plan requirements outlined below.

ADHS/DBHS for its subcontracted T/RBHAs, and DDD for its acute care subcontractors, shall ensure subcontractors prepare adequate business continuity and recovery plans and that the subcontractors review their plans annually, updating them as needed.

## B. BUSINESS CONTINUITY PLAN REQUIREMENTS

1. The Business Continuity and Recovery Plan (Plan) shall be reviewed at least annually and updated as needed by the Contractor.

2. The Contractor shall ensure that its staff is trained and familiar with the Plan.

3. The Plan should be specific to the Contractor's operations in Arizona and reference local resources. Generic Plans which do not reference operations in Arizona and the Contractor's relationship to AHCCCS are not appropriate.

4. The Plan shall contain a listing of key customer priorities and key factors that could cause disruption and timelines for when Contractors will be able to resume critical customer services when a disruption occurs.

   Examples of these priorities include but are not limited to: Providers receipt of prior authorization approvals and denials, members receiving transportation, and timely claims payments.

   The Contractor shall also include any additional priorities as identified by the Contractor to be critical key priorities or factors.

5. The Plan shall contain specific timelines for resumption of services as well as the percentage of recovery at certain hours, and the key actions required meeting those timelines.

   Example: Telephone service restored to prior authorization unit within four hours, to Member Services within 24 hours, to all phones in 24 hours.

6. The Plan shall contain, at a minimum, planning and training for:

   a. Electronic/telephonic failure
   b. Complete loss of use of the main site and any satellite offices out of State
   c. Loss of primary computer system/records
   d. How the Contractor will communicate with AHCCCS during a business disruption. (*The name and phone number of a specific contact in the Division of Health Care Management is preferred*). The Plan should direct the Contractor staff to contact AHCCCS Security at 602-417-4888 in the event of a disruption outside of normal business hours.
   e. Periodic testing, at least annually. Results of the test shall be documented.

7. The Contractor shall designate a staff person as Business Continuity Planning Coordinator and furnish AHCCCS with contact information as part of the Plan.

## IV. RESOURCES

The Federal Emergency Management Agency (FEMA) has a website which contains additional information on Business Continuity Planning, including checklists for reviewing a Plan. AHCCCS encourages the Contractor to use relevant parts of these checklists in the evaluation and testing of its own Business Continuity Plan. The Contractor can also reference the Arizona Division of Emergency Management and the Ready websites for supplementary information. Links to these websites are provided below.

- Federal Emergency Management Agency (FEMA)
- Arizona Division of Emergency Management
- Ready

## V. REFERENCES

- Acute Care Contract, Section D
- ADHS/DBHS Contract, Section D
- ALTCS/EPD Contract, Section D
- CRS Contract, Section D
- DCS/CMDP Contract, Section D
- DES/DDD Contract, Section D
- Attachment A, Business Continuity and Recovery Plan Checklist
- 42 C.F.R. 438.207
- 42 C.F.R. 438.208

## ATTACHMENT A, BUSINESS CONTINUITY AND RECOVERY PLAN CHECKLIST

**SEE THE ACOM WEBPAGE FOR ATTACHMENT A OF THIS POLICY**

# 105 - RESERVED

## 106 – RESERVED

# 107 - MEDICARE DUAL SPECIAL NEEDS PLANS - AHCCCS MEMBERS

EFFECTIVE DATE: 04/01/12, 10/01/13, 09/01/14, 10/01/15

REVISION DATE: 06/06/13, 08/27/14, 05/14/15, 08/20/15

STAFF RESPONSIBLE FOR POLICY: DHCM ADMINISTRATION

## I. PURPOSE

This Policy applies to Acute Care, ADHS/DBHS, and ALTCS/EPD Contractors. This Policy applies to organizations that currently have a contract, or will be pursuing a contract, with the Centers for Medicare and Medicaid (CMS) to operate as a Medicare Advantage Dual Eligible Special Needs Plan (D-SNP). D-SNPs are a type of Medicare Advantage plan which limit enrollment to Medicare beneficiaries who are also receiving Medicaid benefits. The purpose of this Policy is to maximize care coordination for AHCCCS Acute Care members, ALTCS/EPD members, and members enrolled in an Integrated RBHA who are dually eligible for both Medicare and Medicaid.

## II. DEFINITIONS

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|---|---|
| **ACUTE CARE DUALS** | AHCCCS beneficiaries who are determined eligible for AHCCCS acute care benefits, including but not limited to AHCCCS members eligible under 1931, SSI MAO, and AHCCCS Care, who are enrolled in Medicare Part A and/or Part B. |
| **ALTCS DUALS** | Persons who have been determined eligible for the ALTCS/EPD or DD Program because they require an institutional level of care and meet financial and other eligibility criteria for Title XIX eligibility and who are also enrolled in Medicare Part A and/or Part B. |
| **DUAL ELIGIBLE SPECIAL NEEDS PLAN (D-SNP)** | A Dual Eligible Special Needs Plan (D-SNP) is a type of Medicare Advantage plan that enrolls beneficiaries who are entitled to both Medicare (Title XVIII) and Medical Assistance from a State Plan under Title XIX (Medicaid), and offer the opportunity of enhanced benefits by combining those available through Medicare and Medicaid. |
| **EQUITY PARTNER** | Sponsoring organizations or parent companies of the managed care organization that share in the returns generated by the organization, both profits and liabilities, consistent with the partnership agreement. |

| | |
|---|---|
| **INTEGRATED REGIONAL BEHAVIORAL HEALTH AUTHORITY (INTEGRATED RBHA)** | An organization that provides behavioral health services to AHCCCS members who are Title XIX or Title XXI eligible, other than adult members dually enrolled in Medicaid and Medicare with General Mental Health and Substance Abuse needs and American Indians who choose a Tribal Regional Behavioral Health Authority (TRBHA). The Integrated RBHA also provides physical health services for AHCCCS members determined to have a Serious Mental Illness, with the exception of American Indians who choose AIHP. |
| **MEDICARE IMPROVEMENTS FOR PATIENTS AND PROVIDERS ACT (MIPPA) AGREEMENT** | Agreement entered into by AHCCCS and Contractor to coordinate care for individuals in Arizona who are enrolled in Medicare and receiving assistance under Medicaid. The MIPPA agreement outlines requirements which aim to improve care coordination and timely information sharing by both parties for dual eligible members enrolled in a Medicare Advantage Dual Eligible Special Needs Health Plan consistent with 42 CFR 422.107, Section 164 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) and Section 3205 of the Affordable Care Act. |

## III. POLICY

Beginning January 1, 2013, Federal regulations required that all D-SNPs have a contract in place with the State Medicaid Agency which outlines the specific dual eligible population the D-SNP will serve as well as care coordination and cost sharing obligations (MIPPA Agreements) as described in 42 CFR 422.107.

### A. ACUTE CARE DUALS

In spring 2013, AHCCCS awarded Acute Care contracts to successful bidders of the Request for Proposal (RFP) process for provision of acute care services beginning October 1, 2013. As a requirement of this contract, all Contractors are required to operate a D-SNP beginning January 1, 2014 in all counties in which they were awarded a contract.

Beginning January 1, 2014, in order to align more dual members in the same plan for both programs, AHCCCS will not contract with any D-SNPs operating in counties in which they do not *also* have an Acute Care contract. Alignment of dual eligible members in the same plan for both Medicare and Medicaid services provides members with one entity that coordinates all aspects of care, thus decreasing fragmentation of care and reducing confusion for members, providers, and Contractors related to service delivery.

Beginning October 1, 2015, Acute Care Contractors are responsible for the provision and coordination of general mental health and substance abuse behavioral health services for adult members in any Medicare arrangement who are age 18 and older.

## B. ALTCS/EPD DUALS

In May 2011, AHCCCS awarded new contracts for the ALTCS/EPD Program covering the time period of October 1, 2011 through September 30, 2014, with the possibility for two 1-year contract extensions. As a requirement of this contract, all Contractors are required to operate a D-SNP beginning January 1, 2014 in all counties in which they were awarded a contract.

Beginning January 1, 2014, in order to align more dual members in the same plan for both programs, AHCCCS will not contract with any D-SNPs operating in counties in which they do not *also* have an ALTCS/EPD contract. Alignment of dual eligible members in the same plan for both Medicare and Medicaid services provides members with one entity that coordinates all aspects of care, thus decreasing fragmentation of care and reducing confusion for members, providers, and Contractors related to service delivery.

## C. ALTCS/DD DUALS

ALTCS services for members who have a Developmental Disability (DD) are provided by the Department of Economic Security (DES), Division of Developmental Disabilities (DDD) as specified in State Law. Therefore, D-SNPs do not have contracts directly with AHCCCS for serving DD members and there are no requirements for D-SNP participation. However, the MIPPA agreements signed with AHCCCS Contractors permits enrolling DD members if the plan includes them as a covered population.

## D. INTEGRATED RBHA

The Integrated RBHAs are required to contract with CMS for a Medicare Advantage Dual Eligible Special Needs Plan (D-SNP) product (companion D-SNP) or offer a D-SNP through one of the equity partners (equity D-SNP) in the organization, due to market viability concerns.

The Integrated RBHA's companion D-SNP or equity D-SNP is required to be the sole organization that manages the provision of Medicare benefits to dual eligible members determined to be SMI and who are enrolled with the Integrated RBHA and may not delegate or subcontract with another entity.

The Integrated RBHA's companion D-SNP or equity D-SNP must meets all Medicare Advantage requirements to remain in compliance and continue operating as a D-SNP in order to provide Medicare services to eligible individuals.

The Integrated RBHAs must establish branding for its companion D-SNP that ensures it is easily identifiable to members and providers as an integrated plan for both Medicare and Medicaid.

AHCCCS will sign MIPPA Agreements as necessary with the Integrated RBHAs to meet CMS requirements.

## E. DATA SHARING

Claims data for Medicare beneficiaries enrolled with a D-SNP is not currently available to AHCCCS. Therefore, AHCCCS requires that all current AHCCCS Contractors operating D-SNPs submit Medicare claims to AHCCCS. Medicare Parts A/B and D data are currently available for beneficiaries in Fee-for-Service Medicare and shall be provided to Contractors by AHCCCS. This data will be used by AHCCCS and Contractors for care coordination and other operational activities related to dual eligible members.

## F. CARE COORDINATION

All D-SNPs must ensure timely coordination of care with the member's Acute Care or ALTCS Contractor. Detailed requirements are outlined in the MIPPA Agreement.

## G. PROCESS

AHCCCS has developed a MIPPA agreement template for use by each D-SNP, per CMS regulations 42 CFR 422.107 and Chapter 16-B, Section 40.5.1 of the Medicare Managed Care Manual. All contracts must describe the following:

1. The D-SNP organization's responsibility, including financial obligations, to provide or arrange for Medicaid benefits;

2. The category(ies) of eligibility for dual-eligible beneficiaries to be enrolled under the D-SNP, as described under by the Social Security Act at sections 1902(a), 1902(f), 1902(p), and 1905;

3. The Medicaid benefits covered under the D-SNP;

4. The cost-sharing protections covered under the D-SNP;

5. The identification and sharing of information on Medicaid provider participation;

6. The verification of enrollee's eligibility for both Medicare and Medicaid;

7. The service area covered by the D-SNP; and

8. The contract period for the D-SNP.

The AHCCCS Medicare Specialist will coordinate with each D-SNP representative to facilitate the MIPPA agreement process in advance of the CMS deadlines. D-SNPs are required to submit their MIPPA Agreement to CMS by July 1st of each year. To ensure that AHCCCS has adequate time to review the agreements, executed agreements must be received by AHCCCS no later than June 15th. AHCCCS may choose to sign a multi-year agreement with D-SNPs to cover multiple CMS contract years.

## IV. REFERENCES

- Acute Care Contract, Section D
- ADHS/DBHS Contract, Section D
- ALTCS/EPD Contract, Section D
- Section 164 of the Medicare Improvement for Patients and Providers Act of 2008
- Section 3205 of the Affordable Care Act
- 42 CFR 422.107
- Chapter 16-B, Section 40.5.1 of the Medicare Managed Care Manual
- Social Security Act Sections 1902(a), 1902(f), 1902(p), and 1905;
- Medicare Improvements for Patients and Providers Act (MIPPA) Agreement

# 108 - AHCCCS SECURITY RULE COMPLIANCE

EFFECTIVE DATE: 10/01/13

REVISION DATE: 01/16/14, 04/28/14

STAFF RESPONSIBLE FOR POLICY: DHCM OPERATIONS AND DATA ANALYSIS AND RESEARCH

## I. PURPOSE

This Policy applies to Acute Care, ADHS/DBHS, ALTCS/EPD, CRS, DCS/CMDP (CMDP), and DES/DDD (DDD) Contractors.

## II. DEFINITIONS

**BREACH**

A breach is, generally, an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of the protected health information. An impermissible use or disclosure of protected health information is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised. As stated in Section 13402 of the Health Information Technology for Economic and Clinical Health (HITECH) Act issued in August 2009.

**HEALTH INSURANCE, PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)**

The Health Insurance Portability and Accountability Act (P.L. 104-191); also known as the Kennedy-Kassebaum Act, signed August 21, 1996 addresses issues regarding the privacy and security of member confidential information.

**HIPAA PRIVACY RULE**

The HIPAA Privacy Rule establishes national standards to protect individuals' medical records and other individual health information and applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically. The Rule requires appropriate safeguards to protect the privacy of individual health information and sets limits and conditions on the uses and disclosures that may be made of such information without patient authorization. The Rule also gives patients' rights over their health information, including rights to examine and obtain a copy of their health records, and to request corrections.

**HIPAA SECURITY RULE**

Established national standards to protect individuals' electronic personal health information that is created, received, used, or maintained by a covered entity. The Security Rule requires appropriate administrative, physical and technical safeguards to ensure the confidentiality, integrity, and security of electronic protected health information.

**HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT (HITECH)**

The Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009, was signed into law on February 17, 2009, to promote the adoption and meaningful use of health information technology. Subtitle D of the HITECH Act addresses the privacy and security concerns associated with the electronic transmission of health information, in part, through several provisions that strengthen the civil and criminal enforcement of the HIPAA rules.

**PROTECTED HEALTH INFORMATION (PHI)**

Health and demographic information about an individual that is transmitted or maintained in any medium where the information is:

- Created or received by a health care component of a health care provider, health plan, employer or health care clearinghouse; and
- Relates to the past, present or future physical or mental health condition of an individual, provision of health care to an individual, or payment for the provision of health care to an individual.

Protected health information excludes information:

- In education records covered by the Family Educational Rights and Privacy Act;
- In records described at 20 USC 1232g(a)(4)(B)(IV);
- In employment records held by a covered entity in its role as employer; and
- Regarding a person who has been deceased more than 50 years.

**RISK ANALYSIS**

The assessment of the risks and vulnerabilities that could negatively impact the confidentiality, integrity, and availability of the electronic protected health information held by a covered entity, and the likelihood of occurrence.

**RISK MANAGEMENT** The actual implementation of security measures to sufficiently reduce an organization's risk of losing or compromising its electronic protected health information and to meet the general security standards.

**SUBCONTRACTOR** For the purposes of this Policy subcontractor refers to Tribal and Regional Behavioral Health Authorities and DDD's Acute Care Managed Care Organizations.

## III. POLICY

### A. DATA SECURITY AUDIT

The Contractor and its subcontractors (delegated agreements with managed care organizations) must develop policies and procedures to ensure the privacy of protected health information, the security of electronic protected health information, and breach notification to consumers [42 CFR 438.100(d) and 42 CFR 438.208(b)(4)].

The Contractor and its subcontractors (delegated agreements with managed care organizations)are required to have a security audit performed by an independent third party on an annual basis. If a Contractor performs in multiple AHCCCS lines of business one comprehensive audit may be performed covering all systems for all lines of business or separate audits may be performed.

The audit must include, at a minimum a:

1. Review of Contractor compliance with all security requirements as outlined in the AHCCCS Security Rule Compliance Summary Checklist, Attachment A of this Policy.
2. Review of Contractor policies and procedures to verify that appropriate security requirements have been adequately incorporated into the Contractor's business practices, and the production processing systems. The Contractor's Policies and procedures must include the requirements for the Breach Notification Rule.

It is anticipated that audits performed in the second and subsequent years will focus primarily on remediation of prior findings, and system and policy changes identified since the prior audit.

### B. AHCCCS SECURITY RULE COMPLIANCE REPORT

The AHCCCS Security Rule Compliance Report must be submitted to the DHCM, Data Analysis and Research Unit annually for review and approval by June 1. The timeframe audited may be calendar year, fiscal year, or contract year and must be noted in the report. The report must include all findings detailing any issues and discrepancies between the AHCCCS Security Audit Checklist requirements and the Contractor's policies, practices and systems, and as necessary, a corrective action plan. In addition, the report must include written decisions regarding all addressable specifications.

AHCCCS will verify that the required audit has been completed and the approved corrective action plan is in place and implemented as part of Operational Reviews. AHCCCS does not intend to release detailed audit reviews; however may, at its discretion, release a summary level of results.

## IV. AHCCCS SECURITY RULE COMPLIANCE CHECKLIST

### A. INSTRUCTIONS

The AHCCCS Security Rule Compliance Checklist (Attachment A) identifies security rule requirements for administrative, physical, and technical safeguards. The Compliance Checklist must be signed and dated by the Chief Executive Officer or their designee verifying the information and must be submitted with the annual report.

### B. IMPLEMENTATION SPECIFICATIONS

**Required Specifications**:

If an implementation specification is identified as "required" (indicated with an "R" on the checklist), the specification must be implemented.

Addressable Specification: The concept of "addressable implementation specifications" was developed to provide covered entities additional flexibility with respect to compliance with the security standards. Addressable implementation specifications are indicated with an "A" on the checklist.

In meeting standards that contain addressable implementation specifications, a covered entity will do one of the following for each addressable specification:

1. Implement the addressable implementation specifications;

2. Implement one or more alternative security measures to accomplish the same purpose;
3. Not implement either an addressable implementation specification or an alternative.

The covered entity must decide whether a given addressable implementation specification is a reasonable and appropriate security measure to apply within its particular security framework. For example, a covered entity must implement an addressable implementation specification if it is reasonable and appropriate to do so, and must implement an equivalent alternative if the addressable implementation specification is unreasonable and inappropriate, and there is a reasonable and appropriate alternative. This decision will depend on a variety of factors, such as, among others, the entity's risk analysis, risk mitigation strategy, what security measures are already in place, and the cost of implementation.

The decisions that a covered entity makes regarding addressable specifications must be documented in writing. The written documentation should include the factors considered as well as the results of the risk assessment on which the decision was based.

**Risk Analysis**:

The required implementation specification at 45 C.F.R. 164.308(a)(1)(ii)(A), for Risk Analysis, requires a covered entity to, *"conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic protected health information held by the covered entity."*

Risk analysis is the assessment of the risks and vulnerabilities that could negatively impact the confidentiality, integrity, and availability of the electronic PHI held by a covered entity, and the likelihood of occurrence. The risk analysis may include taking inventory of all systems and applications that are used to access and house data, and classifying them by level of risk. A thorough and accurate risk analysis would consider all relevant losses that would be expected if the security measures were not in place, including loss or damage of data, corrupted data systems, and anticipated ramifications of such losses or damage.

**Risk Management**:

The required implementation specification at 45 C.F.R. 164.308(a)(1)(ii)(B), for Risk Management, requires a covered entity to *"implement security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level to comply with -45 C.F.R. 164.306(a) [(the General Requirements of the Security Rule)]."* Risk management is the actual implementation of security measures to sufficiently reduce an organization's risk of losing or compromising its electronic PHI and to meet the general security standards.

**Compliance Status**:

If the covered entity is in compliance with the requirement insert a "C" in the column. If the requirement is not met insert "NC" for non-compliant.

**Compliance Documentation**:

List policies, procedures and processes used to determine compliance with the Implementation Specification.

## V. REFERENCES

- Acute Care Contract, Section D
- ADHS/DBHS Contract, Section D
- ALTCS/EPD Contract, Section D
- CRS Contract, Section D
- DCS/CMDP Contract, Section D
- DES/DDD Contract, Section D
- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- 42 CFR 438.100(d)
- 42 CFR 438.208(b)(4)
- 45 CFR 164.306
- 45 CFR 164.308
- 45 CFR 164.310
- 45 CFR 164.312
- Attachment A, AHCCCS Security Rule Compliance Summary Checklist

## ATTACHMENT A, AHCCCS SECURITY RULE COMPLIANCE SUMMARY CHECKLIST

**SEE THE ACOM WEBPAGE FOR ATTACHMENT A OF THIS POLICY**