

## **305 – PERFORMANCE BOND AND EQUITY PER MEMBER REQUIREMENTS**

EFFECTIVE DATE: 10/01/08, 10/01/13, 10/1/15

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STAFF RESPONSIBLE FOR POLICY: DHCM FINANCE

### **I. PURPOSE**

This Policy applies to Acute Care, CRS, and ALTCS/EPD Contractors and Medicare Advantage/Prescription Drug/Special Needs Plans (MA/PD/SNP – hereafter MA Plan) Contractors certified by AHCCCS. The purpose of this Policy is to establish standards for Contractors to meet the performance bonding and equity per member requirements. These standards will continue to ensure a Contractor’s ability to meet its claims payment obligations, while addressing the individual differences among Contractors and enrollment growth.

### **II. DEFINITIONS**

<b>EQUITY</b>	Net Assets that are not designated or restricted for specific purposes.
<b>PERFORMANCE BOND</b>	A cash deposit with the State Treasurer or a financial instrument secured by the Contractor in an amount designated by AHCCCS to guarantee payment of Contractor claims.
<b>SURETY BOND</b>	An agreement between AHCCCS, the Contractor and the Surety where the surety provides a financial guarantee to AHCCCS.

### **III. POLICY**

AHCCCS requires the posting of a Performance Bond as long as the Contractor has liabilities of \$50,000 or more outstanding, or 15 months following the effective date of their contract, whichever is later, to guarantee payment of the Contractor’s obligations to providers and non-contracting providers, and performance by the Contractor of its obligations under this Contract.

AHCCCS will inform the Contractor of the required initial amount of the Performance Bond, as determined by AHCCCS, at the beginning of each contract cycle. This requirement must be satisfied by the Contractor no later than 30 days after notification by AHCCCS of the initial amount required.

After the initial performance bond is satisfied, AHCCCS shall evaluate each Contractor's enrollment statistics and/or monthly capitation payments on a monthly basis and determine if adjustments are necessary in accordance with this Policy.

AHCCCS will confirm the performance bond with the appropriate institution at least annually.

**A. PERFORMANCE BOND REQUIREMENTS**

1. The Contractor may not change the amount, duration or scope of the performance bond without prior written approval from AHCCCS, Division of Health Care Management. The Contractor shall not leverage the bond for another loan or create other creditors using the bond as security.
2. The Performance Bond amount that must be maintained after the contract term shall be sufficient to cover all outstanding liabilities and will be in the amount and for the term determined by AHCCCS.
3. Any security agreement must be disclosed.
4. **Acute Care and CRS Contractors** - The initial amount of the Performance Bond shall be equal to 100% of the total capitation payment expected to be paid to the Contractor in the first month of the contract year, or as determined by AHCCCS. The total capitation amount excludes premium tax. Acute Care capitation is inclusive of delivery supplemental payments. This requirement must be satisfied by the Contractor no later than 30 days after notification by AHCCCS of the amount required. Thereafter, AHCCCS shall review the capitation amount of the Contractor on a monthly basis to determine if the Performance Bond must be increased. When the amount of the Performance Bond falls below 90% of one month's capitation, then the amount of the instrument must be increased to at least 100% of one month's capitation. The Contractor shall have 30 days following notification by AHCCCS to increase the amount of the Performance Bond.
5. **ALTCS/EPD Contractors** - The initial amount of the Performance Bond shall be equal to 80% of the total capitation payment, including acute care only members, expected to be paid to the Contractor in the first month of the contract year, or as determined by AHCCCS. The total capitation amount excludes premium tax. This requirement must be satisfied by the Contractor no later than 30 days after notification by AHCCCS of the amount required. Thereafter, AHCCCS shall evaluate the capitation amount of the Contractor on a monthly basis to determine if the Performance Bond must be increased. When the amount of the Performance Bond falls below 70% of one month's capitation, the amount of the instrument must be increased to at least 80% of one month's capitation. The Contractor shall have 30

days following notification by AHCCCS to increase the amount of the Performance Bond.

6. **AHCCCS Certified MA Plan Contractors** - AHCCCS requires that the Contractor obtain and maintain a Performance Bond specifically for the purpose of the MA Plan in the amount of \$1,050 per MA Dual Eligible Member. AHCCCS, Division of Health Care Management (DHCM) and the Contractor shall work together to project the number of eligibles to establish the initial amount of the Performance Bond. See ACOM Policy 313 for the requirements to gain state certification of a Medicare Advantage Plan and the ongoing requirements to stay certified by AHCCCS.

## **B. SATISFYING THE PERFORMANCE BOND**

The following are options for satisfying the performance bond:

1. Cash Deposits,
2. An Irrevocable Letter of Credit issued by:
  - a. A bank insured by the Federal Deposit Insurance Corporation, or
  - b. A savings and loan association insured by the Federal Savings and Loan Insurance Corporation, or
  - c. A credit union insured by the National Credit Union Administration, or
3. Surety Bond of standard commercial scope issued by a surety or insurance company authorized to do business in Arizona,
4. Certificate of Deposit, or
5. An acceptable substitute in lieu of one of the above agreed to by AHCCCS.

## **C. CASH DEPOSIT**

1. Deposit of Funds
  - a. Any funds to be deposited with the State Treasurer shall be sent to DHCM in the form of a check or a wire transfer of funds to the State Treasurer. Reference Attachment A for Instructions for Wire/ACH Transfers. Additionally, a letter should be sent to DHCM describing:
    - i. The application of funds (Acute Care, CRS, ALTCS/EPD, MA Plan, or any combination), and
    - ii. A contact person at the Contractor and contact phone number, for any issues concerning the deposit, and a wire number if the funds were sent via a bank wire. Note the attached wire instructions.
  - b. DHCM will “claim” the funds by submitting a copy of the Contractor’s letter and a “Securities Safekeeping” form to the State Treasurer’s Office. After the funds

have been claimed, DHCM will send a confirmation that the funds were received and claimed.

2. Withdrawal of Funds

- a. To withdraw principal funds, send a letter to DHCM requesting the withdrawal. The letter must include:
  - i. The amount of the withdrawal,
  - ii. The program from which the funds are being withdrawn (Acute Care, CRS, ALTCS/EPD or MA Plan),
  - iii. The date that the funds should be withdrawn (allow a minimum of 10 working days), and
  - iv. The manner the warrant from the State Treasurer's office is to be handled:
    - Mailed by the US Postal Service, or
    - Courier pick-up (please include a phone number of the primary contact so prompt notice can be given), or
    - Wiring instructions.
- b. DHCM will submit to the State Treasurer's Office a copy of the Contractor's letter and a "Securities Safekeeping" form to release the funds. DHCM will forward the warrant to the Contractor in the manner requested in the withdrawal letter.

**D. LETTER OF CREDIT**

1. Establishment of Letter of Credit

- a. Before a Letter of Credit can be accepted as a performance bond it must be approved by AHCCCS for form and amount. Requirements include:
  - i. Be of standard commercial scope and issued by a bank, credit union or savings and loans authorized to do business in the State of Arizona and insured by the appropriate Federal Institution;
  - ii. For an amount that meets or exceeds the performance bond dollar requirement;
  - iii. For a time period that meets or exceeds the AHCCCS contract term ; The LOC should be payable to AHCCCS for the benefit of covered members, providers and certain third parties;
  - iv. DHCM must receive a signed extension 30 days prior to the expiration date;
  - v. A statement that the performance bond cannot be changed in the amount, duration or scope, or discontinued without the authorization from DHCM.
- b. Send a copy of the agreement to be executed to DHCM 30 working days prior to the execution date. DHCM will review the agreement and advise of acceptance or that changes are necessary. The DHCM review will only be for issues that are necessary for the AHCCCS performance bond; it will not include review for any other matters.
- c. DHCM will respond in writing that the performance bond is acceptable or changes need to be made for acceptance.

- d. After the agreement is executed, send the original to DHCM. The original will be held in safe keeping until the agreement ends or is terminated by the parties.
  - e. The Contractor shall send notification of a contact person at the financial institution issuing the letter of credit and contact phone number to the DHCM Finance Manager.
2. Return of Letter of Credit original
    - a. The original Letter of Credit will be returned to the makers upon:
      - i. Termination of the Letter of Credit, or
      - ii. Termination of the AHCCCS contract, or
    - b. Satisfying the performance bond requirement with another acceptable form as outlined by AHCCCS.

## **E. SURETY BOND**

1. Establishment of Bond
  - a. Before a Surety Bond can be accepted as a performance bond it must be approved by AHCCCS for form and amount. Requirements include:
    - i. Be of standard commercial scope and issued by a bank, credit union, savings and loans, or insurance company authorized to do business in the State of Arizona and insured by the appropriate Federal Institution,
    - ii. For an amount that meets or exceeds the performance bond dollar requirement,
    - iii. For a time period that meets or exceeds the AHCCCS contract term,
    - iv. DHCM must receive a signed extension 30 days prior to the expiration date, and
    - v. A statement that the performance bond cannot be changed in the amount, duration or scope or discontinued without the authorization of DHCM.
2. Send a copy of the agreement to be executed to DHCM 30 working days prior to the execution date. AHCCCS will review the agreement and will advise of acceptance or that changes are necessary. The AHCCCS review will only be for issues necessary for the AHCCCS performance bond; it will not include review for any other matters.
3. DHCM will respond in writing whether the performance bond is acceptable or changes need to be made for acceptance.
4. After the agreement is executed, the Contractor shall send the original to DHCM. The original will be held in safe keeping until the agreement ends or is terminated by the parties.
5. The Contractor shall send notification of a contact person at the financial institution issuing the surety bond and contact phone number to the DHCM Finance Manager.

6. Return of Surety Bond original
  - a. The original Surety Bond will be returned to the makers upon:
    - i. Termination of the Surety bond, or
    - ii. Termination of the AHCCCS contract, or
    - iii. Satisfying the performance bond requirement with another acceptable form as outlined by AHCCCS, or
    - iv. Statutory Notice of Release

#### **F. CERTIFICATE OF DEPOSITS**

1. Types of Certificate of Deposits
  - a. Only Certificates of Deposit from banks,
  - b. Savings and loans, or credit unions and insured by the appropriate Federal institution, are applicable for the performance bond.
2. Assignment to Arizona State Treasurer
3. All Certificates of Deposit must be assigned to the Arizona State Treasurer in compliance with A.R.S. §35-155. AHCCCS, DHCM finance personnel completes this by submission of the "Assignment to Arizona State Treasurer" form.
4. Deposit of the Certificate of Deposit.
  - a. Send or deliver the original Certificate of Deposit (or receipt for the Certificate of Deposit if a certificate is not issued) and the Assignment form to DHCM. A letter should accompany the Certificate of Deposit describing the contract or line of business the Certificate of Deposit is satisfying (Acute Care, CRS, ALTCS/EPD, or MA) and a contact person.
  - b. After the Certificate of Deposit has been sent to the State Treasurer, DHCM will send a copy of the State Treasurer's "Securities Safekeeping" form to record the deposit of the Certificate of Deposit.
  - c. After the Certificate of Deposit has been deposited with the State Treasurer, the Contractor must monitor the maturity date. No notification should be expected from the State Treasurer's office or DHCM. Evidence of the renewal of each CD must be sent to DHCM within five days of the renewal date.
  - d. The Contractor shall send notification of a contact person at Contractor and contact phone number to the DHCM Finance Manager.
5. Withdrawal of a Certificate of Deposit
  - a. Send a letter to DHCM requesting the release of a specific Certificate of Deposit giving:

The institution of the Certificate of Deposit,

    - i. The certificate number,
    - ii. The amount of the Certificate of Deposit,
    - iii. The program the Certificate of Deposit is being withdrawn from,

- iv. The manner the Certificate of Deposit is to be returned to the Plan, and
- v. A contact person.

DHCM will submit to the State Treasurer’s Office a copy of the Contractor’s letter and a “Securities Safekeeping” form to release the funds. DHCM will forward the warrant to the Contractor in the manner requested in the withdrawal letter.

**G. EQUITY PER MEMBER REQUIREMENTS**

1. **Formula**

Unrestricted equity, less on-balance sheet Performance Bond, divided by the number of members enrolled at the end of the period.

2. **Acute Care Requirement**

Contractors with 0-99,999 members: \$170  
Contractors with 100,000+ members: \$115

3. **CRS Requirement**

At least \$260 per member for CYE 2014  
At least \$320 per member for CYE 2015  
At least \$370 per member for CYE 2016 and thereafter

4. **ALTCS/EPD Requirement**

All Contractors \$2,000

5. **AHCCCS Certified Medicare Advantage Plan Requirement:**

\$50 per member upon commencement of the plan. One year after the MA Plan is established, AHCCCS will require that the equity per member amount increase to \$350 per MA Plan Dual Eligible Member.

**H. REMEDIATION WHEN A CONTRACTOR FAILS TO MEET THE EQUITY PER MEMBER REQUIREMENT**

If a Contractor’s equity per member falls below the requirement, AHCCCS will review the causes for the lack of compliance. AHCCCS may require the Contractor to comply with the following measures:

- 1. Submission of corrective action plan to increase equity,

2. Monthly financial reporting, if not already required,
3. Increase the amount of the Performance Bond,
4. Capital infusion to bring equity into compliance,
5. Enrollment Cap.

If the Contractor fails to comply with the above requirements, AHCCCS may apply sanctions as delineated in ACOM Policy 408.

#### **I. RESTRICTIONS ON EQUITY**

The following asset types will constitute restricted assets, and therefore will be subtracted from a contractor's equity when calculating the equity per member ratio:

1. Assets recorded as "due from affiliates" which are resulting from transactions other than cash/bank account sweep arrangements,
2. Goodwill and adjustments to other assets resulting from a purchase, including those resulting from purchases and revaluations recorded in accordance with SFAS No. 141, *Business Combinations* and EITF 88-16, *Basis in Leverage Buyout Transactions*,
3. Guarantees of debt,
4. On balance sheet Performance Bonds,
5. Other assets determined to be restricted by AHCCCS.

#### **J. REQUIREMENTS FOR CONTRACTORS WITH RESTRICTED EQUITY**

If a Contractor's equity is not supported by unrestricted cash or investments, and the Contractor does not meet the equity per member requirements, then the Contractor may be required to maintain a Performance Bond in an amount greater than 100% of one month's capitation to cover the amount of the equity necessary to meet the requirements.

#### **K. DHCM MONITORING RESPONSIBILITIES**

1. DHCM financial consultants will be responsible for monitoring compliance with equity per member requirements on a quarterly basis. Analyses will be performed to determine the equity per member sufficiency. Deficiencies and requests for remediation will be communicated in writing to the Contractor. The Contractor will be required to submit a plan to increase the equity within 30 days.

2. The DHCM financial consultant responsible for Performance Bonds will monitor compliance with Performance Bond requirements on a monthly basis. AHCCCS will notify the Contractor of required changes to the amount of the Performance Bond. Contractors will have 30 days to comply with new requirements.

#### **IV. REFERENCES**

- Acute Care Contract, Section D
- ALTCS/EPD Contract, Section D
- CRS Contract, Section D
- 42 CFR 438.116
- ACOM Policy 408
- ACOM Policy 313
- SFAS No. 141, Business Combinations
- EITF 88-16, Basis in Leverage Buyout Transactions
- A.R.S. §35-155
- Contract, Section F, Attachment F3, Contractor Chart of Deliverables
- Attachment A, Instructions for Wire/ACH Transfers of Funds to AHCCCS via Arizona State Treasurer

**ATTACHMENT A, INSTRUCTIONS FOR WIRE/ACH TRANSFERS OF FUNDS TO AHCCCS  
VIA ARIZONA STATE TREASURER**

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

**DRAFT**