

103 – FRAUD, WASTE, AND ABUSE

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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