

408 - SANCTIONS

EFFECTIVE DATES: 10/01/03, 10/01/12, 11/01/12, 10/01/15, 07/01/16, 08/03/17, 10/01/18, 04/03/19, 07/01/19

APPROVAL DATES: 09/26/12, 10/09/12, 09/17/15, 04/01/16, 07/12/17, 03/21/19, 09/05/19

I. PURPOSE

This Policy applies to ACC, ALTCS E/PD, DCS/CMDP (CMDP), DES/DDD (DDD), and RBHA Contractors. This Policy specifies the sanctions which may be imposed by the AHCCCS Division of Health Care Management (DHCM) in accordance with Federal and State laws, regulations and the AHCCCS Contract. This Policy does not limit the authority of the AHCCCS Office of the Inspector General to investigate fraud, waste, and abuse, conduct audits and pursue any legal remedies arising from the findings of those investigations and audits.

II. DEFINITIONS

CORRECTIVE ACTION PLAN (CAP)	A written work plan that identifies the root cause(s) of a deficiency, includes goals and objectives, actions/tasks to be taken to facilitate an expedient return to compliance, methodologies to be used to accomplish CAP goals and objectives, and staff responsible to carry out the CAP within established timelines. CAPs are generally used to improve performance of the Contractor and/or its providers, to enhance Quality Management/Process Improvement activities and the outcomes of the activities, or to resolve a deficiency.
NOTICE OF CONCERN (NOC)	A written communication to the Contractor regarding a concern. Failure to correct the issue(s) identified in the notice may result in additional contract enforcement remedies.
NOTICE TO CURE (NTC)	A formal written communication to a Contractor regarding specific non-compliance. The NTC contains specific timelines for meeting performance standards and possible penalties for continued non-compliance. An NTC may contain specific activities or reporting requirements that must be adhered to as the Contractor works toward compliance. Failure to achieve compliance as the result of a Notice to Cure may result in the imposition of a Sanction.

SANCTION

A monetary and/or non-monetary penalty assessed or applied for failure to demonstrate compliance in one or more areas of contractual responsibility. Non-monetary penalties may include, but are not limited to:

1. Appointment of temporary management for the Contractor, granting the Contractor's enrollees the right to terminate enrollment with the Contractor,
2. Suspension of auto-assignment and/or new enrollment, and/or
3. Suspension of payment to the Contractor until CMS or the State is satisfied that the reason for imposition of the sanction no longer exists and is not likely to recur.

III. POLICY**A. GENERAL**

AHCCCS expects the Contractor to align its performance of the Contract with the AHCCCS mission and vision and implement program innovation and best practices on a continual basis while adding value to the AHCCCS program.

In the event the Contractor fails to demonstrate compliance with contractual requirements, AHCCCS may elect to impose an administrative action. AHCCCS reserves the right to issue an administrative action for any occurrence of non-compliance. Each occurrence of non-compliance will be evaluated for determination and issuance of potential administrative action. Administrative actions may include issuance of any or all of the following: Notice of Concern, NTC, a mandate for CAP, and Sanctions. The administrative actions described in this Policy are non-exclusive; that is, the issuance of an administrative action or the imposition of any particular Sanction by AHCCCS does not preclude AHCCCS from pursuing any other remedy available in law or contract arising from the same conduct.

To promote transparency, administrative actions and related documentation may be published on the AHCCCS website. In certain instances, a NOC may be published to the AHCCCS website. In these instances, AHCCCS will provide notice to the Contractor prior to the publication.

B. AHCCCS COMPLIANCE COMMITTEE

1. With the exception of encounter-related Sanctions for aged, pending encounters as outlined in the AHCCCS Encounter Manual, and encounter data validation Sanctions as outlined in the AHCCCS Encounter Data Validation Technical Document, the AHCCCS Compliance Committee will evaluate recommendations for proposed Sanctions and will determine the appropriate Sanction to be imposed after consideration of relevant factors, and ensure consistency in the application and amount of Sanctions being applied. The Compliance Committee may, but is not

- required to, review administrative actions that do not include a Sanction such as issuing a Notice of Concern, a NTC, or requiring a CAP.
2. The Compliance Committee is comprised of the following individuals, or their designees:
 - a. Two AHCCCS Deputy Directors,
 - b. AHCCCS Chief Medical Officer,
 - c. AHCCCS Division of Community Advocacy and Intergovernmental Relations (DCAIR) Assistant Director,
 - d. An attorney from the AHCCCS Office of Administrative Legal Services (OALS), and
 - e. Two AHCCCS Division of Health Care Management (DHCM) Assistant Directors.
 3. All seven Compliance Committee members listed above, or their designee, shall be present at each Committee meeting. Sanctions will be imposed based upon a majority vote.
 4. The Compliance Committee may consult with subject matter experts as appropriate and shall consider the following in its decision making:
 - a. Applicable statutes and rules and contractual requirements,
 - b. Application of consistent standards for determination of Sanction type and/or monetary penalty,
 - c. The goals and objectives of the agency, and
 - d. Aggravating or mitigating factors such as:
 - i. Quality of care or safety concerns for members,
 - ii. Repeated/continual deficiencies,
 - iii. Previous administrative actions,
 - iv. Intentional non-compliance,
 - v. Self-identification of deficiencies and remediation,
 - vi. Risk to the financial viability of the Contractor,
 - vii. Non-compliance with key staffing requirements,
 - viii. Financial implications for providers, and
 - ix. Financial harm to the state.
 5. Matters deliberated in the Compliance Committee are confidential.
 6. Upon the Committee's decision regarding the Sanction, DHCM will provide written notification to the Contractor which explains the basis and nature of the Sanction, and any applicable appeal rights [42 CFR 438.710(a)(1)].

C. BASIS FOR IMPOSITION OF SANCTIONS

AHCCCS may impose Sanctions for any breach of the Contract, or any failure to comply with applicable State or Federal laws or regulations including but not limited to any conduct as specified in 42 CFR 438.700 et seq.

D. TYPES OF SANCTIONS

AHCCCS may impose the following types of Sanctions:

1. Monetary Penalties

The amount of the monetary penalty may vary depending on the nature of the Contractor's action or failure to act as follows:

- a. The maximum of \$25,000 may be imposed per occurrence for the following actions:
 - i. Substantial failure to provide medically necessary services that the Contractor is required to provide under the terms of this contract to its enrolled members,
 - ii. Misrepresentation or falsification of information furnished to an enrollee, potential enrollee, or provider,
 - iii. Failure to comply with physician incentive plan requirements, and
 - iv. Distribution directly, or indirectly through any agent or independent Contractor, of marketing or outreach materials that have not been approved by AHCCCS or that contain false or materially misleading information.
- b. Up to \$25,000 or double the amount of the excess charges (whichever is greater) if the Contractor imposes premiums or charges on members that are in excess of those permitted in the Medicaid program. AHCCCS will deduct the amount of the overcharge from the penalty and return it to the affected member, and
- c. The maximum of \$100,000 may be imposed per occurrence for the following types of actions:
 - i. Discrimination among enrollees on the basis of their health status or need for health care services, and
 - ii. Misrepresentation or falsification of information furnished to CMS or AHCCCS.

2. Member Enrollment Related Sanctions

AHCCCS may Sanction a Contractor by:

- a. Granting members the right to terminate enrollment without cause and notifying the affected members of their right to disenroll (If another Contractor is available),
- b. Suspending all new enrollment, including auto-assignments, after the effective date of the Sanction (If another Contractor is available), and
- c. Suspending payment for members enrolled after the effective date of the Sanction until CMS or AHCCCS is satisfied that the reason for the Sanction no longer exists and is not likely to recur.

3. Temporary Management

AHCCCS retains the right to temporarily manage the Contractor consistent with the terms of the Contract and 42 CFR 438.706 and Section 1932(e)(2)(B)(i) of the Social Security Act.

4. Termination of the Contract

AHCCCS retains the right to terminate a Contract consistent with the terms of the Contract.

5. Additional Sanctions

AHCCCS may impose additional Sanctions as provided under State Laws, regulations, or Contract to address areas of non-compliance.

G. CONTRACTOR RIGHT TO APPEAL

The Contractor may dispute the decision to impose a Sanction as specified in A.R.S. §36-2903.01(B)(4).

H. NOTIFICATION TO CMS

For Sanctions imposed or lifted pursuant to Medicaid Managed Care Regulations (42 CFR 438.700 et seq.), AHCCCS will provide CMS with written notice:

1. Whenever it imposes or lifts a Sanction for any of the Sanction able items as specified in 42 CFR 438.700.
 - a. The notice will specify the Contractor, the type of Sanction, and the reason for the imposition or lifting of the Sanction, and
 - b. The notice will be given no later than 30 days after it imposes or lifts a Sanction.