

**103 – FRAUD, WASTE, AND ABUSE**

EFFECTIVE DATES: 10/01/94, 10/25/12, 12/01/12, 09/01/14, 07/01/16, 10/01/17, 10/01/18, 07/03/19, 10/01/20, UPON PUBLISHING<sup>1</sup>

APPROVAL DATES: 11/01/12, 02/07/13, 08/21/14, 04/21/16, 07/10/18, 06/13/19, 04/22/20, 05/06/21<sup>2</sup>

**I. PURPOSE**

This Policy applies to ACC, ALTCS E/PD, DCS/~~CMDP~~ Comprehensive Health Plan (CHP)<sup>3</sup>, DES/DDD (DDD), and RBHA Contractors. The purpose of this Policy is to outline the corporate compliance requirements including the reporting responsibilities for alleged fraud, waste, and/or abuse involving AHCCCS program funds regardless of the source. This Policy also addresses additional responsibilities regarding compliance with broader program integrity regulatory and programmatic requirements.

AHCCCS/~~Office of Inspector General (AHCCCS/OIG)~~ is responsible for reviewing suspected incidents of fraud, waste, and/or abuse. This includes the preliminary investigation of credible allegations of fraud, the preliminary and full investigation of fraud, waste, and/or abuse, and any other matters necessary to comply with the authority or obligations vested in AHCCCS/~~OIG~~ under State or Federal law, rule, regulations, or policies.

**II. DEFINITIONS**

**ABUSE OF THE AHCCCS 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, noncompliance with licensure standards, misuse of billing numbers, or misuse or abuse of billing privileges. It also includes beneficiary practices that result in unnecessary cost to the AHCCCS Program as specified in [42 CFR 455.2].

<sup>1</sup> Date Policy is effective.

<sup>2</sup> Date presented at APC meeting.

<sup>3</sup> Revised to apply name change for CMDP from Comprehensive Medical and Dental Program to Comprehensive Health Plan (CHP) effective April 1, 2021 due to CHP behavioral health integration. Refer to Laws 2019, 1st Regular Session. Change made throughout Policy and Attachments.

**ADMINISTRATIVE  
SERVICES  
SUBCONTRACT/  
SUBCONTRACTOR**

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, and
- ~~5. CHP and DDD Subcontracted Health Plan(s); and~~
- ~~6. CMDP Administrative Subcontractor.~~<sup>4</sup>

A person (individual or entity) who holds an Administrative Services Subcontract is an Administrative Services Subcontractor.

Providers are not Administrative Services Subcontractors.

**AGENT**

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

**CONTRACTOR**

An organization or entity that has a prepaid capitated Contract with AHCCCS ~~pursuant to~~ as specified in A.R.S. § 36-2904, A.R.S. § 36-2940, A.R.S. § 36-2944, or Chapter 34 of A.R.S. Title 36, to provide goods and services to members either directly or through subcontracts with providers, in conformance with contractual requirements and State and Federal law, rule, regulations, and policies.

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<sup>4</sup> Definition updated to align with contract definition.

**CORPORATE COMPLIANCE OFFICER**

An individual located in Arizona and who implements and oversees the Contractor's Compliance Program. The Corporate Compliance Officer shall be a management official, available to all employees, with designated and recognized authority to access records and make independent referrals to the AHCCCS Office of the Inspector General. The Corporate Compliance Officer shall not hold any other position other than the Corporate Compliance Officer position. The Corporate Compliance Officer ~~must~~<sup>5</sup>shall be an onsite management official who reports directly to the Contractor's CEO and Board of Directors, if applicable. The Corporate Compliance Officer ~~must~~<sup>6</sup>shall be responsible for developing and implementing policies, procedures and practices designed to ensure compliance with the requirements of the Contract 42 CFR 438.608.

**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 ~~{as specified in 42 CFR 455.2}~~.

**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 specified in 42 CFR 455.2}~~.<sup>6</sup>

<sup>5</sup> Updated to align with policy standards throughout Policy.

<sup>6</sup> Definition updated to align with Contract definition.

**IN-NETWORK PROVIDER**

An individual or entity which has signed a provider agreement as specified in A.R.S. §\_36-2904 and that has a subcontract or is authorized through a subcontract with an AHCCCS Contractor to provide services ~~prescribed in as specified in~~ A.R.S. §\_36-2901 et seq. for members enrolled with the Contractor.<sup>7</sup>

**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 as specified in ~~[42 CFR 455.101].~~

**MEMBER**

An eligible individual who is enrolled in AHCCCS, as ~~defined~~ specified in A.R.S. §\_36-2931, §\_36-2901, §\_36-2901.01 and A.R.S. §\_36-2981. Also referred to as Title XIX/XXI Member or Medicaid Member.<sup>8</sup>

**PROVIDER**

Any individual or entity that is engaged in the delivery of services, or ordering or referring for those services, and is legally authorized to do so by the State in which it delivers the services, ~~pursuant to~~ as specified in 42 CFR 457.10<sup>9</sup>, 42 CFR 438.2.

**SUBCONTRACT**

An agreement entered into by the Contractors with any of the following: a provider of health care services who agrees to furnish covered services to member; or with any other organization or individual ~~or entity~~ who agrees to perform any administrative function or service for the Contractors specifically related to fulfilling the Contractor's obligations to AHCCCS under the terms of ~~the~~ is AHCCCS-Contract, as ~~defined~~ specified in 9 A.A.C. 22 Article 1.<sup>10</sup>

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<sup>7</sup> Definition updated to align with Contract.

<sup>8</sup> Definition updated to align with Contract.

<sup>9</sup> Definition updated to align with Contract.

<sup>10</sup> Definition updated to align with Contract.

**SUBCONTRACTOR**

1. A provider of health care who agrees to furnish covered services to members.
2. An individual, agency, or organization with which Contractors have contracted or delegated some of its management/administrative functions or responsibilities.
3. An individual, 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.<sup>11</sup>

**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 division of AHCCCS that has the authority to conduct preliminary and full investigations relating to Fraud, Waste, and abuse involving the programs administered by AHCCCS. ~~Pursuant to~~ As specified in 42 CFR 455, Subpart A, and a Memorandum of Understanding with the Arizona Attorney General's Office, AHCCCS/OIG refers case of suspected Medicaid Fraud to the State Medicaid Fraud Control Unit for appropriate legal action. AHCCCS/OIG also has the authority to make independent referrals to other law enforcement entities.

1. ~~Pursuant to~~ As specified in A.R.S. § 36-2918, 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 AHCCCS/OIG deems relevant or material to an investigation, examination, audit, or review undertaken by the AHCCCS/OIG.
2. ~~Pursuant to~~ As specified in A.R.S. §§ 36-2918 and 2957, AHCCCS/OIG has the authority to impose a civil monetary penalty of up to \$2,000.00 for each item or service claimed, and/or an assessment of an amount not to exceed twice the amount claimed for each item or service.
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) database as well as the Arizona Criminal Justice Information System. Additionally, AHCCCS/OIG is authorized to

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<sup>11</sup> Definition updated to align with Contract.

receive and share restricted criminal justice information with other federal, state, and local agencies.

4. ~~Pursuant to~~ As specified in Federal Law, AHCCCS/OIG shall suspend payments to Providers where it determines that a Credible Allegation of Fraud exists as specified in 42 CFR 455.23.
5. ~~Pursuant to~~ As specified in State and Federal Law, AHCCCS is required in certain circumstances, and in other circumstances it may, act to suspend, terminate, or exclude any person (individual or entity) from participation in the AHCCCS Program.

## **B. CONTRACTOR RESPONSIBILITIES**

Contractors shall:

1. Have in place internal controls, policies, and procedures to prevent, detect, and report Fraud, Waste, and/or abuse activities to AHCCCS/OIG.
2. Have in place internal controls, including policies and procedures, to implement a suspension, termination, or exclusion of a Provider from the Contractor's network of Providers.
3. Have a Corporate Compliance Program that complies with the Contractor's Contract with AHCCCS, and all state and federal laws, including but not limited to 42 CFR Part 438, Subpart H.

The Corporate Compliance Program shall be developed in accordance with the Contractor's Corporate Compliance Plan, which shall include but not be limited to:

- a. Program integrity goals and objectives,
- b. Descriptions of internal and external controls employed by Contractors to ensure compliance with State and Federal law,
- c. The Contractor's corporate compliance activities, and
- d. The roles and responsibilities of the Contractor's staff as they relate to the Corporate Compliance Program.

Contractors can use the sample Corporate Compliance Plan provided as Attachment B for guidance on how to present such compliance activities. The Contractor's written Corporate Compliance Plan shall be submitted to AHCCCS/OIG ~~annually~~<sup>12</sup> as specified in Contract.

4. Include a program integrity audit/review program as part of its Corporate Compliance Plan designed to identify Fraud, Waste, and/or abuse. The program integrity

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<sup>12</sup> Removed timeframe to align with policy standards.



audit/review program shall ensure that Contractors tracks inadequate billing practices and identifies emerging trends ~~in an effort~~<sup>13</sup> to provide technical assistance to contracted Providers and avoid future occurrences of problematic billing.

5. Submit to AHCCCS/OIG an External Audit Plan/Schedule and Audit Report of all individual Provider audits.
  - a. The External Audit Plan/Schedule shall be submitted using Attachment C,
  - b. Each Audit Report shall include at a minimum:
    - i. ~~An Objective;~~ ~~Scope;~~ ~~Estimated dollars at risk;~~ ~~Current audit results;~~ ~~Key audit findings;~~ ~~Recommendations;~~ ~~Corrective actions required, and;~~ ~~conclusion,~~
    - ii. Copies of the report for each audit scheduled and completed, and
    - iii. ~~In the event that~~ ~~If~~<sup>14</sup> an audit was not timely completed, the Audit Report shall include a reason why the audit was not completed and a date when the audit will be completed in the future.
6. Submit ~~annually,~~<sup>15</sup> complete, accurate, and current disclosure information, as described in 42 CFR Part 455, Subpart B and as specified in Contract, upon execution of a Contract with the State and upon renewal or extension of the Contract utilizing Attachment A and Attachment A-1. Contractors shall ensure review of its response by its legal counsel prior to submitting disclosure information. As specified in Contract, Contractors ~~is~~ are required to submit all information electronically. No exceptions will be made to have materials submitted by other methods. AHCCCS/Office of Administrative Legal Services (OALS)<sup>16</sup> and AHCCCS/OIG will review the Contractor's submitted disclosure information for completeness and AHCCCS/OIG will screen and confirm that persons listed in the submitted information are not excluded from participation in the Medicaid program.
7. Complete information is required to enable AHCCCS/OIG to confirm that persons with an ownership or control interest in Contractors are not excluded from participation in the Medicaid program. All required information shall be provided as ~~set out specified~~<sup>17</sup> in Attachment A and Attachment A-1. Do not leave any portion blank. If Contractors believes that ~~particular~~<sup>18</sup> information is not applicable, Contractors shall indicate "Not Applicable" on the form and in a footnote include the legal and factual basis for its determination.

Contractors shall also obtain and disclose the same information regarding its Administrative Services Subcontractors. The results of the Disclosure of Ownership

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<sup>13</sup> Removed verbiage that added no value.

<sup>14</sup> Removed verbiage that added no value

<sup>15</sup> Removed timeframe to align with policy standards.

<sup>16</sup> Spelling out acronym

<sup>17</sup> Updated to align with policy standards throughout Policy.

<sup>18</sup> Removed verbiage that added no value

and Control and the Disclosure of Information on Persons Convicted of Crimes shall be retained by Contractors and reported to AHCCCS/OIG.

The disclosure information described above shall be accompanied by an attestation (~~included~~ as specified in Attachment A) that the information provided is accurate, complete, and truthful. Consistent with [42 CFR 457.990<sup>19</sup>](#) and 42 CFR 438.606, the attestation shall be signed by the entity's Chief Executive Officer, Chief Financial Officer, or an individual who reports directly to the Chief Executive Officer or Chief Financial Officer with delegated authority to sign for the Chief Executive Officer or Chief Financial Officer.

Failure to provide all complete and accurate disclosures and an attestation signed by an individual with appropriate authority may result in the withholding of payments under the Contract and/or the recovery, recoupment, and/or offset of any monies remitted without limitation.

8. Disclose, and require its Administrative Services Subcontractors to disclose, to AHCCCS/OIG the identity of any employee or person with ownership or control interest who is excluded from participation in any federal healthcare programs.
9. Comply with the requirements of Section 6032 Deficit Reduction Act of 2005 (DRA) [Section 1902(a)(68) of the Social Security Act, [42 CFR 457.1285](#), and 42 CFR 438.608(a)(6)]. As a condition for receiving payments, Contractors shall establish written policies, and shall ensure adequate training and ongoing education for, all of its employees (including management), members, and of any Subcontractors and/or Agents of Contractors regarding the following:
  - a. Detailed information about the Federal False Claims Act,
  - b. The administrative remedies for false claims and statements,
  - c. Any State laws relating to civil or criminal liability or penalties for false claims and statements, and
  - d. The whistleblower protections under such laws.
10. Ensure adequate training addressing Fraud, Waste, and/or abuse prevention, recognition, and reporting, and encourage employees, members, and any Subcontractors to report Fraud, Waste, and/or abuse without fear of retaliation.
11. Ensure an internal reporting process relating to the reporting of Fraud, Waste, and/or abuse that is well-defined and made known to all employees, Members, and any Subcontractors.
12. Conduct research and proactively identify changes for program integrity that are relevant to their Corporate Compliance Program, and periodically review and revise

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<sup>19</sup> [Added CHIP reference where applicable throughout Policy](#)



the Fraud, Waste, and/or abuse policies or guidance from AHCCCS to reflect such changes to rules, regulations, or new initiatives.

13. Regularly attend and participate in AHCCCS/OIG work group meetings.
14. Respond promptly and not later than 30 calendar days, to requests for information from AHCCCS/OIG.
15. Cooperate with AHCCCS/OIG regarding any allegation of member billing in violation of A.R.S. § 36-2903.01(K) and A.A.C. R9-22-702.
16. Have a method of verifying with Members that Members received the services billed by Providers to identify potential service/claim Fraud. Contractors shall perform periodic audits through Member contact and report the results of these audits as specified in ACOM Policy 424.
17. In addition to the specific requirements stated above, it is required that Contractors be in compliance with all State and Federal laws and regulations related to Fraud, Waste, and/or abuse even if not directly specified<sup>+</sup> in this Policy.

### **C. REPORTING RESPONSIBILITIES**

1. Fraud, Waste, and/or Abuse
  - a. If a Contractor discovers, or is made aware, that an incident of alleged Fraud, Waste, and/or abuse has occurred or is occurring, Contractors shall report the incident to AHCCCS/OIG as specified in Contract and by completing and submitting the “Report Member, Provider, or Contractor Suspected Fraud or Abuse of the Program” form available on the AHCCCS/OIG webpage. All pertinent documentation that could assist AHCCCS in its investigation shall be attached to the form,
  - b. If a Contractor, Administrative Services Subcontractor, or Provider identifies an incident which warrants self-disclosure, the incident shall be reported within 10 calendar days to AHCCCS/OIG by completing and submitting the Provider Self-Disclosure form available on the AHCCCS/OIG webpage. All pertinent documentation that could assist AHCCCS in its investigation shall be attached to the form,
  - c. Once Contractors or its Subcontractors<sup>20</sup> has referred a case of alleged Fraud, Waste, and/or abuse to AHCCCS/OIG, Contractors or its Subcontractors shall take no action to recoup, offset or act in any manner inconsistent with AHCCCS/OIG’s authority to conduct a full investigation, obtain a comprehensive recovery of any suspected overpayments, and/or impose a civil monetary penalty,

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<sup>20</sup> [Added language to prevent Subcontractors from recouping program funds throughout Policy where applicable](#)

- d. In the event AHCCCS/OIG feels it would be beneficial to seek additional and/or clarifying details regarding a referral from the Contractor, AHCCCS/OIG may first choose to request preliminary review work from Contractors in order to expand the allegation(s) and to obtain further documentation that will support an investigation by AHCCCS/OIG,
- e. If AHCCCS/OIG chooses to seek additional and/or clarifying details regarding a referral from the Contractor, the Contractor will have 30 calendar days to provide the requested documentation,
- f. AHCCCS/OIG will notify Contractors when the investigation concludes in a manner that safeguards the integrity and confidentiality of the investigation,
- g. If it is determined by AHCCCS/OIG that the matter does not represent a Fraud, Waste, and/or abuse case, AHCCCS/OIG will return the matter to Contractors for disposition in accordance with any applicable laws and/or contracts,
- h. Contractors agree that AHCCCS has the sole authority to handle and dispose of any matter involving Fraud, Waste, and/or abuse. Contractors assign to AHCCCS the right to recoup any amounts overpaid to a Provider as a result of Fraud, Waste, and/or abuse. If Contractors receives anything of value that could be construed to represent the repayment of any amount expended due to Fraud, Waste or abuse, Contractors shall forward that recovery to AHCCCS/OIG within 30 days of its receipt. As specified in the AHCCCS Minimum Subcontractor Provisions (MSPs), the above requirements apply to any actions undertaken on behalf of a Contractor by a Subcontractor.<sup>21</sup>
- i. Contractors relinquishes each, every, any, and all claims to any monies received by AHCCCS as a result of any program integrity efforts which include, but are not limited to:
  - i. Recovery of an overpayment,
  - ii. Civil monetary penalties and/or assessments,
  - iii. Civil settlements and/or judgments,
  - iv. Criminal restitution,
  - v. Collection by AHCCCS or indirectly on AHCCCS' behalf by the Office of the Attorney General, and/or
  - vi. Other, as applicable,
- j. Contractors shall also report to AHCCCS, as specified in the Contract, and AMPM Policy 950, any credentialing denials including, but not limited to:
  - i. Those which are the result of licensure issues,
  - ii. Quality of care concerns,
  - iii. Excluded, terminated, or otherwise sanctioned Providers, and/or
  - iv. Alleged Fraud, Waste, and/or abuse.

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<sup>21</sup> Added to clarify that subcontractors must adhere to the same requirement as the subcontractor.

OPEN UNTIL 6/21/21