

## 103 – FRAUD, WASTE, AND ABUSE

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### I. PURPOSE

This Policy applies to ACC, ACC-RBHA, ALTCS E/PD, DCS CHP (CHP), and DES DDD (DDD) Contractors. The purpose of this Policy is to outline the corporate compliance requirements including the reporting responsibilities for alleged Fraud, Waste, and/or Abuse (FWA) involving AHCCCS program funds regardless of the source. This Policy also addresses additional responsibilities regarding compliance with broader program integrity regulatory and programmatic requirements.

The AHCCCS Office of Inspector General (AHCCCS OIG) is responsible for reviewing suspected incidents of FWA. This includes the preliminary investigation of credible allegations of fraud, the preliminary and full investigation of FWA, 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

Refer to the [AHCCCS ACOM and AMPM Dictionary](#) for common terms found in this Policy.

For Purposes of this Policy, the following terms are defined as:

#### **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, whether or not the individual is an employee of the institution as specified in 42 CFR 455.101.

**PERSON WITH AN  
OWNERSHIP OR  
CONTROL INTEREST**

As specified in 42 CFR 455.101, an individual or entity that:

1. Has a direct ownership interest equal to 5% or more in a provider.
2. Has an indirect ownership interest equal to 5% or more in a provider.
3. Has a combination of direct and indirect ownership interests equal to 5% or more in a provider.
4. Owns an interest of 5% or more in any mortgage, deed of trust, note, or other obligation secured by the provider if that interest equals at least 5% of the value of the property or assets of the provider.
5. Is an officer or director of a provider that is organized as a corporation; or a partner in a provider that is organized as a partnership.

For reference only, some examples of Persons with an Ownership or Control Interest included, but are not limited to:

1. If Entity A has a 100% interest in the provider entity, then Entity A has Persons with an Ownership or Control Interest and shall be disclosed.
2. Any entity with a 5% or greater interest in Entity A also has Persons with an Ownership or Control Interest and shall be disclosed.

**III. POLICY**

**A. AUTHORITY**

The AHCCCS OIG is the division of AHCCCS that has the authority to conduct preliminary and full investigations relating to FWA involving the programs administered by AHCCCS. Pursuant to 42 CFR 455, Subpart A, and a Memorandum of Understanding with the Arizona Attorney General's Office, AHCCCS OIG refers cases 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 ARS 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 ARS 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. The 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 receive and share restricted criminal justice information with other Federal, State, and local agencies.

4. Pursuant to 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 Federal and State 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**

The Contractor shall:

1. Have in place internal controls, policies, and procedures to prevent, detect, and report FWA 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 Federal and State 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 the Contractor to ensure compliance with Federal and State 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.

The Contractor may use the sample Corporate Compliance Plan provided in Attachment B for guidance on how to present such compliance activities. The Contractor's written corporate compliance plan shall be submitted as specified in Contract Section F, Attachment F3, Contractor Chart of Deliverables.

4. Include a program integrity audit/review program as part of its corporate compliance plan designed to identify FWA. The program integrity audit/review program shall ensure that the Contractor tracks inadequate billing practices and identifies emerging trends to provide technical assistance to contracted providers and avoid future occurrences of problematic billing. Elements of the program integrity review should be part of the standing meetings with the OIG, including but not limited to; FWA trends and insights, provider education and technical assistance, policy questions, audit findings, etc.

5. Submit Corporate Compliance - External Audit Plan/Schedule and Corporate Compliance Audit Report of all individual provider audits as specified in Contract Section F, Attachment F3, Contractor Chart of Deliverables an:
  - 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. If 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.
  - c. The Contractors with one line of business are required to submit a minimum of 20 audits semiannually. Contractors with two lines of business are required to submit a minimum of 20 audits for the first line of business and 15 audits for the second line of business. The Contractors with three or more lines of business are required to submit a minimum of 20 audits for the first line of business, 15 audits for the second line of business, and 10 audits for the third line and subsequent lines of business, and
  - d. Follow-up audits should be submitted on a separate Attachment C and do not count towards the required minimum audit numbers as stated above.
6. Submit complete, accurate, and current disclosure information, as described in 42 CFR Part 455, Subpart B utilizing Attachment A, Attachment A-1, and as specified in Contract Section F, Attachment F3, Contractor Chart of Deliverables upon execution of a Contract with the State and upon renewal or extension of the Contract.

The Contractor shall ensure review of its response by its legal counsel prior to submitting disclosure information. As specified in Contract Section F, Attachment F3, Contractor Chart of Deliverables, the Contractor is required to submit all information electronically. No exceptions will be made to have materials submitted by other methods. The AHCCCS Office of General Counsel (OGC) 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 the Contractor is not excluded from participation in the Medicaid program. All required information shall be provided as specified in Attachment A and Attachment A-1 and as specified in Contract Section F, Attachment F3, Contractor Chart of Deliverables. Do not leave any portion blank. If the Contractor believes that information is not applicable, the Contractor shall indicate "Not Applicable" on the form and in a footnote include the legal and factual basis for its determination.

The Contractor shall also obtain and disclose the same information regarding its administrative services subcontractors. The results of the Disclosure of Ownership and Control and Disclosure of Information on Persons Convicted of Crimes shall be retained by the Contractor and reported as specified in Contract Section F, Attachment F3, Contractor Chart of Deliverables.

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

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 Persons With An 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 (SSA), 42 CFR 457.1285, and 42 CFR 438.608(a)(6)]. As a condition for receiving payments, the Contractor 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 the Contractor 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 FWA prevention, recognition, and reporting, and encourage employees, members, and any subcontractors to report FWA without fear of retaliation.
11. Ensure an internal reporting process relating to the reporting of FWA 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 the FWA 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 meeting, including but not limited to Compliance Officer Networking Group (CONG), regular meetings with the Inspector General, etc.
14. Respond promptly and not later than 30 calendar days, to standard requests for information from AHCCCS OIG. Should a priority request come from AHCCCS OIG, the Contractor shall ensure to respond appropriately to the identified deadlines.
15. Cooperate with AHCCCS OIG regarding any allegation of member billing in violation of ARS 36-2903.01(K) and AAC 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. The Contractor 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 the Contractor be in compliance with all Federal and State laws and regulations related to FWA even if not directly specified in this Policy.

### C. REPORTING RESPONSIBILITIES

1. Fraud, Waste, and/or Abuse (FWA):
  - a. If a Contractor discovers, or is made aware, that an incident of alleged FWA has occurred or is occurring, the Contractor shall report the incident to AHCCCS OIG as specified in Contract Section F, Attachment F3, Contractor Chart of Deliverables, and by completing and submitting through the link available on the [AHCCCS OIG webpage](#). All pertinent documentation that could assist AHCCCS in its investigation shall be included in the submission. The Contractor shall ensure thorough referral submission that include, but are not limited to; sufficient background, evidentiary and documentation information, plan interaction and relevant history, and details of the FWA allegations,
  - 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 the Contractor or its subcontractors has referred a case of alleged FWA to AHCCCS OIG, the Contractor 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,
  - 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 the Contractor in order to expand the allegation(s) and to obtain further documentation that will support an investigation by AHCCCS OIG,
  - e. AHCCCS OIG may notify the Contractor when an Audit or Investigation concludes in a manner that safeguards the integrity and confidentiality of the Audit or Investigation. At any time the Contractor may inquire regarding a Contractor submitted referral. AHCCCS OIG will respond no later than 30 calendar days,
  - f. If it is determined by AHCCCS OIG that the matter does not represent a FWA case, AHCCCS OIG will return the matter to the Contractor for disposition in accordance with any applicable laws and/or contracts,

- g. The Contractor agrees that AHCCCS has the sole authority to handle and dispose of any matter involving FWA. The Contractor shall submit data that indicates a review of allegations that were not reported to AHCCCS OIG that were resolved internally which were not identified as FWA. The Contractor's Allegations Not Reported to AHCCCS OIG shall adhere to Contract and ACOM Policy 103 and shall be submitted to AHCCCS as specified in Contract Section F, Attachment F3, Contractor Chart of Deliverables. The Contractor assigns to AHCCCS the right to recoup any amounts overpaid to a provider as a result of FWA. If the Contractor receives anything of value that could be construed to represent the repayment of any amount expended due to FWA, the Contractor 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,
- h. The Contractor relinquishes each, every, any, and all claims to any monies received by AHCCCS, or received by the Contractor, 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.
- i. The Contractor 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 FWA.