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, 07/15/21

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I. PURPOSE

This Policy applies to ACC, ALTCS E/PD, DCS/Comprehensive Health Plan (CHP), 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 [42 CFR 455.2].

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. Pharmacy Benefit Manager (PMB).
3. Dental Benefit Manager.
4. Credentialing, including those for only primary source verification (i.e. Credential Verification Organization).
5. Management Service Agreements.
6. Medicaid Accountable Care Organization (ACO).
7. Service Level Agreements with any Division or Subsidiary of a corporate parent owner, and
8. CHP and DDD Subcontracted Health Plan.

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 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.

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 Contract Compliance Officer position. The Corporate Compliance Officer shall be an onsite management official who reports directly to the Contractor's CEO and Board of Directors, if applicable. The Corporate Compliance Officer 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 [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 [42 CFR 455.2].

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 as specified in A.R.S. § 36-2901 et seq. for members enrolled with the Contractor.

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].

MEMBER

An eligible individual who is enrolled in AHCCCS, as 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.

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, as specified in 42 CFR 457.10, 42 CFR 438.2.

SUBCONTRACT An agreement entered into by the Contractor 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 who agrees to perform any administrative function or service for the Contractor specifically related to fulfilling the Contractor's obligations to AHCCCS under the terms of this Contract, as specified in 9 A.A.C. 22 Article 1.

SUBCONTRACTOR

1. A provider of health care who agrees to furnish covered services to members.
2. An individual, agency, or organization with which Contractor has 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.

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 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 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 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 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 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

The Contractor 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 the Contractor 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.

   The Contractor 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 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 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.

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. 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.

6. Submit 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 of extension of the Contract utilizing Attachment A and Attachment A-1. The Contractor shall ensure review of its response by its legal counsel prior to submitting disclosure information. As specified in Contract, The Contractor is 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) 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. 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 the disclosure of information on persons convicted of crimes shall be retained by the Contractor and reported to AHCCCS/OIG.

   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, 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, 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 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 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. 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 state and federal laws and regulations related to fraud, waste, and/or abuse even if not directly specified 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, the Contractor 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 the Contractor or its subcontractors has referred a case of alleged fraud, waste, and/or abuse 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. If AHCCCS/OIG chooses to seek additional and/or clarifying details regarding a referral from the Contractor, the Contactor will have 30 calendar days to provide the requested documentation,
   f. AHCCCS/OIG will notify the Contractor 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 the Contractor for disposition in accordance with any applicable laws and/or contracts,
   h. The Contractor agrees that AHCCCS has the sole authority to handle and dispose of any matter involving fraud, waste, and/or abuse. The Contractor assigns to AHCCCS the right to recoup any amounts overpaid to a provider as a result of fraud, waste, and/or abuse. If the Contractor receives anything of value that could be construed to represent the repayment of any amount expended due to fraud, waste or abuse, 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.
   i. The Contractor 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. 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 fraud, waste, and/or abuse.