

305 CYE 26 – PERFORMANCE BOND AND EQUITY PER MEMBER REQUIREMENTS E/PD ONLY

EFFECTIVE DATES: 10/01/08, 10/01/13, 10/01/15, 07/01/16, 10/01/17, 10/01/18, 07/01/21,
10/01/22, 03/31/23, 10/01/24, 10/01/25

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I. PURPOSE

This Policy applies to ALTCS E/PD Contractors. The purpose of this Policy is to establish standards for the Contractor to meet the performance bond and equity per member requirements. These standards will ensure the Contractor's ability to meet its claims payment obligations, while addressing the individual differences among the Contractor and enrollment growth.

II. DEFINITIONS

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

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

BOND SUBSTITUTE	Assets or financial instruments, in an amount specified in the Contract and this policy, pledged to AHCCCS as a promise in lieu of a Performance Bond/Surety Bond to guarantee the Contractor's obligation under the Contract. This can take the form of one or more of the following: Cash Deposits, Irrevocable Letter of Credit, Certificate of Deposit, or any other type of substitute security agreed to by AHCCCS.
EQUITY	Net Assets that are not designated or restricted for specific purposes.
PERFORMANCE BOND	A written promise by a Surety to pay AHCCCS (as the obligee) an amount specified in the Contract and this policy, if the Contractor (as the principal), fails to meet the Contractor's obligation under the Contract. A Performance Bond is also called a Surety Bond.

**QUALIFYING CASH SWEEP
ARRANGEMENT**

An arrangement where cash that exceeds a set threshold is swept on a regular basis (typically daily) into a highly liquid interest-bearing investment account. The entity managing the sweep account must maintain an accounting system that permits separate accounting of amounts held for each Arizona Medicaid, including the Non-Title XIX/XXI Contract, (hereafter AHCCCS for the purposes of this definition) line of business. Cash held in a sweep account, including any interest earned on that cash, must be available to each AHCCCS line of business within 24 hours of the request. The amount held in the sweep account must be sufficient to meet the needs of all AHCCCS lines of business if the cash is requested by all AHCCCS lines of business simultaneously.

**QUALIFYING CENTRALIZED CASH
ARRANGEMENT**

The consolidation of cash flow decisions within a company to a central authority for the purposes of achieving greater control of intra-company cash balances. These arrangements only qualify when the arrangement is: (1) between Arizona Medicaid, including the Non-Title XIX/XXI Contract, (hereafter AHCCCS for the purposes of this definition) lines of business when one Contractor is the named party to contracts for multiple AHCCCS lines of business or (2) between multiple AHCCCS Contractors with a common ownership. The entity responsible for the centralized cash management must be an AHCCCS Contractor. A parent company may not be the entity responsible for centralized cash management unless the parent company is also an AHCCCS Contractor for at least one AHCCCS line of business. A qualifying centralized cash arrangement may not consolidate non-AHCCCS lines of business with AHCCCS lines of business.

SURETY

A financial institution, such as a bank, credit union, or savings and loan, insured by the appropriate Federal agency, or an insurance company authorized to do business in the State of Arizona, and rated at least A by A.M. Best Company.

TERMINATED CONTRACTOR

A former Contractor whose contract has been terminated either voluntarily or through non-renewal.

III. POLICY

AHCCCS requires the posting of a Performance Bond or Bond Substitute in addition to the initial minimum capitalization and Equity per member requirements as specified in this Policy. This is to guarantee payment of the Contractor's obligations under the Contract including, but not limited to, obligations or payments to providers, non-providers, and any other entity that subcontracts for the performance of the Contractor's obligations under this Contract, whether related to coverage for services to members or for the administration of this Contract.

AHCCCS will inform the Contractor of the required initial amount of the Performance Bond or Bond Substitute determined by AHCCCS prior to or at the beginning of each contract cycle. This requirement shall be satisfied by the Contractor no later than 30 days after notification by AHCCCS of the initial amount required.

After the initial Performance Bond or Bond Substitute is satisfied, The Contractor shall self-monitor for compliance with the performance bond amount on a monthly basis to ensure the amount of the bond does not fall below the required amount. Also, AHCCCS shall evaluate each Contractor's enrollment statistics and/or monthly capitation payments on a monthly basis and determine if adjustments are necessary in accordance with this Policy.

Annually on October 1, the Contractor shall provide a written attestation, consistent with 42 CFR 438.604 and 42 CFR 438.606, that the documentation of the Performance Bond or Bond Substitute is accurate, complete, and truthful. Refer to Attachment A.

A. REQUIREMENTS FOR PERFORMANCE BONDS AND BOND SUBSTITUTES

1. The Performance Bond shall be in a form acceptable to AHCCCS as specified in the section on Performance Bonds and Types of Bond Substitutes of this Policy. The Contractor shall also request approval from AHCCCS before a Bond Substitute is established.
2. The Contractor may not change the amount, duration, scope or type of the Performance Bond or Bond Substitute without prior written approval from AHCCCS/Division of Business Finance (DBF), Finance.
3. The Contractor shall not pledge any Bond Substitute as collateral or security for any other loan, debt, or obligation of the Contractor or pledge the Bond Substitute as security to creditors.
4. The Performance Bond or Bond Substitute shall be maintained after the contract term until outstanding and contingent liabilities are less than \$50,000, or 15 months following the termination date of the contract with AHCCCS, whichever is later, and will be in the amount and for the term determined by AHCCCS. Refer to section on Performance Bond and Bond Substitute Requirement for a Terminated Contractor of this Policy.
5. Any security agreement shall be disclosed.

6. The initial amount of the Performance Bond or Bond Substitute shall be equal to 100% of the total capitation payment expected to be paid to the Contractor in the first month of the contract cycle, or as determined by AHCCCS. The total capitation amount excludes premium tax. Thereafter, when the amount of the Performance Bond or Bond Substitute falls below 90% of the monthly capitation amount (including delivery supplement and excluding premium tax), the Contractor shall increase the amount of the Performance Bond or Bond Substitute to at least 100% of the monthly capitation amount excluding premium tax. The Contractor shall increase the amount of the Performance Bond or Bond Substitute within 30 days of falling below 90% of the monthly capitation amount. The required increase to the Performance Bond amount at 100% of monthly capitation will remain in effect for the remainder of the contract term.
7. A Contractor that fails to maintain or renew the Performance Bond or Bond Substitute as required by the Contract with AHCCCS and as specified in this Policy, is considered in material breach of the Contract with AHCCCS. Refer to Administrative Actions section of the Contract for further details and ACOM Policy 408.
8. Following a change in organizational structure of a Contractor or a Contractor's parent company, AHCCCS reserves the right to require additional Performance Bond assurances on behalf of the new entity, including, but not limited to, expanding the Performance Bond or Bond Substitute to include service dates prior to the change in organizational structure.
9. In the event of a default by the Contractor, AHCCCS shall, in addition to any other remedies it may have under the Contract, obtain payment under the Performance Bond or Bond Substitute to remedy the breach, including but not limited to one or more of the following purposes:
 - a. Paying any damages sustained by providers, and other subcontractors by reason of a breach of the contractor's obligations under this Contract,
 - b. Reimbursing AHCCCS for any payments made by AHCCCS on behalf of the Contractor,
 - c. Reimbursing AHCCCS for any administrative expenses incurred by reason of a breach of the Contractor's obligations under the Contract, including, but not limited to, expenses incurred after termination of the Contract. Terminations pursuant to Section E, Termination for Convenience, of the Contract do not require reimbursement to AHCCCS for administrative expenses,
 - d. Reimbursing expenditures incurred by AHCCCS in the direct operation of the Contractor under Section E, Temporary Management/Operation of a Contractor of the Contract, and
 - e. Paying any sanctions imposed under Section D, Administrative Actions of the Contract, to the extent the sanctions are not offset against payments due from AHCCCS to the Contractor as provided for under Section E, Right of Offset of the Contract.

B. PERFORMANCE BONDS AND TYPES OF BOND SUBSTITUTES

1. Performance Bond

a. Establishment of Bond

- i. The Contractor shall send a copy of the completed Attachment B, Performance Bond Form to AHCCCS DBF, Finance 30 days prior to the execution of the bond agreement. AHCCCS will review the agreement and will advise the Contractor in writing of the acceptance of the Performance Bond Form to be executed or that changes are necessary. The AHCCCS review will only be for the sufficiency of the agreement to meet the AHCCCS Performance Bond requirements.
- ii. Performance Bond Form includes the following requirements:
 - 1) Shall be issued by a Surety,
 - 2) The Performance Bond shall be in an amount that meets or exceeds the Performance Bond dollar requirement,
 - 3) The Performance Bond shall guarantee performance by the Contractor for all obligations, including post-award obligations that precede the beginning of the first contract year and “wind down” obligations that follow termination of the contract,
 - 4) The Performance Bond shall include a statement that the Performance Bond cannot be changed in the amount, duration, or scope or discontinued without the written authorization of AHCCCS/DBF, Finance. Any changes in the Surety or the terms of the Performance Bond shall be approved in writing by AHCCCS DBF, Finance at least 30 days prior to the anticipated change date, and
 - 5) The Performance Bond shall include a contact person at the financial institution issuing the Performance Bond and a contact phone number.

b. After the Performance Bond Form is executed, the Contractor shall send the original executed Attachment B, Performance Bond Form to AHCCCS DBF Finance, signed and notarized by the Contractor and the Surety,

c. AHCCCS will hold the original Performance Bond Form in safe keeping until the agreement ends or is terminated by the parties,

d. The Contractor is not required to submit a separate Surety Bond to support the Performance Bond Form. If a supporting Surety Bond exists, to the extent the terms of a Surety Bond conflict with the terms of the Performance Bond Form, the terms of the Performance Bond Form are controlling,

e. Return of Performance Bond Form original,

The original Performance Bond Form will be returned to the makers upon:

- i. The later of 15 months after the termination of the Contract or when the Contractor’s actual and contingent liabilities after the termination of the Contract are less than \$50,000, or
- ii. Satisfying the Performance Bond requirement with a Bond Substitute(s) as specified and approved by AHCCCS.

2. Types of Bond Substitutes

With the prior written approval of AHCCCS DBF, Finance, the Contractor may provide one or more of the following Bond Substitutes in lieu of a Performance Bond: Cash Deposits, Irrevocable Letter of Credit, Certificate of Deposit, and any other type of security agreed to by AHCCCS.

3. Cash Deposit
 - a. Deposit of Funds
 - i. Any funds to be deposited with the State Treasurer shall be sent to AHCCCS DBF, Finance in the form of a check, or a wire transfer of funds to the State Treasurer. Reference Attachment C, Wire/ACH Transfer Form for Instructions for Wire/ACH Transfers of Funds to AHCCCS via Arizona State Treasurer. Additionally, a letter should be sent to AHCCCS DBF, Finance describing:
 - 1) The application of funds (ACC, ALTCS E/PD, ACC-RBHA, MA Organization, or any combination), and
 - 2) A contact person at the Contractor and the contact phone number to resolve any issues concerning the deposit, and a wire number if the funds were sent via a bank wire.
 - a) AHCCCS DBF, Finance will “claim” the funds by submitting a copy of the Contractor’s letter and a “Securities Safekeeping” form to the State Treasurer’s Office. After the funds have been claimed, AHCCCS/DBF, Finance will send a confirmation that the funds were received and claimed.
 - b. Withdrawal of Funds
 - i. To withdraw principal funds, send a letter to AHCCCS DBF, Finance requesting the withdrawal. The letter shall include:
 - 1) The amount of the withdrawal,
 - 2) The program(s) from which the funds are being withdrawn (ACC, ACC-RBHA, ALTCS E/PD or MA Organization),
 - 3) The date that the funds should be withdrawn (allow a minimum of 10 working days from request), and
 - 4) The manner the warrant from the State Treasurer’s office is to be handled:
 - a) Mailed by the US Postal Service, or
 - b) Courier pick-up (please include a phone number of the primary contact so prompt notice can be given), or
 - c) Wiring instructions.
 - ii. AHCCCS DBF, Finance will submit to the State Treasurer’s Office a copy of the Contractor’s letter and a “Securities Safekeeping” form to release the funds. AHCCCS DBF, Finance will forward the warrant to the Contractor in the manner requested in the withdrawal letter.
4. Irrevocable Letter of Credit
 - a. Establishment of an Irrevocable Letter of Credit
 - i. Before a Letter of Credit can be accepted in lieu of a performance bond it shall be approved by AHCCCS for form and amount. Requirements include:
 - 1) Shall be of standard commercial scope and issued by a bank insured by the Federal Deposit Insurance Corporation, credit union insured by the National Credit Union Administration or savings and loan association insured by Federal Savings and Loan Insurance Corporation and authorized to do business in the State of Arizona,
 - 2) Shall be for an amount that meets or exceeds the Bond Substitute dollar requirement,
 - 3) Shall be payable to AHCCCS for the benefit of covered members, providers and certain third parties, and

- 4) Shall include a statement that the Letter of Credit cannot be changed in the amount, duration, or scope, or discontinued without written authorization from AHCCCS DBF, Finance.
 - ii. The Contractor shall send a copy of the Letter of Credit to AHCCCS DBF, Finance 30 days prior to execution of the Letter of Credit. AHCCCS DBF, Finance will review the Letter of Credit and advise the Contractor in writing whether it is accepted or that changes are necessary including, but not limited to, expiration date and amount. The AHCCCS DBF, Finance review will only be for issues that are necessary for the AHCCCS Letter of Credit. It will not include review for any other matters,
 - iii. After the agreement is executed, the Contractor shall send the original to AHCCCS DBF, Finance. The original will be held in safe keeping until the agreement ends or is terminated by the parties,
 - iv. The Contractor shall send notification of a contact person at the financial institution issuing the letter of credit and contact phone number to the AHCCCS DBF, Finance Manager.
 - b. Return of original Letter of Credit
The original Letter of Credit will be returned to the makers upon:
 - i. The later of 15 months after the termination of the Contract or when the Contractor's actual and contingent liabilities after the termination of the Contract are less than \$50,000, or
 - ii. Satisfying the Performance Bond or Bond Substitute requirement with another acceptable form as specified by AHCCCS.
5. Certificate of Deposits
- a. Certificates of Deposit are acceptable only if issued by a bank, savings and loan, or credit union that is insured by the appropriate Federal institution,
 - b. All Certificates of Deposit shall be assigned to the Arizona State Treasurer in compliance with ARS 35-155. AHCCCS DBF, Finance personnel will complete this assignment by obtaining and submitting the "Assignment to Arizona State Treasurer" form,
 - c. Deposit of the Certificate of Deposit
 - i. The Contractor shall send or deliver the original Certificate of Deposit (or receipt for the Certificate of Deposit if a certificate is not issued) and the Assignment form to AHCCCS DBF, Finance. A letter should accompany the Certificate of Deposit describing the contract or line of business the Certificate of Deposit is satisfying (and a contact person,
 - ii. After the Certificate of Deposit (CD) has been sent to the State Treasurer, DBF Finance will send a copy of the State Treasurer's "Securities Safekeeping" form to the Treasurer to record the deposit of the Certificate of Deposit,
 - iii. After the Certificate of Deposit has been deposited with the State Treasurer, the Contractor shall monitor the maturity date. No notification should be expected from the State Treasurer's office or AHCCCS DBF, Finance. Evidence of the Contractor's renewal of each CD shall be sent to AHCCCS DBF, Finance five business days prior to the renewal date, and
 - iv. The Contractor shall send notification of a contact person at the Contractor and contact phone number to the AHCCCS DBF, Finance Manager.

- d. Withdrawal of a Certificate of Deposit
 - i. The Contractor shall send a letter to AHCCCS DBF, Finance requesting the release of a specific Certificate of Deposit providing:
 - 1) The name of the institution that issued the Certificate of Deposit,
 - 2) The certificate number,
 - 3) The amount of the Certificate of Deposit,
 - 4) The program(s) the Certificate of Deposit is being withdrawn from (ACC, ACC-RBHA, ALTCS E/PD or MA Organization),
 - 5) The manner the Certificate of Deposit is to be returned to the Plan, and
 - 6) A contact person.
 - ii. AHCCCS DBF, Finance will submit to the State Treasurer's Office a copy of the Contractor's letter and a "Securities Safekeeping" form to release the funds. AHCCCS DBF, Finance will forward the warrant to the Contractor in the manner requested in the withdrawal letter.
- 6. Any Other Type of Substitute Securities
 - a. AHCCCS may accept a substitute security or securities in lieu of the Surety bond or bond substitute forms discussed above. The Contractor shall obtain prior approval from AHCCCS for any Substitute Securities,
 - i. The Contractor agrees to perform any and all acts and execute any and all documents including, but not limited to, security agreements and necessary filings pursuant to the Arizona Uniform Commercial Code, necessary to grant AHCCCS an enforceable security interest in such substitute security to secure performance of the Contractor's obligations under the Contract, and
 - ii. The Contractor is solely responsible for establishing the credit-worthiness of all forms of substitute security.
 - b. AHCCCS may, after written notice to the Contractor, withdraw its permission for a substitute security or securities, in which case the Contractor shall provide AHCCCS with Performance Bond or an alternate form of Bond Substitute discussed above.

C. PERFORMANCE BOND AND BOND SUBSTITUTE REQUIREMENT FOR A TERMINATED CONTRACTOR

The Performance Bond or Bond Substitute amount shall be maintained after the contract term in an amount sufficient to cover the Terminated Contractor's outstanding and contingent liabilities greater than \$50,000, or 15 months following the termination date of their contract, whichever is later, to guarantee payment of the Contractor's obligations to providers, non-providers, and other subcontractors and performance by the Contractor of its obligations under the Contract with AHCCCS.

The Performance Bond or Bond Substitute shall be in a form acceptable to AHCCCS as specified in Sections on Performance bonds and Types of Bond Substitutes and Performance Bond and Bond Substitute Requirement for a Terminated Contractor of this Policy. Annually, on October 1, the Contractor shall provide a written attestation, consistent with 42 CFR 438.604 and 42 CFR 438.606, that the documentation of the Performance Bond or Bond Substitute is accurate, complete, and truthful. Refer to Attachment A, Performance Bond Annual Attestation Statement.

A Terminated Contractor may request a reduction in the Performance Bond or Bond Substitute amount sufficient to cover all outstanding liabilities, including contingent liabilities, greater than \$50,000, subject to AHCCCS' approval. A Terminated Contractor may not change the amount, duration, scope, or type of the Performance Bond or Bond Substitute without prior written approval from AHCCCS DBF Finance. Any modification in the Performance Bond or Bond Substitute shall be approved by AHCCCS DBF, Finance at least 30 days before the revision of the Performance Bond or Bond Substitute has been executed.

IV. POLICY FOR EQUITY PER MEMBER

A. FORMULA

Unrestricted Equity, less on-balance sheet Performance Bond or Bond Substitute, due from affiliates, guarantees of debts/pledges/assignments and other assets determined to be restricted by AHCCCS, divided by the number of members enrolled at the end of the period. (Refer to section on Restrictions on Equity)

B. REQUIREMENTS

1. The Contractor shall self-monitor for compliance with the equity per member amount every 30 days at a minimum to ensure the amount of the equity per member does not fall below the required amount. The Contractor shall infuse capital to meet the equity per member within 30 days of falling below the required amount.

2. ALTCS E/PD Equity Per Member Requirement

All E/PD Contractors: at least \$2,000 per member.

At any time during the contract cycle, the maintenance of Equity per member shall never fall below the minimum capitalization requirement as specified in the ALTCS E/PD RFP YH18-0001, Instructions to Offerors.

C. REMEDIATION WHEN THE CONTRACTOR FAILS TO MEET THE EQUITY PER MEMBER REQUIREMENT

If the Contractor fails to monitor for compliance every 30 days, and/or fails to infuse capital within 30 days of identification of noncompliance (to bring Equity Per Member back into compliance and remain in compliance), AHCCCS will review the causes for the lack of compliance. AHCCCS may require the Contractor to comply with one or more of the following measures:

1. Submission of corrective action plan to increase Equity.
2. Monthly financial reporting, if not already required.
3. Increase the amount of the Performance Bond or Bond Substitute.
4. Sanctions, and/or Enrollment Cap if applicable.

If the Contractor fails to comply with the above requirements, AHCCCS may apply administrative action as specified in ACOM Policy 408.

D. RESTRICTIONS ON EQUITY

The following asset types will constitute restricted assets and therefore will be subtracted from a contractor's Equity when calculating the Equity per member ratio. However, a waiver request can be submitted for the following:

1. Assets recorded as "due from affiliates." Assets recorded as "due from affiliates" are restricted assets, and therefore will be excluded from a contractor's Equity when calculating the Equity per member ratio except for:
 - a. The portion of the due from affiliates balance resulting from AHCCCS approved Qualifying Cash Sweep Arrangement, and/or
 - b. The portion of the due from affiliates balance resulting from AHCCCS approved Qualifying Centralized Cash Arrangement.

To obtain a waiver, the Contractor shall, on an annual basis, provide AHCCCS a copy of the sweep agreements and corporate cash policy and any other documents requested by AHCCCS. The Contractor may be required to provide monthly cash reconciliations, and/or bank statements, and an accounting of any applicable interest earned as a result of the arrangement.

2. All intangible assets, including but not limited to goodwill and adjustments to other assets resulting from a purchase, including those resulting from purchases and revaluations recorded in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification Topic 105 - Generally Accepted Accounting Principles and FASB Accounting Standards Codification Topic 350 -Intangibles — Goodwill and Other.
3. Guarantees of debt, pledges, and assignments.
4. On balance sheet Performance Bonds or Bond Substitute.
5. Other assets determined to be restricted by AHCCCS.

E. REQUIREMENTS FOR THE CONTRACTOR WITH RESTRICTED EQUITY

If the Contractor Equity is not supported by unrestricted cash or investments, and the Contractor does not meet the Equity per member requirements, then the Contractor may be required to maintain a Performance Bond or Bond Substitute in an amount greater than 100% of one month's capitation to cover the amount of the Equity necessary to meet the requirements.

F. FUND BALANCE AND CAPITALIZATION REQUIREMENTS

Fund Balance Requirements: If the Contractor's Equity becomes a fund deficit, the Contractor and its owners shall fund the deficit through capital contributions in a form acceptable to AHCCCS.

The capital contributions shall be for the period in which the deficit is reported and shall occur within 30 days of the financial statement due to AHCCCS.

AHCCCS at its sole discretion may impose a different timeframe other than the 30 days required in this paragraph. AHCCCS may, at its option, impose enrollment caps in any or all GSAs, if applicable, and/or sanction the Contractor as a result of an accumulated deficit, even if unaudited.

G. AHCCCS DBF, FINANCE MONITORING RESPONSIBILITIES

In addition to the Contractor's self-monitoring requirements, AHCCCS DBF, Finance will perform the following monitoring activities:

1. Analyses will be performed to determine the Equity per member and capitalization sufficiency on a quarterly basis. If there are deficiencies, AHCCCS may require immediate remediation from the Contractor and decide if further administrative actions should be taken. Refer to Remediation When a Contractor Fails to Meet the Equity per Member Requirement section.
2. Analyses will be performed to determine the Performance Bond or Bond Substitute sufficiency on a monthly basis. If there are deficiencies, AHCCCS may require immediate remediation from the Contractor and decide if further administrative actions should be taken. Refer to ACOM Policy 408.