

305 PERFORMANCE BOND AND EQUITY PER MEMBER REQUIREMENTS

EFFECTIVE DATE: October 1, 2019

REFERENCES: A.R.S. § 35-155

DELIVERABLES: Performance Bond or Bond Substitute, ACOM 305 Attachment A

This Policy applies to the Division's Administrative Services Subcontractors (AdSS). The purpose of this Policy is to establish standards to meet the performance bonding and equity per member requirements. These standards will continue to ensure an AdSS ability to meet its claims payment obligations, while addressing the individual differences among AdSS and enrollment growth.

Definitions

- A. Equity - Net Assets that are not designated or restricted for specific purposes.
- B. Performance Bond - A cash deposit with the State Treasurer or a financial instrument secured by the AdSS in an amount designated by the Division to guarantee payment of AdSS claims.
- C. Surety Bond - An agreement between the Division, the AdSS, and the Surety where the surety provides a financial guarantee to the Division.

Policy

The Division requires the posting of a Performance Bond or Bond Substitute in addition to the initial minimum capitalization and equity per member requirements as described below. This is to guarantee payment of the AdSS obligations under the Contract including, but not limited to obligations or payments to providers and non-contracting providers and any other entity that subcontracts for the performance of the AdSS obligations under this Contract whether related to coverage for services to members or for the administration of this Contract.

The Division will inform the AdSS of the required initial amount of the Performance Bond or Bond Substitute, as determined by the Division, prior to or at the beginning of each contract cycle. This requirement must be satisfied by the AdSS no later than 30 days after notification by the Division of the initial amount required.

After the initial performance bond or Bond Substitute is satisfied, the Division will evaluate each AdSS enrollment statistics and/or monthly capitation payments and determine if adjustments are necessary in accordance with this Policy.

Annually on October 1, the AdSS provides a written attestation, consistent with 42 C.F.R. 438.604 and 42 CFR 438.606, that the documentation of the Performance Bond or Bond Substitute is accurate, complete, and truthful. See Attachment A.

Performance Bond Requirements and Bond Substitutes

- A. The Performance Bond must be in a form acceptable to the Division as described in Section III B of this Policy. The AdSS must request an approval from the Division before a Bond Substitute is established.
- B. The AdSS must not change the amount, duration, scope, or type of the performance bond of Bond Substitute without prior written approval from the Division's Finance unit.
- C. The AdSS must not pledge any Bond Substitute as collateral or security for any other loan, debt, or obligation of the AdSS or pledge the Bond Substitute as security to creditors.
- D. The Performance Bond or Bond Substitute maintains after the contract term until outstanding and contingent liabilities greater are less than \$50,000, or 15 months following the termination date of the contract with the Division, whichever is later and will be in the amount and for the term determined by the Division.
- E. Any security agreement must be disclosed.
- F. An AdSS that fails to maintain or renew the Performance Bond or Bond Substitute as required by the Contract with the Division and as outlined in this Policy, is considered in material breach of the Contract with the Division.
- G. Following a merger/acquisition of an AdSS or an AdSS parent company, the Division 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 merger/acquisition.
- H. In the event of a default by the AdSS, the Division will, 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:
 - 1. Paying any damages sustained by providers, and other subcontractors because of a breach of the AdSS obligations under this Contract.
 - 2. Reimbursing the Division for any payments made by the Division on behalf of the AdSS.
 - 3. Reimbursing the Division for any administrative expenses incurred because of a breach of the AdSS 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 the Division for administrative expenses.
 - 4. Reimbursing expenditures incurred by the Division in the direct operation of the AdSS under Section E.
 - 5. Paying any sanctions imposed under Section D, to the extent the sanctions

are not offset against payments due from the Division to the AdSS as provided for under Section G2, Right of Offset of the Contract.

Performance Bonds and Types of Bond Substitute

A. Performance Bond

1. Establishment of Bond

- a. The AdSS must send a copy of the completed Performance Bond form to the Division's Finance Department, 30 days prior to the execution of the bond agreement. The Division will review the agreement and advise the AdSS in writing of the acceptance of the Performance Bond form to be executed or that changes are necessary. The Division review will only be for the sufficiency of the agreement to meet the Division Performance Bond requirements section.
- b. Performance Bond Form includes the following requirements
 - i. Issued by a Surety
 - ii. The Performance Bond must be in an amount that meets or exceeds the Performance Bond dollar requirement.
 - iii. The Performance Bond guarantees performance by the AdSS 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.
 - iv. The Performance Bond includes a statement that the Performance Bond cannot be changed in the amount, duration, or scope or discontinued without the written authorization of the Division Finance Department. Any changes in the Surety or the terms of the Performance Bond is approved in writing by the Division Finance Department at least 30 days prior to the anticipated change date.
 - v. The Performance Bond includes a contact person at the financial institution issuing the Performance Bond and a contact phone number.
2. After the Performance Bond Form is executed, the Division sends the original completed Performance Bond Form to the Division Finance Department signed, and notarized by the AdSS and the Surety.
3. The Division will hold the original Performance Bond Form in safe keeping until the agreement ends or is terminated by the parties.
4. The AdSS 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.

5. Return of Performance Bond Form original

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

- a. The later of 15 months after the termination of the Contract or when the AdSS actual and contingent liabilities after the termination of the Contract are less than \$50,000.
- b. Satisfying the Performance Bond requirement with a Bond Substitute(s) as outlined and approved by the Division.

B. Types of Bond Substitutes

With the prior written approval of the Division Finance Department, the AdSS 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 the Division.

C. Cash Deposit

1. Deposit of Funds

- a. Any funds to be deposited with the State Treasurer must be sent to the Division in the form of a check or a wire transfer of funds to the State Treasurer. Reference *ACOM 305 Attachment A Instructions for Wire/ ACH Transfers of Funds to AHCCCS via Arizona State Treasurer*.
- b. Additionally, a letter should be sent to the Division describing:
 - i. The application of funds
 - ii. A contact person at the AdSS and contact phone number, for any issues concerning the deposit, and a wire number if the funds were sent via a bank wire.
- c. The Division will "claim" the funds by submitting a copy of the AdSS letter and a "Securities Safekeeping" form to the State Treasurer's Office. After the funds, have been claimed, the Division will send a confirmation that the funds were received and claimed.

2. Withdrawal of Funds

- a. To withdraw principal funds, send a letter to the Division requesting the withdrawal. The letter must include:
 - i. The amount of the withdrawal

Division Letter of Credit. It will not include review for any other matters.

- c. After the agreement is executed, the AdSS must send the original to the Division. The original will be held in safe keeping until the agreement ends or is terminated by the parties.
 - d. The AdSS must send notification of a contact person at the financial institution issuing the letter of credit and contact phone number to the Division Finance Manager.
2. Return of the original Letter of Credit

The original Letter of Credit will be returned to the originators upon:

- a. Termination of the Letter of Credit
- b. Termination of the Division Contract
- c. Satisfying the Performance Bond or Bond Substitute requirement with another acceptable form as outlined by the Division.

Certificate of Deposits

Certificates of Deposit are acceptable only by a bank, savings and loan, or credit union that is insured by the appropriate Federal institution.

- A. Types of Certificate of Deposits
 1. Only Certificates of Deposit from banks
 2. Savings and loans, or credit unions and insured by the appropriate Federal institution, are applicable for the performance bond.
- B. Assignment to Arizona State Treasurer
- C. All Certificates of Deposit must be assigned to the Arizona State Treasurer in compliance with A.R.S. §35-155. Division finance personnel completes this by submission of the "Assignment to Arizona State Treasurer" form.
- D. Deposit of the Certificate of Deposit.
 1. The AdSS must 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 the Division. A letter should accompany the Certificate of Deposit describing the contract or line of business (e.g., Acute Care, DDD, CRS, ALTCS/EPD, or MA) the Certificate of Deposit is satisfying and a contact person.
 2. After the Certificate of Deposit has been sent to the State Treasurer, the Division will send a copy of the State Treasurer's "Securities Safekeeping" form to the Treasurer to record the deposit of the

Certificate of Deposit.

3. After the Certificate of Deposit has been deposited with the State Treasurer, the AdSS must monitor the maturity date. No notification should be expected from the State Treasurer's office or the Division. Evidence of the renewal of each CD must be sent to the Division within five business days prior to the renewal date.
4. The AdSS must send notification of a contact person at the AdSS and contact phone number to the Division Finance Manager.

E. Withdrawal of a Certificate of Deposit

The AdSS must send a letter to the Division 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 programs from which the Certificate of Deposit is being withdrawn
5. The manner the Certificate of Deposit is to be returned to the Plan
6. A contact person.

The Division submits to the State Treasurer's Office a copy of the AdSS letter and a "Securities Safekeeping" form to release the funds. The Division forwards the warrant to the AdSS in the manner requested in the withdrawal letter.

F. Any Other Type of Substitute Securities

1. The Division may accept a substitute security or securities in lieu of the surety bond or bond substitute forms discussed above. The AdSS must obtain prior approval from AHCCCS for any Substitute Securities.
 - a. The AdSS agrees to perform 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 the Division an enforceable security interest in such substitute security to secure performance of the AdSS obligations under the Contract.
 - b. The AdSS is solely responsible for establishing the credit-worthiness of all forms of substitute security.
2. The Division may, after written notice to the AdSS, withdraw its permission for a substitute security or securities, in which case the AdSS must provide the Division with Performance Bond or an alternate form of Bond Substitute

discussed above.

Performance Bond and Bond Substitute Requirement for a Terminated AdSS

- A. The Performance Bond or Bond Substitute amount must be maintained after the contract term in an amount sufficient to cover the Terminated AdSS 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 AdSS obligations to providers, non-providers, and other subcontractors and performance by the AdSS of its obligations under the Contract with the Division.
- B. The Performance Bond or Bond Substitute must be in a form acceptable to the Division.
- C. Annually, on October 1, the AdSS must provide a written attestation, consistent with 42 C.F.R. §§ 438.604 and 42 CFR 438.606, that the documentation of the Performance Bond or Bond Substitute is accurate, complete, and truthful.
- D. A terminated AdSS may request a reduction in the Performance Bond or Bond Substitute amount sufficient to cover all outstanding liabilities, including liabilities greater than \$50,000, subject to the Divisions' approval. A Terminated Contractor AdSS may not change the amount, duration, scope, or type of the Performance Bond or Bond Substitute without prior written approval from the Division Finance. Any modification in the Performance Bond or Bond Substitute must be approved by the Division Finance at least 30 days before the revision of the Performance Bond or Bond Substitute has been executed.

Equity per Member Requirements

- 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 the Division, divided by the number of members enrolled at the end of the period.
- B. Requirement

CYE2020: At least \$450 per member
CYE2021: At least \$500 per member
CYE2022 and thereafter: At least \$500 per member
- C. Division Certified Medicare Advantage Plan Requirement:

\$350 per member upon commencement of the plan.

Remediation When an AdSS Fails to Meet the Equity per Member Requirement

If an AdSS equity per member falls below the requirement, the Division will review the

causes for the lack of compliance. The Division may require the AdSS to comply with one or more of the following measures:

- A. Capital infusion, within 30 days of non-compliance, in an amount sufficient to not only bring equity into compliance, but also to maintain compliance.
- B. Submission of corrective action plan to increase equity
- C. Monthly financial reporting, if not already required
- D. Increase the amount of the Performance Bond or Bond Substitute
- E. Sanctions and/or Enrollment Cap, if applicable.

If the AdSS fails to comply with the above requirements, the Division may apply sanctions as delineated in *AdSS Operations Manual, Policy 408*.

Restrictions on Equity

The following asset types will constitute restricted assets, and therefore will be subtracted from AdSS equity when calculating the equity per member ratio:

- A. Assets recorded as "due from affiliates." The AdSS may request a waiver from the Division to include the prorated portion of the due from affiliates balance resulting from Division approved cash/bank account sweep arrangements.
- B. Goodwill and adjustments to other assets resulting from a purchase, including those resulting from purchases and revaluations recorded in accordance with FASB Accounting Standards Codification Topic 105 - Generally Accepted Accounting Principles and FASB Accounting Standards Codification Topic 350 - Intangibles — Goodwill and Other
- C. Guarantees of debt, pledges, and assignments.
- D. On balance sheet Performance Bonds or Bond Substitute
- E. Other assets determined to be restricted by the Division.

Requirements for AdSS with Restricted Equity

If AdSS equity is not supported by unrestricted cash or investments, and the AdSS does not meet the equity per member requirements, then the AdSS 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.

Fund Balance and Capitalization Requirements

If the AdSS equity becomes a fund deficit, the AdSS and its owners must fund the deficit through capital contributions in a form acceptable to the Division. The capital contributions must be for the period in which the deficit is reported and must occur within 30 days of the financial statement due to the Division. The Division at its sole discretion may impose a different timeframe other than the 30 days required in this paragraph. The Division may,

at its option, impose enrollment caps and/or sanction the AdSS because of an accumulated deficit, even if unaudited.

Division Monitoring Responsibilities

- A. The Division's Finance Unit monitors compliance with equity per member requirements on a quarterly basis. Analyses will be performed to determine the equity per member. Deficiencies and requests for remediation will be communicated in writing to the AdSS. The AdSS will be required to submit a plan to increase the equity and/or capitalization within 30 days.

- B. The Division's Finance Unit monitors compliance with Performance Bond or Bond Substitute requirements on a monthly basis. Deficiencies and requests for remediation will be communicated in writing to the AdSS. The AdSS will have 30 days to comply with new requirements.