

317 CHANGE IN ORGANIZATIONAL STRUCTURE

EFFECTIVE DATE: October 1, 2019

REFERENCES: 42 CFR 101-106; ACOM Policy 438, 103; Section F3, Contractor Chart of Deliverables

DELIVERABLES: Change in Contractor Organizational Structure: Notification; Change in Contractor Organizational Structure: Transition Plan Final Documents; Change in Contractor Organizational Structure: Transition Plan Initial Documents; Completed Change in Contractor Organizational Structure: Documents required after AHCCCS Approval

This policy applies to the Division's Administrative Services Subcontractors (AdSS). This policy establishes the procedure for approval of AdSS changes in Organizational Structure as defined below, including changes in a Management Service Agreement (MSA) subcontractor.

Definitions

- A. Acquisition – an acquiring, by one company, of all of a target company's assets, capital, or stock.
- B. Administrative Services Subcontract - agreement that delegates any of the requirements of the contract with the Division, including, but not limited to the following:
 - 1. Claims processing, including pharmacy claims
 - 2. Credentialing, including those requirements for only primary source verification
 - 3. Management Service Agreements (MSAs)
 - 4. Service Level Agreements with any division or subsidiary of a corporate parent owner.

Providers are not AdSSs.

- C. Articles of Incorporation - basic legal instrument required to be filed with the state upon incorporation of a business (sometimes also referred to as the Certificate of Incorporation or the Corporate Charter).
- D. Change In Organizational Structure - any of the following:
 - 1. Acquisition
 - 2. Change in Articles of Incorporation
 - 3. Change in ownership
 - 4. Change of MSA subcontractor (to the extent management of all or substantially all plan functions has been delegated to meet Division contractual requirements)

5. Joint venture
6. Merger
7. Reorganization
8. State agency reorganization resulting from an act of the Governor of the State of Arizona or the Arizona State Legislature
9. Other applicable changes that may cause a change in any of the following:
 - a. Employer Identification Number/Tax Identification Number (EIN/TIN)
 - b. Critical member information, including the website, member or provider handbook and member ID card
 - c. Legal entity name.
- E. Change in Ownership - any change in the possession of equity in the capital, stock, profits, or voting rights, with respect to a business such that there is a change in the persons or entities having the controlling interest of an organization, such as changes that result from a merger or acquisition, or, with respect to non-stock corporations (e.g., non-profit corporations), a change in the members or sponsors of the corporation or in the voting rights of the members or sponsors of the corporation.
- F. Joint Venture - business arrangement in which two or more parties agree to pool their resources for the purpose of accomplishing a specific task. This task can be a new project or any other business activity. In a joint venture, each of the participants is responsible for profits, losses and costs associated with it. However, the venture is its own entity, separate and apart from the participants' other business.
- G. Management Service Agreement (MSA) - type of subcontract with an entity in which the owner of an AdSS delegates all or substantially all management and administrative services necessary for the operation of the AdSS.
- H. Merger - Two companies join together to form a single entity, using both companies' assets or stock, or, for non-stock corporations (e.g., non-profit corporations), the conversion of memberships, sponsors or their voting rights. Both companies cease to exist separately and new stock is issued for the resulting organization or, for non-stock corporations (e.g., non-profit corporations), memberships or sponsors are combined or their voting rights are transferred to the new corporation.
- I. 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.
- J. Reorganization - An arrangement where a company attempts to restructure its business to ensure it can continue operations. A company restructuring may work

with its creditors to restate its assets and liabilities which may be an attempt to avoid a bankruptcy.

Change in AdSS's Organizational Structure

A change in AdSS organizational structure requires notification and prior approval of the Division. When submitting for prior approval, the Division will review documentation to ensure the following:

- A. Uninterrupted services and ongoing adequate access to care and choice for members
- B. The new entity's ability to maintain and support the contract requirements including the commitments in the proposal submitted to the Division during the procurement process
- C. Major functions of the AdSS's organization, as well as Division-funded services, are not adversely affected
- D. The integrity of a fair, competitive, procurement process for AdSS contracts.

The Division reserves the right to obtain stakeholder input on the proposed ownership change through a public notice and feedback process, and to temporarily suspend an AdSS's new-member enrollment pending the Division's review and final determination regarding an AdSS's change in organizational structure. The AdSS must submit a written notification to the Division of any proposed merger, acquisition, reorganization, or change in ownership, 180 days before the effective date. This notification must include:

- A. A detailed description of the type of change or new corporate structure and the purpose thereof
- B. A detailed transition plan as outlined below.

Transition Plan

The AdSS must submit the transition plan 180 days before the effective date. Items for which information is not yet available for submission, or is still considered draft, must be noted and must be submitted or resubmitted no later than 90 days before the effective date.

All transition plan documents must be submitted electronically to the Division via the secured File Transfer Protocol (FTP) server.

- A. The AdSS must submit the following as part of the transition plan, as applicable:
 - 1. A letter of explanation that includes the following information:
 - a. The type of entity if a new entity will be formed and/or any changes to existing entity
 - b. Any material change to operations as specified in Policy 439 of this Manual and contract

2. Documents including the following:
 - a. The formal name and any proposed logo used by the resulting organization
 - b. The organizational chart of the new resulting organization or proposed changes to the existing organizational chart if a new entity is not being formed
 - c. Current audited financial statements of current AdSS and merging entity
 - d. Pro forma financial statements of entity resulting from the change in organizational structure that include, at a minimum: a balance sheet, statement of revenues and expenses, and statement of cash flows for the subsequent three years, and enrollment projections and footnotes detailing assumptions. The format can be the same as the audit format; however the Division lines of business should be detailed separately just as is required in the annual audit report.
3. A description of the following:
 - a. An assessment of any potential interruption of services to members, and steps the AdSS is taking to ensure there are no interruptions
 - b. Any changes to the management and staffing of the organization currently overseeing services provided under the contract
 - c. Any changes to existing Administrative Services Subcontracts
 - d. Any changes to the administration of critical components of the organizations, including but not limited to information systems, prior authorization, claims processing or grievances
 - e. The AdSS's plan for communicating the change to members, including a draft notification to be distributed to affected members and providers
 - f. The AdSS's plan for changes to critical member information, including the website, member and provider handbook and member ID card
 - g. Any anticipated changes to the network.
- B. Upon Division approval of the transition plan, the following documents must be submitted within 120 days of the change:
 1. The Articles of Incorporation, if applicable, including copies of all affiliation agreements

An affiliate is an entity that directly or indirectly controls, is controlled by, or is under common control with another entity; also, a party with which

the entity may deal if one party has the ability to exercise significant influence over the other's operating and financial policies. The affiliation agreement (also referred to as a member agreement) defines and governs the affiliate relationship.

2. Any proposed change to the Employer Identification Number/Tax Identification Number (EIN/TIN)
3. Any additional information requested by the Division.

Additional Submission Requirements

The AdSS must submit the following to the Division no later than 45 days before the effective date of the change in organizational structure and commencement of operations under the new structure:

- A. Automatic Clearing House (ACH) Vendor Authorization Form

The ACH form is to be submitted as directed on the form in order for the AdSS to begin receiving reimbursement.

- B. Information regarding Disclosure of Ownership and Control and Disclosure of Information on Persons Convicted of a Crime in accordance with the 42 CFR 101 through 106, the Corporate Compliance Contractual Provisions, and Division Policy Manuals

The information is to be submitted via secured FTP server to the Division.

For a change of MSA Subcontractor, the AdSS must also follow the process for the review and approval of the new subcontract as outlined in Division Operations Manual Policy 438.

The Division reserves the right to request additional items deemed necessary to complete the evaluation.

Division Disposition of Request

The Division will review and respond to the AdSS within 30 days of the Notification and submission of the Transition Plan. Incomplete submissions may require additional information before approval. Upon completion of the review, the Division may:

- A. Approve the proposal without conditions.
- B. Approve the proposal with conditions that may include, but are not limited to:
 1. Allowing an open enrollment for plan membership
 2. More rigorous oversight for a specified period of time
 3. A cap on enrollment.

C. Deny the proposal.

If the Division denies the proposal, and if the AdSS moves forward, the Division may terminate some or all of the Geographic Service Areas that are part of the contract.