

## 408 SANCTIONS

EFFECTIVE DATE: October 1, 2019

REFERENCES: A.R.S. §36-2903.01(B)(4); 42 CFR 438.700 et sq.

This policy applies to the Division's Administrative Services Subcontractors (AdSS). This policy specifies the sanctions that may be imposed by the Division in accordance with federal and state laws, regulations and the contract with the Division. This policy does not limit the authority of the Division or AHCCCS Office of the Inspector General to investigate fraud, waste and abuse, conduct audits, and pursue any legal remedies arising from the findings of those investigations and audits.

### Definitions

- A. Corrective Action Plan (CAP) - A written work plan that identifies the root cause(s) of a deficiency, includes goals and objectives, actions/tasks to facilitate an expedient return to compliance, methodologies to be used to accomplish CAP goals and objectives, and staff responsible to carry out the CAP within established timelines. CAPs are generally used to improve performance of the AdSS and/or its providers, to enhance Quality Management/Process Improvement activities and the outcomes of the activities, or to resolve a deficiency
- B. Notice to Cure (NTC) - A formal written notice to an AdSS regarding specific non-compliance. The NTC contains specific timelines for meeting performance standards and possible penalties for continued non-compliance. An NTC may contain specific activities or reporting requirements that must be adhered to as the AdSS works toward compliance. Failure to achieve compliance as the result of a Notice to Cure may result in the imposition of a Sanction
- C. Sanction - A monetary and/or non-monetary penalty assessed or applied for failure to demonstrate compliance in one or more areas of contractual responsibility. Non-monetary penalties may include, but are not limited to any or all the following:
  - 1. Appointment of temporary management for the AdSS, granting the AdSS enrollees the right to terminate enrollment with the AdSS
  - 2. Suspension of auto-assignment and/or new enrollment
  - 3. Suspension of payment to the AdSS until CMS or the state is satisfied that the reason for imposition of the sanction no longer exists and is not likely to recur.

### General

The Division expects the AdSS to align its performance of the Contract with the AHCCCS and Division mission and vision and implement program innovation and best practices on a continual basis while adding value to the ALTCS program.

If the AdSS fails to demonstrate compliance with contractual requirements, the Division may elect to impose an administrative action. The Division reserves the right to issue an administrative action for any occurrence of non-compliance. Each occurrence of non-compliance will be evaluated for determination and issuance of potential administrative

action. Administrative actions may include issuance of any or all the following: Notice of Concern, Notice to Cure, a mandate for a Corrective Action Plan, and Sanctions. The administrative actions described in this policy are non-exclusive; that is, the issuance of an administrative action or the imposition of any sanction by the Division does not preclude the Division from pursuing any other remedy available in law or contract arising from the same conduct.

To promote transparency, administrative actions and related documentation may be published on the Division website.

### **Division Compliance Committee**

- A. Except for encounter-related sanctions for aged, pended encounters as outlined in the Division Encounter Manual, the Division Compliance Committee will evaluate recommendations for proposed sanctions and will determine the appropriate sanction to be imposed after consideration of relevant factors. The Compliance Committee, however, will regularly review encounter-related sanctions to ensure just and consistent application of such sanctions. The Compliance Committee may, but is not required to, review administrative actions that do not include a sanction such as issuing a Notice of Concern, a Notice to Cure, or requiring a Corrective Action Plan.
- B. The Division's Health Plan Compliance Committee is comprised of the following individuals, or their designees:
- Medical Director
  - Compliance Officer
  - Quality Management Manager
  - Performance/Quality Improvement Coordinator
  - Maternal Child Health/EPSTDT Coordinator
  - Medical Management Manager
  - Network Manager
  - Behavioral Health Coordinator
  - Policy Manager
- C. All Compliance Committee members listed above, or their designee, must be present at each Committee meeting. Sanctions will be approved based on a majority vote.
- D. The Division's Health Plan Compliance Committee may consult with subject matter experts as appropriate and will consider the following in its decision making:
1. Applicable statutes and rules and contractual requirements
  2. Application of consistent standards for determination of sanction type administrative actions
  3. The goals and objectives of the agency
  4. Aggravating or mitigating factors such as:

- a. Quality of care or safety concerns for members
  - b. Repeated/continual deficiencies
  - c. Previous administrative actions
  - d. Intentional non-compliance
  - e. Self-identification of deficiencies and remediation
  - f. Risk to the financial viability of the AdSS
  - g. Non-compliance with key staffing requirements
  - h. Financial implications for providers,
  - i. Financial harm to the state.
- E. Upon the Committee's decision regarding the sanction, the Division will provide written notification to the AdSS which explains the basis and nature of the sanction, and any applicable appeal rights [42 CFR 438.710(a)(1)].

### **Basis for Imposition of Sanctions**

The Division may impose sanctions for any breach of the Contract, or any failure to comply with applicable state or federal laws or regulations including but not limited to any conduct described in 42 CFR 438.700 et seq.

### **Types of Sanctions**

The Division may impose the following types of sanctions:

#### **A. Member Enrollment Related Sanctions**

the Division may sanction an AdSS by:

1. Granting members, the right to terminate enrollment without cause and notifying the affected members of their right to disenroll (If another AdSS is available)
2. Suspending all new enrollment, including auto-assignments, after the effective date of the sanction (if another AdSS is available)
3. Suspending payment for members enrolled after the effective date of the sanction until CMS or the Division is satisfied that the reason for the sanction no longer exists and is not likely to recur.

### **Right to Appeal**

The AdSS may file a grievance to dispute the decision to impose a sanction in accordance with A.R.S. §36-2903.01(B)(4).

### **Sanctions Imposed to AdSS**

- A. Sanctions imposed against the Division by AHCCCS for noncompliance with requirements for encounter data or reporting that would not have been imposed but for the AdSS action or lack thereof will be assessed to the AdSS as actual damages.
- B. Any other sanctions imposed against the Division by AHCCCS in accordance with applicable AHCCCS rules, policies, and procedures that would not have been imposed but for the AdSS action or lack thereof will be assessed dollar for dollar to the Contractor as actual damages.
- C. Sanctions imposed against the Division by AHCCCS for failure of AdSS to submit requested disclosure statements will be assessed dollar for dollar to the AdSS as actual damages.