103 FRAUD, WASTE, AND ABUSE

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REFERENCES: A.R.S. § 36-2901, A.R.S. § 36-2918, A.R.S. § 36-2957, A.R.S. § 36-2903.01(K); A.A.C. R9-22-702; 42 CFR 455.101, 42 CFR 438.608, 42 CFR Part 438, Subpart H, 42 CFR 455, 42 CFR 455, Subpart A, 42 CFR 455, Subpart B, 42 CFR 455.2, 42 CFR 455.23, 42 CFR 455.101, 42 CFR 455.436; ACOM Policy 103, Attachment A; ACOM Policy 103, Attachment A-1; Attestation of: Disclosure of Ownership and Control and Disclosure of Information of Persons Convicted of a Crime; ACOM Policy 103, Attachment B; ACOM Policy 103, Attachment C; ACOM Policy 424; the Division Medical Policy 950, Credentialing and Recredentialing Processes; Attachment F3, Contractor Chart of Deliverables State Medicaid Director Letters 08-003 and 09-001; Section 6032 of the Deficit Reduction Act.

PURPOSE

This Policy applies to the Division of Developmental Disabilities (Division). The purpose of this Policy is to outline the corporate compliance requirements including the reporting responsibilities for alleged Fraud,

Waste, or Abuse involving Division program funds regardless of the source. This Policy also addresses additional responsibilities regarding regulatory compliance with program integrity, and programmatic requirements.

DEFINITIONS

1. "Abuse" means Provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Division program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care, including beneficiary practices that result in unnecessary cost to the Division Program as outlined in 42 CFR 455.2.
2. "Administrative Services Subcontract" means an agreement that delegates any of the requirements of the Contract with AHCCCS, including:
    a. Claims processing, including pharmacy claims
    b. Pharmacy Benefit Manager (PBM)
    c. Dental Benefit Manager

d. Credentialing, including those for only primary source verification through Credential Verification Organization [CVO]

e. Medicaid Accountable Care Organization (ACO)

f. Service Level Agreements with any Division or Subsidiary of a corporate parent owner

g. CHP and the Division Subcontracted Health Plan

i. A person, individual or entity, who holds an Administrative Services Subcontract is an administrative services subcontractor.

ii. Providers are not administrative services subcontractors.

3. "Agent" means any person who has been delegated the authority to obligate or act on behalf of a Provider as specified in 42 CFR 455.101.

4. "Contract" means the Division's contract with AHCCCS.

5. "Corporate Compliance Officer" means 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 Division 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 Chief Executive Officer (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 as specified in 42 CFR 438.608.

6. "Credible Allegation of Fraud" means the State Medicaid agency has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis as specified in 42 CFR 455.2.
7. "Fraud" means 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, including any act that constitutes fraud under applicable State or Federal law, as defined in 42 CFR 455.2.

8. "Managing Employee" means 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 as outlined in 42 CFR 455.101.
9. "Member" means the same as "Client" as defined in A.R.S. § 36-551.
10. "Provider" means an agency or individual operating under a contract or service agreement with the Department to provide services to Division Members.
11. "Waste" means over-utilization or inappropriate utilization of services, misuse of resources, or practices that result in unnecessary costs to the Medicaid Program.

POLICY

A. The Division shall:

1. Have in place internal controls, policies, and procedures to:

a. Prevent, detect, and report credible Fraud, Waste, and Abuse activities to AHCCCS-OIG.

b. Implement a suspension, termination, or exclusion of a provider from the Contractor's network of providers.

2. Have a Corporate Compliance Program that complies with the Division's contract with AHCCCS and all state and federal laws, including 42 CFR Part 438, Subpart H and is developed under the Contractor's corporate compliance plan including:

   a. Program integrity goals and objectives;

   b. Descriptions of internal and external controls employed by the Division to ensure compliance with State and Federal law; and

   c. The Division's corporate compliance activities, as outlined in ACOM 103.

3. Submit the Division's written Corporate Compliance Plan to AHCCCS-OIG annually as specified in the Contract.

4. Submit to AHCCCS-OIG an external audit plan/schedule and audit report of all individual provider audits using ACOM 103 Attachment C.

a. In each audit report, the Division shall include:

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 completed; and

iii. If an audit was not completed timely, include a reason why and a date when the audit will be completed.

b. The Division shall submit a minimum of 20 audits semiannually.

c. The Division shall submit follow-up audits on a separate ACOM 103 Attachment C and not count toward the required minimum audit numbers as stated in this subsection.

5. 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.

a. The Contractor shall ensure review of its response by its legal counsel prior to submitting disclosure information.

b. As specified in Contract, the Contractor shall submit all information electronically, without any exceptions.

c. AHCCCS/Office of Administrative Legal Services (OALS) and AHCCCS-OIG reviews the Contractor's submitted disclosure information for completeness and AHCCCS-OIG screens and confirms that persons listed in the submitted information are not excluded from participation in the Medicaid program.

6. Complete all information as specified in ACOM 103 Attachment A and Attachment A-1 to enable AHCCCS-OIG to confirm that persons with an ownership or control interest in the aDivision are not excluded from participation in the Medicaid program.

a. The Division shall obtain and disclose the information regarding the ownership and control interest of administrative services subcontractors.

b. The Division shall retain the results of the disclosure of ownership and control and the disclosure of information on persons convicted of crimes and report to AHCCCS-OIG.

c. The Division shall complete and submit an attestation as specified in ACOM 103 Attachment A along with the disclosure information described in this subsection and that the information provided is accurate, complete, and truthful.

d. Consistent with 42 CFR 457.990 and 42 CFR 438.606, the Division's Assistant Director (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 shall sign the attestation.

e. The Division's 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 or the recovery, recoupment, or offset of any monies remitted without limitation.

7. 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.
8. 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)].
9. As a condition for receiving payments, establish written policies, and ensure adequate training and ongoing education for all of its employees including management, Members, and any subcontractors or Agents of the Division 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 law.
10. Ensure adequate training addressing Fraud, Waste, or Abuse prevention, recognition and reporting, and encourage Division

employees, Members, and any subcontractors to report Fraud, Waste, or Abuse without fear of retaliation.

11. Ensure an internal reporting process relating to the reporting of Fraud, Waste, or Abuse that is well-defined is made known to all Division employees, Members, and any subcontractors.
12. Conduct research and proactively identify changes for program integrity that are relevant to the~~ir~~ corporate compliance program, and periodically review and revise the Fraud, Waste, or Abuse policies or guidance from the AHCCCS to reflect such changes due 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 they received the services billed by Providers to identify potential service or claim Fraud.
17. Perform periodic audits through Member contact and report the results of these audits as specified in ACOM Policy 424.
18. Maintain compliance with all State and Federal laws and regulations related to Fraud, Waste, or Abuse even if not directly specified in this Policy.

B. REPORTING RESPONSIBILITIES

1. Fraud, Waste, and Abuse
    a. If the Division discovers, or is made aware, that an incident of alleged Fraud, Waste, or Abuse has occurred or is occurring, the Division 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, and attach all pertinent documentation that could assist AHCCCS in its investigation;

b. If the Division identifies an incident that warrants self-disclosure, the Division shall report incident within ten calendar days to AHCCCS-OIG by completing and submitting the Provider Self-Disclosure form available on the AHCCCS-OIG webpage and attach all pertinent documentation that could assist AHCCCS in its investigation;

c. When the Division refers, or is aware that a subcontractor has referred, a case of alleged Fraud, Waste, or Abuse to AHCCCS-OIG, the Division 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, or impose a civil monetary penalty;

d. The Division shall conduct preliminary review work regarding a referral at the request of AHCCCS-OIG in order to expand the allegation and obtain documentation to support the investigation being conducted by AHCCCS-OIG;

e. The Division shall provide documentation requested by AHCCCS-OIG within 30 calendar days of the request;

f. The Division may receive notification from AHCCCS-OIG when the investigation concludes in a manner that safeguards the integrity and confidentiality of the investigation;

g. The Division shall ensure proper disposition of any matters returned by AHCCCS-OIG as non-Medicaid Fraud, Waste, or Abuse in accordance with any applicable laws and contracts;

h. The Division shall adhere to the requirement that AHCCCS-OIG has the sole authority to handle and dispose of any matter involving Fraud, Waste or Abuse and assign to AHCCCS the right to recoup any amounts overpaid to a Provider as a result of Fraud, Waste or Abuse.

i. The Division shall forward anything of value that could be construed to represent the repayment of any amount expended due to Fraud, Waste or Abuse that is recovered to AHCCCS-OIG within 30 days of its receipt.

j. The Division shall ensure the requirements outlined in subsection (i) apply to any actions undertaken by the Division on behalf of a Contractor by a subcontractor, as specified in the AHCCCS Minimum Subcontractor Provisions (MSPs).

k. The Division shall relinquish all claims to any monies received by AHCCCS as a result of any program integrity efforts, including:

   i. Recovery of an overpayment;

   ii. Civil monetary penalties or assessments;

   iii. Civil settlements or judgments;

   iv. Criminal restitution;

   v. Collection by AHCCCS or indirectly on AHCCCS' behalf by the Office of the Attorney General; or

   vi. Other, as applicable.

l. The Division shall report to AHCCCS, as specified in Contract, and the Division Medical Policy 950, any credentialing denials including:

   i. That are the result of licensure issues;

ii. Quality of care concerns;

iii. Excluded, terminated, or otherwise sanctioned providers; or

iv. Alleged Fraud, Waste, or Abuse.

C. THE DIVISION'S RESPONSIBILITIES RELATED TO FRAUD, WASTE AND ABUSE

1. The Division shall:

   a. Process all referrals of allegations of suspected Member and provider Fraud, Waste, or Abuse.

   b. Oversee, monitor, and review all documents and functions as they relate to Fraud, Waste, and Abuse prevention, detection, and reporting.

   c. Maintain and monitor a tracking system of Fraud, Waste, and Abuse referrals.

   d. Ensure all Division employees, subcontractors, Providers, Agents, and Members receive adequate training and information regarding Fraud, Waste, and Abuse prevention, identification and reporting.

e. Assure Division employees, subcontractors, Providers, Agents, and Members that they can report Fraud, Waste, and Abuse without fear of retaliation.

f. Develop and maintain open channels of communication with AHCCCS-OIG, subcontractors, Providers, Agents, and Members to combat Fraud, Waste, and Abuse at all levels in the System.

g. Develop and maintain open channels of communication with DES-OIG in the prevention and detection of Fraud, Waste, and Abuse.

h. Make referrals to AHCCCS-OIG to investigate cases of potential Member billing in violation of A.R.S. § 36-2903.01(K) and A.A.C. R9-22-702.

i. Perform all functions required by Section 6032 of the Deficit Reduction Act, including the auditing of Providers to ensure their compliance.

j. Ensure that the Division is in compliance with its federal obligations with regard to Disclosure of Ownership and Control, Managing Employees Database Exclusion, and

Checks, and Criminal Convictions Checks, and all other federal requirements related to Provider Screening and Enrollment.

SUPPLEMENTAL INFORMATION

1. 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.

2. 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 an Intergovernmental Agreement with the Arizona Attorney General's Office, AHCCCS-OIG refers cases 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.

a. 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 Inspector General deems relevant or material to an investigation, examination, or review undertaken by the AHCCCS-OIG.

b. Pursuant to A.R.S. §§ 36-2918 and 36-2957, 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.

c. 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.

d. 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.

e. 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.