

## POLICY and PROCEDURE

<b>TITLE: CP 5014 First Tier, Downstream and Related Entity Oversight</b>			
<b>Version:</b> 13	<b>Responsible Position:</b> Director of Compliance	<b>Responsible Department:</b> Compliance	
<b>Origination Date:</b> 04/01/2013	<b>Last Review Date:</b> 05/12/2020	<b>Approval Date:</b> 06/05/2020	<b>Next Review Date:</b> 06/15/2021
<b>Organization:</b> Banner Health Insurance Division			
<b>Population (Define):</b> This policy applies to all Medicaid and Medicare lines of business			
<b>Policy Replaces:</b> CP 606, CP 6014			

### I. Purpose/Expected Outcome:

- A. To outline the steps necessary for Banner Medicaid and Medicare Health Plans to monitor, oversee and audit any First Tier, Downstream or Related Entity (FDR) to which Banner Medicaid and Medicare Health Plans has delegated any Services/Functions to perform on behalf of Banner Medicaid and Medicare Health Plans.

### II. Definitions:

- A. Please refer to the link below for full definitions:  
<http://sharepoint/sites/hppandp/new/Lists/Definitions/PP%20Definitions.aspx>

### III. Policy:

- A. It is the policy of Banner Medicaid and Medicare Health Plans to monitor, oversee and audit delegated FDRs, who perform Services/Functions on behalf of Banner Medicaid and Medicare Health Plans. The oversight is conducted in such a manner that ensures Services/Functions delegated to FDRs are in full compliance with AHCCCS and CMS, and any other applicable federal and state requirements, regulations, contractual requirements, and policies and procedures. Banner Medicaid and Medicare Health Plans is ultimately responsible for the compliant operation and performance of any Services/Functions that are delegated to an FDR.

### IV. Procedure/Interventions:

- A. When Banner Medicaid and Medicare Health Plans decides to delegate Services/Functions to a prospective FDR, Banner Medicaid and Medicare Health Plans conducts a pre-Delegation audit to evaluate the prospective FDR's ability to perform the Delegated Services/Functions and to ensure a compliant infrastructure, administration and operations.
- B. The results of the FDR's pre-Delegation audit are presented to Banner Medicaid and Medicare Health Plans Vendor Oversight Team, (VOT) for review and recommendation.

1. Banner Medicaid and Medicare Health Plans Operational Area staff (business owner) is required to complete Banner Medicaid and Medicare Health Plans Vendor Intake and Risk Assessment form and submit the form to Banner Medicaid and Medicare Health Plans VOT for review. Banner Medicaid and Medicare Health Plans VOT reviews all completed forms to evaluate risk, compliance requirements and to identify all delegated FDRs.
  - a. Banner Medicaid and Medicare Health Plans CEO retains the authority to direct and prioritize any Delegated subcontract requirements.
2. Upon CEO approval, Banner Medicaid and Medicare Health Plans executes a subcontract with the Delegated FDR. Banner Medicaid and Medicare Health Plans maintains a fully executed original and electronic copy of the subcontract. The subcontract is accessible to all government programs.
  - a. For AHCCCS, the subcontract shall be accessible within two business days of AHCCCS request.
    - i. All requested subcontracts must have full disclosure of all terms and conditions and must fully disclose all financial or other requested information.
    - ii. Information may be designated as confidential but may not be withheld from AHCCCS as proprietary. Information designated as confidential may not be disclosed by AHCCCS without the prior written consent of Banner Medicaid and Medicare Health Plans except as required by law.
  - b. All subcontracts shall comply with the applicable provisions of Federal and State laws, regulations, contractual requirements, and policies.
    - i. For AHCCCS, all administrative service contracts must reference and require compliance with the AHCCCS Minimum Subcontract provisions. Upon notification from AHCCCS, any updates to the AHCCCS Minimum Subcontract provisions will be communicated to the subcontractor as specified in the contract and ACOM policy 416.
    - ii. For Medicare, all FDR contracts must reference and require compliance with the Medicare Managed Care Manual Chapter 11 section 100 Material Provisions of an MA Contract and section 110 MA Organization Relationship with Related Entities, Contractors, Subcontractors, First Tier and Downstream Entities.
  - c. The subcontract must specify the activities delegated to the FDR and the FDR reporting responsibilities.
  - d. The subcontract must allow for Banner Medicaid and Medicare Health Plans to evaluate the FDRs ability to perform the delegated activities prior to delegation and annually thereafter. These reviews include that the FDR has sufficient resources and appropriately qualified staff to perform the delegated activities.

- e. The subcontract must specify that the performance of the FDR will be monitored by Banner Medicaid and Medicare Health Plans and the FDR must provide ongoing reporting to Banner Medicaid and Medicare Health Plans.
  - f. The subcontract must also provide for disciplinary actions to be taken by Banner Medicaid and Medicare Health Plans if the FDR's performance is inadequate. This shall include, but is not limited to, revoking Delegation or imposing other sanctions.
  - g. The subcontract must include a provision allowing Banner Medicaid and Medicare Health Plans to term any subcontract immediately if deemed necessary when a potential risk to members is noted.
  - h. All Banner Medicaid and Medicare Health Plans delegates are required to submit proposed Changes in Organizational Structure, including sub-delegation to another entity, to Banner Medicaid and Medicare Health Plans for review. All notices will be sent to AHCCCS for review and approval.
- C. For AHCCCS, any subcontract which Delegates an Administrative Service Function that is entered into by Banner Medicaid and Medicare Health Plans is subject to prior review and written approval by AHCCCS and incorporates by reference the applicable terms and conditions of the contract between Banner Medicaid and Medicare Health Plans and AHCCCS.
- 1. This includes any Administrative Service Function related to the management of the contract between Banner Medicaid and Medicare Health Plans and AHCCCS, such as:
    - a. Claims processing, including pharmacy claims;
    - b. Credentialing including those for only primary source verification (CVO)
    - c. Management Service Agreements;
    - d. Service Level Agreements with any Division or Subsidiary of a corporate parent owner.
  - 2. Banner Medicaid and Medicare Health Plans must submit all AHCCCS-required elements at least 60 days prior to the anticipated beginning date of Delegation subcontract.
  - 3. Banner Medicaid and Medicare Health Plans implements any AHCCCS-specific Delegated Administrative Service Function only after receiving AHCCCS approval.
  - 4. For CMS, any new or amendment to FDR contracts fulfilling key Part C and/or Part D functions on behalf of Banner Medicaid and Medicare Health Plans shall be communicated to the CMS Account Manager at least 60 days prior to the effective date of the new contract.
  - 5. Banner Medicaid and Medicare Health Plans must ensure that all systems involved in the administration of the function by the subcontractor have been thoroughly tested and have a reasonable implementation timeline with defined milestones and deliverables. Further, any critical systems that must be

maintained to continue operations and the delivery of services to members will continue to run until Banner Medicaid and Medicare Health Plans can assure that the newly implemented system is fully functional.

- D. All Delegated Administrative Service Functions are managed through Banner Medicaid and Medicare Health Plans Vendor Oversight Team (VOT). Banner Medicaid and Medicare Health Plans VOT ensures ongoing monitoring, oversight and audit of all Delegated FDRs. The VOT evaluates the FDR's performance and program.
1. The VOT is comprised of the Compliance Officers, the Vendor Oversight Program Manager and other Banner Medicaid and Medicare Health Plans leadership who are the subject matter experts and are responsible for the compliant performance of any Service/Function which Banner Medicaid and Medicare Health Plans has delegated.
  2. The business owners are responsible for ongoing monitoring of Delegated FDR performance.
  3. Business owners conduct routine monitoring by reviewing required FDR reporting and FDR-supplied dashboards as requested by the plan.
  4. Business owners are responsible for providing the results of their ongoing monitoring to Banner Medicaid and Medicare Health Plans Vendor Oversight Program Manager.
  5. Banner Medicaid and Medicare Health Plan's Compliance Department conducts most of the annual audits of FDRs based on the Delegated Services/Functions and as outlined on the Compliance FDR Audit Work Plan. The exception are the FDR audits performed by the Finance Department or any audits needing expertise from another internal department or a contracted auditor. The FDR Audit Work Plan is submitted to AHCCCS, Division of Health Care Management.
    - a. Annual Audit Overview: The formal, annual FDR audits are conducted on-site or via electronic desk audit. All audits results are documented, and the Compliance Department retains all audit documentation.
    - b. All Banner Medicaid and Medicare Health Plans FDR's are required to meet any performance standards as required by AHCCCS, CMS, contractual requirement and other state and federal requirements. The validation of the applicable standards, regulations and contractual requirements are included in the annual audit.
    - c. The formal audit results, including any deficiencies, are communicated in writing to the FDR, Compliance Program Director, the Compliance Director, and Banner Medicaid and Medicare Health Plans Vendor Oversight Program Manager. If the FDR is not fully compliant, the FDR will be issued a Corrective Action Plan (CAP). Banner Medicaid and Medicare Health Plans

Vendor Oversight Program Manager is included on the issuance of the CAP to the FDR.

6. The Compliance Department staff report the outcomes of FDR audits to the Compliance Committee. Banner Medicaid and Medicare Health Plans Vendor Oversight Program Manager reports the outcomes of the FDR audits to Banner Medicaid and Medicare Health Plans VOT.
  7. If monitoring or auditing of the FDR results in a CAP being issued Banner Medicaid and Medicare Health Plans, the Vendor Oversight Program Manager will ensure that AHCCCS receives notification within 30 days of discovery.
  8. The CAP is monitored by the Compliance Department staff and is shared with the business owner that is responsible for the Delegated Service/Function.
  9. CAP progress reports are provided to the Compliance Committee and are available to AHCCCS and CMS upon request.
  10. If the Delegated subcontractor continues to operate in a non-compliant manner, Banner Medicaid and Medicare Health Plans VOT may recommend disciplinary action to Banner Medicaid and Medicare Health Plans CEO, up to and including termination. Banner Medicaid and Medicare Health Plans VOT ensures that all necessary actions are taken so that Banner Medicaid and Medicare Health Plans performs Services/Functions in a compliant manner.
    - a. If the Delegated subcontractor is in significant non-compliance that would affect the subcontractor's abilities to perform the duties and responsibilities of the Delegation agreement Banner Medicaid and Medicare Health Plans must notify AHCCCS and Potentially CMS, and include the CAP along with any measures taken by Banner Medicaid and Medicare Health Plans to bring the subcontractor into compliance.
- E. The applicable business owner will develop contingency plans for any Delegated Services/Functions applicable to their areas. The contingency plans provide a mechanism for Banner Medicaid and Medicare Health Plans to resume performing the Services/Functions should the Delegated subcontractor go out of business, be subject to an immediate termination, or for any other reason by which Banner Medicaid and Medicare Health Plans would need to quickly resume performing the Service/Function. FDRs are required to develop, implement and maintain Business Continuity Plans compliant with CMS and AHCCCS minimum standards. A merger, reorganization or change in ownership of a Delegated subcontractor shall require a contract amendment and prior approval of AHCCCS.
- F. For AHCCCS only, all administrative services subcontracts must include and require compliance with the Disclosure of Ownership and Control and Disclosure of Information on Persons Convicted of Crimes requirements as outlined in contract and 42 CFR 455.101 through 106, 42 CFR 436 and SMDL09-001.

1. Upon discovery of an excluded individual the administrative service subcontractor must provide immediate disclosure to Banner Medicaid and Medicare Health Plans and the AHCCCS-OIG.
- G. Banner Medicaid and Medicare Health Plans will ensure that any member communications created by the FDR contain the appropriate Banner Medicaid and Medicare Health Plans branding.
1. All communications regarding modification or updates to any AHCCCS and Medicare guidelines, regulations, sub-regulations policies and manuals will be sent to all FDRs by the Vendor Oversight Department via email.
  2. The FDR/Subcontractor account managers or contacts will review and implement as applicable.
  3. FDR/Subcontractor will return a signed cover sheet to acknowledge they have received the information on the modification to the guideline, policy or manual.
- H. In accordance with CMS requirements, Banner Medicaid and Medicare Health Plans requires all FDR's complete General Compliance and FWA Training within 90 days of hire or contracting and at least annually thereafter:
1. FDRs may complete these trainings one of two ways:
  2. Access Banner Medicaid and Medicare Health Plan's General Compliance and FWA training via the Provider Portal, or
  3. Develop and implement General Compliance and FWA trainings, that are made available to Banner Medicaid and Medicare Health Plans, upon request.
  4. Banner Medicaid and Medicare Health Plans provides notices to FDRs of the CMS training requirements through various mechanisms such as FDR attestations, newsletters, e-mail notifications, fax blasts, website/web portal postings, participation manuals, provider forums, etc. In addition, Banner Medicaid and Medicare Health Plans communicates general compliance information through Banner Medicaid and Medicare Health Plans Code of Conduct dissemination to FDRs occurs within 90 days of contracting, when updated, and annually thereafter.
  5. FDRs are required to retain evidence of training completion (e.g., training logs, employee certifications, etc.) for a period of no less than ten (10) years, and to make this evidence available to Banner Medicaid and Medicare Health Plans and/or CMS, upon request (i.e., for FDR audits, etc.).
- I. FDR attestations:
1. FDRs are asked to complete and submit to Banner Medicaid and Medicare Health Plans an annual attestation to confirm that the FDR is in compliance with Federal and State laws, regulations and policies.

## **V. Performance and Outcome Measures:**

- A. For AHCCCS only, Banner Medicaid and Medicare Health Plan will submit an Annual Subcontractor Assignment and Evaluation Report (within 90 days from the start of the AHCCCS contract year) detailing any Delegation agreements for Administrative Service Functions and which contains all AHCCCS-required information.
- B. For AHCCCS and CMS, should any FDR which performs a Delegated Services/Functions be determined to be non-compliant based on an audit outcome, Banner Medicaid and Medicare Health Plans will work with the FDR toward regaining compliance. This is accomplished by Banner Medicaid and Medicare Health Plans issuing a Corrective Action Plan (CAP) to the Delegated entity and monitoring such entity until compliance is regained.
- C. For AHCCCS and CMS, Banner Medicaid and Medicare Health Plans will promptly inform AHCCCS and the CMS Account Manager in writing or via phone call if a Participating Provider/FDR, with a Delegated Service/Function is in significant non-compliance that would affect the Participating Provider/FDR's abilities to perform the duties and responsibilities of the Delegation agreement.

**VI. References:**

- A. AHCCCS Complete Care Contract; Section D, Paragraph 36, Subcontracts
- B. AHCCCS EPD ALTCS Contract, Section D, Paragraph 33 - Subcontracts
- C. ACOM Policy 416
- D. AHCCCS Contractor Operations Manual Chapter 400, policy 438- Administrative Services Subcontractor Evaluation
- E. AHCCCS Acute Care Contract and AHCCCS EPD ALTCS Contract Attachment F3, Contractor Chart of Deliverables
- F. ACOM Policy 438 Attachment A, Administrative Services Subcontract Checklist
- G. ACOM Policy 438 Attachment B, Administrative Services Subcontractors Evaluation Report Template
- H. 42 C.F.R 438.230
- I. 42 C.F.R 455.101 through 106
- J. 42 C.F.R 436
- K. SMDL09-001
- L. 42 C.F.R. §§ 422.503(b)(4)(vi), 422.504(i), 423.504(b)(4)(vi), 423.505(i)
- M. 42 C.F.R. §§ 422.503(b)(4)(vi)(F), 423.504(b)(4)(vi)(F)
- N. Medicare Managed Care Manual, Chapter 21 Prescription Drug Benefit Manual Chapter 9, Compliance Program Guidelines, Section 40
- O. CMS Final Rule
- P. (42 CFR §§422.504(o) and §423.505(p)) Business Continuity Plans
- Q. Medicare Managed Care Manual Chapter 11 section 100 Material Provisions of an MA Contract and section 110 MA Organization Relationship with Related Entities, Contractors, Subcontractors, First Tier and Downstream Entities

**VII. Related Policies/Procedures:**

- A. Insurance Division Policy: CP 5108 Compliance Actions
- B. Insurance Division Policy: CP 5001 Compliance Program
- C. Insurance Division Policy: GP 5015 Continuity of Operations and Recovery Plan
- D. Insurance Division Policy: ND 5012 Delegated Administrative Service Agreements
- E. Banner Health Policy: 503 HIPAA: IT Service Continuance Program

**VIII. Keywords and Keyword Phrases:**

- A. FDR
- B. Sub-Contractor
- C. Delegation Oversight
- D. First Tier
- E. Downstream
- F. Related Entity