

POLICY and PROCEDURE

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

I. Purpose/Expected Outcome:

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

II. Definitions:

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

III. Policy:

- A. It is the policy of the Health Plan to monitor, oversee and audit delegated FDRs, who perform Services/Functions on behalf of the Health Plan. 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. The Health Plan is ultimately responsible for the compliant operation and performance of any Services/Functions that are delegated to an FDR.

IV. Procedure/Interventions:

- A. When the Health Plan decides to delegate Services/Functions to a prospective FDR, the Health Plan 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 the Health Plan Vendor Oversight Team, (VOT) for review and recommendation.
 - 1. Health Plan Operational Area staff (business owner) is required to complete the Health Plan Vendor Intake and Risk Assessment form and submit the form to the Health Plan VOT for review. The Health Plan VOT reviews all completed forms to evaluate risk, compliance requirements and to identify all delegated FDRs.
 - a. The Health Plan CEO retains the authority to direct and prioritize any Delegated subcontract requirements.

2. Upon CEO approval, the Health Plan executes a subcontract with the Delegated FDR. The Health Plan 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 the Health Plan 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 the Health Plan to evaluate the FDR's 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 the Health Plan and the FDR must provide ongoing reporting to the Health Plan.
 - f. The subcontract must also provide for disciplinary actions to be taken by the Health Plan 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 the Health Plan to term any subcontract immediately if deemed necessary when a potential risk to members is noted.
 - h. All Health Plan delegates are required to submit proposed Changes in Organizational Structure, including sub-delegation to another entity, to the

Health Plan 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 the Health Plan is subject to prior review and written approval by AHCCCS and incorporates by reference the applicable terms and conditions of the contract between the Health Plan and AHCCCS.
1. This includes any Administrative Service Function related to the management of the contract between the Health Plan 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. The Health Plan must submit all AHCCCS-required elements at least 60 days prior to the anticipated beginning date of Delegation subcontract.
 3. The Health Plan 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 the Health Plan shall be communicated to the CMS Account Manager at least 60 days prior to the effective date of the new contract.
 5. The Health Plan 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 the Health Plan can assure that the newly implemented system is fully functional.
- D. All Delegated Administrative Service Functions are managed through the Health Plan Vendor Oversight Team (VOT). The Health Plan 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 Health Plan leadership who are the subject matter experts and are responsible for the compliant performance of any Service/Function which the Health Plan 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 the Health Plan Vendor Oversight Program Manager.
5. The 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 Health Plan 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 the Health Plan Vendor Oversight Program Manager. If the FDR is not fully compliant, the FDR will be issued a Corrective Action Plan (CAP). The Health Plan 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. The Health Plan Vendor Oversight Program Manager reports the outcomes of the FDR audits to the Health Plan VOT.
7. If monitoring or auditing of the FDR results in a CAP being issued the Health Plan, 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, the Health Plan VOT may recommend disciplinary action to the Health Plan CEO, up to and including termination .The Health Plan VOT ensures that all necessary actions are taken so that the Health Plan 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, the Health Plan must notify AHCCCS and Potentially CMS, and include the CAP along with any measures taken by the Health Plan 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 the Health Plan 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 the Health Plan 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 the Health Plan and the AHCCCS-OIG.
- G. The Health Plan will ensure that any member communications created by the FDR contain the appropriate Health Plan 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, the Health Plan 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 the 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 the Health Plan, upon request.
 - 4. The Health Plan 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, the Health Plan communicates general compliance information through the Health Plan 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 the Health Plan and/or CMS, upon request (i.e., for FDR audits, etc.).

I. FDR attestations:

1. FDRs are asked to complete and submit to the Health Plan 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, the 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, the Health Plan will work with the FDR toward regaining compliance. This is accomplished by the Health Plan issuing a Corrective Action Plan (CAP) to the Delegated entity and monitoring such entity until compliance is regained.
- C. For AHCCCS and CMS, the Health Plan 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

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- 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. Health Plan Policy – CP 5108, Compliance Actions
- B. Health Plan Policy – CP 5001, Compliance Program
- C. Health Plan Policy – GP 5015, Continuity of Operations and Recovery Plan
- D. Health Plan 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