

408 - ADMINISTRATIVE ACTIONS

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I. PURPOSE

This Policy applies to ACC, ACC-RBHA, ALTCS E/PD, DCS/CHP (CHP), and DES/DDD (DDD) Contractors. This Policy specifies the Administrative Actions, ~~including sanctions~~¹ which may be imposed by AHCCCS in accordance with Federal and State laws, regulations and the AHCCCS Contracts. This Policy does not limit the authority of the AHCCCS Office of the Inspector General (OIG) to investigate fraud, waste, and abuse, conduct audits and pursue any legal remedies arising from the findings of those investigations and audits.

II. DEFINITIONS²

Refer to the [AHCCCS Contract and Policy ACOM and AMPM³ Dictionary](#) for common terms found in this Policy ~~including:~~⁴

[For purposes of this Policy, the following terms are defined as:](#)

~~CORRECTION ACTION PLAN (CAP)~~	~~CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS)~~	~~MEMBER~~
~~NOTICE OF CONCERN (NOC)~~	~~NOTICE TO CURE (NTC)~~	

ADMINISTRATIVE ACTION

[Administrative actions include any or all of the following \(from lower to higher severity\):](#)

- [1. Notice of Concern \(NOC\).](#)
- [2. Notice of Mandated Corrective Action Plan \(CAP\).](#)
- [3. Notice to Cure \(NTC\) including corrective action.](#)
- ~~1.~~[4. Notice of Sanction \(may include corrective action\).](#)

NOTICE OF CONCERN (NOC)

[A formal written communication issued by AHCCCS to a Contractor regarding a compliance deficiency.](#)

¹ [Removed as the scope includes all administrative actions not just sanctions, revised throughout the Policy.](#)

² [Included definitions for Administrative Actions](#)

³ [Updated to ACOM and AMPM Dictionary.](#)

⁴ [Removed terms table to align with ACOM and AMPM Dictionary. Terms/definitions including in Dictionary: Administrative Action; Notice of Mandated Corrective Action Plan \(CAP\); Notice of Sanction](#)

**NOTICE OF MANDATED
CORRECTIVE ACTION PLAN
(CAP)**

A formal written communication issued by AHCCCS to a Contractor requiring the Contractor to develop a Plan outlining the corrective steps the Contractor will implement to address cited areas of noncompliance.

NOTICE OF SANCTION

A monetary and/or non-monetary penalty assessed or applied to the Contractor for failure to demonstrate compliance in one or more areas of contractual responsibility. The penalty may consist of, but is not limited to, temporary management of the Contractor; monetary penalties; suspension of enrollment; withholding of payments; granting members the right to terminate enrollment without cause; suspension of new enrollments, suspension of payment for new enrollments, refusal to renew, or termination of the Contract.

NOTICE TO CURE (NTC)

A formal written communication issued by AHCCCS to the Contractor to a Contractor 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 Contractor works toward compliance.

III. POLICY

A. GENERAL

~~AHCCCS expects t~~The Contractor ~~to shall~~ align its performance ~~of the Contract~~ with the AHCCCS mission and vision; ~~and~~ continually implement programs ~~innovation~~ and best practices supporting high quality, whole person health care ~~on a continual basis while that adding value to the AHCCCS program.~~; and advance practices that improve the efficiency and effectiveness of the Medicaid program while supporting member choice, access to care and delivery of high quality care.⁵

~~In the event the Contractor fails to demonstrate compliance with contractual requirements, AHCCCS may elect to impose an administrative action.~~ The Contractor shall demonstrate compliance with all contractual requirements. Failure to do so may result in AHCCCS imposing an administrative action.⁶

~~AHCCCS reserves the right to issue an administrative action for any occurrence of non-compliance with Title XIX/XXI or Non-Title XIX/XXI Contract provisions. Each occurrence of non-compliance will be evaluated for determination and issuance of potential administrative action.~~⁷

Administrative actions ~~may~~ include issuance of any or all of the following (from lower to higher severity):

⁵ Updated to include quality.

⁶ Establishes a clear contractual responsibility.

⁷ Moved section below.

1. Notice of Concern (NOC).
2. [Notice of Mandated Corrective Action Plan \(CAP\)](#).
3. [Notice to Cure \(NTC\) including corrective action](#).
4. [Notice of Sanctions \(may include corrective action\)](#). ~~Notice to Cure (NTC), a mandate for Correction Action Plan (CAP), and sanctions.~~⁸

The administrative actions described in this Policy are non-exclusive; that is, the issuance of an administrative action or the imposition of any particular sanction by AHCCCS does not preclude AHCCCS from pursuing any other remedy available in law or contract arising from the same conduct.

~~To promote transparency, a~~ Administrative actions and related documentation ~~may will~~ be published on the AHCCCS website [at AHCCCS' discretion](#). ~~When AHCCCS intends to publish an~~ In certain instances, an NOC [Administrative Action](#) ~~may be published~~ to the AHCCCS website. ~~In these instances,~~ AHCCCS will provide [prior](#) notice to the Contractor ~~(e.g., include notification in the Administrative Action letter) prior to the publication of an NOC.~~⁹

B. AHCCCS [MANAGED CARE ORGANIZATION \(MCO\) COMPLIANCE COMMITTEE](#)¹⁰

[AHCCCS has established an AHCCCS Managed Care Organization \(MCO\) Compliance Committee that serves as the decision-making body for proposed MCO Administrative Actions. The Committee reviews AHCCCS staff recommendations, evaluates the circumstances and severity of Contract noncompliance, and determines the appropriate Administrative Action, when warranted.](#)

~~With the exception of encounter-related sanctions for aged, pending encounters as outlined in the AHCCCS Encounter Manual, and encounter data validation sanctions as outlined in the AHCCCS Encounter Data Validation Technical Document, the AHCCCS Compliance Committee will evaluate recommendations for proposed sanctions and will determine the appropriate sanction to be imposed after consideration of relevant factors, and ensure consistency in the application and amount of sanctions being applied.~~

[The AHCCCS MCO Compliance Committee may consult with AHCCCS subject matter leads, as appropriate, and may consider any other relevant factors, information, or circumstances when making its determination](#)

~~The Compliance Committee may, but is not required to, review administrative actions that do not include a sanction such as issuing an NOC, an NTC, or a mandated CAP.~~

~~The Compliance Committee is comprised of the following individuals, or their designees:
AHCCCS Deputy Director of Business Operations,
AHCCCS Deputy Director of Community Engagement and Regulatory Affairs,~~

⁸ Updated to include each administrative action and severity level.

⁹ Updated to clarify publishing of Administrative Actions.

¹⁰ Updated name of committee and revised section to provide overview of the Committee and its role.

~~AHCCCS Chief Medical Officer,
AHCCCS Division of Community Advocacy and Intergovernmental Relations (DCAIR) Assistant Director,
An attorney from the AHCCCS Office of General Counsel (OGC),
AHCCCS Division of Health Care Services (DHCS) Assistant Director,
AHCCCS Division of Grants and Innovation (DGI) Assistant Director,
AHCCCS Division of Business and Finance (DBF) Assistant Director, and
AHCCCS Division of Fee for Service Management (DFSM) Assistant Director.
All nine Compliance Committee members listed above, or their designee, shall be present at each Committee meeting. Sanctions will be imposed based upon a majority vote.~~

~~The Compliance Committee may consult with subject matter experts as appropriate and shall consider the following in its decision making:
Applicable statutes and rules and contractual requirements, and other authorities
Application of consistent standards for determination of sanction type and/or monetary penalty,
The goals and objectives of the agency, and
Aggravating or mitigating factors such as:
Quality of care or safety concerns for members,
Repeated/continual deficiencies,
Previous administrative actions,
Intentional non-compliance,
Self-identification of deficiencies and remediation,
Risk to the financial viability of the Contractor,
Non-compliance with key staffing requirements,
Financial implications for providers, and
Financial harm to the State.~~

~~1. Matters deliberated in the Compliance Committee are confidential.~~

~~After~~ Upon the AHCCCS MCO Compliance Committee's renders a decision regarding ~~the an~~ Administrative Action ~~sanction~~, AHCCCS will provide a written notification to the Contractor which explains the basis and nature of the ~~sanction~~ Administrative Action, and any applicable ~~appeal~~ dispute rights [42 CFR 438.710(a)(1)].¹¹

The AHCCCS MCO Compliance Committee does not review recommendations for, or determine implementation of, the -actions listed below. While these actions may be reviewed by the AHCCCS MCO Compliance Committee as part of the overall background or support for an Administrative Action, the AHCCCS MCO Compliance Committee does not review recommendations for, or determine implementation of, the following actions:

1. Encounter-related sanctions for aged, pended encounters as outlined in the AHCCCS Encounter Manual,
2. Encounter data validation sanctions as outlined in the AHCCCS Encounter Data Validation Technical Document, and

¹¹ Including reference to Code of Federal Regulations (CFR).

3. Lower severity performance feedback/compliance activities such as compliance notifications; requests for information; or Technical Assistance (TA).¹²

C. BASIS FOR IMPOSITION OF ~~SANCTIONS~~ ADMINISTRATIVE ACTIONS¹³

AHCCCS may elect to issue an administrative action for any occurrence of non-compliance with Title XIX/XXI or Non-Title XIX/XXI Contract provisions.

Each occurrence of non-compliance is evaluated for determination and issuance of potential administrative action.

AHCCCS may elect to impose ~~sanctions~~ administrative actions for any breach of the Contract, or any failure to comply with applicable Federal or State laws or regulations or other legal authorities, including but not limited to ~~any~~ conduct as specified in 42 CFR 438.700 et seq, or any violation of any provision of AAC R9-22-606, and AAC R9-28-606 or the Contract.¹⁴

Failure of the Contractor to correct the issue(s) identified may result in additional administrative action including sanctions.

~~C.D.~~ TYPES OF SANCTIONS

AHCCCS may elect to impose the following types of sanctions:

1. Civil Money ~~Monetary~~ Penalties under 42 CFR 438.704¹⁵
The amount of the ~~monetary~~ civil money penalty, ~~(42 CFR 438.704), may vary~~ varies depending on the nature of the Contractor's action or failure to act as follows:
 - a. The maximum of \$25,000 may be imposed per occurrence for the following actions:
 - i. Substantial failure to provide medically necessary services that the Contractor is required to provide under the terms of this contract to its enrolled members,
 - ii. Misrepresentation or falsification of information furnished to an enrollee, potential enrollee, or provider,
 - iii. Failure to comply with physician incentive plan requirements, and
 - iv. Distribution directly, or indirectly through any agent or independent Contractor, of marketing or outreach materials that have not been approved by AHCCCS or that contain false or materially misleading information.
 - b. Up to \$25,000 or double the amount of the excess charges (whichever is greater) if the Contractor imposes premiums or charges on members that are in excess of those permitted in the Medicaid program. AHCCCS will deduct the amount of the overcharge from the penalty and return it to the affected member.

¹² Including statement of what is out of the committee's scope.

¹³ Retitled Section C to Administrative Actions vs Sanctions only and moved some language down from top of policy.

¹⁴ Including sanctions under Rule ACC R9-22 and 28 (ALTCS); includes Suspension of any or all further member enrollment, by choice and/or assignment for a period of time and Imposition of a monetary sanction.

¹⁵ Revised section to align with Code of Federal Regulations (CFR) terminology.

- c. The maximum of \$100,000 may be imposed per occurrence for the following types of actions:
 - i. Discrimination among enrollees on the basis of their health status or need for health care services, and
 - ii. Misrepresentation or falsification of information furnished to Centers for Medicare and Medicaid Services (CMS) or AHCCCS.
 - d. The maximum of \$15,000 may be imposed for each beneficiary AHCCCS determines was not enrolled because of a discriminatory practice under 42 CFR 438.700(b)(3). This is subject to the overall limit of \$100,000.¹⁶
2. Member Enrollment Related Sanctions

~~AHCCCS-The duration may of a member enrollment related~~ sanction on a Contractor may extend until such time that CMS and/or AHCCCS is satisfied that the reason for the sanction no longer exists and is not likely to recur.¹⁷ Sanctions may be imposed by:

 - a. Granting members the right to terminate enrollment without cause and notifying the affected members of their right to disenroll ~~(If another Contractor is available),~~
 - b. Suspending all new enrollment, including auto-assignments s of membership, ~~-after the effective date of the Sanction (If another Contractor is available), and~~
 - c. Suspending payment to the Contractor for members enrolled after the effective date of the sanction until CMS or AHCCCS is satisfied that the reason for the sanction no longer exists and is not likely to recur.¹⁸
 3. Temporary Management of the Contractor

AHCCCS retains the right to temporarily manage the Contractor consistent with the terms of the Contract and 42 CFR 438.706 and Section 1932(e)(2)(B)(i) of the Social Security Act (SSA).
 4. Termination or Non-Renewal of the Contract .¹⁹

AHCCCS retains the right to terminate or refuse to renew a Contract with the Contractor consistent with the terms of the Contract.
 5. Additional Sanctions

AHCCCS is authorized to impose sanctions in addition to those specified in Policy Section (D) (1)-(4) above in one through four, including but not limited to monetary sanctions, to address areas of non-compliance ~~{[42 CFR 438.702]}.~~

~~D.E.~~ CONTRACTOR RIGHT TO APPEAL/DISPUTE²⁰

The Contractor may dispute the decision to impose a sanction as specified in ~~A.R.S. §ARS~~ 36-2903.01(B)(4) -utilizing the process outlined in AAC Title 9, Chapter 34, Article 4.²¹

¹⁶ Added per 42 CFR 438.704(b)(3).

¹⁷ Moved language up as it applies to all sub bullets. Revised to establish duration of a member enrollment sanction.

¹⁸ Revised section to more succinctly align with sanction provisions.

¹⁹ Revised to align with sanction definition/provisions.

²⁰ Regulation alignment.

²¹ Specifying applicable regulation.

E.F. NOTIFICATION TO CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS)

In accordance with 42 CFR 438.724, AHCCCS will provide CMS with written notice ~~F~~for sanctions imposed or lifted ~~for violations listed in 42 CFR 438.700 pursuant to Medicaid Managed Care Regulations (42 CFR 438.700 et seq.), AHCCCS will provide CMS with written notice:~~²²

- ~~1. Whenever it imposes or lifts a sanction for any of the sanctionable items as specified in 42 CFR 438.700.~~

~~The notice will specify the Contractor, the type of sanction, and the reason for the imposition or lifting of the sanction, and~~

~~The notice will be given no later than 30 days after it imposes or lifts a sanction.~~²³

²² Simplified language and specified applicable regulation.

²³ Removed redundant notice language; aligns with Centers for Medicare and Medicaid Services (CMS) reporting and committee charter.