

AHCCCS SUBCONTRACTOR PROVISIONS

“*Subcontract*” means any contract between the Contractor and a third party for the performance of any or all services or requirements specified under the Contractor’s contract with AHCCCS.

“*Subcontractor*” means any third party with a contract with the Contractor for the provision of any or all services or requirements specified under the Contractor’s contract with AHCCCS.

Subcontractors who provide services under both the AHCCCS ALTCS and the Acute Care Program please see the following:

- Rules for the ALTCS are found in Arizona Administrative Code (AAC) Title 9, Chapter 28. AHCCCS statutes for long term care are generally found in Arizona Revised Statute (ARS) 36, Chapter 29, Article 2.
- Rules for the Acute Care Program are found in AAC Title 9, Chapter 22. AHCCCS statutes for the Acute Care Program are generally found in ARS 36, Chapter 29, Article 1. Rules for the KidsCare Program are found in AAC Title 9, Chapter 31 and the statutes for KidsCare Program may be found in ARS 36, Chapter 29, Article 4.

All statutes, rules and regulations cited in this attachment are listed for reference purposes only and are not intended to be all inclusive.

1. ASSIGNMENT AND DELEGATION OF RIGHTS AND RESPONSIBILITIES

No payment due the Subcontractor under this subcontract may be assigned without the prior approval of the Contractor. No assignment or delegation of the duties of this subcontract shall be valid unless prior written approval is received from the Contractor. (AAC R2-7-305)

2. AWARDS OF OTHER SUBCONTRACTS

AHCCCSA and/or the Contractor may undertake or award other contracts for additional or related work to the work performed by the Subcontractor and the Subcontractor shall fully cooperate with such other contractors, subcontractors or state employees. The Subcontractor shall not commit or permit any act which will interfere with the performance of work by any other contractor, subcontractor or state employee. (AAC R2-7-308)

3. CERTIFICATION OF COMPLIANCE – ANTI-KICKBACK AND LABORATORY TESTING

By signing this subcontract, the Subcontractor certifies that it has not engaged in any violation of the Medicare Anti-Kickback statute (42 USC §§1320a-7b) or the “Stark I” and “Stark II” laws governing related-entity referrals (PL 101-239 and PL 101-432) and compensation there from. If the Subcontractor provides laboratory testing, it certifies that it has complied with 42 CFR §411.361 and has sent to AHCCCSA simultaneous copies of the information required by that rule to be sent to the Centers for Medicare and Medicaid Services. (42 USC §§1320a-7b; PL 101-239 and PL 101-432; 42 CFR §411.361)

4. CERTIFICATION OF TRUTHFULNESS OF REPRESENTATION

By signing this subcontract, the Subcontractor certifies that all representations set forth herein are true to the best of its knowledge.

5. CLINICAL LABORATORY IMPROVEMENT AMENDMENTS OF 1988

The Clinical Laboratory Improvement Amendment (CLIA) of 1988 requires laboratories and other facilities that test human specimens to obtain either a CLIA Waiver or CLIA Certificate in order to

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obtain reimbursement from the Medicare and Medicaid (AHCCCS) programs. In addition, they must meet all the requirements of 42 CFR 493, Subpart A.

To comply with these requirements, AHCCCSA requires all clinical laboratories to provide verification of CLIA Licensure or Certificate of Waiver during the provider registration process. Failure to do so shall result in either a termination of an active provider ID number or denial of initial registration. These requirements apply to all clinical laboratories.

Pass-through billing or other similar activities with the intent of avoiding the above requirements are prohibited. The Contractor may not reimburse providers who do not comply with the above requirements. (CLIA of 1988; 42 CFR 493, Subpart A)

6. COMPLIANCE WITH AHCCCSA RULES RELATING TO AUDIT AND INSPECTION

The Subcontractor shall comply with all applicable AHCCCS Rules and Audit Guide relating to the audit of the Subcontractor's records and the inspection of the Subcontractor's facilities. If the Subcontractor is an inpatient facility, the Subcontractor shall file uniform reports and Title XVIII and Title XIX cost reports with AHCCCSA. (ARS 41-2548; 45 CFR 74.48 (d))

7. COMPLIANCE WITH LAWS AND OTHER REQUIREMENTS

The Subcontractor shall comply with all federal, State and local laws, rules, regulations, standards and executive orders governing performance of duties under this subcontract, without limitation to those designated within this subcontract. (42 CFR 434.70) [42 CFR 438.6(l)]

8. CONFIDENTIALITY REQUIREMENT

Confidential information shall be safeguarded pursuant to 42 CFR Part 431, Subpart F, ARS §36-107, 36-2932, 41-1959 and 46-135, AHCCCS Rules and the Health Insurance Portability and Accountability Act (CFR 164).

9. CONFLICT IN INTERPRETATION OF PROVISIONS

In the event of any conflict in interpretation between provisions of this subcontract and the AHCCCS Minimum Subcontract Provisions, the latter shall take precedence.

10. CONTRACT CLAIMS AND DISPUTES

Contract claims and disputes shall be adjudicated in accordance with AHCCCS Rules.

11. ENCOUNTER DATA REQUIREMENT

If the Subcontractor does not bill the Contractor (e.g., Subcontractor is capitated), the Subcontractor shall submit encounter data to the Contractor in a form acceptable to AHCCCSA.

12. EVALUATION OF QUALITY, APPROPRIATENESS, OR TIMELINESS OF SERVICES

AHCCCSA or the U.S. Department of Health and Human Services may evaluate, through inspection or other means, the quality, appropriateness or timeliness of services performed under this subcontract.

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13. FRAUD AND ABUSE

If the Subcontractor discovers, or is made aware, that an incident of suspected fraud or abuse has occurred, the Subcontractor shall report the incident to the prime Contractor as well as to AHCCCSA, Office of Program Integrity. All incidents of potential fraud should be reported to AHCCCSA, Office of the Director, Office of Program Integrity.

14. GENERAL INDEMNIFICATION

The parties to this contract agree that AHCCCS shall be indemnified and held harmless by the Contractor and Subcontractor for the vicarious liability of AHCCCS as a result of entering into this contract. However, the parties further agree that AHCCCS shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

15. INSURANCE

[This provision applies only if the Subcontractor provides services directly to AHCCCS members]

The Subcontractor shall maintain for the duration of this subcontract a policy or policies of professional liability insurance, comprehensive general liability insurance and automobile liability insurance in amounts that meet Contractor's requirements. The Subcontractor agrees that any insurance protection required by this subcontract, or otherwise obtained by the Subcontractor, shall not limit the responsibility of Subcontractor to indemnify, keep and save harmless and defend the State and AHCCCSA, their agents, officers and employees as provided herein. Furthermore, the Subcontractor shall be fully responsible for all tax obligations, Worker's Compensation Insurance, and all other applicable insurance coverage, for itself and its employees, and AHCCCSA shall have no responsibility or liability for any such taxes or insurance coverage. (45 CFR Part 74) The requirement for Worker's Compensation Insurance does not apply when a Subcontractor is exempt under ARS 23-901, and when such Subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

16. LIMITATIONS ON BILLING AND COLLECTION PRACTICES

Except as provided in federal and state law and regulations, the Subcontractor shall not bill, or attempt to collect payment from a person who was AHCCCS eligible at the time the covered service(s) were rendered, or from the financially responsible relative or representative for covered services that were paid or could have been paid by the System.

17. MAINTENANCE OF REQUIREMENTS TO DO BUSINESS AND PROVIDE SERVICES

The Subcontractor shall be registered with AHCCCSA and shall obtain and maintain all licenses, permits and authority necessary to do business and render service under this subcontract and, where applicable, shall comply with all laws regarding safety, unemployment insurance, disability insurance and worker's compensation.

18. NON-DISCRIMINATION REQUIREMENTS

The Subcontractor shall comply with State Executive Order No. 99-4, which mandates that all persons, regardless of race, color, religion, gender, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable Federal and state laws, rules and regulations, including the Americans with Disabilities Act and Title VI. The Subcontractor shall take positive action to ensure that applicants for employment, employees, and persons to whom it provides service are not discriminated against due to race, creed, color, religion, sex, national origin or disability. (Federal regulations, State Executive order # 99-4)

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19. PRIOR AUTHORIZATION AND UTILIZATION MANAGEMENT

The Contractor and Subcontractor shall develop, maintain and use a system for Prior Authorization and Utilization Review that is consistent with AHCCCS Rules and the Contractor's policies.

20. RECORDS RETENTION

The Subcontractor shall maintain books and records relating to covered services and expenditures including reports to AHCCCSA and working papers used in the preparation of reports to AHCCCSA. The Subcontractor shall comply with all specifications for record keeping established by AHCCCSA. All books and records shall be maintained to the extent and in such detail as required by AHCCCS Rules and policies. Records shall include but not be limited to financial statements, records relating to the quality of care, medical records, dental records, prescription files and other records specified by AHCCCSA.

The Subcontractor agrees to make available at its office at all reasonable times during the term of this contract and the period set forth in the following paragraphs, any of its records for inspection, audit or reproduction by any authorized representative of AHCCCSA, State or Federal government.

The Subcontractor shall preserve and make available all records for a period of five years from the date of final payment under this contract unless a longer period of time is required by law.

If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any such termination. Records which relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of this contract, or costs and expenses of this contract to which exception has been taken by AHCCCSA, shall be retained by the Subcontractor for a period of five years after the date of final disposition or resolution thereof unless a longer period of time is required by law. (45 CFR 74.53; 42 CFR 431.17; ARS 41-2548)

21. SEVERABILITY

If any provision of these standard subcontract terms and conditions is held invalid or unenforceable, the remaining provisions shall continue valid and enforceable to the full extent permitted by law.

22. SUBJECTION OF SUBCONTRACT

The terms of this subcontract shall be subject to the applicable material terms and conditions of the contract existing between the Contractor and AHCCCSA for the provision of covered services.

23. TERMINATION OF SUBCONTRACT

AHCCCSA may, by written notice to the Subcontractor, terminate this subcontract if it is found, after notice and hearing by the State, that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Subcontractor, or any agent or representative of the Subcontractor, to any officer or employee of the State with a view towards securing a contract or securing favorable treatment with respect to the awarding, amending or the making of any determinations with respect to the performance of the Subcontractor; provided, that the existence of the facts upon which the state makes such findings shall be in issue and may be reviewed in any competent court. If the subcontract is terminated under this section, unless the Contractor is a governmental agency, instrumentality or subdivision thereof, AHCCCSA shall be entitled to a penalty, in addition to any other damages to which it may be entitled by law, and to exemplary damages in the amount of three times the cost

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incurred by the Subcontractor in providing any such gratuities to any such officer or employee. (AAC R2-5-501; ARS 41-2616 C.; 42 CFR 434.6, a. (6))

24. VOIDABILITY OF SUBCONTRACT

This subcontract is voidable and subject to immediate termination by AHCCCSA upon the Subcontractor becoming insolvent or filing proceedings in bankruptcy or reorganization under the United States Code, or upon assignment or delegation of the subcontract without AHCCCSA's prior written approval.

25. WARRANTY OF SERVICES

The Subcontractor, by execution of this subcontract, warrants that it has the ability, authority, skill, expertise and capacity to perform the services specified in this contract.

26. OFF-SHORE PERFORMANCE OF WORK PROHIBITED

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

27. FEDERAL IMMIGRATION AND NATIONALITY ACT

The Subcontractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the Subcontractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of Contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the Contractor.

BUSINESS ASSOCIATE AGREEMENT

This Attachment sets out the responsibilities and obligations of _____ (“Associate”) as a business associate of Maricopa Integrated Health System (MIHS) pursuant to the Contract between Associate and MIHS. Associate and MIHS agree to the terms and conditions of this Attachment in order to comply with the use and handling of Protected Health Information (“PHI”) under the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. §§ 160.103, 164.501 et. seq., as amended from time to time (“Privacy Standards”). Unless otherwise provided, all capitalized terms in this Agreement will have the same meaning as provided under the Privacy Standards. Associate and MIHS will comply with the terms of this Attachment for the duration of the Contract and for such other continuing periods as provided in this Attachment.

Definitions for terms in this Attachment:

1. Business Associate means an entity that performs or assists in the performance of a function on behalf of a Covered Entity, which involves the use, or disclosure of Individually Identifiable Health Information as defined in 45 C.F.R. § 160.103. The terms “Business Associate” and “Contractor” are synonymous. Notwithstanding this definition, if Contractor does not have access to or create Protected Health Information under this Contract, Contractor is not a Business Associate, and the terms of this Attachment do not apply to Contractor.
2. Individual means the Individual who is the subject of the Protected Health Information.
3. Individually Identifiable Health Information (“Protected Health Information”) means the health information that is created or received by a Covered Entity; and relates to the physical condition, mental health or other health condition of an Individual, or to the provision of health care to the Individual (including but not limited to the payment for such health care); and identifies or can be used to identify the Individual as defined in 45 C.F.R. § 160.103.
4. Protected Health Information (“PHI”) means the same as Individually Identifiable Health Information

It is agreed concerning:

1. **Uses and Disclosures of Protected Health Information.** Associate will use and disclose PHI only for those purposes necessary to perform its duties, obligations and functions under the Contract, or as otherwise expressly permitted in this Attachment or required by other law. Associate will not use or further disclose any PHI in violation of this Attachment.
2. **Safeguards.** Associate will implement appropriate safeguards to prevent any use or disclosure of PHI not otherwise permitted in this Attachment.
3. **Reports of Impermissible Use of Disclosure.** Associate will report to MIHS any use or disclosure of PHI not permitted by the contract between Associate and MIHS within five business days of Associate’s learning of such use or disclosure.
4. **Agents and Subcontractors.** Associate will ensure that any agent(s), including a subcontractor, to whom it provides PHI received from, or created or received by Associate on behalf of, MIHS agree to the same restrictions and conditions that apply to Associate with respect to such information.
5. **Obligations Regarding Associate Personnel.** Associate will appropriately inform all of its employees, agents, representatives and members of its workforce (“Associate Personnel”), whose services may be used to satisfy Associate’s obligations under the Contract and this Attachment of the terms of this Attachment. Associate represents and warrants that the Associate Personnel are under legal obligation to Associate, by contract or otherwise, sufficient to enable Associate to fully comply with the provisions of this Attachment.

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6. Access to PHI.
 - a. MIHS Access. Associate will make available PHI in accordance with 45 C.F.R. §164.524.
 - b. Patient Access. If a Patient requests access to PHI directly from Associate, Associate will within five business days forward such request in writing to MIHS. MIHS will be responsible for making all determinations regarding the grant or denial of a Patient's request for PHI and Associate will make no such determinations. Only MIHS will release PHI to the Patient pursuant to such a request.
7. Amendment of PHI. Associate will make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. §164.526.
8. Accounting of Disclosures; Requests for Disclosure.
 - a. Disclosure Records. Associate will make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528.
 - b. Patient Request to Associate. If a Patient requests an accounting of disclosures directly from Associate, Associate will forward the request to MIHS within five business days of Associate's receipt of the request, and will make its records of disclosures available to MIHS as otherwise provided in this Section. MIHS will be responsible to prepare and delivery the records of disclosure to the Patient. Associate will not provide an accounting of its disclosure directly to the Individual.
9. Government Access. Associate will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Associate on behalf of, MIHS available to the Secretary of the Department of Health and Human Services for purposes of determining MIHS' compliance with Part 164, Subpart E.
10. Responsibilities upon Termination
 - a. Return of PHI; Destruction. At the termination of the contract, if feasible, Associate will return or destroy all PHI received from, or created or received by Associate on behalf of, MIHS that Associate still maintains in any form and retain no copies of such information.
 - b. Alternative Measures. If Associate believes that returning or destroying PHI at the termination of the Contract is not feasible, Associate will extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
11. Termination. MIHS may immediately terminate the Contract upon written notice to Associate if MIHS determines that Associate has violated a material term of this Attachment.
12. Amendment to Comply with Law. The Parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Attachment may be required to ensure compliance with such developments. Should such developments occur, and upon either Party's good faith request, the other Party agrees to enter good faith negotiations concerning the terms of an amendment to this Attachment.