

305 – PERFORMANCE BOND AND EQUITY PER MEMBER REQUIREMENTS

EFFECTIVE DATES: 10/01/08, 10/01/13, 10/01/15, 07/01/16, 10/01/17, 10/01/18¹

APPROVAL DATES: 10/01/08, 10/24/12, 01/22/14, 02/20/14, 05/21/15, 05/19/16, 11/01/16, 05/18/17, 01/17/19²

I. PURPOSE

This Policy applies to ~~Acute~~ AHCCCS Complete³ Care (ACC), ALTCS E /P/D, ~~CRS~~⁴, and RBHA Contractors, and Medicare Advantage/Prescription Drug/Special Needs Plans (MA/PD/SNP – hereafter MA Plan Organization⁵) Contractors certified by AHCCCS. The purpose of this Policy is to establish standards for Contractors to meet the performance ~~bonding~~ and equity per member requirements. These standards will ~~continue to~~ ensure a Contractor’s ability to meet its claims payment obligations, while addressing the individual differences among Contractors and enrollment growth.

II. DEFINITIONS

BOND SUBSTITUTE

Assets or financial instruments, in an amount specified in the Contract and this policy, pledged to AHCCCS as a promise in lieu of a Performance Bond/Surety Bond to guarantee the Contractor’s obligation under the Contract. This can take the form of one or more of the following: Cash Deposits, Irrevocable Letter of Credit, Certificate of Deposit, or any other type of substitute security agreed to by AHCCCS.

EQUITY

Net Assets that are not designated or restricted for specific purposes.

PERFORMANCE BOND

A written promise by a Surety to pay AHCCCS (as the obligee) an amount specified in the Contract and this policy, if the Contractor (as the principal), fails to meet the Contractor’s obligation under the Contract. A Performance Bond is also called a Surety Bond. ~~A cash deposit with the State Treasurer or a financial instrument secured by the Contractor in an amount designated by AHCCCS to guarantee payment of Contractor claims.~~

¹ Date changes are effective

² Date presented at APC Meeting

³ Changed to reflect new contractor, updated throughout policy where applicable

⁴ Removed to reflect new contractor

⁵ Updated to align with ACOM Policy 313 revisions, term revised to reflect Medicare Advantage Organization throughout policy where applicable

SURETY BOND

A financial institution, such as a bank, credit union, or savings and loans, insured by the appropriate Federal agency, or an insurance company authorized to do business in the State of Arizona, and rated at least A by A.M. Best Company.

~~An agreement between AHCCCS, the Contractor and the Surety where the surety provides a financial guarantee to AHCCCS.~~

TERMINATED CONTRACTOR⁶

A former Contractor whose contract has been terminated either voluntarily or through non-renewal.

III. POLICY FOR PERFORMANCE BOND

~~_____AHCCCS requires the posting of a Performance Bond or Bond Substitute in addition to the initial minimum capitalization and equity per member requirements as described below. as long as the Contractor has liabilities of \$50,000 or more outstanding, or 15 months following the termination date of their contract, whichever is later. This is to guarantee payment of the Contractor's obligations under the Contract including, but not limited to, obligations or payments to providers, and non-contracting providers, non-providers, and any other entity that subcontracts for the performance of the Contractor's obligations under this Contract whether related to coverage for services to members or for the administration of this Contract, performance by the Contractor of its obligations under this Contract.~~⁷

AHCCCS will inform the Contractor of the required initial amount of the Performance Bond or Bond Substitute as determined by AHCCCS, prior to or at the beginning of each contract cycle. This requirement ~~must~~⁸ shall be satisfied by the Contractor no later than 30 days after notification by AHCCCS of the initial amount required.

After the initial Performance Bond or Bond Substitute is satisfied, AHCCCS shall evaluate each Contractor's enrollment statistics and/or monthly capitation payments on a monthly basis and determine if adjustments are necessary in accordance with this Policy.

⁶ Added definition to provide clarification, see Section C of this policy.

⁷ Revised for clarity

⁸ Revised for consistency of term throughout policy where applicable

~~—Annually on October 1, the Contractor shall provide a written attestation, consistent with 42 C.F.R. 438.604 and 42 CFR 438.606, that the documentation of the Performance Bond or Bond Substitute is accurate, complete, and truthful. AHCCCS will confirm the performance bond with the appropriate institution at least annually. See Attachment A.~~

A. REQUIREMENTS FOR PERFORMANCE BONDS AND BOND SUBSTITUTES REQUIREMENTS

~~1. The Performance Bond shall be in a form acceptable to AHCCCS as described in Section III B of this Policy. The Contractor shall also request approval from AHCCCS before a Bond Substitute is established.⁹~~

~~2. The Contractor may not change the amount, duration, ~~or scope or type~~¹⁰ of the Performance Bond or Bond Substitute without prior written approval from AHCCCS/~~Division of Health Care Management/DHCM, Finance~~¹¹.~~

~~3. The Contractor shall not pledge any Bond Substitute leverage the bond for another loan or create as collateral or security for any other loan, debt or creditors using the bond as security obligation of the Contractor or pledge the Bond Substitute as security to creditors.~~

~~4. The Performance Bond or Bond Substitute amount that ~~must~~ shall be maintained after the contract term until ~~shall be sufficient to cover~~ outstanding and contingent liabilities ~~greater~~ are less than \$50,000, or 15 months following the termination date of the contract with AHCCCS, whichever is later, and will be in the amount and for the term determined by AHCCCS.¹² See Section III C of this Policy.~~

~~5. Any security agreement ~~must~~ shall be disclosed.~~

~~6. Acute Care and CRS Contractors—The initial amount of the Performance Bond or Bond Substitute shall be equal to 100% of the total capitation payment expected to be paid to the Contractor in the first month of the contract year cycle, or as determined by AHCCCS. The total capitation amount excludes premium tax. ~~Acute Care capitation is inclusive of delivery supplemental payments.~~¹³ This requirement must be satisfied by the Contractor no later than 30 days after notification by AHCCCS of the amount required. Thereafter, AHCCCS shall review the capitation amount of the Contractor on a monthly basis to determine if the Performance Bond must be increased. ~~w~~ When~~

⁹ Added to align with ACC

¹⁰ Added for clarification

¹¹ Added as abbreviation of DHCM Finance is used throughout remainder of policy

¹² Revised for clarification and to align with ACC

¹³ Revised to align with ACC, added 'including delivery supplement' to previous sentence regarding total capitation amount

the amount of the Performance Bond or Bond Substitute falls below 90% of one month's-capitation ~~amount excluding premium tax~~, ~~then the Contractor shall increase the amount of the instrument must be increased~~ Performance Bond or Bond Substitute to at least 100% of one month's capitation amount excluding premium tax. The Contractor shall ~~have 30 days following notification by AHCCCS to increase the amount of the Performance Bond.~~ increase the amount of the Performance Bond or Bond Substitute no later than 30 days following notification by AHCCCS.¹⁴ The following additional requirements or exceptions by line of business apply:

- a. ACC Contractors - include delivery supplement in the capitation payment,
- b. RBHA Contractors - include Non-Title XIX/XXI monthly payment amounts, AHCCCS will calculate and monitor the Title XIX/XXI and Non-Title XIX/XXI Performance Bond or Bond Substitute amount as one figure. Therefore, it is not necessary that this requirement be met with two separate Performance Bonds or Bond Substitute, and
- a.c. AHCCCS Certified MA Organization Contractors - amount of the Performance Bond or Bond Substitute shall be equal to \$1,050 per enrolled Dual Eligible Member. The Contractor shall work together with AHCCCS to project the number of eligible members to establish the initial amount of the Performance Bond or Bond Substitute.

~~4. ALTCS/EPD Contractors – The initial amount of the Performance Bond shall be equal to 100% of the total capitation payment, including acute care only members, expected to be paid to the Contractor in the first month of the contract year, or as determined by AHCCCS. The total capitation amount excludes premium tax. This requirement must be satisfied by the Contractor no later than 30 days after notification by AHCCCS of the amount required. Thereafter, AHCCCS shall evaluate the capitation amount of the Contractor on a monthly basis to determine if the Performance Bond must be increased. When the amount of the Performance Bond falls below 90% of one month's capitation, the amount of the instrument must be increased to at least 100% of one month's capitation. The Contractor shall have 30 days following notification by AHCCCS to increase the amount of the Performance Bond.~~

~~RBHA Contractors – The initial amount of the Performance Bond shall be equal to 100% (for Greater Arizona Contractors) or 80% (for the Maricopa County Contractor) of the total Title XIX/XXI capitation payment and Non-Title XIX/XXI payments expected to be paid to the Contractor in the first month of the contract year, or as determined by AHCCCS. The total capitation amount excludes premium tax. This requirement must be satisfied by the Contractor no later than 30 days after notification by AHCCCS of the amount required. Thereafter, AHCCCS shall review the Title XIX/XXI capitation and Non-Title XIX/XXI payment amounts of the Contractor on a monthly basis to determine if the Performance Bond must be increased. Wwhen the amount of the Performance Bond or Substitute Security falls below 90% (for Greater Arizona Contractors) or 70% (for the Maricopa County Contractor) of one month's Title XIX/XXI capitation and Non-Title XIX/XXI~~

¹⁴ Revised to align with ACC. added clarifying language

~~payment amounts, then the amount of the instrument must be increased to at least 100% (for Greater Arizona Contractors) or 80% (for the Maricopa County Contractor) of one month's Title XIX/XXI capitation and Non Title XIX/XXI payment amounts. The Contractor shall have 30 days following notification by AHCCCS to increase the amount of the Performance Bond. AHCCCS will calculate and monitor the Title XIX/XXI and Non Title XIX/XXI performance bond or substitute security amount as one figure. Therefore, it is not necessary that this requirement be met with two separate performance bonds or two separate substitute securities.~~

~~AHCCCS Certified MA Plan Contractors—AHCCCS requires that the Contractor obtain and maintain a Performance Bond specifically for the purpose of the MA Plan in the amount of \$1,050 per MA Dual Eligible Member. AHCCCS Division of Health Care Management (DHCM) and the Contractor shall work together to project the number of eligibles to establish the initial amount of the Performance Bond. See ACOM Policy 313 for the requirements to gain state certification of a Medicare Advantage Plan and the ongoing requirements to stay certified by AHCCCS.¹⁵~~

7. A Contractor that fails to maintain or renew the Performance Bond or Bond Substitute as required by the Contract with AHCCCS and as outlined in this Policy, is considered in material breach of the Contract with AHCCCS. See Administrative Actions section of the Contract for further details and ACOM Policy 408.¹⁶
8. Following a merger/acquisition of a Contractor or a Contractor's parent company, AHCCCS reserves the right to require additional Performance Bond assurances on behalf of the new entity, including, but not limited to, expanding the Performance Bond or Bond Substitute to include service dates prior to the merger/acquisition.
9. In the event of a default by the Contractor, AHCCCS shall, in addition to any other remedies it may have under the Contract, obtain payment under the Performance Bond or Bond Substitute to remedy the breach, including but not limited to one or more of the following purposes:
 - a. Paying any damages sustained by providers, and other subcontractors by reason of a breach of the contractor's obligations under this Contract,
 - b. Reimbursing AHCCCS for any payments made by AHCCCS on behalf of the Contractor,
 - c. Reimbursing AHCCCS for any administrative expenses incurred by reason of a breach of the Contractor's obligations under the Contract, including, but not limited to, expenses incurred after termination of the Contract. Terminations pursuant to Section E, Termination for Convenience, of the Contract do not require reimbursement to AHCCCS for administrative expenses,

¹⁵ Updated term to reflect Medicare Advantage Organization, removed ACOM Policy 313 reference

¹⁶ Reformatted, moved placement from end of section to beginning for clarity

- d. Reimbursing expenditures incurred by AHCCCS in the direct operation of the Contractor under Section E, Paragraph 43 of the Contract, and¹⁷
- e. Paying any sanctions imposed under Section D, Paragraph 68, to the extent the sanctions are not offset against payments due from AHCCCS to the Contractor as provided for under Section E, **Right of Offset of the Contract.**

SATISFYING THE PERFORMANCE BOND

~~A Contractor that fails to maintain or renew the performance bond as required by the Contract with AHCCCS and as outlined in this policy, is considered in material breach of the Contract with AHCCCS.¹⁸~~

The following are options for satisfying the performance bond:

1. ~~Cash Deposits,~~
2. ~~An Irrevocable Letter of Credit issued by:
 - a. ~~A bank insured by the Federal Deposit Insurance Corporation, or~~
 - b. ~~A savings and loan association insured by the Federal Savings and Loan Insurance Corporation, or~~
 - c. ~~A credit union insured by the National Credit Union Administration,;~~~~
3. ~~Surety Bond rated at least A by A.M. Best Company of standard commercial scope issued by a surety or insurance company authorized to do business in Arizona,~~
4. ~~Certificate of Deposit, or~~

~~An acceptable substitute in lieu of one of the above agreed to by AHCCCS.~~

~~OR~~

B. PERFORMANCE BONDS AND TYPES OF BOND SUBSTITUTES SECURITY

¹⁹

1. Performance Bond
 - a. Establishment of Bond

¹⁷ Section added to clarify added protections available to AHCCCS.

¹⁸ Reformatted, moved placement from end of section to beginning for clarity

¹⁹ Section reorganized and language moved from other areas of the policy

- i. The Contractor ~~must~~ shall send a copy of the completed Performance Bond Form (see Attachment B) to AHCCCS/DHCM, Finance 30 days prior to the execution of the bond agreement. AHCCCS will review the agreement and will advise the Contractor in writing of the acceptance of the Performance Bond Form to be executed or that changes are necessary. The AHCCCS review will only be for the sufficiency of the agreement to meet the AHCCCS Performance Bond requirements (in B.1.b. below),
- ii. Performance Bond Form includes the following requirements:
 - 1) Must be issued by a Surety,
 - 2) -The Performance Bond shall be in an amount that meets or exceeds the Performance Bond dollar requirement,
 - 3) The Performance Bond shall guarantee performance by the Contractor for all obligations, including post-award obligations that precede the beginning of the first contract year and “wind down” obligations that follow termination of the contract,-
 - 4) The Performance Bond shall include a statement that the Performance Bond cannot be changed in the amount, duration, or scope or discontinued without the written authorization of AHCCCS/DHCM, Finance. Any changes in the sSurety or the terms of the Performance Bond shall be approved in writing by AHCCCS/DHCM, Finance at least 30 days prior to the anticipated change date, and
 - 5) The Performance Bond shall include a contact person at the financial institution issuing the Performance Bond and a contact phone number,
- b. After the Performance Bond Form is executed, the Contractor shall send the original ~~completed~~executed Performance Bond Form (Attachment B) to AHCCCS/DHCM, Finance, signed and notarized by the Contractor and the Ssurety,
- c. AHCCCS will hold the original Performance Bond Form in safe keeping until the agreement ends or is terminated by the parties,
- d. The Contractor is not required to submit a separate Surety Bond to support the Performance Bond Form. If a supporting Surety Bond exists, to the extent the terms of a Surety Bond conflict with the terms of the Performance Bond Form, the terms of the Performance Bond Form are controlling,
- e. Return of Performance Bond Form original,

—————The original Performance Bond Form will be returned to the makers upon:

 - i. The later of 15 months after the termination of the Contract –or when the Contractor’s actual and contingent liabilities after the termination of the Contract are less than \$50,000, or
 - ii. Satisfying the Performance Bbond requirement with a Bond Substitute(s) as outlined and approved by AHCCCS.

2. Types of Bond Substitutes

With the prior written approval of AHCCCS/DHCM, Finance, the Contractor may provide one or more of the following Bond Substitutes in lieu of a Performance Bond:

Cash Deposits, Irrevocable Letter of Credit, Certificate of Deposit, and any other type of security agreed to by AHCCCS.

3. Cash Deposit

a. Deposit of Funds

i. Any funds to be deposited with the State Treasurer shall be sent to AHCCCS/DHCCMDHCCM, Finance in the form of a check, or a wire transfer of funds to the State Treasurer. Reference Attachment CA for Instructions for Wire/ACH Transfers of Funds to AHCCCS via Arizona State Treasurer. Additionally, a letter should be sent to AHCCCS/DHCCMDHCCM, Finance describing:

- 1) The application of funds (~~Acute Care, CRS~~ ALTCS/E/PD, RBHA, MA Plan/MA Organization, or any combination), and
- 2) A contact person at the Contractor and the contact phone number, to resolve ~~for~~ any issues concerning the deposit, and a wire number if the funds were sent via a bank wire. Note the attached wire instructions
 - a) AHCCCS/DHCCMDHCCM, Finance will “claim” the funds by submitting a copy of the Contractor’s letter and a “Securities Safekeeping” form to the State Treasurer’s Office. After the funds have been claimed, AHCCCS/DHCCMDHCCM, Finance will send a confirmation that the funds were received and claimed,

b. Withdrawal of Funds

i. To withdraw principal funds, send a letter to AHCCCS/DHCCMDHCCM, Finance requesting the withdrawal. The letter ~~must~~ shall include:

- 1) The amount of the withdrawal,
- 2) The program(s) from which the funds are being withdrawn (~~Acute Care/ACC, CRS,~~ ALTCS/E/PD, RBHA or MA ~~Plan~~ Organization),
- 3) The date that the funds should be withdrawn (allow a minimum of 10 working days from request), and
- 4) The manner the warrant from the State Treasurer’s office is to be handled:
 - a) Mailed by the US Postal Service, or
 - b) Courier pick-up (please include a phone number of the primary contact so prompt notice can be given), or
 - c) Wiring instructions.

ii. ~~AHCCCS/DHCCMDHCCM, Finance~~ will submit to the State Treasurer’s Office a copy of the Contractor’s letter and a “Securities Safekeeping” form to release the funds. ~~DHCCMAHCCCS/DHCCM, Finance~~ will forward the warrant to the Contractor in the manner requested in the withdrawal letter.

ii.

²⁰ Formatting revision

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4. Irrevocable Letter of Credit

a. Establishment of an Irrevocable Letter of Credit

- i. Before a Letter of Credit can be accepted asin lieu of a performance bond it ~~must shall~~ be approved by AHCCCS for form and amount. Requirements include:

Shall Be of standard commercial scope and issued by a bank insured by the Federal Deposit Insurance Corporation, credit union insured by the National Credit Union Administration or savings and loans association insured by Federal Savings and Loan Insurance Corporation and authorized to do business in the State of Arizona ~~and insured by the appropriate Federal Institution.~~

1)

~~1)2)~~ Shall be for an amount that meets or exceeds the ~~performance bond~~ Bond Substitute dollar requirement,

2) ~~For a time period that meets or exceeds the AHCCCS contract term the LOC should~~ Shall be payable to AHCCCS for the benefit of covered members, providers and certain third parties, and

3)

3) ~~DHCM must receive a signed extension 30 days prior to the expiration date, and~~

4) ~~A~~ Shall include a statement that the ~~performance bond~~ Letter of Credit cannot be changed in the amount, duration or scope, or discontinued without ~~the~~ written authorization from AHCCCS/DHCMDHCM, Finance,

- ii. ~~S~~ The Contractor shall send a copy of the ~~agreement~~ Letter of Credit ~~to be executed~~ to AHCCCS/DHCMDHCM, Finance 30 working days prior to the execution ~~date of the Letter of Credit.~~ AHCCCS/DHCMDHCM, Finance will review the ~~agreement~~ Letter of Credit and advise the Contractor in writing whether it is accepted ~~of acceptance~~ or that changes are necessary including, but not limited to, expiration date and amount. The AHCCCS/DHCMDHCM, Finance review will only be for issues that are necessary for the AHCCCS ~~performance bond~~ Letter of Credit. ~~It~~ It will not include review for any other matters,

- iii. ~~DHCM will respond in writing that the performance bond is acceptable or changes need to be made for acceptance.~~

²¹ Formatting revision

- iv.iii. After the agreement is executed, the Contractor must shall send the original to AHCCCS/DHCMDHCM, Finance. The original will be held in safe keeping until the agreement ends or is terminated by the parties,
- v.iv. The Contractor shall send notification of a contact person at the financial institution issuing the letter of credit and contact phone number to the AHCCCS/DHCMDHCM, Finance Manager.
- b. Return of original Letter of Credit original
The original Letter of Credit will be returned to the makers upon:
 - i.—i. The later of 15 months after the termination of the Cecontract or when the Contractor’s actual and contingent liabilities after the termination of the Cecontract are less then \$50,000, or Termination of the Letter of Credit, or Termination of the AHCCCS contract,
 - ii. Satisfying the pPerformance Bbond or Bond Substitute requirement with another acceptable form as outlined by AHCCCS.

B. SURETY BOND

- a.—Establishment of Bond
 - i.—Before a Surety Bond can be accepted as a performance bond it must be approved by AHCCCS for form and amount. Requirements include:
 - 1) Be rated at least A by A.M. Best Company of a standard commercial scope and issued by a bank, credit union, savings and loans, or insurance company authorized to do business in the State of Arizona and insured by the appropriate Federal Institution,
 - 2) ForT an amount that meets or exceeds the performance bond dollar requirement,
 - 3) For a time period that meets or exceeds the AHCCCS contract term,termination of the
 - 4) DHCM must receive a signed extension 30 days prior to the expiration date, and
 - 5) A statement that the performance bond cannot be changed in the amount, duration or scope or discontinued without the authorization of DHCM.
 - b.—Send a copy of the agreement to be executed to DHCM 30 working days prior to the execution date. AHCCCS will review the agreement and will advise of acceptance or that changes are necessary. The AHCCCS review will only be for issues necessary for the AHCCCS performance bond, it will not include review for any other matters.
 - c.—DHCM will respond in writing whether the performance bond is acceptable or changes need to be made for acceptance.
 - d.—After the agreement is executed, the Contractor shall send the original to DHCMXXX. The original will be held in safe keeping until the agreement ends or is terminated by the parties.
 - e.—The Contractor shall send notification of a contact person at the financial institution issuing the surety bond and contact phone number to the DHCM Finance Manager.

~~f. Return of Surety Bond original~~

~~The original Surety Bond will be returned to the makers upon:~~

- ~~i. Termination of the Surety bond, termination of the contract the termination of the or~~
- ~~ii. Termination of the AHCCCS contract, or~~
- ~~iii. Satisfying the performance bond requirement with another acceptable form as outlined by AHCCCS, or~~
- ~~iv. Statutory Notice of Release²²~~

5. Certificate of Deposits

~~a. Certificates of Deposit are acceptable only if issued by a bank, savings and loan, or credit union that is insured by the appropriate Federal institution, Assignment to Arizona State Treasurer~~

~~b-a.~~

~~b. All Certificates of Deposit shall be assigned to the Arizona State Treasurer in compliance with A.R.S. §35-155. AHCCCS/DHCM, Finance personnel will complete this assignment by obtaining and submitting the "Assignment to Arizona State Treasurer" form,~~

~~c. Deposit of the Certificate of Deposit-~~

~~i. The Contractor shall send or deliver the original Certificate of Deposit (or receipt for the Certificate of Deposit if a certificate is not issued) and the Assignment form to AHCCCS/DHCM, Finance. A letter should accompany the Certificate of Deposit describing the contract or line of business the Certificate of Deposit is satisfying (Acute Care, CRSACC, ALTCS, E/PD, RBHA, or MA Organization) and a contact person,~~

~~ii. After the Certificate of Deposit has been sent to the State Treasurer, DHCM, Finance will send a copy of the State Treasurer's "Securities Safekeeping" form to the Treasurer to record the deposit of the Certificate of Deposit,~~

~~iii. After the Certificate of Deposit has been deposited with the State Treasurer, the Contractor must shall monitor the maturity date. No notification should be expected from the State Treasurer's office or AHCCCS/DHCM, Finance. Evidence of the Contractor's renewal of each CD must shall be sent to AHCCCS/DHCM, Finance within five business days of prior to the renewal date, and~~

~~iv. The Contractor shall send notification of a contact person at the Contractor and contact phone number to the AHCCCS/DHCM, Finance Manager.~~

~~d. Withdrawal of a Certificate of Deposit~~

~~i. Send The Contractor must shall send a letter to AHCCCS/DHCM, Finance requesting the release of a specific Certificate of Deposit giving providing:~~

²² Revised for clarity

- 1) _____ The name of the institution ~~of~~ that issued the Certificate of Deposit,
- 2) The certificate number,
- 3) The amount of the Certificate of Deposit,
- 4) The program(s) the Certificate of Deposit is being withdrawn from (ACC, ALTCS, E/PD, RBHA or MA Organization),
- 5) The manner the Certificate of Deposit is to be returned to the Plan, and
- 6) A contact person,

ii. AHCCCS/DHCMDHCM, Finance will submit to the State Treasurer's Office a copy of the Contractor's letter and a "Securities Safekeeping" form to release the funds. AHCCCS/DHCMDHCM, Finance will forward the warrant to the Contractor in the manner requested in the withdrawal letter.

6. Any Other Type of Substitute Securities

- a. AHCCCS may accept a substitute security or securities in lieu of the surety bond or bond substitute forms discussed above. Contractors shall obtain prior approval from AHCCCS for any Substitute Securities,
 - i. The Contractor agrees to perform any and all acts and execute any and all documents including, but not limited to, security agreements and necessary filings pursuant to the Arizona Uniform Commercial Code, necessary to grant AHCCCS an enforceable security interest in such substitute security to secure performance of the Contractor's obligations under the Contract,
 - ii. The Contractor is solely responsible for establishing the credit-worthiness of all forms of substitute security, and
- b. AHCCCS may, after written notice to the Contractor, withdraw its permission for a substitute security or securities, in which case the Contractor shall provide AHCCCS with Performance Bond or an alternate form of Bond Substitute discussed above.²³

C. PERFORMANCE BOND AND BOND SUBSTITUTE REQUIREMENT FOR A TERMINATED CONTRACTOR²⁴

The Performance Bond or Bond Substitute amount shall be maintained after the contract term in an amount sufficient to cover the Terminated Contractor's outstanding and contingent liabilities of greater than \$50,000, or 15 months following the termination date of their contract, whichever is later, to guarantee payment of the Contractor's obligations to providers, non-providers, and other subcontractors and performance by the Contractor of its obligations under the Contract with AHCCCS.

The Performance Bond or Bond Substitute shall be in a form acceptable to AHCCCS as described in Section III B and III C of this Policy.²⁵

²³ Added to align with Contract

²⁴ Added new section to advise requirements surrounding terminated contractor performance bonds

²⁵ Replaces previous paragraph surrounding terminated contractor, added for clarity

Annually, on October 1, the Contractor shall provide a written attestation, consistent with 42 C.F.R. ~~438.604~~ and 42 CFR 438.606, that the documentation of the Performance Bond or Bond Substitute is accurate, complete, and truthful. See Attachment A.

A terminated Contractor may request a reduction in the Performance Bond or Bond Substitute amount sufficient to cover all outstanding liabilities, including contingent liabilities, greater than \$50,000, subject to AHCCCS' approval. A Terminated Contractor may not change the amount, duration, scope or type of the —Performance Bond or Bond Substitute without prior written approval from AHCCCS—/DHCM Finance. Any modification in the Performance Bond or Bond Substitute shall be approved by AHCCCS /DHCM, Finance at least 30 days before the revision of the Performance Bond or Bond Substitute has been executed.²⁶

IV. POLICY FOR EQUITY PER MEMBER REQUIREMENTS

A. FORMULA

Unrestricted equity, less on-balance sheet Performance Bond or Bond Substitute, due from affiliates, guarantees of debts/pledges/assignments and other assets determined to be restricted by AHCCCS, —divided by the number of members enrolled at the end of the period. (See Section IV D below.)

B. REQUIREMENTS

1. ~~Acute Care~~ACC Equity Per Member Requirement

~~Contractors with 0-99,999 members: \$170~~

~~Contractors with 100,000+ members: \$115~~

Contract Year 2019 (Year one)-: at least \$150 per member

Contract Year 2020 (Year two)-: at least \$200 per member

Contract Year 2021 (Year three)- and forward: at least \$250 per member²⁷

The Contractor shall demonstrate compliance with the equity per member standard for CYE 2019, CYE 2020, and CYE 2021 by the end of each Contract period. Once the \$250 equity per member standard is met, the Contractor shall maintain compliance at \$250 per member for the remainder of the Contract term.

At any time during the contract cycle, the maintenance of equity per member shall never fall below the minimum capitalization requirement as outlined in the ACC RFP YH19-0001, Instructions to Offerors.

²⁶ Replaces previous paragraph surrounding terminated contractor, added for clarity

²⁷ Added per equity per member requirements outlined in ACC, Financial Viability Standards paragraph

2. ALTCS ~~/E/~~PD Equity Per Member Requirement

All E/PD Contractors \$2,000

At any time during the contract cycle, the maintenance of equity per member shall never fall below the minimum capitalization requirement as outlined in the ALTCS E/PD RFP YH18-0001, Instructions to Offerors.

3. RBHA Equity Per Member Requirements

~~All Contractors~~ Greater Arizona Contractors: ~~\$25–1,200~~ per Title XIX/XXI member (~~limited to Title XIX/XXI members only~~) assigned to the RBHA eligible to receive behavioral health services only, and ~~\$25–1,200~~ per Title XIX/XXI member (~~limited to Title XIX/XXI members only~~) enrolled with the RBHA for integrated SMI services

Maricopa County Contractor: \$1,300 per Title XIX/XXI member assigned to the RBHA eligible to receive behavioral health services only, and \$1,300 per Title XIX/XXI member enrolled with the RBHA for integrated SMI services

See Section IV F.2 below for RBHA Capitalization Requirements for Non-Title XIX/XXI members

4. AHCCCS ~~Contracted~~certified Medicare Advantage ~~Organization~~Plan²⁸ Equity Per Member Requirement:

~~\$50 per member upon commencement of the plan. One year after the MA Plan is established, AHCCCS will require that the equity per member amount increase to~~ At least \$350 per MA Plan Enrolled Dual Eligible Member.²⁹

C. REMEDIATION WHEN A CONTRACTOR FAILS TO MEET THE EQUITY PER MEMBER REQUIREMENT

If a Contractor's equity per member falls below the requirement, AHCCCS will review the causes for the lack of compliance. AHCCCS may require the Contractor to comply with one or more of the following measures:

²⁸ Revised for clarification, MAOs may be certified but not contracted with AHCCCS whereas listed requirement applies to AHCCCS Contracted MAOs.

²⁹ Previous \$50 per member requirement no longer applies, revised to reflect minimum \$350 per enrolled dual eligible member requirement

1. Capital infusion, within 30 days of non-compliance, in an amount sufficient to not only bring equity into compliance, but also to maintain compliance.

~~1.2.~~ Submission of corrective action plan to increase equity.

~~2.3.~~ Monthly financial reporting, if not already required.

~~3.4.~~ Increase the amount of the Performance Bond or Bond Substitute.

~~4. Capital infusion to bring equity into compliance,~~

5. Sanctions, and/or Enrollment Cap if applicable.

If the Contractor fails to comply with the above requirements, AHCCCS may apply ~~sanctions~~ administrative action as delineated in ACOM Policy 408.

D. RESTRICTIONS ON EQUITY

The following asset types will constitute restricted assets, and therefore will be subtracted from a contractor's equity when calculating the equity per member ratio:

1. Assets recorded as "due from affiliates." The Contractor may request a waiver from AHCCCS to include the prorated portion of the due from affiliates balance which are resulting from transactions other than AHCCCS approved cash/bank account sweep arrangements with other AHCCCS lines of business.

~~2.~~

~~3.2.~~ Goodwill and adjustments to other assets resulting from a purchase, including those resulting from purchases and revaluations recorded in accordance with FASB Accounting Standards Codification Topic 105 - Generally Accepted Accounting Principles and FASB Accounting Standards Codification Topic 350 - Intangibles — Goodwill and Other.

~~4.3.~~ Guarantees of debt, pledges, and assignments.

~~5.4.~~ On balance sheet Any Performance Bonds or Bond Substitute.

~~6.5.~~ Other assets determined to be restricted by AHCCCS.

E. REQUIREMENTS FOR CONTRACTORS WITH RESTRICTED EQUITY

If a Contractor's equity is not supported by unrestricted cash or investments, and the Contractor does not meet the equity per member requirements, then the Contractor may

be required to maintain a Performance Bond or Bond Substitute in an amount greater than 100% of one month's capitation to cover the amount of the equity necessary to meet the requirements.

F. FUND BALANCE AND CAPITALIZATION REQUIREMENTS

1. Fund Balance Requirements: If the Contractor's equity becomes a fund deficit, the Contractor and its owners shall fund the deficit through capital contributions in a form acceptable to AHCCCS. The capital contributions ~~must~~ shall be for the period in which the deficit is reported and shall occur within 30 days of the financial statement due to AHCCCS. AHCCCS at its sole discretion may impose a different timeframe other than the 30 days required in this paragraph. AHCCCS may, at its option, impose enrollment caps in any or all GSAs, if applicable, and/or sanction the Contractor as a result of an accumulated deficit, even if unaudited.
2. RBHA Capitalization Requirements for Non-Title XIX/XXI members: ~~At any time during the first contract year, the maintenance of minimum capitalization requirement shall never fall below the initial capitalization requirement as outlined in the RBHA contract.~~ Unrestricted Net Assets/Equity (not including ~~the value of the on-balance sheet~~ Performance Bond or Bond Substitute, due from the affiliates, guarantees of debts/pledges/assignments, and Other Assets deemed restricted by AHCCCS, see Section IV D above) shall be greater than or equal to 90% of the monthly Title XIX/XXI capitation and Non-Title XIX/XXI payments to the RBHA. ~~AHCCCS will calculate and monitor the Title XIX/XXI and Non-Title XIX/XXI capitalization requirement amount as one figure.~~

G. AHCCCS/DHCMDHCM, FINANCE MONITORING RESPONSIBILITIES

1. AHCCCS/DHCMDHCM, Finance, financial eConsultants will be responsible for monitoring compliance with equity per member requirements and RBHA Non-Title XIX/XXI capitalization requirements on a quarterly basis. Analyses will be performed to determine the equity per member and RBHA Non-Title XIX/XXI capitalization sufficiency. Deficiencies and requests for remediation will be communicated in writing to the Contractor. The Contractor will be required to submit a plan to increase the equity and/or capitalization within 30 days.
2. ~~The AHCCCS/DHCMDHCM, Finance, financial consultant will be~~ responsible for monitoring compliance with Performance Bond or Bond Substitute ~~s requirements will monitor compliance with Performance Bond requirements~~ on a monthly basis. Deficiencies and requests for remediation will be communicated in writing to the Contractor. ~~AHCCCS will notify the Contractor of required changes to the amount of the Performance Bond.~~ The Contractors will have 30 days to comply with new requirements.