

## **ATTACHMENT L**

### **Program Integrity and Disclosure Requirements**

The CONTRACTOR shall diligently safeguard against the potential for, and promptly investigate reports of, suspected fraud and abuse by employees, subcontractors, providers, and others with whom the CONTRACTOR does business. The CONTRACTOR shall provide Kansas Department of Health and Environment / Division of Health Care Finance (KDHE/DHCF) with the CONTRACTOR'S policies and procedures on handling issues of suspected fraud and abuse.

The CONTRACTOR shall comply with all Federal and State Laws and Regulations related to program integrity and disclosure requirements. This includes any future laws and regulations that may be required as well as current laws and regulations.

#### *Verification of Services Provided 42 CFR §455.20.*

The CONTRACTOR shall have in place a method to verify whether services reimbursed by the CONTRACTOR were actually furnished to eligible persons as billed by providers.

#### *Coordination of Program Integrity Efforts.*

The CONTRACTOR shall coordinate any and all program integrity efforts with KDHE/DHCF personnel and Kansas' Medicaid Fraud Control Unit (MFCU), located within the Kansas Attorney General's Office. At a minimum, the CONTRACTOR shall:

- a. Meet monthly, and as required, with the KDHE/DHCF staff and MFCU staff to coordinate reporting of all instances of credible allegations of fraud, as well as all recoupment actions taken against providers;
- b. Provide any and all documentation or information upon request to KDHE/DHCF or MFCU related to any aspect of this contract, including but not limited to policies, procedures, subcontracts, provider agreements, claims data, encounter data, and reports on recoupment actions and receivables;
- c. Report within two (2) working days to the KDHE/DHCF, MFCU, and any appropriate legal authorities any evidence indicating the possibility of fraud and abuse by any member of the provider network; if the CONTRACTOR fails to report any suspected fraud or abuse, the State may invoke any penalties allowed under this contract including, but not limited to, suspension of payments or termination of the contract. Furthermore, the enforcement of penalties under the contract shall not be construed to bar other legal or equitable remedies which may be available to the State or MFCU for noncompliance with this section;
- d. Provide KDHE/DHCF with a quarterly update of investigative activity, including corrective actions taken;
- e. Hire and maintain a staff person in Kansas whose duties shall be composed at least 90% of the time in the oversight and management of the program integrity efforts required under this contract. This person shall be designated as the Program Integrity Manager. The program integrity manager shall have open and immediate access to all claims, claims processing data and any other electronic or paper information required to assure that program integrity activity of the CONTRACTOR is sufficient to meet the requirements of the KDHE/DHCF. The duties shall include, but not be limited to the following:
  - (1) Oversight of the program integrity function under this contract;
  - (2) Liaison with the State in all matters regarding program integrity;
  - (3) Development and operations of a fraud control program within the CONTRACTOR claims payment system;
  - (4) Liaison with Kansas' MFCU;
  - (5) Assure coordination of efforts with KDHE/DHCF and other agencies concerning program integrity issues.

#### *Procedures to Guard Against Fraud & Abuse 42 CFR §438.608.*

The CONTRACTOR shall have administrative and management arrangements or procedures, and a mandatory compliance plan that are designed to guard against fraud and abuse and include the following:

- a. Written policies, procedures, and standards of conduct consistent with all applicable Federal and State laws pertaining to fraud and abuse and that articulate the organizations commitment to complying with all applicable Federal and State standards. Attached hereto and incorporated herein by reference as Appendix 1 is a document entitled "*CMS Performance Standard for Referrals of Suspected Fraud from a Single State Agency to a Medicaid Fraud Control Unit*," which was published by Centers for Medicare and Medicaid Services (CMS) in September 2008. The CONTRACTOR shall incorporate the guidance document and fraud referral performance standards, as well as any other appropriate guidance and/or future CMS guidance, into written policies and procedures and training materials on developing suspected Medicaid fraud cases for referral to appropriate authorities, including but not limited to MFCU. In any of the joint program integrity meetings held among the parties to this agreement, the parties shall jointly discuss the guidance document;
- b. The designation of a compliance officer and a compliance committee who are accountable to senior management;
- c. Effective training and education for the compliance officer and the staff;
- d. Effective lines of communication between the compliance officer and staff;
- e. Enforcement of standards through well-publicized disciplinary guidelines;
- f. Provision for internal monitoring and auditing, and
- g. Provision for prompt response to detected offenses and for development of corrective action initiatives relating to the contract services.

*Obligation to Suspend Payments to Providers 42 CFR §455.23.*

The CONTRACTOR shall comply with 42 C.F.R. § 455.23 by suspending all payments to a provider after the CONTRACTOR determines that there is a credible allegation of fraud for which an investigation is pending under the Medicaid program against an individual or entity unless KDHE/DHCF has identified in writing good cause for not suspending payments or to suspend payments only in part.

- a. The CONTRACTOR shall issue a notice of payment suspension that comports in all respects with the obligations set forth in 42 C.F.R. § 455.23(b) and maintain the suspension for the durational period set forth in 42 C.F.R. § 455.23(c). In addition, the notice of payment suspension shall state that payments are being withheld in accordance with 42 C.F.R. § 455.23;
- b. Whenever the CONTRACTOR suspends payments in compliance with this subsection in whole or in part, the CONTRACTOR shall make a written fraud referral to Kansas' MFCU not later than the next business day after the suspension is enacted. Whenever possible, the CONTRACTOR should notify the MFCU of the potential suspension and afford the MFCU the opportunity to determine whether or not the suspension is appropriate before suspending payments;
- c. The CONTRACTOR shall maintain all materials related to payment suspensions for a minimum of five (5) years in compliance with the obligations set forth in 42 C.F.R. § 455.23(g).

*Reporting of Ownership & Control of CONTRACTOR 42 CFR §455.104.*

The CONTRACTOR shall report ownership and control information:

- a. *What disclosures must be provided.* The CONTRACTOR shall report the following:
  - (1) The name and address of any person (individual or corporation) with an ownership or control interest in the CONTRACTOR. The address for corporate entities must include as applicable primary business address, every business location, and P.O. Box address;
  - (2) The date of birth and Social Security Number (in the case of an individual);
  - (3) Other tax identification number (in the case of a corporation) with an ownership or control interest in the CONTRACTOR or in any subCONTRACTOR in which the CONTRACTOR has a 5% or more interest;
  - (4) Whether the person (individual or corporation) with an ownership or control interest in the CONTRACTOR is related to another person with ownership or control interest in the CONTRACTOR as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subCONTRACTOR in which the disclosing entity has a 5% or more interest is related

- to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling;
- (5) The name of any other disclosing entity (or fiscal agent or managed care entity) in which the owner of the disclosing entity (or fiscal agent or managed care entity) has an ownership or control interest;
- (6) The name, address, date of birth, the Social Security Number of any managing employee of the disclosing entity (or fiscal agent or managed care entity).
- b. *When the disclosures must be provided;*
  - (1) Disclosures from the CONTRACTOR are due:
    - i. Upon the CONTRACTOR submitting the proposal in accordance with the State's procurement process.
    - ii. Upon the CONTRACTOR executing a contract with the State.
    - iii. Upon renewal or extension of the Contract.
    - iv. Within 35 days after any change in ownership of the CONTRACTOR.
- c. *To Whom the Disclosures be Provided.* All disclosures must be provided to KDHE/DHCF.
- d. *Consequences for Failure to Provide Required Disclosures.* Federal financial participation (FFP) is not available in payments made to a disclosing entity that fails to disclose ownership or control information as required by law.

*Reporting of Business Transactions of CONTRACTOR 42 CFR 455.105.*

- a. The CONTRACTOR shall furnish to KDHE/DHCF and/or the Secretary of Health and Human Services (HHS) on request, information related to business transactions in accordance with subparagraph (b) immediately below.
- b. The CONTRACTOR must submit, within 35 days of the date on a request by the Secretary of HHS or KDHE/DHCF full and complete information about –
  - (1) The ownership of any subcontractor with whom the CONTRACTOR has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and
  - (2) Any significant business transactions between the CONTRACTOR and any wholly owned supplier, or between the provider and any subcontractor, during the five (5) year period ending on the date of the request.
- c. FFP is not available in expenditures for services furnished by CONTRACTOR if the CONTRACTOR fails to comply with a request made by the Secretary or the Medicaid agency under paragraph (b) of this section or under 42 CFR §420.205. CONTRACTOR shall not be entitled to payment under the contract (i.e., no capitation payment will be paid) for services provided during the period beginning on the day following the date the information was due to the Secretary of HHS or KDHE/DHCF and ending on the day before the date on which the information was supplied.

*CONTRACTOR Disclosure of Information on Persons Convicted of Crimes 42 CFR 455.106.*

- a. *Information that must be disclosed.* Upon signing this amendment and prior to renewal of the contract, or at any time upon written request by KDHE/DHCF, the CONTRACTOR must disclose to KDHE/DHCF the identity of any person who:
  - (1) Has ownership or control interest in the CONTRACTOR, or is an agent or managing employee of the CONTRACTOR; and
  - (2) Has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the Children's Health Insurance Program (CHIP) since the inception of those programs.
- b. *Notification to Inspector General.*
  - (1) KDHE/DHCF must notify the Inspector General of the HHS of any disclosures made under paragraph (a) of this subsection within 20 working days from the date it receives the information.
  - (2) KDHE/DHCF will also promptly notify the Inspector General of HHS of any action it takes in respect to the CONTRACTOR.
- c. *Denial or Termination of Contract.*

- (1) KDHE/DHCF may refuse to enter into or renew a Contract with the CONTRACTOR if any person who has an ownership or control interest in the CONTRACTOR, or who is an agent or managing employee of the CONTRACTOR, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid or CHIP.
- (2) KDHE/DHCF may refuse to enter into or may terminate the Contract if it determines that the CONTRACTOR did not fully and accurately make any disclosure required under subparagraph (a) of this section.

*CONTRACTOR Reporting Obligations for Adverse Actions Taken on Provider Applications for Program Integrity Reasons 42 CFR §455.1002.3.*

The CONTRACTOR shall implement in its provider enrollment processes the obligation of providers to disclose the identity of any person described in 42 CFR § 1001.1001(a)(1). CONTRACTOR shall forward such disclosures to KDHE/DHCF. CONTRACTOR shall abide by any direction provided CONTRACTOR on whether or not to permit the applicant to be a provider in the Kansas network. Specifically, the CONTRACTOR shall not permit the provider into the provider network if KDHE/DHCF or CONTRACTOR determines that any person who has ownership or control interest in the provider, or who is an agent or managing employee of the provider, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid or CHIP, or if KDHE/DHCF or the CONTRACTOR determine that the provider did not fully and accurately make any disclosure required pursuant to 42 CFR § 1001.1001(a)(1).

*Disclosure by CONTRACTOR Providers and Fiscal Agents: Information on Ownership and Control 42 CFR §455.104.*

- a. *Who must provide disclosures.* The CONTRACTOR must obtain disclosures from disclosing entities, fiscal agents, and network providers.
- b. *What disclosures must be provided.* The CONTRACTOR must require that disclosing entities, fiscal agents, and network providers provide the following disclosures:
  - (1) The name and address of any person (individual or corporation) with an ownership or control interest in the disclosing entity, fiscal agent, or network provider. The address for corporate entities must include as applicable primary business address, every business location, and P.O. Box address.
    - ii. Date of birth and Social Security Number (in the case of an individual).
    - iii. Other tax identification number (in the case of a corporation) with an ownership or control interest in the disclosing entity (or fiscal agent or network provider) or in any subcontractor in which the disclosing entity (or fiscal agent or network provider) has a 5% or more interest.
  - (2) Whether the person (individual or corporation) with an ownership or control interest in the disclosing entity (or fiscal agent or network provider) is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the disclosing entity (or fiscal agent or network provider) has a 5% or more interest is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling.
  - (3) The name of any other disclosing entity (or fiscal agent or network provider) in which an owner of the disclosing entity (or fiscal agent or network provider) has an ownership or control interest.
  - (4) The name, address, date of birth, and Social Security Number of any managing employee of the disclosing entity (or fiscal agent or network provider).
- c. *When the disclosures must be provided.*
  - (1) *Disclosures from network providers or disclosing entities.* Disclosure from any network provider or disclosing entity is due at any of the following times:
    - i. Upon the network provider or disclosing entity submitting the provider application.
    - ii. Upon the network provider or disclosing entity executing the provider agreement.

- iii. Upon request of KDHE/DHCF during the re-validation of enrollment process.
  - iv. Within 35 days after any change in ownership of the disclosing entity or network provider.
- (2) *Disclosures from fiscal agents.* Disclosures from fiscal agents are due at any of the following times:
  - i. Upon the fiscal agent submitting the proposal in accordance with the procurement process.
  - ii. Upon the fiscal agent executing the contract with the CONTRACTOR.
  - iii. Upon renewal or extension of the contract with a fiscal agent.
  - iv. Within 35 days after any change in ownership of the fiscal agent.
- (3) *Disclosures from managed care entities.* Disclosures from managed care entities (MCOs, PIHPs, PAHPs, and HIOs), except Person Centered Case Managements (PCCMs) are due at any of the following times:
  - i. Upon the managed care entity submitting the proposal in accordance with the procurement process.
  - ii. Upon the managed care entity executing the contract with the CONTRACTOR.
  - iii. Upon renewal or extension of the contract.
  - iv. Within 35 days after any change in ownership of the managed care entity.
- (4) Disclosures from PCCMs. PCCMs will comply with disclosure requirements under paragraph (c)(1) of this section.
- d. *To whom must the disclosures be provided.* All disclosures must be provided to CONTRACTOR, who will make them available to KDHE/DHCF.
- e. *Consequences for failure to provide required disclosures.* FFP is not available in payments made to a disclosing entity that fails to disclose ownership or control information as required by this section.

*Disclosure by Providers: Information Related to Business Transactions 42 CFR §455.105.*

- a. *Provider agreements.* The CONTRACTOR must enter into an agreement with each provider under which the provider agrees to furnish to it or to the Secretary on request, information related to business transactions in accordance with paragraph (b) of this section.
- b. *Information that must be submitted.* A provider must submit, within 35 days of the date on a request by the Secretary, KDHE/DHCF, or the CONTRACTOR, full and complete information about—
  - (1) The ownership of any subcontractor with whom the provider has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and
  - (2) Any significant business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor, during the five (5) year period ending on the date of the request.
- c. *Denial of FFP.*
  - (1) FFP is not available in expenditures for services furnished by providers who fail to comply with a request made by the Secretary, KDHE/DHCF, or the CONTRACTOR under paragraph (b) of this section or under 42 CFR § 420.205 .
  - (2) FFP will be denied in expenditures for services furnished during the period beginning on the day following the date the information was due to the Secretary, KDHE/DHCF, or the CONTRACTOR and ending on the day before the date on which the information was supplied.

*Disclosure by Providers: Information on Persons Convicted of Crimes 42 CFR §455.106.*

- a. *Information that must be disclosed.* Before the CONTRACTOR enters into or renews a provider agreement, or at any time upon written request by KDHE/DHCF or the CONTRACTOR, the provider must disclose to the CONTRACTOR and KDHE/DHCF the identity of any person who:
  - (1) Has ownership or control interest in the provider, or is an agent or managing employee of the provider; and

- (2) Has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the Title XXI services program since the inception of those programs.
- b. *Notification to Inspector General.*
  - (1) The CONTRACTOR shall notify KDHE/DHCF of any disclosures made under paragraph (a) of this section within 10 working days from the date it receives the information. KDHE/DHCF will forward the information to the Office of Inspector General of HHS.
  - (2) The CONTRACTOR must also promptly notify the KDHE/DHCF of any action it takes on the provider's application for participation in the program.
- c. *Denial or termination of provider participation.*
  - (1) The CONTRACTOR may refuse to enter into or renew an agreement with a provider and KDHE/DHCF may refuse to allow CONTRACTOR to renew or enter into such an agreement if any person who has an ownership or control interest in the provider, or who is an agent or managing employee of the provider, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid or CHIP.
  - (2) The CONTRACTOR may refuse to enter into or may terminate a provider agreement and KDHE/DHCF may refuse to allow the CONTRACTOR to renew or enter into such an agreement if any of the three entities determines that the provider did not fully and accurately make any disclosure required under paragraph (a) of this section.

*Federal Database Checks 42 CFR §455.436.* The CONTRACTOR must do all of the following:

- a. Confirm the identity and determine the exclusion status of providers and any person with an ownership or control interest or who is an agent or managing employee of the provider through routine checks of Federal databases.
- b. Check the Social Security Administration's Death Master File, the National Plan and Provider Enumeration System (NPPES), the List of Excluded Individuals/Entities (LEIE), the General Services Administration's Excluded Parties List System (EPLS), the Medicare Exclusion Database (the MED) and any such other databases as the Secretary of HHS may prescribe, including the national database of terminated providers.
- c. Consult appropriate databases to confirm identity upon enrollment and reenrollment and check the LEIE, EPLS, the MED and any such other databases as the Secretary of HHS may prescribe, no less frequently than monthly.
- d. Notify KDHE/DHCF within one (1) business day if an enrolled provider and any person with an ownership or control interest or who is an agent or managing employee of the provider has been excluded from participation or of other adverse actions. FFP is not available for any provider and any person with an ownership or control interest or who is an agent or managing employee of the provider that has been excluded.

*Prohibition on Certain Relationships 42 CFR §438.610.*

- a. The CONTRACTOR may not knowingly have a relationship with the following:
  - (1) an individual who is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued under Executive Order No.12549 or under guidelines implementing Executive Order No. 12549, or
  - (2) an individual who is an affiliate, as defined in the Federal Acquisition Regulation, of a person described in paragraph (a)(1) of the regulation.
- b. For the purposes of this section, "Relationship" is defined as follows:
  - (1) a director, officer, or partner of the CONTRACTOR;
  - (2) a person with beneficial ownership of 5% or more of the CONTRACTOR'S equity, or
  - (3) a person with an employment, consulting or other arrangement with the CONTRACTOR for the provision of items and services that are significant and material to the CONTRACTOR's obligation under its contract with the State.

*Other Requirements.*

The CONTRACTOR shall not expend Medicaid funds for providers excluded by Medicare, Medicaid, or CHIP, as notified by KDHE/DHCF, except for emergency services.

The CONTRACTOR must require each individually contracted physician to have a unique identifier.

The CONTRACTOR shall report fraud and abuse information to KDHE/DHCF quarterly. The report will include the following to the extent such information is available:

- a. the number of complaints of fraud and abuse made to KDHE/DHCF that warrant preliminary investigation, and
- b. for each complaint which warrants investigation, the following information: name-ID number; source of complaint; type of provider; nature of complaint; approximate dollars involved; legal and administrative disposition of the case.

The CONTRACTOR shall document that safeguards at least equal to federal safeguards (at 41 USC 423, section 27) are in place.

*Termination or Denial of Enrollment of Provider if Provider is terminated from any other State Medicaid Program or Medicare. 42CFR §455.416*

The CONTRACTOR must deny enrollment or terminate the enrollment of any provider that is terminated on or after January 1, 2011, under title XVIII of the Act or under the Medicaid program or CHIP of any other State. Providers terminated or denied under §455.416 must be given any appeal rights available under procedures established by State law or regulations.

*Requirements of Section 6032 of the DRA.* Any provider or provider entity, including the CONTRACTOR, that receives or makes \$5 million in annual payments from KDHE/DHCF, must comply with Section 6032 of the Deficit Reduction Act as a condition of receiving payment. The \$5 million amount will be based on paid claims, net of any adjustments to those claims. **It will be the responsibility of providers or provider entities, including the CONTRACTOR, to make the determination as to whether they meet the \$5 million threshold.**

To comply with Section 6032 of the Deficit Reduction Act (DRA), the CONTRACTOR and providers must ensure that no later than January 1, 2007, it has implemented all of the following requirements:

- a. Must establish written policies that provide detailed information about the Federal laws identified in Section 6032(A) and any Kansas laws imposing civil or criminal penalties for false claims and statements, or providing whistleblower protections under such laws.
- b. In addition to the detailed information regarding the Federal and State laws, the written policies must contain detailed information regarding the CONTRACTOR or provider's own policies and procedures to detect and prevent fraud, waste and abuse in Federal health care programs, including the Medicare and MA Programs.
- c. The CONTRACTOR and providers must provide a copy of its written policies to all of its employees, contractors and agents of the vendor.
- d. If the CONTRACTOR or providers maintain an employee handbook, the CONTRACTOR or provider must include in its employee handbook a specific discussion of the Federal and State laws described in its written policies, the provider's policies and procedures for detecting and preventing fraud, waste and abuse and the right of its employees to be protected from discharge, demotion, suspension, threat, harassment, discrimination, or retaliation in the event the employee files a claim pursuant to the Federal False Claims Act or otherwise makes a good faith report alleging fraud, waste or abuse in a Federal health care program, including the Medicare and KDHE/DHCF Programs, to the CONTRACTOR or provider or to the appropriate authorities.

*Cost Recovery and Cost Avoidance Tracking and Reporting*

The CONTRACTOR must submit a monthly report to KDHE/DHCF detailing, for the reporting month, the money saved and costs avoided through front end edits and recipient lock-in and other cost avoidance

efforts, and the amount recovered through fraud, waste or abuse detection efforts. These reports must be in a format approved by KDHE/DHCF.



**APPENDIX 1**  
**CMS-MIG Performance Standard for Referrals of Suspected Fraud from a Single State Agency to a Medicaid Fraud Control Unit**

Specification Category	Specification Details
<b>Objective</b>	Determine the percentage of acceptable referrals (those that meet minimum criteria for a “collection of information”) that were provided by the State Medicaid agency to its Medicaid Fraud Control Unit (MFCU) in accordance with 42 CFR 455.21(a)(1).
<b>Definitions</b>	<p>Referral: A “collection of information” communicated from the Single State Agency to the MFCU due to suspicion of provider fraud (in accordance with CFR) through a formalized process.</p> <p><i>Acceptable Referral:</i> Referral of a potentially fraudulent Medicaid provider to the State’s MFCU that contains the “minimum criteria.”</p> <p>Minimum Criteria for “collection of information” provided to allow the MFCU to determine if further action is warranted includes:</p> <ul style="list-style-type: none"> <li>• Subject (name, Medicaid ID, address, provider type)</li> <li>• Source/origination of complaint</li> <li>• Date reported to State</li> <li>• Description of suspected misconduct, with specific details including: <ul style="list-style-type: none"> <li>- Category of service</li> <li>- Factual explanation of the allegation</li> <li>- Specific Medicaid statutes, rules, regulations, and/or policies violated</li> <li>- Date(s) of conduct</li> </ul> </li> <li>• Amount paid to provider during the past 3 years or during the period of the alleged misconduct, whichever is greater</li> <li>• All communications between State and provider concerning conduct at issue</li> <li>• Contact information for State agency staff person with practical knowledge of workings of the relevant program</li> <li>• Sample/exposed dollar amount [when available]</li> </ul>
<b>Data Source</b>	State Program Integrity Assessment (SPIA) Data Collection Instrument

<b>Specification Category</b>	<b>Specification Details</b>
<b><i>Unit of Analysis</i></b>	Referrals to MFCUs
<b><i>Frequency of Measurement</i></b>	Annually by FFY beginning with FFY 2009; Validation of 1/3 of States annually through Medicaid Program Integrity Reviews
<b><i>Formula</i></b>	Identify percentage of acceptable referrals: Numerator = # of acceptable referrals provided to MFCUs Denominator = total # of referrals sent to MFCUs