

Sanctions and Penalties Enactment

Policy

It is the policy of Central Florida Behavioral Health Network, Inc. (CFBHN) to enforce sanctions and penalties applied to Network Service Providers (NSPs) that do not maintain contract compliance, and/or perform at a level that does not meet minimum standards.

Purpose

To implement an objective, predictable, progressive, and systematic approach to addressing unacceptable performance by NSPs, specific to the responsibilities as delineated in their CFBHN subcontracts.

Procedure

I. Definitions

- A. Administrative/Operational Violation: A lack of submission of a necessary subcontract document, billing data, service data, program report, or other documentation that is related to the subcontract compliance.
- B. Contractual Violations: Violations that occur when an NSP fails to meet the prescribed obligations as specified and agreed to in the subcontract with CFBHN.
- C. Corrective Action Plan (CAP): A plan of action agreed upon by the NSP and CFBHN to remediate performance deemed unacceptable or noncompliant with the conditions of the NSP's subcontract. This plan specifies the actions to be taken and the timeframes within which acceptable performance or compliance is to be achieved.
- D. Health and Safety Violation: Failure to protect the health and safety of individuals during the provision of healthcare services. These violations include, but are not limited to: Preventable injuries or death; Failure to follow required risk management or care procedures; Lack of safety drills and/or failure to maintain safety equipment.
- E. Involuntary Termination: Occurs when CFBHN:
 - 1. Has determined the NSP has failed to meet the mandatory requirements of the subcontract or agreement, or
 - 2. Provides evidence of the NSP's substantial non-compliance. Termination may apply to one or more specific programs or the entire contract, depending on the severity of the violations(s). A termination letter is to be sent to the NSP giving them 30 days' notice, except when CFBHN determines that termination should be immediate upon notice.
- F. Safety of Individuals Served: The prevention of errors and adverse effects to individuals served.
- G. Voluntary Termination: Termination of CFBHN subcontract, program or agreement, initiated by the NSP.

II. Notification of Sanctions and Penalties

- A. CFBHN notifies its Board of Directors of any penalties imposed on an NSP prior to the termination of a subcontract, program or agreement.

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- B. Prior to a sanction being issued, CFBHN staff, including the President/Chief Executive Officer (CEO), will meet with the NSP's CEO and Board Chair to advise them that their next Corrective Action/occurrence may result in a sanction. At this meeting, this policy may be reviewed with the NSP.
 - 1) No statements made by CFBHN at such meeting may amend or waive this policy, or amend or waive any provision of the NSP's contracts or subcontracts with CFBHN, or bind the CFBHN regarding what is, or is not, a breach or nonperformance of the NSP's contracts or subcontracts with CFBHN.
 - 2) Only in egregious circumstances, approved by CFBHN's Board of Directors, will CFBHN's CEO and staff not be required to meet with the NSP.
- C. If the NSP fails to correct the deficiency, a letter may be issued to the NSP's CEO & Board Chair stating that a withholding of funds may be applied to their next request for payment. The amount of the withholding, if any, may be specified.

III. Voluntary Contract Termination:

- A. An NSP under a subcontract or agreement can terminate the subcontract, a program or agreement without cause with a 30-day notice. Notification must be provided in writing and submitted to their CFBHN contract specialist.
- B. Upon notification of the termination, the Director of Contracts notifies CFBHN management.
- C. The Director of Contracts works with the appropriate program staff in Network Development and Clinical Services (NDCS) to develop a transition plan to avoid a break in services.
- D. The Contract Specialist ensures that all required reports and deliverables have been received and outstanding requirements are met.
- E. The CFO works with the other internal departments to ensure all outstanding deliverables are met before the final payment is issued.
- F. Once all of the information has been received by the Contract Specialist and other departments, the Finance department releases the final payment. The NSP's failure to comply with the subcontract obligations may result in delay or withholding of payment to the NSP.

IV. Involuntary Contract Termination

- A. Immediate Termination
 - 1. As part of its contract with the Department of Children and Families (DCF), the presence of any one of the following may result in an immediate termination notification of the subcontract or agreement.
 - a. A gap in the insurance coverage. (Note: if the NSP can re-establish coverage within the specified timeframe, CFBHN has the option to retract the contract termination.)
 - b. An NSP is listed on the government-wide exclusions in the System for Award Management (SAM).

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- c. An NSP has been debarred, suspended, proposed for debarment and declared ineligible, or voluntarily excluded from participation in a subcontract by any federal department or agency.
- d. If the subcontract is for an amount of \$1 million or more and:
 - 1) The NSP is found to have submitted a false certification under section 287.135, F. S., or
 - 2) Has been placed on the Scrutinized Companies with Activities in Sudan List, or
 - 3) Has been placed on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
 - 4) Regardless of the amount of this contract, the ME may terminate this contract at any time the NSP is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

2. The 30-day termination notice is issued to the NSP's Chief Executive Officer (CEO) and its Board Chairperson.

A 30-day termination notice is not required if the NSP's contract or agreement or Florida law allows for immediate termination.

3. If within the 30-day period, verification is provided that the presence on the list was a mistake or the company has been removed from the list, the contract termination may be retracted.
4. The list of items in this Immediate Termination section are not exclusive. Nothing in this list limits CFBHN's right to terminate as provided in the NSP's contract/agreement or in Florida law.

B. Contract Non-Compliance Termination

1. If an NSP has not submitted documentation required to be submitted by the subcontract or agreement and CFBHN staff have notified the NSP three times that such documentation has not been submitted, CFBHN may withhold their payment until the documentation is received, or may terminate the subcontract, agreement or program. The Contract Specialist endeavors to notify NSPs of missed deadlines for submission of documentation, but failure of the Contract Specialist to provide such notification does not waive any contract requirements or limit CFBHN's remedies.
2. During the course of the year, an NSP's failure to meet performance targets established in the subcontract or agreement may result in the initiation of a corrective action plan.
 - a. CFBHN may provide technical assistance to the NSP.
 - b. If, by year end, the NSP has not met the required targets, a corrective action may be issued, and an action plan to address the issue, requested from the NSP.

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- c. Repeated noncompliance, in two consecutive years, may result in a penalty as defined in the schedule that accompanies this policy.
- d. If it is determined that the NSP is not able to correct the problematic issues(s), the funds may be removed from the contract.
- e. CFBHN does not issue a corrective action on performance measures on which they are not held accountable by DCF. However, this general practice may not be followed in situations in which CFBHN determines a corrective action plan is appropriate to help ensure contract compliance.

C. Finance Non-Compliance and Termination

- 1. Finance staff monitor the NSPs' financial health. If the ratio testing conducted demonstrates that an NSP is on a downward trend:
 - a. The Finance staff may recommend that benchmarks be added into the NSP's subcontract or included in a corrective action plan.
 - b. CFBHN's CEO or designee may meet with the NSP's Board Chairperson, to ensure that CFBHN's concerns about the NSP's financial health are known, and a plan is in place to address the identified issues. The CEO also informs the CFBHN Executive Committee of the meeting and related concerns.
 - c. If the NSP fails to correct any deficiencies, CFBHN may terminate part or the entire contract.
- 2. Complaints received from the NSPs vendors/NSPs including, but not limited to, failure to make payments on time are noted by CFBHN.

D. Continuous Quality Improvement (CQI) Non-Compliance and Termination

- 1. Risk Management
 - a. NSPs are required to adhere to the incident reporting requirements established by DCF policies CFOP 215-4 and CFOP 215-6.
 - b. Failure to meet the reporting requirements established by these policies may result in a penalty up to, and including, the termination of NSP's funding for the program(s) involved.
 - c. The amount of the penalty is determined according to the penalty schedule.
- 2. CQI Monitoring
 - a. As a component of the monitoring process, areas of weakness or non-compliance are identified and corrective actions issued. In response, NSPs are required to submit an action plan that identifies:

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- 1) The steps that will be taken to correct the issue;
 - 2) Who is responsible for ensuring that it is corrected; and
 - 3) The date on which the process will be completed.
- b. If an NSP is cited with a corrective action on the same monitoring tool in two or more consecutive monitoring reviews, penalties may be enacted as prescribed on the penalty schedule outlined in this policy. Technical assistance may be offered, as required, by the CQI team and CFBHN managers of the cited program.
- c. The charts below outline the process by which a first, second or third offense, related to CQI monitoring, is defined and determined.

Corrective Action Cited on Same Monitoring Tool in CONSECUTIVE MONITORING REVIEWS

Initial Result	Occurrence 1	Occurrence 2	Occurrence 3
Corrective Action is issued on the same tool in 2 consecutive annual/follow-up monitoring reviews	Corrective Action is issued on the same monitoring tool, and/or for the same item, during a 3 rd consecutive monitoring review	Corrective Action is issued on the same monitoring tool, and/or for the same item, during a 4 th consecutive monitoring review	Corrective Action is issued on the same monitoring tool, and/or for the same item, during a 5 th consecutive monitoring review

- d. The NSP's consecutive monitoring streak is considered to be ended once monitoring tool results determine that cited concerns have been addressed in an acceptable manner and no additional Corrective Action is warranted.

E. Termination due to unsatisfactory performance

1. Unsatisfactory performance by an NSP on a subcontract or agreement includes, but is not limited to, a situation in which the Chief Clinical Officer (CCO), Program Manager or other CFBHN staff member determines that:
 - a. There is evidence of an NSP's substantial non-compliance in fulfilling its obligations in the subcontract or agreement.
 - b. The NSP has consistently performed in a manner that is unsatisfactory as determined in the sole, reasonable discretion of CFBHN senior staff.
2. CFBHN senior staff review the documentation to verify that opportunities were afforded to the NSP to correct the issues through technical assistance, or a corrective action plan, except when CFBHN senior staff determine that immediate withholding of funds or termination is appropriate.

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3. At the discretion of CFBHN senior staff, an NSP may be granted a period of 60 days to correct the deficiency.
 - a. Notification of this decision is sent to the NSP’s CEO and Board Chairperson,
 - b. During this time, CFBHN staff may continue to provide technical assistance, if requested by the NSP in writing.
 - c. Failure to comply within this timeframe may result in the termination of the contract.
4. If client health and safety is impacted due to gross misconduct, the contract will be terminated with 24-hour notice.
5. CFBHN staff may meet internally to determine the next steps and put a plan in place to ensure there is a smooth transition of client services to a new NSP.

V. Penalty Schedule

- A. The schedule below outlines the withholdings for first, second and third occurrences defined by this policy.

Nature of the Concern/Violation	1 st Occurrence	2 nd Occurrence	3 rd Occurrence
Administrative/Operations	No withholding; Corrective Action Plan Required	2% of total contract payments are withheld	5% of total contract payments are withheld
Health/Safety of Individual(s) Served	No withholding; Corrective Action Plan Required	5% of total contract payments are withheld	10% of total contract payments are withheld

- B. The timeframe that is subject to a payment withhold is determined by CFBHN leadership.
 1. This decision takes into account the following factors:
 - a. The date that the issue that triggered the payment withhold:
 - 1) Occurred;
 - 2) Was discovered; and
 - 3) Was corrected.
 - b. Whether the occurrence is the 2nd or 3rd cited by CFBHN.
 - c. The NSP’s history of previous violations/payment withholds
 2. Timeframes during which a withhold may be imposed are not limited to the current fiscal year. For example, a withhold issued in response to a violation discovered in the 4th quarter of the fiscal year, if not corrected by June 30, may carry over into the next fiscal year.
- C. Payments withheld after the 2nd occurrence may be returned to the NSP, if the NSP has corrected the identified issues and or implemented any necessary changes.

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- D. Funds withheld at the 3rd occurrence are not returned to the NSP in the current, or future, years.
 - 1. CFBHN holds these funds in a separate account and submits a plan to the Board.
 - 2. If the funds are Federal, CFBHN works with the circuit(s) where the funding originated to determine how to contract out the funding.

- E. Additionally, staff may recommend to the Board to impose additional withholdings or remedies, if the situation warrants, up to contract termination.

- F. Disputes and appeals will be processed in accordance with *NSP Dispute/Appeal Process* policy.

- G. All withholdings are liquidated damages regardless of the terminology used. CFBHN's damages resulting from violations are not readily ascertainable. The amount of the withholding is not grossly disproportionate to any damages that might reasonably be expected to follow from such violations.

<p>Sanctions and Penalties Enactment</p> <p>Approval:  Alan Davidson, President/Chief Executive Officer</p>	<p>Date Issued: <u>03/19/2009</u></p> <p>Last Revision: <u>06/10/2022</u></p> <p>Review Date: <u>03/29/2023</u></p>
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