


Policy Title: Subcontractor Compliance and Performance Improvement		
Department: Contracts	Revised Date: 05/11/2024 Review Date: 05/11/2024	
CEO Approval:	Effective Date:  9/22/2024	

**POLICY:**

It is the policy of Central Florida Cares Health System, Inc. (CFCHS) to enforce Subcontractor compliance with contract requirements.

**PURPOSE:**

To implement an objective, predictable, progressive, and systematic approach to addressing unacceptable performance by CFCHS Subcontractors specific to their responsibilities as defined in the CFCHS Subcontract.

**DEFINITIONS:**

Corrective Action Plan (CAP): A formal written plan to correct contract compliance issue(s) or a pattern of errors that significantly impact the provision of quality services, continuation of funding and/or operation of the organization. The CAP shall specify the corrective actions to be taken, the person(s) responsible, the timeframes within which acceptable performance or compliance is to be achieved and shall be agreed upon by the Subcontractor and CFCHS.

Spending Plan: A CAP triggered when financial reports indicate that contracted dollars are not being utilized and there is potential for lapsing funds. The Spending Plan shall include a spreadsheet of projected expenditures per month as well as the items required by a CAP.

Contractual Violations: Include the demonstrated and measured failure of a Subcontractor to comply with the obligations specified in the subcontract documents between the Subcontractor and CFCHS as classified according to severity and type.

**PROCEDURES:**

1. Violation Severity:
  - a. Minimal Risk. Violations that do not significantly impact the care of persons served or impede the Subcontractor or CFCHS' ability to operate efficiently and meet other, more significant contractual obligations.
  - b. Moderate Risk. Violations that negatively impact quality of care of clients or impede the Subcontractor's, or CFCHS', ability to operate efficiently and meet other contractual obligations.
  - c. Serious Risk. Violations by a Subcontractor of the magnitude that may result in adverse legal action or constitute an impediment to CFCHS' ability to meet contractual obligations to the extent the violations place CFCHS, or a CFCHS contract, at risk.

2. Violation Types:
  - a. Administrative. Administrative violations include but are not limited to the following areas where unsatisfactory performance may be cited and for which corrective actions may be required.
    - i. Background Screening
    - ii. Staff Orientation and Training
    - iii. Data Submission
    - iv. Report Submission
    - v. Claims Matching Audit Trail
    - vi. Compliance to Other Specified Regulatory Requirements
    - vii. Outcomes
  - b. Operational. Operational violations include but are not limited to the following areas where unsatisfactory performance in the area of service provision may be cited and for which corrective actions may be required.
    - i. Clinical Documentation
    - ii. Incident Reporting
    - iii. Maintenance of Licensure and Accreditation
    - iv. Services Performance Measures and Outcomes
    - v. Spending of contracted funds
  - c. Health and Safety. Health and safety violations include but are not limited to unsatisfactory performance specific to physical considerations identified below that threaten the health, safety and well-being of persons served, staff, and visitors for which corrective actions may be required.
    - i. Fire Protection
    - ii. Facility and Property Maintenance
    - iii. Facility Hygiene
    - iv. Food Service Preparation
    - v. Adequacy of Staffing
3. Corrective Action Process:
  - a. Notice of Non-Compliance – All findings derived from CFCHS contract management and quality improvement program activities that are deemed to warrant corrective action responses are communicated in writing and discussed with the Subcontractor to examine and validate the accuracy, as described in CFCHS' Subcontractor Monitoring Policy. Should findings not be resolved following an approved CAP and/or should the finding(s) be considered serious enough to warrant immediate resolution, a notice of non-compliance letter is sent to the Subcontractor.
    - i. Notices of Non-Compliance are signed by the Contract Manager and copied to the CFCHS CEO as well as key CFCHS staff involved in the process associated with the non-compliance determination.
    - ii. Examples of findings include but are not limited to:
      1. Failure to submit required reports timely.
      2. Failure to abide by applicable published Florida Department of Children and Families (Department) Guidance Documents or Department operating procedure.
      3. Findings from monitoring site visits.
  
      4. Findings from complaint investigations.
      5. Findings from performance measure oversight.

- b. Request for Corrective Action Plan – Those findings deemed by CFCHS to require corrective action responses are documented and communicated in writing to the Subcontractor along with the deadline for when the corrective action plan is due to CFCHS for approval.
  - i. CFCHS shall respond to the proposed corrective action plan within 30 days of receipt.
  - ii. Once the corrective action plan is approved, CFCHS will schedule a follow-up call, meeting, or monitoring to evaluate the Subcontractor’s success in accomplishing the tasks and improvements specified in the corrective action plan.
  - iii. The corrective action process shall serve to initiate a progressive sequence of interventions to resolve Subcontractor contractual non-compliance, which includes and/or results in:
    - 1. A Letter of Satisfaction of Compliance when contractual compliance has been achieved.
    - 2. An extension of the time period for corrective action plan completion where notable compliance has been achieved, to include the scheduling of a subsequent follow-up review.
    - 3. A notice of determination of non-performance.
- c. Letter of Determination of Non-Performance – A letter is sent to the Chair of the Subcontractor’s Board of Directors when significant non-compliance continues to exist. That correspondence shall specify the financial penalties to be enacted and any accompanying adjustments to the Subcontractor’s contract that will occur, which may include, but are not limited to, a moratorium on contracted services, reduction or elimination of contracted services and/or contracted dollars up to and including termination of the contractual relationship with CFCHS. In addition, when termination is identified as the final outcome, the letter shall specify expectations and timeframes for the transition of persons receiving services and the method by which the Subcontractor will be compensated for expenses through the transition period.

#### 4. Notification of Determination

Upon determination being made by CFCHS resulting from the corrective action process described above, CFCHS will formally notify the Subcontractor, in writing, of the nature of the determination as being: the Satisfaction of Compliance; the formal extension of the corrective action time period; or the Determination of Non-Performance.

#### 5. Appeal Processes

Subcontractors retain the right throughout the performance evaluation, corrective action negotiations, and penalty-enacting processes to appeal findings, corrective action requirements, the enactment and magnitude of financial penalties, or substantive changes proposed to a Subcontractor’s contract. Dispute resolution and the appeals process shall be followed as outlined in the CFCHS policy: Subcontractor Dispute Resolution.

#### 6. Penalty Enactment:

- a. In situations where it is determined the Subcontractor failed to ultimately fulfill the requirements of the Corrective Action Plan and that financial penalties will be imposed, along with contractual adjustments, if any, that are determined to be

necessary to address the contractual noncompliance, the financial penalties will be based on a percentage of the Subcontractor's contract from the date of the initial finding and prorated for the time period over which the corrective action process was in effect.

- b. The percentage imposed is determined according to the classification of the infraction as specified below and the severity of the risk (minimal, moderate, or serious) the violation posed to the Subcontractor's ability to conduct business and CFCHS's ability to function as a Managing Entity.
- c. Financial penalties shall be applied, as follows, once the final determination is made that the corrective action process did not resolve the contractual non-compliance issues:
  - i. Minimal Risk Violations - when corrective action plans are not adequately fulfilled, the Subcontractor is subject to a financial penalty of a percent of the Subcontractor's total contracted dollars prorated for the period of time for which the corrective actions process was in effect.
    1. Administrative financial penalties at the 1% level
    2. Operational financial penalties at the 2% level
    3. Health and Safety financial penalties at the 5% level.
  - ii. Moderate Risk Violation - when corrective action plans are not adequately fulfilled, the Subcontractor is subject to a financial penalty of a percent of the Subcontractor's total contracted dollars prorated for the period of time for which the corrective actions process was in effect.
    1. Administrative financial penalties at the 1.5% level
    2. Operational financial penalties at the 3.5% level
    3. Health and Safety financial penalties at the 7.5 % level.
  - iii. Serious Risk Violation - when corrective action plans are not adequately fulfilled, the Subcontractor is subject to a financial penalty of a percent of the Subcontractor's total contracted dollars prorated for the period of time for which the corrective actions process was in effect.
    1. Administrative financial penalties at the 2% level
    2. Operational financial penalties at the 5% level
    3. Health and Safety penalties at the 10% level.
- d. Collection of Financial Penalties:
  - i. Following the date of the Letter of Determination of Non-Performance (or following an appeal process determination where the financial penalties are upheld), CFCHS will reduce Subcontractor's next scheduled payment by the amount of the imposed penalty.
  - ii. The penalty shall continue to be documented in the invoicing process as a payment owed such that upon the final year-end invoice, the payment shall show due the total amount earned by the Subcontractor minus the penalty amount.
  - iii. In no instance shall penalties collected be earned back by the Subcontractor.
  - iv. Should the Subcontractor have a lapse of funds as a result of the imposed financial penalties, such lapsed funds shall be reallocated in accordance with CFCHS policies and practices