Medicaid: Conflict of Interest

According to the DHS/DCFS Contract, Part I. C. 11.,

RESTRICTIONS ON CONFLICTS OF INTEREST: The Contractor shall not enter into any transaction that is improper or gives the appearance of being improper because of a conflict of interest.

a. Definitions

(1) "Business Entity" is as defined in Utah Code§ 67-16-3.
(2) "Conflict of Interest" means any situation where the Contractor has economic, social, political, familial, legal or other interests which interfere with, or have the potential to interfere with, the exercise of the Contractor's duties, responsibilities, or judgment in connection with this Contract, or which involve conflicting loyalties to the Contractor and to another interest. "Conflict of Interest" also includes any violation of the Ethics Acts.
(3) "Contractor" includes all "representatives" of the Contractor.
(4) "Disclosure Statement" means a written statement provided to DHS by the Contractor about a Conflict of Interest. "Conflict of Interest Certification" and "Conflict of Interest-Disclosure Statement" forms are available from the DHS/DCFS Contract Representative.
(5) "Ethics Acts" means the Utah Public Officers' and Employees' Ethics Act (Utah Code 67-16-1 et. seq.) and the Municipal Officers' and Employees' Ethics Act (Utah Code 10-3-1301 et. seq.).
(6) "Related Party" means:
   (a) any person related to the Contractor's representative by blood or marriage; and
   (b) all business associates of the Contractor:
      (i) who are partners, directors, or officers in the same business entity as the Contractor;
      (ii) who have authority to make decisions or establish policies in the same business entity as the Contractor; or
      (iii) who directly or indirectly own 10% or more in the same business entity as the Contractor.
(7) "Representative" means any person or entity acting on behalf of the Contractor, and includes all employees, owners, partners, directors, officers, board members, subcontractors and agents, as well as any individuals with authority to establish policies or make decisions for the Contractor. "Volunteers" are not "representatives" and are not required to be included in the Contractor's Disclosure Statement, unless they are board members or officers, or are substantially involved in the Contractor's decision-making processes.
(8) "Volunteer" means a person who donates services to the Contractor without compensation, except for expenses incurred (such as meals and travel costs).

b. Compliance with the Ethics Acts. The Contractor shall comply at all times with the applicable provisions of the Ethics Acts.

c. Contractor Conflict of Interest Policy and Internal Review: The Contractor shall implement a written policy that requires:
   (1) Its representatives to submit a disclosure statement upon hire and annually thereafter;
(2) Its representatives to immediately disclose in writing to the Contractor all existing, potential, and contemplated conflicts of interest as they arise.
(3) Annual review of all disclosure statements and its own operations to reasonably assure DHS that the Contractor avoids prohibited conflicts of interest.
(4) Disclosure statements to be maintained in its personnel files.
(5) The Contractor to train its representatives regarding:
   (a) The conflict of interest concept and the certification/disclosure requirements of this Contract; and
   (b) The applicable provisions of the Ethics Acts.

d. Restrictions on Conflicts of Interest. Transactions involving Conflicts of Interest are prohibited to the extent they are the result of undue influence, or have the potential to result in increased costs, decreased performance, the appearance of impropriety, or any other disadvantage to DHS. Conflicts of Interest can occur in one of three ways:
   (1) Dual Employment. Conflicts of interest can occur when a Contractor's representative is also employed by the State of Utah or by another of the Contractor's representatives.
   (2) Related-Party Transactions. Conflicts of interest occur when the Contractor makes payments to a related party using money obtained from DHS through this Contract. Conflicts of interest also occur when transactions, which affect the performance of this Contract, are made between the Contractor and a related party, whether or not payments are involved.
   (3) Independent Judgment Impaired. Conflicts of interest occur when a Contractor's representative participates in any transaction on the Contractor's behalf and has a significant relationship or shared interest with another party to the transaction, which could affect the representative's ability or willingness to exercise independent judgment, and which may affect the performance of this Contract. Independent judgment may also be impaired when the Contractor or the Contractor's representative is involved in any administrative or legal action pending against the State, DHS, or any of their officers or employees.

e. Disclosing Conflicts of Interest to DHS:
   (1) Requirements for Governmental Entities. Before entering into this Contract or a subcontract related to this Contract, and annually thereafter, a governmental Contractor and any governmental subcontractors shall:
      (a) Submit to DHS a written certification that they maintain a written policy as required above, monitor for compliance with the conflict of interest provisions of this Contract, and reasonably assure DHS that representatives (including any non-governmental subcontractors) with a potential conflict of interest do not:
         (i) make or influence decisions or set policies that affect this Contract;
         (ii) monitor the performance of this Contract; or
         (iii) become involved in or otherwise benefit from the performance of this Contract; and
      (b) Disclose to DHS any existing or potential conflicts of interest that relate to this Contract or the services provided pursuant to this Contract by submitting a Disclosure Statement in accordance with the requirements for non-governmental entities, and complying with the requirements regarding the continuing duty to disclose these conflicts of interest.
(2) Requirements for Non-Governmental Entities: Before entering into this Contract, or a subcontract related to this Contract, a non-governmental Contractor shall submit a Disclosure Statement to DHS/DCFS in which the Contractor or, when applicable its subcontractor, discloses any existing or potential conflicts of interest, including all information required by the Ethics Acts and this Contract.

(a) For Conflicts of Interest Involving Dual Employment, the following information is required:
   (i) the name of the representative engaged in dual employment;
   (ii) the titles or positions held by the representative engaged in dual employment;
   (iii) the representative's decision-making or monitoring authority with the employing entities, and how that representative's authority affects this Contract or any subcontract relating to this Contract; and
   (iv) the measures taken to avoid potentially adverse effects resulting from the representative's dual employment.

(b) For Conflicts of Interest involving Related-Party Transactions or Independent Judgment Impaired, the following information is required:
   (i) the name of the representative having the conflict of interest;
   (ii) the name of the other party to the conflict of interest;
   (iii) the relationship between the individuals identified in (i) and (ii) above;
   (iv) the nature and value of the interest (if any) held by the representative in the other business entity;
   (v) a description of the transaction to which the conflict of interest applies and the dollar amount involved (if any);
   (vi) the decision-making or monitoring authority of the representative and the party identified in (ii) above, with respect to the applicable transaction or decision;
   (vii) the potential effect of the conflict of interest on this Contract or any subcontract relating to this Contract; and
   (viii) the measures taken by the Contractor to avoid potentially adverse effects resulting from the identified parties' relationship.

(c) If the Contractor has no conflicts of interest, the Contractor shall so indicate on the Disclosure Statement. By submitting a Disclosure Statement, the Contractor is certifying to DHS that it has checked its organization and has required its representatives to disclose their conflicts of interest, and that it has disclosed all known conflicts of interest to DHS.

f. Continuing Duty to Disclose Conflicts of Interest. The Contractor and its subcontractors have a continuing duty to immediately review updated Disclosure Statements and submit a copy to DHS whenever a potential Conflict of interest is disclosed. The Contractor shall require its subcontractors to provide an updated Disclosure Statement to the Contractor, if at any time during the term of this Contract, they contemplate any transaction involving a potential conflict of interest, or hire or affiliate with any individual with a potential conflict of interest, or discover any existing conflict of interest.

g. Monitoring Compliance. In addition to the remedies outlined in this Contract, DHS retains the right to do any of the following if DHS determines that a conflict of interest may exist:
(1) Investigate any potential conflict of interest;
(2) Require further information from the Contractor or the subcontractor;
(3) Require specific remedial action; or
(4) Disapprove identified transactions.