

APA-1

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No: 560 Department or Agency: Alabama Medicaid Agency

Rule No: 560-X-64-.09

Rule Title: Information and Marketing Requirements for Enrollees and Potential Enrollees

X New; _____ Amend; _____ Repeal; _____ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? _____ no

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? _____ yes

Is there another, less restrictive method of regulation available that could adequately protect the public? _____ no

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? _____ no

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? _____ no

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? _____ yes

Does the proposed rule have an economic impact? _____ no

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: Stephanie Lindsay

Date: 4/20/2018

ALABAMA MEDICAID AGENCY

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Medicaid Agency

RULE NO. & TITLE: 560-X-64-.09 Information and Marketing Requirements for Enrollees and Potential Enrollees

INTENDED ACTION: Add New Rule 560-X-64-.09

SUBSTANCE OF PROPOSED ACTION: The above referenced rule is being created to set forth the requirements for the State and Integrated Care Networks to provide information to enrollees and potential enrollees.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Written or oral comments may be submitted to the Alabama Medicaid Agency, 501 Dexter Avenue, Post Office Box 5624, Montgomery, Alabama 36103-5624. Agency business hours are 8:00 a.m. to 5:00 p.m. Monday through Friday.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Written/Oral comments concerning this change must be received by the Alabama Medicaid Agency no later than June 4, 2018.

CONTACT PERSON AT AGENCY: Stephanie Lindsay, Administrative Secretary, Alabama Medicaid Agency, 501 Dexter Avenue, Post Office Box 5624, Montgomery, Alabama 36103-5624. Phone: (334) 242-5833.


Stephanie McGee Azar
Commissioner

Rule No. 560-X-64-.09 Information and Marketing Requirements for Enrollees and Potential Enrollees – NEW RULE

(1) As used in this rule, the following terms have the meanings set forth below:

- (a) Enrollee means a Medicaid beneficiary enrolled as a member of an Integrated Care Network (ICN).
- (b) Large Print means printed in a font size no smaller than 18 point.
- (c) Limited English Proficient (LEP) means Enrollees and Potential Enrollees who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. LEP individuals may be eligible to receive language assistance for a particular type of service, benefit or encounter.
- (d) Potential Enrollee means a Medicaid beneficiary subject to mandatory enrollment in an ICN or who may voluntarily be required to enroll as a member of an ICN.
- (e) Prevalent means those non-English languages determined to be spoken by a significant number or percentage of Enrollees and Potential Enrollees that are limited English proficient. The following languages are defined as Prevalent:
 - (i) Spanish or Spanish Creole;
 - (ii) Korean;
 - (iii) Chinese;
 - (iv) Vietnamese;
 - (v) Arabic;
 - (vi) German;
 - (vii) French;
 - (viii) Gujarati;
 - (ix) Tagalog;
 - (x) Hindi;
 - (xi) Laotian;
 - (xii) Russian;
 - (xiii) Portuguese;
 - (xiv) Turkish; and
 - (xv) Japanese.
- (f) Readily Accessible means electronic information and services which comply with modern accessibility standards such as section 508 guidelines, section 504 of the Rehabilitation Act and W3C's Web Content Accessibility Guidelines (WCAG) 2.0 AA and successor versions.

(2) The ICN shall be responsible for the development of outreach and educational materials addressing prevention of illness and disease, disease management, healthy lifestyles, and the

availability of and how to access non-emergency transportation services. All materials used by the ICN must be approved by the Medicaid Agency prior to their use.

(3) The Medicaid Agency shall be responsible for the development of all other information and materials for Enrollees and Potential Enrollees not listed in paragraph (2) above, including but not limited to, the Enrollee handbook and notices in accordance with 42 C.F.R. § 438.10(e).

(4) All materials provided to Enrollees or Potential Enrollees must be in a manner and format that may be easily understood and is Readily Accessible, the information required herein, including the process to enroll in an ICN, the rights and responsibilities of Enrollees, as well as the grievance and appeals process in order to help Enrollees and Potential Enrollees understand the requirements, benefits and services of the Integrated Care Network (ICN) Program.

(5) General Information Requirements. The below requirements shall apply to the ICN to the extent it develops and distributes materials in accordance with paragraph (2) and to the Agency to the extent it develops and distributes materials in accordance with paragraph (3). Herein, the term "Organization" shall mean both the Agency and the ICN to the extent each entity is responsible for developing and distributing materials.

- (a) The Organization must have policies and procedures in place regarding providing assistance to Enrollees and Potential Enrollees in making informed decisions and in understanding the ICN program's benefits and services (hereafter collectively the "services").
- (b) The Organization must give each Enrollee notice of any significant change, as determined by the Medicaid Agency, in the written material and the information required by this rule and by 42 C.F.R. § 438.10, at least thirty (30) calendar days before the intended effective date of the change.
- (c) The Organization shall ensure that all its representatives who have contact with Enrollees and Potential Enrollees are properly trained and fully informed of the policies, procedures, and forms of the Organization including those applicable to enrollment, disenrollment and the grievance system set forth under the ICN program.
- (d) Enrollee information required hereunder may not be provided electronically by the Organization unless:
 - (i) The format is Readily Accessible.
 - (ii) The information is placed in a location on the Organization's website that is prominent and Readily Accessible.
 - (iii) The information is provided in an electronic form which can be electronically retained and printed.

- (iv) The information is consistent with the content and language requirements of this rule.
- (v) The Enrollee is informed that the information is available in paper form without charge upon request and the Organization provides such information within five (5) business days of the request.
- (e) The ICN must also use the managed care terminology established by the Alabama Medicaid Agency pursuant to 42 C.F.R. § 438.10(c)(4).

(2) Language and Format

- (a) All written materials that are critical to obtaining services, including at a minimum, provider directories, Enrollee handbooks, appeal and grievance notices, and denial and termination notices available to Enrollees and Potential Enrollees are available in an easily understandable language that meets the requirements of this section, in English and all other Prevalent Non-English Languages in the ICN's service area. Auxiliary aids and services must be made available at no cost to Enrollees or Potential Enrollees upon his or her request.
- (b) Written materials referenced in subsection (a) must include taglines in the Prevalent non-English languages, as well as Large Print, explaining the availability of written translation or oral interpretation to understand the information provided and the toll-free and TTY/TDY telephone number of the Organization's Enrollee/customer service unit.
- (c) The Organization shall make interpretation services available to Potential Enrollees and Enrollees and provide those services free of charge. This includes oral interpretation and the use of auxiliary aids such as TTY/TDY and American Sign Language. Oral interpretation requirements apply to all non-English languages, not just those the Agency has identified as Prevalent.
- (d) The Organization shall notify Enrollees that oral interpretation is available for any language and written translation available in Prevalent languages; that auxiliary aids and services are available upon request at no cost for Enrollees with disabilities; and how to access the services in this subsection.
- (e) Upon request by and at no charge to Enrollees and Potential Enrollees, the Organization must make all written material available in easily understood language and format, in alternative formats and in an appropriate manner that takes into consideration the special needs of Enrollees or Potential Enrollees with disabilities or limited English proficiency. The Organization must inform Enrollees and Potential Enrollees that written information is available in alternative formats and how to access these formats. Except as otherwise expressly provided herein, the written materials referenced herein shall use a font size no smaller than 12 point, except the Organization shall include a

Large Print tagline and information on how to request auxiliary aids and services, including the provision of materials in alternate formats.

(3) Information Packet. Within fifteen (15) calendar days of an of an Enrollee's enrollment in the ICN program, the Agency shall mail an information packet to new Enrollees setting forth the information required herein. The packet shall include, at a minimum, confirmation of enrollment in the ICN and an Enrollee handbook. Alternatively, Enrollees may elect but are not required to receive the materials electronically via e-mail, an on-line Enrollee portal, or similar means. An Organization wishing to make this option available must contact the Enrollee within five (5) business days of enrollment to determine if the Enrollee prefers to receive information electronically. For Enrollees who make this election, the Organization must mail written confirmation within fifteen (15) calendar days of an Organization receiving notice of an Enrollee's enrollment in the ICN program confirming the Enrollee's decision to receive information electronically and explaining the method(s) for doing so and how to opt-out and return to paper communications.

- (a) The Enrollee handbook shall also be maintained on the Agency's website.
- (b) At least once a year, the Agency shall provide notice to Enrollees that a copy of the Enrollee handbook is available upon request.
- (c) The Enrollee handbook shall list the ICN's location, mailing address, web address, telephone number and office hours.

(4) Information for Enrollees. The Medicaid Agency must provide information required by 42 C.F.R. § 438.10(f) and hereunder to all Enrollees including:

- (a) At least annually, and within ten (10) calendar days of request, the Medicaid Agency must notify Enrollees of their disenrollment rights, including an explanation of the process for exercising disenrollment rights and the alternatives available to the Enrollee based on their specific circumstances;
- (b) The right of Enrollees to request and obtain all information listed herein at least once a year;
- (c) The right of Enrollees to request all information listed herein within a reasonable time after the Organization receives notice of the Enrollee's enrollment in the ICN program; and
- (d) Written notice of any significant changes in the information required under this rule provided at least thirty (30) calendar days before the intended effective date of the change.

(5) Enrollee Handbook. In addition to any requirements set forth in a contract between the ICN and the Medicaid Agency:

- (a) Each Organization must provide each Enrollee an Enrollee handbook, within a reasonable time, not to exceed fifteen (15) calendar days, after receiving notice of the Enrollee's enrollment, which serves a similar function as the summary of benefits and coverage described in 45 C.F.R. § 147.200(a). At least once a year, the Agency must provide notice to Enrollees that the Handbook is available upon request.
- (b) The content of the Enrollee handbook must include information that enables the Enrollee to understand how to effectively use the ICN program. The information must include at a minimum:
 - (i) Services provided by the ICN;
 - (ii) Enrollee rights, responsibilities and protections, including the applicable elements set forth in 42 C.F.R. § 438.100;
 - (iii) A description of how to access auxiliary aids and services, including additional information in alternative formats and languages;
 - (iv) The toll-free number for Enrollee services, medical management, and any other unit providing services directly to Enrollees;
 - (v) Information on how to report suspected fraud or abuse;
 - (vi) How to access and understand forms provided by the Organization and how to obtain assistance in completing and submitting forms; and
 - (vii) The Enrollee's right to request and obtain copies of their medical records and whether they may be charged a reasonable copying fee.
- (c) Information required by this Rule will be considered to be provided by the Organization if the Organization:
 - (i) Mails a printed copy of the information to the Enrollee's mailing address;
 - (ii) Provides information by email after obtaining the Enrollee's agreement to receive the information by email;
 - (iii) Post the information on the Organization's website and advises the Enrollee in paper or in electronic form that the information is available on the internet and includes the applicable internet address, provided that Enrollees with disabilities who cannot access this information online are provided auxiliary aids and services upon request at no cost; or
 - (iv) Provides the information by any other method that can reasonably be expected to result in the Enrollee receiving the information.

- (d) The Organization must give each Enrollee notice of any significant change, as determined by the Medicaid Agency, in the written material and the information required by this paragraph and by 42 C.F.R. § 438.10(g)(4), at least thirty (30) calendar days before the intended effective date of the change.

(6) Marketing.

- (a) The ICN may not directly market to individual Medicaid recipients or Potential Enrollees, except as specified in this rule, and must adhere to the requirements specified by 42 C.F.R. §§ 438.10 and 438.104 and section 1557 of the Affordable Care Act. The ICN is prohibited from door-to-door, telephone, email, texting or other cold-call marketing or engaging in marketing activities that could mislead, confuse or defraud Medicaid recipients, Enrollees or Potential Enrollees. Marketing materials must receive Agency approval prior to use and cannot contain any assertion or statement whether written or oral that:
 - (i) Potential Enrollees must enroll with the ICN in order to obtain benefits or in order not to lose benefits; or
 - (ii) The ICN is endorsed by CMS, the Federal or State government or similar entity.
- (b) When distributing approved marketing materials, the ICN must distribute the materials throughout the entire State.
- (c) The ICN marketing activities and materials must not seek to influence enrollment in conjunction with the sale or offering of any private insurance.
- (d) The ICN may only conduct marketing activities in health care settings in common areas, such as cafeterias, recreational rooms or conference rooms. The ICN may not conduct marketing activities in areas where Enrollees primarily receive health care services, or wait to receive health care services. Areas where the ICN is prohibited from conducting marketing activities include, but are not limited to, the following:
 - (i) Waiting rooms;
 - (ii) Exam rooms;
 - (iii) Hospital patient rooms; and
 - (iv) Dialysis center treatment areas.

(7) Sanctions may be imposed in accordance with Alabama Medicaid Administrative Code Chapter 64 if the ICN distributes information or materials to Enrollees, Potential Enrollees or providers is misrepresented, falsified, or distributed without prior authorization by the Medicaid Agency.

(8) Compliance with state and federal law. In addition to the information required by this rule, the ICN must provide an Enrollee and Potential Enrollee any additional information required by applicable state and federal law. All such information must be provided in a format required by this rule and other applicable law.

Author: Stephanie Lindsay, Administrator, Administrative Procedures Office.

Statutory Authority: State Plan; Title XIX, Social Security Act; 42 C.F.R. § 438.10.

History: New Rule: Filed April 20, 2018.