

APA-1
6/93

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 540 Department or Agency Alabama State Board of Medical Examiners

Rule No. 540-X-13

Rule Title: Alabama Physician Health Program

X New Amend X Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?

_____ YES _____

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 Reference Service.

Signature of certifying officer Avery W. Green

Date: February 17, 2017

APA-2
6/93

ALABAMA STATE BOARD
OF MEDICAL EXAMINERS

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama State Board of Medical Examiners

RULE NO. & TITLE: 540-X-13, Alabama Physician Health Program

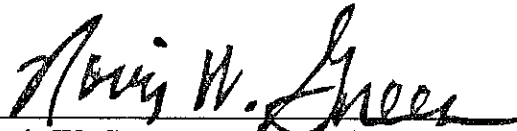
INTENDED ACTION: To repeal and replace the Chapter

SUBSTANCE OF PROPOSED ACTION: To repeal and replace the Chapter to update changed committee names; remove provisions that have become obsolete; correct scrivener's errors; all pursuant to Ala. Code § 41-22-5.2 concerning review of administrative rules

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested persons may submit data, views, or arguments concerning the proposed new rule(s) and regulation(s) in writing to: Patricia E. Shaner, General Counsel, Alabama State Board of Medical Examiners, Post Office Box 946, Montgomery, Alabama 36101-0946, by mail or in person between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, until and including April 4, 2017. Persons wishing to obtain copies of the text of this rule and submit data, views, or comments or arguments orally should contact Carla H. Kruger by telephone (334-242-4116) during said period. The rule amendment will also be available at the Board's web site, www.albme.org.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: April 4, 2017

CONTACT PERSON AT AGENCY: Patricia E. Shaner



Norris W. Green, Executive Director

NEW
RULES
OF THE
ALABAMA BOARD OF MEDICAL EXAMINERS

CHAPTER 540-X-13

ALABAMA PHYSICIAN HEALTH PROGRAM

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540-X-13-.05	Policy Guidelines
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540-X-13-.01 Background

Under the provisions of Act 88-536 of the 1988 Regular Session of the Alabama Legislature, the State Board of Medical Examiners has the responsibility to promote the early identification, intervention, treatment and rehabilitation of physicians who may be impaired by reason of illness, inebriation, excessive use of drugs, narcotics, alcohol, chemicals or other substances or as a result of any physical or mental condition.

Author: Alabama Board of Medical Examiners.

Statutory Authority: Code of Alabama, 1975 §§34-24-400 through 406.

History: Filed December 22, 1988. Filed: April 16, 1992. Adopted: June 17, 1992. Effective Date: July 23, 1992. Repeal/Replace Chapter Approved: February 15, 2017.

540-X-13-.02 Alabama Physician Health Program. In order to carry out its responsibilities under Act 88-536, the Board hereby establishes the Alabama Physician Health Program. The purpose of the program is to develop, maintain, and make available to all licensed physicians programs to render assistance to impaired physicians who

voluntary seek medical intervention, treatment and rehabilitation for their impairment. The program shall operate under the direction of the Alabama Physician Wellness Committee as established by Act 88-536. The Committee shall consist of not less than three (3) nor more than fifteen (15) physicians or osteopaths licensed to practice medicine in this State. The members of the Committee will be appointed by the Board and will serve for a term of three (3) years and will be eligible for re-appointment. The Board may remove a Committee member before the expiration of his or her three (3) year term for just cause.

Author: Alabama Board of Medical Examiners.

Statutory Authority: Code of Alabama, 1975 §§34-24-400 through 406.

History: Filed December 22, 1988. Filed: April 16, 1992. Adopted: June 17, 1992. Effective Date: July 23, 1992. Amended/Approved for Publication: July 19, 2000. Amended/Approved for Publication: August 16, 2000. Adopted: October 18, 2000. Effective Date: November 23, 2000. Repeal/Replace Chapter Approved: February 15, 2017.

540-X-13-.03 Implementing Contract

The Board is authorized under the provisions of Act 88-536 to enter into a contractual agreement with a non-profit corporation or medical professional association for the creation of the Alabama Physician Health Program and the support of the Alabama Physician Wellness Committee.

Author: Alabama Board of Medical Examiners.

Statutory Authority: Code of Alabama, 1975 §§34-24-400 through 406.

History: Filed December 22, 1988. Filed: April 16, 1992. Adopted: June 17, 1992. Effective Date: July 23, 1992. Amended/Approved for Publication: August 16, 2000. Adopted: October 18, 2000. Effective Date: November 23, 2000. Repeal/Replace Chapter Approved: February 15, 2017.

540-X-13-.04 Physician Wellness Committee. The Alabama Physician Wellness

Committee may exercise the following functions and responsibilities:

- (a) Receiving and evaluating reports of suspected impairment from any source

including referrals from the Board.

- (b) Intervening in case of verified impairment.
- (c) Referring impaired physicians to appropriate treatment programs.
- (d) Monitoring the treatment and rehabilitation of impaired physicians.
- (e) Providing post treatment monitoring and after care support of rehabilitated impaired physicians.
- (f) Rendering an annual statistical report to the Board of Medical Examiners on the activities of the Committee in such form as the Board shall specify.
- (g) Reporting to the Board any physician who in the opinion of the Committee is unable to continue in the practice of medicine or osteopathy with reasonable skill and safety to patients when it appears that such physician or osteopath is currently in need of intervention, treatment or rehabilitation and has failed or refused to participate in programs of treatment or rehabilitation recommended by the Committee.
- (h) Developing out-reach and awareness programs which promote and publicize the services available through the Alabama Physician Health Program.
- (i) When requested by the Board, developing standards for evaluation of treatment facilities and evaluating and making recommendations to the Board for the approval of treatment and rehabilitation facilities and/or programs to be used by physicians referred by the Committee for treatment.
- (j) Other functions and responsibilities as may be mutually agreed upon between the Medical Association of the State of Alabama, the Committee and the Board.

Author: Alabama Board of Medical Examiners.

Statutory Authority: Code of Alabama, 1975 §§34-24-400 through 406.

History: Filed December 22, 1988. Filed: April 16, 1992. Adopted: June 17,

1992. Effective Date: July 23, 1992. Amended/Approved for Publication: August 16, 2000. Adopted: October 18, 2000. Effective Date: November 23, 2000. Repeal/Replace Chapter Approved: February 15, 2017.

540-X-13-.05 Policy Guidelines.

It is the purpose and intent of the Board that the Alabama Physician Health Program be a confidential nonpunitive alternative to disciplinary sanction for impaired physicians who voluntarily seek medical intervention, evaluation, treatment, counseling or rehabilitation for their impairment. To that end, the Board hereby adopts the following policy guidelines to be used by the Alabama Physician Wellness Committee in implementing the Alabama Physician Health Program:

(1) A physician voluntarily seeking the assistance of the committee for treatment of an impairment who successfully completes the recommended course of treatment and therapy and who continues to abide by the terms and conditions of the committee's after-care agreements for the period of time specified and thereafter continues to practice medicine with reasonable skill and safety and free from impairment will not be reported by the committee to the Board for violation of Code of Ala. 1975, § 34-24-360(19). However, a physician participating in programs of treatment and/or rehabilitation and after-care must always truthfully answer all inquiries concerning such treatment made by employers, state or federal licensing and/or regulatory agencies, hospital medical staff credentialing bodies, courts, medical malpractice insurance carriers, and medical specialty Boards. The Physician Wellness Committee will serve as an advocate on behalf of and lend support to physicians participating in programs sponsored or recommended by the committee before such agencies and organizations. A report by a licensed physician to the Physician Wellness Committee that such physician has reason to believe that any other licensed

physician is impaired, shall be deemed to be a report to the Board of Medical Examiners for the purpose of the mandatory reporting requirements of Code of Ala. 1975, § 34-24-361(b).

(2) Should the Board as a result of an investigation determine that there is cause to believe that a physician may be impaired, the Board may administratively report that fact to the committee with a request or Board Order that the individual be evaluated to determine whether an impairment exists. The Board will make available to the committee such information as is necessary to accomplish an intervention and evaluation. The committee will report its findings and recommendations to the Board and provide follow-up reports upon request.

(3) The committee must report to the Board the name of any physician the committee has reason to believe may be impaired and

(a) who has failed or refused to follow the recommendations of the committee for evaluation, treatment and/or rehabilitation, or

(b) who has discontinued such evaluation, treatment or rehabilitation against medical advice, or

(c) who has failed to abide by the terms and conditions of an after-care agreement with the committee, or

(d) whose continuation in practice, in the opinion of the committee, constitutes a threat to the safety of his or her patients or to the public.

(4) In any report to the Board of Medical Examiners made pursuant to the requirements of this rule, the committee or its authorized designee may forward to the board any and all reports, evaluations, treatment records, medical records, documents or

information relevant to the physician or osteopath upon whom the report is made, unless specifically prohibited by federal law or regulation, notwithstanding any law or regulation of this state declaring that such evaluations, information, treatment records, medical records documents or reports are confidential or privileged. All such information, evaluations, documents, reports, treatment records or medical records received by the board in a report submitted pursuant to this subsection shall be privileged and confidential and shall not be public records nor available for court subpoena or for discovery proceedings but may be used by the board in the course of its investigations and may be introduced as evidence in administrative hearings conducted by the board or by the Medical Licensure Commission.

(5) In the case of a physician who is placed under disciplinary sanction by an order of the Board of Medical Examiners or the Medical Licensure Commission or as a result of a voluntary or involuntary restriction on his or her Certificate of Qualification or license to practice medicine which requires that the physician enter into and comply with an after-care agreement with the committee, then the committee must report to the Board or to the commission, as appropriate, any violation or deviation by the physician of the terms and conditions of his or her after-care agreement.

Author: Alabama Board of Medical Examiners

Statutory Authority: Code of Ala. 1975, §§§34-24-400 through 406.

History: Filed December 22, 1988. Amended: Filed June 18, 1992.

Amended: Filed October 19, 2000; effective November 23, 2000. Amended: June 6, 2002. Effective Date: September 26, 2002. Repeal/Replace Chapter Approved: February 15, 2017.

540-X-13-.06 Confidentiality. All information, interviews, reports, statements, memorandum, or other documents furnished to or produced by the Alabama Physician

Wellness Committee and any findings, conclusions, interventions, treatment or rehabilitation, or other proceedings of such committee are declared to be privileged and confidential. All records and proceedings of such committee shall be confidential and shall be used by such committee and the members thereof only in the exercise of the proper function of the committee and shall not be public records nor available for court subpoena or for discovery proceedings. The Committee may disclose information relative to an impaired physician only (1) when it is essential to disclose such information to further the intervention, treatment, counseling or rehabilitation needs of the individual physician concerned and then only to such persons or organizations with a need to know, or (2) when its release is authorized in writing by the physician, or (3) when the Committee is required to make a report to the Board under rules 540-X-13-.04(g), 540-X-13-.05(3), and 540-X-13-.05(4).

Author: Alabama Board of Medical Examiners.

Statutory Authority: Code of Ala. 1975, §§34-24-400 through 406.

History: Filed December 22, 1988. Filed: April 16, 1992. Adopted: June 17, 1992. Effective Date: July 23, 1992. Repeal/Replace Chapter Approved: February 15, 2017.

REPEAL
RULES
OF THE
ALABAMA BOARD OF MEDICAL EXAMINERS

CHAPTER 540-X-13

ALABAMA PHYSICIAN HEALTH PROGRAM

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540-X-13-.04	Impaired Physician Committee
540-X-13-.05	Policy Guidelines
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540-X-13-.01 Background

Under the provisions of Act 88-536 of the 1988 Regular Session of the Alabama Legislature, the State Board of Medical Examiners has the responsibility to promote the early identification, intervention, treatment and rehabilitation of physicians who may be impaired by reason of illness, inebriation, excessive use of drugs, narcotics, alcohol, chemicals or other substances or as a result of any physical or mental condition.

Author: Alabama Board of Medical Examiners.

Statutory Authority: Code of Alabama, 1975 §20-2-50.

History: Filed December 22, 1988. Filed: April 16, 1992. Adopted: June 17, 1992. Effective Date: July 23, 1992.

540-X-13-.02 Alabama Physician Health Program. In order to carry out its responsibilities under Act 88-536, the Board hereby establishes the Alabama Physician Health Program. The purpose of the program is to develop, maintain, and make available to all licensed physicians programs to render assistance to impaired physicians who

voluntary seek medical intervention, treatment and rehabilitation for their impairment. The program shall operate under the direction of the Alabama Impaired Physicians Committee as established by Act 88-536. The Committee shall consist of not less than three (3) nor more than fifteen (15) physicians or osteopaths licensed to practice medicine in this State. The members of the Committee will be appointed by the Board and will serve for a term of three (3) years and will be eligible for re-appointment. The Board may remove a Committee member before the expiration of his or her three (3) year term for just cause.

Author: Alabama Board of Medical Examiners.

Statutory Authority: Code of Alabama, 1975 §20-2-50.

History: Filed December 22, 1988. Filed: April 16, 1992. Adopted: June 17, 1992. Effective Date: July 23, 1992. Amended/Approved for Publication: July 19, 2000. Amended/Approved for Publication: August 16, 2000. Adopted: October 18, 2000. Effective Date: November 23, 2000.

540-X-13-.03 Implementing Contract

The Board is authorized under the provisions of Act 88-536 to enter into a contractual agreement with a non-profit corporation or medical professional association for the creation of the Alabama Physician Health Program and the support of the Alabama Impaired Physicians Committee.

Author: Alabama Board of Medical Examiners.

Statutory Authority: Code of Alabama, 1975 §20-2-50.

History: Filed December 22, 1988. Filed: April 16, 1992. Adopted: June 17, 1992. Effective Date: July 23, 1992. Amended/Approved for Publication: August 16, 2000. Adopted: October 18, 2000. Effective Date: November 23, 2000.

540-X-13-.04 Impaired Physician Committee. The Alabama Impaired Physicians Committee may exercise the following functions and responsibilities:

- (a) Receiving and evaluating reports of suspected impairment from any source including referrals from the Board.

(b) Intervening in case of verified impairment.

(c) Referring impaired physicians to appropriate treatment programs.

(d) Monitoring the treatment and rehabilitation of impaired physicians.

(e) Providing post treatment monitoring and after care support of rehabilitated impaired physicians.

(f) Rendering an annual statistical report to the Board of Medical Examiners on the activities of the Committee in such form as the Board shall specify.

(g) Reporting to the Board any physician who in the opinion of the Committee is unable to continue in the practice of medicine or osteopathy with reasonable skill and safety to patients when it appears that such physician or osteopath is currently in need of intervention, treatment or rehabilitation and has failed or refused to participate in programs of treatment or rehabilitation recommended by the Committee.

(h) Developing out-reach and awareness programs which promote and publicize the services available through the Alabama Physician Health Program.

(i) When requested by the Board, developing standards for evaluation of treatment facilities and evaluating and making recommendations to the Board for the approval of treatment and rehabilitation facilities and/or programs to be used by physicians referred by the Committee for treatment.

(j) Making recommendations to the Board for expenditures to be made from the Alabama Physicians Education Fund as authorized by §34-24-382, Code of Alabama, 1975.

(k) Developing or recommending to the Board existing programs of continuing medical education in the area of physician impairment for funding by the Board from the

Alabama Physicians Education Fund as established under §34-24-382, Code of Alabama, 1975.

(l) With the approval of the Board, appointing consultants, advisors, and assistants as necessary to accomplish the above listed functions.

(m) Other functions and responsibilities as may be mutually agreed upon between MASA, the Committee and the Board.

Author: Alabama Board of Medical Examiners.

Statutory Authority: Code of Alabama, 1975 §20-2-50.

History: Filed December 22, 1988. Filed: April 16, 1992. Adopted: June 17, 1992. Effective Date: July 23, 1992. Amended/Approved for Publication: August 16, 2000. Adopted: October 18, 2000. Effective Date: November 23, 2000.

540-X-13-.05 Policy Guidelines.

(1) It is the purpose and intent of the Board that the Alabama Physician Health Program be a confidential nonpunitive alternative to disciplinary sanction for impaired physicians who voluntarily seek medical intervention, treatment, counseling or rehabilitation for their impairment. To that end, the Board hereby adopts the following policy guidelines to be used by the Alabama Impaired Physicians Committee in implementing the Alabama Physician Health Program:

(a) A physician voluntarily seeking the assistance of the committee for treatment of an impairment who successfully completes the recommended course of treatment and therapy and who continues to abide by the terms and conditions of the committee's after-care agreements for the period of time specified and thereafter continues to practice medicine with reasonable skill and safety and free from impairment will not be reported by the committee to the Board for violation of Code of Ala. 1975, § 34-24-360(19). However, a physician participating in programs of treatment and/or rehabilitation and after-care must

always truthfully answer all inquiries concerning such treatment made by employers, state or federal licensing and/or regulatory agencies, hospital medical staff credentialing bodies, medical malpractice insurance carriers, and medical specialty Boards. The Impaired Physicians Committee will serve as an advocate on behalf of and lend support to physicians participating in programs sponsored or recommended by the committee before such agencies and organizations. A report by a licensed physician to the Impaired Physicians Committee that such physician has reason to believe that any other licensed physician is impaired, shall be deemed to be a report to the Board of Medical Examiners for the purpose of the mandatory reporting requirements of Code of Ala. 1975, § 34-24-361(b).

(b) Should the Board as a result of an investigation determine that there is cause to believe that a physician may be impaired, the Board may administratively report that fact to the committee with a request that the individual be evaluated to determine whether an impairment exists. The Board will make available to the committee such information as is necessary to accomplish an intervention and evaluation. The committee will report its findings and recommendations to the Board and provide follow-up reports upon request.

(c) The committee must report to the Board the name of any physician the committee has reason to believe may be impaired and

1. who has failed or refused to follow the recommendations of the committee for treatment and/or rehabilitation, or
2. who has discontinued such treatment or rehabilitation against medical advice, or
3. who has failed to abide by the terms and conditions of an after-care

agreement with the committee, or

4. whose continuation in practice, in the opinion of the committee, constitutes a threat to the safety of his or her patients or to the public.

(d) In any report to the Board of Medical Examiners made pursuant to the requirements of this rule, the committee or its authorized designee may forward to the board any and all reports, evaluations, treatment records, medical records, documents or information relevant to the physician or osteopath upon whom the report is made, unless specifically prohibited by federal law or regulation, notwithstanding any law or regulation of this state declaring that such evaluations, information, treatment records, medical records documents or reports are confidential or privileged. All such information, evaluations, documents, reports, treatment records or medical records received by the board in a report submitted pursuant to this subsection shall be privileged and confidential and shall not be public records nor available for court subpoena or for discovery proceedings but may be used by the board in the course of its investigations and may be introduced as evidence in administrative hearings conducted by the board or by the Medical Licensure Commission.

(e) In the case of a physician who is placed under disciplinary sanction by an order of the Board of Medical Examiners or the Medical Licensure Commission or as a result of a voluntary or involuntary restriction on his Certificate of Qualification or license to practice medicine which requires that the physician enter into and comply with an after-care agreement with the committee, then the committee must report to the Board or to the commission, as appropriate, any violation or deviation by the physician of the terms and conditions of his after-care agreement.

AUTHOR: Alabama Board of Medical Examiners

STATUTORY AUTHORITY: Code of Ala. 1975, § 20-2-50.

HISTORY: Filed December 22, 1988. Amended: Filed June 18, 1992.
Amended: Filed October 19, 2000; effective November 23, 2000. Amended:
June 6, 2002. Effective Date: September 26, 2002.

540-X-13-.06 Confidentiality All information, interviews, reports, statements, memorandum, or other documents furnished to or produced by the Alabama Impaired Physicians Committee and any findings, conclusions, interventions, treatment or rehabilitation, or other proceedings of such committee are declared to be privileged and confidential. All records and proceedings of such committee shall be confidential and shall be used by such committee and the members thereof only in the exercise of the proper function of the committee and shall not be public records nor available for court subpoena or for discovery proceedings. The Committee may disclose information relative to an impaired physician only (1) when it is essential to disclose such information to further the intervention, treatment, counseling or rehabilitation needs of the individual physician concerned and the only to such persons or organizations with a need to know, or (2) when its release is authorized in writing by the physician, or (3) when the Committee is required to make a report to the Board under rules 540-X-13-.04(g), 540-X-13-.05(c), and 540-X-13-.05(d).

Author: Alabama Board of Medical Examiners.

Statutory Authority: Code of Ala. 1975, §20-2-50.

History: Filed December 22, 1988. Filed: April 16, 1992. Adopted: June 17, 1992. Effective Date: July 23, 1992.

540-X-13-.07 Financial Support. In support of the Alabama Physician Health Program and the activities of the Alabama Impaired Physicians Committee, the Board may contract to reimburse actual expenses incurred in the operation of the program and the

actual expenses incurred for the education, rehabilitation or treatment of an impaired physician from funds designated to the Alabama Physicians Education Fund under the authority of §34-24-382, Code of Alabama, 1975. The Board may authorize, within its discretion and subject to the availability of resources, expenditures from the Alabama Physicians Education Fund on behalf of an impaired physician for any expense which the Board shall determine is reasonably necessary for the proper evaluation, treatment, hospitalization, rehabilitation or other services, provided that the physician for whom payments are made has signed and executed a written promissory note or other agreement which obligates the physician to repay to the Board all monies expended by the Board for his or her benefit, with interest at a rate fixed by the Board, and within such period of time as the Board may specify.

Author: Alabama Board of Medical Examiners.

Statutory Authority: Code of Ala. 1975, §20-2-50.

History: Filed December 22, 1988. Effective Date: January 26, 1989. Filed: April 16, 1992. Adopted: June 17, 1992. Effective Date: July 23, 1992.

Amended/Approved for Publication: August 16, 2000. Adopted: October 18, 2000. Effective Date: November 23, 2000.