

APA-1

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No: 560 Department or Agency: Alabama Medicaid Agency

Rule No: 560-X-64.12

Rule Title: Probationary Certification of Organizations Seeking to Become Integrated Care Networks

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 Reference Service.

Signature of certifying officer: Stephanie Lindsay

Date: 7/20/2017

ALABAMA MEDICAID AGENCY

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Medicaid Agency

RULE NO. & TITLE: 560-X-64-.12 – Probationary Certification of Organizations Seeking to Become Integrated Care Networks

INTENDED ACTION: Add new rule 560-X-64-.12

SUBSTANCE OF PROPOSED ACTION: The above-referenced rule is being added to create a probationary certification process for organizations intending to respond to the competitive procurement required by Alabama Code (1975), § 22-6-220, *et seq.* It provides that the Agency has statutory authority to review applications and issue certifications or deny applications and revoke certificates.

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 September 5, 2017.

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-.12 Probationary Certification of Organizations Seeking to Become Integrated Care Networks – NEW RULE

(1) An organization may receive probationary certification as an integrated care network (Probationary Certification) upon submission of an application to the Medicaid Agency that satisfies the requirements of this rule.

(2) An organization seeking Probationary Certification shall be organized or incorporated under Alabama law in a manner consistent with the accomplishment of its stated mission which shall include, as a minimum, delivery of medical care and long-term health care services in accordance with Sections 22-6-220, *et seq.* of the Alabama Code. For as long as the health insurance providers fee under 26 C.F.R. Part 57 is effective, organizations incorporated as a nonprofit corporation shall mandate in their Certificate of Formation of the organization that:

(a) no part of the organization's net earnings shall inure to the benefit of any private shareholder or individual, no substantial part of the activities of the organization shall include carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in section 501(h) of the Internal Revenue Code of 1986), and the organization shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; and

(b) more than 80 percent of the gross revenues of the organization shall be received from government programs that target low-income, elderly, or disabled populations under titles XVIII, XIX, and XXI of the Social Security Act.

(3) An organization seeking Probationary Certification must have a governing board of directors acceptable to the Medicaid Agency that, in the sole discretion of the Medicaid Agency, meets or substantially meets the requirements of Section 22-6-221(d) of the Alabama Code and Alabama Medicaid Administrative Code Rule 560-X-64-.03. For the purposes of this rule, whether an organization "substantially meets" the aforementioned requirements will be determined by the Medicaid Agency, in its sole discretion, on a case by case basis. However, an organization seeking Probationary Certification should have at least a majority of the required number of directors including at least as a majority of both risk bearing and non-risk bearing directors in place at the time it applies for Probationary Certification. Such organization shall also provide the Medicaid Agency copies of all or substantially all documents set forth in subsection (6)(g), with minutes reflecting board approval. The Medicaid Agency may for good cause, as determined in the sole discretion of the Medicaid Agency, allow an organization additional time to make certain appointments and/or provide documents required in this rule. Should Probationary Certification be granted to an organization that has not fully met the aforementioned requirements, the organization will be required to provide a corrective action plan, satisfactory to the Medicaid Agency, describing how the organization will satisfy such requirements and to fully meet those requirements within the time required by the Medicaid Agency or the Probationary Certification will be terminated.

(4) The Medicaid Agency shall have power to approve the members of the governing board of the organization and the board's structure, powers, bylaws, or other rules of procedure, as well as all

amendments thereto. No organization shall be granted Probationary Certification without approval.

(5) All applications for Probationary Certification must be submitted to the Medicaid Agency on or before the date set by the Medicaid Agency. The Medicaid Agency shall have the power, at its sole discretion, to permit an applicant to supplement its application to the Medicaid Agency.

(6) All applications for Probationary Certification must include the following information or documentation for the Medicaid Agency's review and approval:

(a) The organization's name, physical and mailing address, email address, and telephone number;

(b) The name, mailing address, email address, and telephone number of the organization's registered agent and each person authorized by the organization to receive notices and communications relating to the organization's application;

(c) The name, mailing address, and telephone number of the primary person whom the Medicaid Agency should contact concerning any questions or issues relating to the organization's application;

(d) A proposed organizational chart identifying the relationship among the members of the board of directors, officers, controlling persons, owners, participants, and administrators of the organization and any other persons responsible for the medical care and services of the organization, as applicable;

(e) The applicant's applicable National Provider Identifier (NPI) number(s), Medicaid ID number(s), Taxpayer Identification Number(s) (TIN), and any state professional or facility license number(s);

(f) Identification of the organization's Certificate to Collaborate Number issued by the Medicaid Agency;

(g) Copies of any organizational, governing, and operational documents which may exist such as the applicant's articles of incorporation, bylaws, operating agreement, certificate of formation, rules, trust agreements, organizational minutes and/or minutes appointing or designating persons as officers, directors, managers, resolutions, confidentiality agreements, conflict of interest policies, management agreements, administrative service agreements, loan agreements, material contracts or other documents creating an executive committee or other committee and/or appointing members thereto and all other similar or applicable documents and agreements regulating the conduct of the internal affairs of the applicant and all amendments thereto; and

(h) A proposed plan for creating a citizens' advisory committee that meets the requirements of Section 22-6-222 of the Alabama Code and Alabama Medicaid Administrative Code Rule 560-X-64-.04, including, but not limited to, the organization's plan for identifying and recruiting

committee members and holding initial meetings of its citizens' advisory committee. The applicant shall provide periodic updates to the Agency on its progress in developing a citizens' advisory committee.

(7) All applications for Probationary Certification shall also include the following information concerning the organization's governing board of directors for the Medicaid Agency's review and approval:

(a) The name, business, occupation or medical specialty, mailing address, email address and telephone number of each board of directors member;

(b) The National Provider Identifier (NPI) number(s), Medicaid ID number(s), Taxpayer Identification Number(s) (TIN), Social Security Number(s) (SSN), Certificate to Collaborate Number(s), and any state professional or facility license number(s) of each board of directors member, as applicable;

(c) Documentation and information demonstrating the proposed amounts, levels and types of financial risk of all risk-bearing participants and directors of the organization;

(d) Information evidencing that the memberships of the board of directors and any executive committee are inclusive and reflective of the gender, race, and geographical areas makeup of the population to be served;

(e) With respect to each board of directors member, identification whether each individual:

(i) is a risk-bearing participant or represents a risk-bearing participant in the organization as described in Section 22-6-221(d)(1)a. of the Alabama Code and Alabama Medicaid Administrative Code Rule 560-X-64-.03 and the nature of his/her participation as a risk-bearing participant;

(ii) is not a risk-bearing participant and is not an employee or representative of a risk-bearing participant in the organization, and meets the other requirements set forth in Section 22-6-221 of the Alabama Code. If the board of directors member is appointed by one of the associations or organizations identified in Alabama Medicaid Administrative Code 560-X-64-.03(1)(b); the applicant shall provide correspondence from such association or organization confirming such appointment.

(f) With respect to each board of directors member, as applicable, background information pertaining to any adverse action against any occupational, professional or vocational license or permit; criminal offenses other than civil traffic offenses; civil judgments involving dishonesty, breach of trust, or foreclosure; and any bankruptcy proceeding.

(g) Certification that a majority of the board of directors members do not and will not represent a single provider.

(h) Certification that each provider on the board of directors meets licensing requirements set by law, has a valid Medicaid provider number and is not disqualified from participating in Medicare or Medicaid.

(i) Information describing the experience and expertise of members of the board of directors in the delivery of required services and care.

(8) The governing body of an organization granted Probationary Certification shall be responsible for the establishment and oversight of its business and affairs. The organization may, by resolution of the governing body, delegate power and authority as permitted by Alabama law. Any such delegation shall include only the authority specifically delegated. The responsibilities of the governing body of the organization shall include, but not be limited to, the following:

(a) Adoption and enforcement of all policies governing the organization's management and delivery of all required services and care, quality improvement and utilization review programs including biannual meetings at a minimum for the purpose of evaluation and improvement of all required services and care of the organization and to implement the quality measures adopted by the ICN Quality Assurance Committee;

(b) The governing body shall keep minutes of meetings and other records to document the fact that the governing body is effectively discharging the obligations of its office regarding all required services and care. All records must be maintained for not less than ten (10) years;

(c) Assurance that the organization complies with applicable laws and regulations.

(9) All applications for Probationary Certification shall include a certification by the organization that all information entered on the application is true to the best of the organization's knowledge, and:

(a) that all bargaining, negotiation, contracting and cooperation in the creation of the organization has been and will continue to be in good faith;

(b) that such bargaining, negotiation, contracting and cooperation has been and will continue to be necessary to identify appropriate service delivery systems and reimbursement methods in order to align incentives in support of integrated and coordinated health care delivery;

(c) that such bargaining has been and will continue to be necessary to provide quality health care at the lowest possible cost to Alabama citizens who are Medicaid eligible;

(d) that the organization is not an entity that must be excluded from contracts as a condition for federal financial participation pursuant to 42 C.F.R. §438.808;

(e) that the organization does not have a prohibited affiliation with any individual debarred by a federal agency within the meaning of 42 C.F.R. §438.610;

(f) that each risk-bearing participant has the financial ability and solvency to satisfy his/her obligations as a risk-bearing participant; and

(g) that the applicant intends to provide all required services and care to Medicaid beneficiaries statewide.

(10) The Medicaid Agency may inspect or request additional documentation and information from an applicant and from members or proposed members of the board of directors as the Medicaid Agency deems appropriate before Probationary Certification or at any other time to verify that the Medicaid laws are implemented in accordance with the legislative intent.

(11) The Medicaid Agency may conduct meetings and conferences with an applicant or its existing or proposed governing board members as the Medicaid Agency deems appropriate before certification of a probationary integrated care network or at any other time to verify that the Medicaid laws are implemented in accordance with legislative intent. In addition to discussing information provided in the application, plans for establishing an adequate service delivery network, potential funding sources, organizational issues, and other topics may be discussed.

(12) The Medicaid Agency shall review the application and any additional documentation and information and, if the Medicaid Agency in its sole discretion determines that the applicant meets or substantially meets the requirements for probationary certification, the Medicaid Agency shall issue the organization a Probationary Certificate as an integrated care network. The applicant must meet or substantially meet, as determined by the Medicaid Agency in its sole discretion, the requirements for probationary certification on or before October 1, 2017, or such later date determined by the Medicaid Agency.

(13) The Medicaid Agency may require an organization that has been issued a Probationary Certificate as an integrated care network to take additional or corrective action with respect to any requirement of this rule. Failure to take such additional or corrective action to the satisfaction of the Medicaid Agency may lead to revocation of the organization's Probationary Certificate.

(14) A Probationary Certificate as an integrated care network shall be effective immediately upon issuance by the Medicaid Agency and shall expire no later than the date specified in Section 22-6-231(a)(3) of the Alabama Code. The issuance of a Probationary Certificate as an integrated care network provides no presumption that an organization shall be certified as an integrated care network.

(15) The holder of a Probationary Certificate as an integrated care network (Certificate Holder) shall promptly notify the Medicaid Agency of any substantial or material corrections or updates to the information provided in connection with the Certificate Holder's application. The Certificate Holder shall also promptly notify the Medicaid Agency of any vacancy and subsequent filling of any vacancy on the governing board of directors. The Medicaid Agency may revoke a Probationary Certification upon a finding that the organization no longer meets the requirements for Probationary Certification.

(16) All applications submitted pursuant to this rule, all Probationary Certificates as an integrated care network, and the names and addresses of all applicants and their officers, directors and contact persons to whom the Medicaid Agency issues Probationary Certificates as an integrated care network shall be public records and shall be subject to disclosure. The applicant shall submit to the Medicaid Agency one original application and one copy from which information may be redacted for which the applicant has legal authority or a good faith basis to assert that such information is confidential, personal and/or proprietary. The Medicaid Agency may, in its sole discretion, treat documents and information submitted in connection with the application as confidential and not subject to disclosure.

(17) Any person or entity may notify the Medicaid Agency of conduct that is alleged to violate any of the certifications by the Certificate Holder or the board member pursuant to this rule. The notice must be signed, in writing and include a statement of facts supporting the allegation or violation. Upon receipt of such notice or upon receipt of such information obtained by the Medicaid Agency on its own, the Medicaid Agency shall review the notice and conduct any inquiry it finds appropriate and may refer the allegation of the violation to the State of Alabama Attorney General. The Medicaid Agency may also revoke a Probationary Certificate as an integrated care network upon finding that the Certificate Holder or the board of directors member has violated any of the certifications by the Certificate Holder or the board of directors member pursuant to this rule or it may in its discretion impose additional terms and conditions determined necessary to effectuate the objectives of Probationary Certification.

(18) Whenever an application for probationary certification as an integrated care network that was submitted to the Medicaid Agency on or before the date established in subsection (5) of this rule is denied or a Probationary Certificate as an integrated care network is terminated, the applicant or Certificate Holder will be afforded an opportunity for a hearing and rights of review in accordance with the requirements for contested case proceedings under the Alabama Administrative Procedure Act, Sections 41-22-1, *et seq.* of the Alabama Code.

Author: Stephanie Lindsay, Administrator, Administrative Procedures Office.

Statutory Authority: Code of Alabama, 1975 Section 22-6-150, *et seq.*

History: Emergency Rule filed and effective June 23, 2017. **Amended:** July 20, 2017