

APA-1

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No: 560 Department or Agency: Alabama Medicaid Agency

Rule No: 560-X-4-.05

Rule Title: Abuse, Fraud, and/or Deliberate Misuse by Recipients or Sponsors of Recipients

_____ New; X 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 action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? _____

no

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: 7/17/2018

ALABAMA MEDICAID AGENCY

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Medicaid Agency

RULE NO. & TITLE: 560-X-4-.05 Abuse, Fraud, and/or Deliberate Misuse by Recipients or Sponsors of Recipients

INTENDED ACTION: Amend 560-X-4-.05

SUBSTANCE OF PROPOSED ACTION: The above referenced rule is being amended to update terminology pertaining to Program Integrity to be more in line with the terminology used by CMS.

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 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-4-.05. ~~Abuse, Fraud, and/or Deliberate Misuse~~ Fraud, Waste, and/or Abuse by Recipients or Sponsors of Recipients.

(1) Recipient ~~abuse, deliberate misuse, or fraud~~ fraud, waste, and abuse cases include, but are not limited to, the following categories:

- (a) Drug overutilization or overutilization of services;
- (b) Sale, alteration, or lending of the Medicaid card to others for services;
- (c) Criminal activity involved in securing medical services (such as forged prescriptions);
- (d) Repeated failure to safeguard the Medicaid card;
- (e) Collusion with providers for services or supplies;
- (f) Providing incorrect information or allowing others to do so in order to obtain Medicaid eligibility;
- (g) Failure to reveal to Medicaid the existence of third party insurance, failure to pay to Medicaid funds received from "Third Parties" as required by Chapter 20 of these Codes, or failure in other respects to cooperate with Medicaid in its effort to secure the State's subrogation rights;
- (h) Failure to report changes which occur in income, living arrangements, or resources; or
- (i) Inappropriate use of Medicaid voucher payments through the Non-Emergency Transportation Program.

(2) Code of Alabama (1975) Section 22-6-8 requires that a Medicaid recipient who has abused, defrauded or deliberately misused benefits of the program shall immediately become ineligible for Medicaid benefits and shall not again be eligible for Medicaid services for a period of not less than one year and until full restitution is made to the State of Alabama.

(3) All cases of suspected ~~abuse, misuse, or fraud~~ fraud, waste, or abuse in receipt of Medicaid benefits by a recipient or sponsor shall be reviewed by the Program Integrity Division to determine the validity of suspected ~~abuse, misuse, or fraud~~ fraud, waste, or abuse. This determination shall include but not be limited to review of system and/or medical data, and if necessary, interview of the suspect recipient, providers with whom he has been in contact, and others as necessary.

(4) Corrective action for suspected fraud, abuse, or deliberate misuse shall include the following:

- (a) A warning letter for recipients found to be marginally abusing drugs or other services;
- (b) Restriction of benefits to one physician and one pharmacy for recipients found to be overutilizing, misusing, and/or abusing services;
- (c) Additional restriction of controlled substances if Agency medical staff determines that a recipient's controlled substances utilization is not supported by medical diagnoses; or
- (d) Suspension of Medicaid benefits as authorized by Code of Alabama (1975) Section 22-6-8, if recommended by the URC and approved by the Deputy Commissioner(s) of Medicaid. Initial determinations of fraud, waste, or abuse, ~~or deliberate misuse~~ of program benefits may result in URC recommendation to the Deputy Commissioners of Medicaid that the

recipient be deemed ineligible for Medicaid benefits for a period of not less than one year and until full restitution of any misspent funds resulting from such fraud, abuse or deliberate misuse. A second determination of fraud, waste, or abuse, or deliberate misuse of program benefits by a recipient may result in a URC recommendation to the Deputy Commissioner(s) of Medicaid that the recipient be deemed ineligible for Medicaid benefits for a period of not less than two years and until full restitution has been made. Recurring occurrences of fraud, waste, or abuse, or deliberate misuse of program benefits may result in a URC recommendation to the Deputy Commissioner(s) of Medicaid that the recipient be deemed ineligible for Medicaid benefits for a period of not less than four years and until full restitution has been made.

(5) At least ten days prior to imposing any administrative sanction for fraud, waste, or abuse or intentional misuse, the recipient shall be provided with a notice of violation setting forth the reasons for the sanctions and the recipient's rights to an administrative hearing.

(6) When a recipient's eligibility for Medicaid benefits has been suspended due to having committed fraud, waste, or abuse, or deliberate misuse of Medicaid benefits and the recipient subsequently reapplies for Medicaid benefits during the period of suspension due to pregnancy, the Director of Program Integrity will change the suspended status of the recipient to a restricted status for pregnancy related services only. The recipient's eligibility status will be changed back to suspended at the end of the month in which the sixtieth day following delivery occurs.

(7) Recipients placed on restriction will have their utilization of services reviewed at least annually to determine if there has been a change in utilization of drugs or other services. When the determination has been made by medical staff that a restriction status should be continued, the recipient will be notified of the following:

- (a) The reason for continuation of their restriction status;
- (b) Their right to reconsideration of this decision and procedures for requesting such; and
- (c) Their right to a fair hearing and procedures for requesting such.

(8) If a recipient loses eligibility while on restriction, they will remain restricted upon reinstatement of eligibility pending review by Medicaid medical staff.

Author: Jacqueline G. Thomas, Director, Program Integrity Division

Statutory Authority: State Plan; Title XIX, Social Security Act; 42 C.F.R. Sections 401, 431.54, 455 et seq., 456 et seq., 6th Omnibus Budget Reconciliation Act, Sec 9401, 9407.

History: Rule effective October 1, 1982. Amended February 8, 1984; June 10, 1987; April 12, 1988; November 10, 1988; March 14, 1989; October 13, 1989; June 14, 1990; January 13, 1993; March 15, 1994; and March 26, 1996. **Amended:** Filed December 16, 2002; effective March 18, 2003. **Amended:** Filed July 17, 2018.