

APA-1

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control No: 560 Department or Agency: Alabama Medicaid Agency

Rule No: 560-X-64-.18

Rule Title: Sanctions

\_\_\_\_\_ 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

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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.

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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: 6/20/2018

**ALABAMA MEDICAID AGENCY**

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE:** 560-X-64-.18 - Sanctions

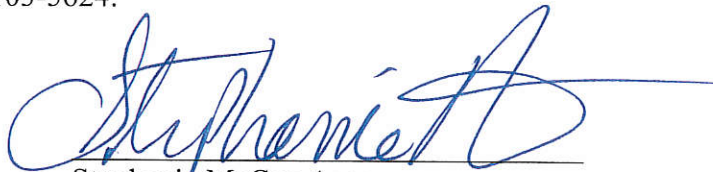
**INTENDED ACTION:** Amend Rule 560-X-64-.18

**SUBSTANCE OF PROPOSED ACTION:** The above referenced rule is being amended to align with the Medicaid Agency's shift in implementation of the Integrated Care Network Program.

**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 August 3, 2018.

**CONTACT PERSON AT AGENCY:** Stephanie Lindsay, Administrative Secretary, Alabama Medicaid Agency, 501 Dexter Avenue, Post Office Box 5624, Montgomery, Alabama 36103-5624.

  
Stephanie McGee Azar  
Commissioner

## Rule No. 560-X-64-.18 Sanctions

(1) Bases for Imposition of Sanctions on ICNs. The Medicaid Agency may impose sanctions on an integrated care network ("ICN") if the Medicaid Agency determines in its sole discretion that the ICN has violated any applicable federal or state law or regulation, the Alabama Medicaid State Plan, the risk contract between the Medicaid Agency and the ICN and the exhibits thereto (the "risk contract"), any policies, procedures, written interpretations, or other guidance of the Medicaid Agency, or for any other applicable reason described in 42 C.F.R. Part 438, Subpart I or the risk contract, including but not limited to a determination by the Medicaid Agency that an ICN acts or fails to act as follows:

- (a) fails substantially to provide medically necessary services that the ICN is required to provide, under law or under its risk contract, to an enrollee covered under the risk contract;
- (b) imposes on enrollees premiums or charges that are in excess of the premiums or charges permitted under the Alabama Medicaid program;
- (c) acts to discriminate among enrollees on the basis of their health status or need for health care services (including termination of enrollment or refusal to reenroll a recipient, except as permitted under the Alabama Medicaid program, or any practice that would reasonably be expected to discourage enrollment by recipients whose medical condition or history indicates probable need for substantial future medical services);
- (d) misrepresents or falsifies information that it furnishes to the Medicaid Agency or to the Centers for Medicare and Medicaid Services (CMS);
- (e) misrepresents or falsifies information that it furnishes to an enrollee, potential enrollee, or health care provider;
- (f) distributes directly, or indirectly through any agent or independent contractor, marketing materials that have not been approved in writing by the Medicaid Agency or that contain false or materially misleading information;
- (g) fails submit a corrective action plan that is acceptable to the Medicaid Agency within the time period specified by the Medicaid Agency's written notice or does not implement or complete the corrective action within the established time period;
- (h) violates, as determined by the Medicaid Agency, any requirement of sections 1903(m), ~~or~~ 1932, or 1905(t) of the Social Security Act or any implementing regulations; or
- (i) violates, as determined by the Medicaid Agency, any applicable requirement of Sections 22-6-220, et seq. of the Alabama Code or the rules promulgated thereunder Alabama Medicaid Administrative Code.



(2) Types of Sanctions that May be Imposed on ICNs. The sanctions imposed by the Medicaid Agency against an ICN are as follows:

(a) requiring the ICN to develop and implement a corrective action plan that is acceptable to the Medicaid Agency;

(b) the intermediate sanctions described in 42 U.S.C. § 1396u-2(e)(2) and 42 C.F.R. Part 438, Subpart I, including but not limited to civil monetary penalties up to the maximum amounts set forth in 42 C.F.R. § 438.704;

(c) Grant Enrollees the right to disenroll without cause (the Agency may notify the affected Enrollees of their right to disenroll);

(d) Suspend all new enrollment, including auto-assignment, after the date HHS or the Agency notifies Contractor of a determination of a violation of any requirement under Sections 1932 or 1905(t) of the Social Security Act;

(e) Suspend payment for Enrollees enrolled after the effective date of the Sanction until CMS or the Agency is satisfied that the reason for the imposition of the Sanction no longer exists and is not likely to recur;

(~~ef~~) for acts or omissions which are not addressed by 42 C.F.R. Part 438, Subpart I, other provisions of this rule, or the risk contract and exhibits thereto, and which, in the opinion of the Medicaid Agency, constitute willful, gross, or fraudulent misconduct, the assessment of a monetary penalty amount up to \$100,000 per act or omission;

~~(d) denial of payments under the risk contract for new enrollees when, and for so long as, payment for those enrollees is denied by CMS in accordance with 42 C.F.R. § 438.730(e);~~

~~(e) the sanctions set forth in the risk contract and exhibits thereto;~~

(~~fg~~) any other sanction available under federal or state law or regulation, including without limitation Rule No. 560-X-37-.01;

(h) termination of the risk contract, in accordance with the terms of the risk contract; and

(~~gi~~) any other sanction reasonably designed to remedy noncompliance and/or compel future compliance with the ~~risk~~ contract or federal or state law or regulation, pursuant to the Medicaid Agency's authority under 42 C.F.R. § 438.702(b), including, but not limited to:

| <u>Activity</u>  | <u>Sanction</u>                                |
|--|--|
| • <u>Distribution of unapproved material, distribution of materials that contain</u> | • <u>Up to \$25,000 for each determination</u> |

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|---|---|
| <u>false or materially misleading information, or materials that otherwise violate Rule No. 560-X-64-.09.</u>   |   |
| <ul style="list-style-type: none"> <li>• <u>Untimely, as defined in the ICN's contract with the Medicaid Agency, payment to a Case Management Organization, through the Alabama Department of Senior Services for Home and Community Based Services Case Management.</u></li> </ul> | <ul style="list-style-type: none"> <li>• <u>Up to \$5,000 for the first quarter that Claims performance percentages by claim type fall below the performance standards</u></li> <li>• <u>Up to \$25,000 per quarter for each additional quarter that the Claims performance percentages by claim type fall below the performance standards</u></li> </ul> |
| <ul style="list-style-type: none"> <li>• <u>Failure to report, as required by the ICN's contract with the Medicaid Agency, suspected Enrollee abuse, neglect, or exploitation.</u></li> </ul>   | <ul style="list-style-type: none"> <li>• <u>Up to \$25,000 for each determination</u></li> </ul>  |
| <ul style="list-style-type: none"> <li>• <u>Approved Encounters, as defined in the ICN's contract with the Medicaid Agency, less than 98%.</u></li> </ul>   | <ul style="list-style-type: none"> <li>• <u>0.25% of the Per Member Per Month Payment for each percentage point below 98%</u></li> </ul>  |
| <ul style="list-style-type: none"> <li>• <u>Misrepresents or falsifies information furnished to the Agency or CMS.</u></li> </ul>   | <ul style="list-style-type: none"> <li>• <u>Up to \$100,000 for each determination</u></li> </ul>   |

; and

~~(h) termination of the risk contract, in accordance with the terms of the risk contract.~~

~~(3) Sanctions that May be Imposed on Probationary ICNs. If the Medicaid Agency in its sole discretion determines that an organization with probationary ICN certification has acted or failed to act in a manner that is sanctionable against an ICN in accordance with this rule, the Medicaid Agency may (a) impose any applicable sanction described in section 2 of this rule against such probationary ICN, and/or (b) exercise any other applicable authority that the Agency may exercise under other rules of the Medicaid Agency or other applicable state and federal laws and regulations, including but not limited to denial of the probationary ICN's application for full certification. Without limiting the foregoing, the Medicaid Agency may impose sanctions against a probationary ICN in the form of civil monetary penalties, up to the maximum amounts set forth in 42 C.F.R. § 438.704, if it determines that a probationary ICN:~~

~~(a) acts to discriminate among enrollees or potential enrollees on the basis of their health status or need for health care services;~~



~~(b) misrepresents or falsifies information that it furnishes to CMS or the Medicaid Agency; or~~

~~(c) misrepresents or falsifies information that it furnishes to an enrollee, potential enrollee, or health care provider.~~

~~(d) violates any requirement of Sections 22-6-220, et seq. of the Alabama Code or the rules promulgated thereunder; or~~

~~(e) violates any other federal or state law or regulation, the Alabama Medicaid State Plan, or any policies, procedures, written interpretations, or other guidance of the Medicaid Agency.~~

(43) Notice of Sanction. Before the Medicaid Agency imposes a sanction under this rule, it will give the affected organization timely written notice explaining (a) the basis and nature of the sanction, (b) if applicable, the organization's right to request a fair hearing under Rule No. 560-X-64-.15, and (c) any other due process protections ~~pursuant to the risk contract or that~~ the Medicaid Agency elects to provide.

(45) Waiver of Fair Hearing and Reduction of Sanction. Except as otherwise required by applicable law, in the event of an imposed sanction in the form of a civil monetary penalty according to this rule and/or the risk contract and exhibits thereto, the amount of the sanction imposed will be reduced by thirty five percent (35%) if the ICN waives, in writing, its right to a fair hearing within thirty (30) calendar days from the date of notice imposing the sanction. The reduction under this section only applies to sanctions that could be appealed under Rule No. 560-X-64-.15 and not to any other outstanding sanctions imposed on the ICN by the Medicaid Agency.

(56) Pre-termination Hearing. Before terminating ~~thea risk~~ contract as a sanction under this rule and 42 C.F.R. § 438.708, the Medicaid Agency will provide the ICN with a pre-termination hearing to be conducted in accordance with the procedures for fair hearings set forth in Rule No. 560-X-64-.15. Prior to such pre-termination hearing, the Medicaid Agency will, in accordance with 42 C.F.R. § 438.710:

(a) give the ICN written notice of the Medicaid Agency's intent to terminate the risk contract, the reason or reasons for termination of the risk contract, and the time and place of the hearing;

(b) after the hearing, give the ICN written notice of the decision affirming or reversing the proposed termination of the risk contract and, for an affirming decision, the effective date of termination; and

(c) For a decision affirming the determination to terminate the risk contract, give enrollees of the ICN notice of the termination and information, consistent with 42 C.F.R. § 438.10, on their options for receiving Medicaid services following the effective date of termination.

~~(7) Temporary Management. Notwithstanding anything herein or in the risk contract to the contrary, if the Medicaid Agency determines that an ICN has repeatedly failed to meet substantive requirements in section 1903(m) or section 1932 of the Social Security Act or in 42 C.F.R. Part~~

~~438, Subpart I, the imposition of temporary management in accordance with 42 C.F.R. § 438.706(b) and the risk contract shall not be delayed by an administrative review or hearing. The Agency may remove temporary management if, and only if, it determines that the ICN can ensure that the sanctioned behavior shall not recur.~~

(86) Sanctions Not Exclusive. The imposition of a single sanction by the Medicaid Agency does not preclude the imposition of any other sanction or combination of sanctions or any remedy authorized under the risk contract for the same deficiency. The Medicaid Agency may impose sanctions under this rule in addition to or in lieu of exercising any other right, remedy, or authority that the Medicaid Agency may exercise under other rules promulgated by the Medicaid Agency, other applicable state and federal laws and regulations, or any contract between the Medicaid Agency and an ICN ~~or probationary ICN~~. Nothing in this rule shall restrict or prevent the Medicaid Agency or the State of Alabama from obtaining declaratory, injunctive or equitable relief, or from recovering damages from an ICN, ~~probationary ICN~~, and/or any other person or entity for breach of contract or any other cause of action.

**Author:** Stephanie Lindsay, Administrator, Administrative Procedures Office.

**Statutory Authority:** State Plan; Title XIX, Social Security Act; 42 C.F.R. Part 438; 42 C.F.R. § 438.700 *et seq.*

**History:** Emergency Rule filed and effective August 21, 2017. **Amended:** Filed October 13, 2017; effective November 28, 2017. **Amended:** Filed June 20, 2018.