

APA-1

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No: 560 . Department or Agency: Alabama Medicaid Agency

Rule No: 560-X-62-.27 .

Rule Title: Contracts with Additional Regional Care Organizations
X New Rule; Amend; Repeal; Adoption 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 any 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: 12/19/2016

FOR APD USE ONLY

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EDITED AND APPROVED BY DOCUMENT NO.

ALABAMA MEDICAID AGENCY

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 560-X-62-.27 Contracts with Additional Regional Care Organizations

INTENDED ACTION: Add New Rule 560-X-62-.27

SUBSTANCE OF PROPOSED ACTION: The above referenced rule is being created to establish a process for allowing an additional regional care organization to provide services to Medicaid beneficiaries under specified circumstances.

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 February 3, 2017.

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-62-.27 Contracts with Additional Regional Care Organizations– NEW RULE

(1) The Medicaid Agency shall follow the procedures outlined in this Rule in the event any of the following occurs:

- (a) A regional care organization with probationary or full certification (collectively referred to as RCOs) has its certification terminated in a Medicaid region;
- (b) No organization had been awarded full certification in a Medicaid region by the date established by the Medicaid Agency;
- (c) The Agency could not award a contract to a RCO in a Medicaid Region under the terms of Section 22-6-153 of the Code of Alabama;
- (d) A RCO failed to provide adequate service in a Medicaid Region pursuant to its risk contract with the Agency; or,
- (e) The Agency and a RCO have initiated termination procedures under the terms of the risk contract.

(2) If any of the events set forth in subsections (1)(a)-(e) occur, the Medicaid Agency may, in its sole discretion, offer any RCO, which it judges could successfully provide services in its initial region and an additional region or regions (Additional Region), the opportunity to serve Medicaid beneficiaries in both regions. In any of such events, the Medicaid Agency will send a notice of opportunity to serve Medicaid beneficiaries in the Additional Region (Notice of Opportunity) to all remaining RCOs in any region. The Notice of Opportunity shall include, at a minimum:

- (a) Identification of the Medicaid region in which the vacancy exists;
- (b) The Agency's anticipated timeline for implementation;
- (c) The deadline for notice to be sent to the Agency in writing of a RCO's interest in sponsoring an entity to serve beneficiaries in the Additional Region (Sponsor RCO);
- (d) The date of the proposed planning meeting described in section (3) below; and,
- (e) Any other items or factors the Agency deems relevant.

(3) The Medicaid Agency shall schedule a planning meeting to discuss the Notice of Opportunity with all RCOs that notify the Agency in writing of an interest in serving beneficiaries in the Additional Region. At the planning meeting, the Medicaid Agency shall discuss the Agency's proposed Eligible Responder criteria, described in section (4) below, and Application Process criteria, described in section (6) below.

(4) In order to participate in the Application process described in section (6) below, an entity must be an Eligible Responder. In order to be an Eligible Responder, an entity must meet the following criteria:

- (a) Demonstrate to the Medicaid Agency's satisfaction that the Sponsor RCO has the ability to successfully provide services in both its initial region and the Additional Region. In evaluating the demonstration, the Medicaid Agency shall take into consideration:

- (i) The Sponsor RCO's historic performance in operating and/or establishing an organization with probationary or full certification;
 - (ii) The stability of the Sponsor RCO's current or proposed program, including, but not limited to the RCO's financial solvency and the operation of a health home program, if applicable;
 - (iii) The Sponsor RCO's compliance with reporting requirements, corrective action plans, and state or federal laws and regulations, including any sanctions issued for non-compliance; and,
 - (iv) Any other facts or circumstances the Medicaid Agency deems relevant to its consideration;
- (b) Attend the planning meeting and all other meetings deemed by the Medicaid Agency, in writing, as mandatory for Eligible Responders;
 - (c) Obtain a Certificate to Collaborate in accordance with Alabama Medicaid Administrative Code Rule 560-X-62-.01;
 - (d) Establish a separate legal entity in the Additional Region with a corporate and governance structure approved by the Medicaid Agency. This structure, at a minimum, must include:
 - (i) An organization incorporated as a nonprofit corporation under Alabama law. The Certificate of Formation of the organization shall mandate 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% of 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.
 - (ii) A Governing Board of Directors which shall be responsible for the establishment and oversight of the organization's business and affairs. The Medicaid Agency shall have the power to approve the members of the Governing Board of Directors of the organization and the board's structure, powers, bylaws, or other rules of procedure, as well as all amendments thereto. The Governing Board of Directors shall be composed of the following members:
 - (A) Six risk-bearing members who are "primary medical providers," "core specialists" and/or "facilities" as defined in Alabama Medicaid Administrative Code Rule 560-X-62-.12(1)(a)-(c), or representatives thereof, who treat Medicaid beneficiaries in the Additional Region to be served by the organization;

- (B) Six risk-bearing members who are risk-bearing members of the Sponsor RCO (any risk-bearing member that could qualify under both subsection (A) and (B) will be counted in this subsection (B) only); and,
 - (C) Eight non risk-bearing members in accordance with Section 22-6-151(c)(1)(b)-(c) of the Alabama Code and Alabama Medicaid Administrative Code Rule 560-X-62-.03(1)(b)(i)-(ii) or a timeline, acceptable to the Medicaid Agency, for obtaining the eight non risk-bearing members;
 - (iii) A Citizens' Advisory Committee in accordance with Section 22-6-151(d) of the Alabama Code and Alabama Medicaid Administrative Code Rule 560-X-62-.04 or a timeline, acceptable to the Medicaid Agency, for forming the Citizens' Advisory Committee;
 - (iv) A Provider Standards Committee in accordance with Section 22-6-151(h) of the Alabama Code and Alabama Medicaid Administrative Code Rule 560-X-62-.09 or a timeline, acceptable to the Medicaid Agency, for forming the Provider Standards Committee;
 - (v) A conflict of interest policy consistent with Alabama Medicaid Administrative Code Rule 560-X-62-.08;
 - (e) Demonstrate that the organization will be able to meet the minimum solvency and financial requirements of Section 22-6-151(e) of the Alabama Code and Alabama Medicaid Administrative Code Rule 560-X-62-.16, notwithstanding the timing requirements contained therein; and
 - (f) Any other requirements established by the Medicaid Agency.
- (5) On or before a date established by the Medicaid Agency, all interested entities must have completed and submitted to the Agency evidence of compliance with the required criteria for Eligible Responders. The Medicaid Agency, in its sole discretion, may deem one or more, if any, organization(s) meeting the criteria established in section (4) above as Eligible Responders that shall be permitted to participate in the Application Process described in section (6) below.
- (6) Only organizations designated as Eligible Responders may participate in the Application Process established by the Medicaid Agency. This process shall include:
- (a) A readiness assessment process consistent with Alabama Medicaid Administrative Code Rule 560-X-62-.22, notwithstanding the timing requirements contained therein;
 - (b) Active supervision reporting on a periodic basis as specified in the Application Process, consistent with Alabama Medicaid Administrative Code Rule 560-X-62-.26;
 - (c) Meet the minimum solvency and financial requirements of Section 22-6-151(e) of the Alabama Code and Alabama Medicaid Administrative Code Rule 560-X-62-.16, notwithstanding the timing requirements contained therein

- (d) Demonstration of an adequate service delivery network as outlined in Alabama Administrative Code Rule 560-X-62-.12 notwithstanding the timing requirements contained therein;
- (e) Obtaining full certification consistent with Alabama Administrative Code Rule 560-X-62-.19, notwithstanding the timing requirements contained therein; and,
- (f) Any other criteria established by the Medicaid Agency.

(7) On or about the date specified in the Application Process, the Medicaid Agency, in its sole discretion, may offer to one or more Eligible Responders the opportunity to serve Medicaid beneficiaries in the Additional Region. The Medicaid Agency's determination shall be based on the organization(s)'s performance during the Eligible Responder period and Application Process and compliance with all established benchmarks, reporting requirements, and other mandatory elements. The Medicaid Agency may, within its discretion, contract with one or more RCOs that meet the requirements of this Rule and other applicable RCO laws if the Agency determines the contract to be in the best interest of the State and Medicaid beneficiaries.

(8) No legal or equitable rights or interests are created by a RCO attending the planning meeting, pursuing Eligible Responder status, participating in the Application Process, or otherwise engaging in the process described herein. Any RCO dissatisfied with a determination of the Medicaid Agency during any step of the process described herein may file a written request for reconsideration to the Agency within five business days of the determination for which reconsideration is requested. The Medicaid Agency shall respond to the request for reconsideration within a reasonable time period.

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 December 19, 2016.