

APA-1

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No: 560 Department or Agency: Alabama Medicaid Agency

Rule No: 560-X-62-.16

Rule Title: Solvency and Financial Requirements for 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: 1-22-2015

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EDITED AND APPROVED BY _____ DOCUMENT NO. _____

ALABAMA MEDICAID AGENCY

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 560-X-62-.16 Solvency and Financial Requirements for Regional Care Organizations

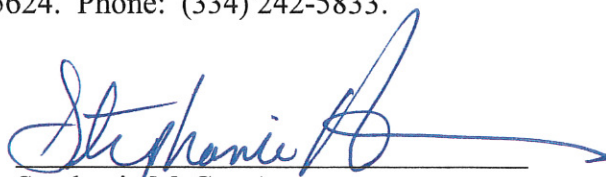
INTENDED ACTION: Add New Rule 560-X-62-.16

SUBSTANCE OF PROPOSED ACTION: The above referenced rule is being created to set forth the solvency and financial requirements which must be met and maintained by each regional care organization.

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 March 9, 2015.

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
Acting Commissioner

Rule No. 560-X-62-16 Solvency and Financial Requirements for Regional Care Organizations – NEW RULE

(1) Subject to Section 22-6-159(c) of the Alabama Code, each organization with probationary regional care organization certification ("probationary RCO") shall, not later than October 1, 2015, have demonstrated to the Medicaid Agency's approval that it has met or will meet the solvency and financial requirements for a regional care organization ("RCO") as outlined in section (2) of this rule.

(a) A probationary RCO shall be deemed to have met such requirements if the Medicaid Agency has in its discretion approved one or more of the following: (i) irrevocable letters of commitment to provide the required capital or surplus and restricted reserves from one or more risk bearing participants with a demonstrated ability (as determined by the Agency in its sole discretion) to provide the required funds, (ii) a commitment letter from a qualified insurer to issue a performance bond complying with section (3) of this rule, (iii) evidence satisfactory to the Medicaid Agency demonstrating that the probationary RCO has adequately funded a restricted reserve account in accordance with section (4) of this rule and has satisfied the capital or surplus requirement, (iv) the probationary RCO's most recent audited financial statements reflecting the required capital or surplus and restricted reserves, or (v) some combination of (i) through (iv) satisfactory to the Medicaid Agency.

(b) No organization shall be granted full RCO certification until it has either (i) provided a balance sheet, certified by the chief executive officer and chief financial officer of the RCO, reflecting the capital or surplus required pursuant to section (2) of this rule (subject to confirmation and validation by the Medicaid Agency) and evidence satisfactory to the Medicaid Agency demonstrating that the RCO has adequately funded a restricted reserve account in accordance with section (4) of this rule, or (ii) provided a performance bond in accordance with section (3) of this rule.

(2) Each RCO shall meet at a minimum the solvency and financial requirements provided in this section or section (3) of this rule. Each RCO, as a condition of certification or continued certification, and as a condition to the risk contract between the Medicaid Agency and the RCO, shall maintain minimum financial reserves at the following levels:

(a) Restricted reserves of two hundred fifty thousand dollars (\$250,000) or an amount equal to 25 percent of the RCO's total actual or projected average monthly expenditures (as calculated pursuant to section (5) of this rule), whichever is greater; and

(b) Capital or surplus, or any combination thereof, of two million five hundred thousand dollars (\$2,500,000).

(3) Instead of maintaining the financial reserves required by section (2) of this rule, an RCO may submit to the Medicaid Agency a written guaranty in the form of a bond issued by an insurer, in an amount equal to the aggregate financial reserves that would otherwise be required of the RCO under section (2), to guarantee the performance of the provisions of the risk contract, satisfying the following requirements:

(a) The performance bond shall be issued by an insurer authorized to do business in the State of Alabama and approved by the Medicaid Agency.

(b) No assets of the RCO shall be pledged or otherwise encumbered in connection with the performance bond.

(c) The performance bond shall be approved by the Medicaid Agency as to form and content and shall be payable to the Medicaid Agency on demand in the event of the Medicaid Agency's determination in its sole discretion that the RCO is in default under the risk contract, with no proof of breach or default required.

(d) In addition to the foregoing and such other terms and conditions as shall be required by the Medicaid Agency, the performance bond shall require that the insurer notify the Medicaid Agency in writing within ten business days after the occurrence of any delinquency in payment of any premium by the RCO or giving of notice of default to the RCO by the insurer. The performance bond shall also require that the insurer give the Medicaid Agency 30 calendar days' advance written notice prior to termination of the performance bond or any other material adverse action to be taken by the insurer with respect to the performance bond.

(4) Each RCO other than RCOs satisfying their financial reserves requirements with a performance bond shall, using a model depository agreement provided by the Medicaid Agency, establish a restricted reserve account with a third party financial institution that is authorized to do business in the State of Alabama and is satisfactory to the Medicaid Agency for the purpose of holding the RCO's restricted reserve funds required pursuant to subsection (2)(a) of this rule.

(a) Restricted reserves shall be held for the exclusive purpose of making payments to providers in the event of a determination by the Medicaid Agency pursuant to Rule No. 560-X-62-.18 that the RCO is insolvent, is in a hazardous financial condition, or is otherwise in default under the risk contract.

(b) Each RCO shall provide a copy of its executed model depository agreement to the Medicaid Agency in accordance with the timeline for implementation set forth in Section 22-6-159 of the Alabama Code and such model depository agreement shall remain in effect throughout the term of the risk contract, including any renewals thereof, unless and until the RCO provides a performance bond in compliance with section (3) of this rule.

(c) The following are considered eligible deposits for the purposes of the restricted reserve requirements:

(i) Cash;

(ii) Certificates of deposit satisfying standards approved by the Medicaid Agency; and

(iii) Bonds, notes, warrants, debentures, and other evidences of indebtedness which are direct obligations of the United States of America for which the full faith and credit of the United States of America is pledged for the payment of principal and interest.

(5) For purposes of calculating an RCO's required restricted reserves pursuant to subsection (2)(a) of this rule, an RCO's average monthly expenditures shall be equal to the average monthly total capitated payment pursuant to the RCO's risk contract. Thus, the restricted reserves required to be maintained by an RCO shall be the greater of \$250,000 or 25% of such average monthly total capitated payment. "Average monthly total capitated payment" means the mathematical average of the total capitated payment pursuant to the risk contract for each of the three months during the preceding calendar quarter. Within 30 calendar days after the end of each calendar quarter, each RCO's required restricted reserves shall be adjusted based on the average monthly total capitated payment for such preceding quarter. Until an RCO has completed a full calendar quarter of its risk contract, the RCO's projected average monthly total capitated payment shall be determined by the Medicaid Agency, based on a projection of the capitated payment to be paid to the RCO if the Medicaid Agency enters into a risk contract with the RCO. Such projected average monthly expenditures may be adjusted by the Medicaid Agency from time-to-time through the completion of the first full calendar quarter of the RCO's risk contract, based upon changes in the projected or the actual capitated payment under the risk contract.

(6) For purposes of subsection (2)(b) of this rule and Section 22-6-151(e) of the Alabama Code, an RCO's capital and surplus is the difference between the admitted assets of the RCO and the liabilities of the RCO, determined as follows:

(a) The classification and value of the RCO's assets and liabilities shall be determined in accordance with Generally Accepted Accounting Principles (GAAP), as modified by the provisions of this section (6).

(b) For purposes of this rule, "admitted assets" means only assets owned exclusively by the RCO consisting of:

(i) Cash, including the true balance of deposits in solvent banks and trust companies;

(ii) Bonds, notes, warrants, debentures, and other evidences of indebtedness which are direct obligations of the United States of America for which the full faith and credit of the United States of America is pledged for the payment of principal and interest ("U.S. Treasury Securities");

(iii) Investment grade bonds or other evidences of indebtedness other than U.S. Treasury Securities, satisfying standards approved by the Medicaid Agency;

(iv) Marketable equity securities, satisfying standards approved by the Medicaid Agency;

(v) Due or deferred capitated payments pursuant to the risk contract between the RCO and the Medicaid Agency or, in the case of an RCO granted probationary RCO certification, due or deferred payments for case management services;

(vi) The amount recoverable under any stop loss insurance or reinsurance provided or approved by the Medicaid Agency, and the amount recoverable from a third

party reinsurer if and to the extent credit for stop loss insurance or reinsurance is allowed by the Medicaid Agency;

(vii) The acquisition cost of land and depreciated cost of improvements thereon owned by the RCO and used in connection with the performance of the risk contract, in excess of any liabilities secured by encumbrances on such assets, in an aggregate amount not greater than 50 percent of the required minimum capital and surplus of the RCO; and

(viii) Such other assets as may be approved by the Medicaid Agency.

(c) In addition to assets not described in subsection (6)(b) of this rule, an RCO's admitted assets shall not include:

(i) Any single investment or asset, or any combination of investments in or secured by the securities, obligations, and/or property of one person, entity, or governmental unit, to the extent any such investment or combination of investments would exceed 20 percent of the RCO's admitted assets, provided that the foregoing restriction shall not apply to U.S. Treasury Securities or cash; or

(ii) Goodwill and other intangible assets.

(d) In any determination of the capital and surplus of an RCO, liabilities to be charged against the RCO's admitted assets shall include, in addition to other liabilities chargeable in accordance with GAAP:

(i) The amount necessary to pay all of the RCO's unpaid losses and claims incurred on or prior to the date of the statement, together with the expenses of adjustment or settlement thereof;

(ii) Federal, state, and local taxes, expenses and other obligations due or accrued at the date of the statement;

(iii) The restricted reserves required by subsection (2)(a) of this rule, if applicable; and

(iv) Any additional reserves for asset valuation contingencies or loss contingencies required by the Medicaid Agency pursuant to Rule No. 560-X-62-.18 or otherwise required by applicable law.

(7) No RCO shall reduce its combined capital and surplus, by distribution of its assets to the members, owners, or risk-bearing participants of the RCO or otherwise, below the RCO's required capital and surplus under the rules of the Medicaid Agency.

(8) The Medicaid Agency may offer or mandate that each RCO participate in one or more stop-loss insurance or reinsurance programs, including but not limited to one or more stop-loss pools. The Medicaid Agency may administer any such programs and may require that they be funded by the RCOs at such levels as may be determined by the Medicaid Agency. If the Medicaid Agency offers or mandates a stop-loss insurance or reinsurance program, no RCO shall

purchase duplicative stop loss insurance or reinsurance for enrollees that provides the same coverage as that offered or mandated in such stop-loss insurance or reinsurance program.

(9) Each RCO shall at its expense procure and maintain, throughout the term of the risk contract between the Medicaid Agency and the RCO, professional and general liability insurance, directors' and officers' liability insurance, errors and omissions liability insurance, and, if the RCO provides Medicaid services to enrollees directly, medical malpractice insurance, in such amounts and including such coverage as set forth in the risk contract.

Author: Sharon Weaver, Administrator, Administrative Procedures Office.

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

History: New Rule: Filed January 22, 2015.