

APA-1

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control No: 560 Department or Agency: Alabama Medicaid Agency

Rule No: 560-X 62-.05

Rule Title: Probationary Certification of Organizations Seeking to Become 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

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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.

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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 Reference Service.

Signature of certifying officer: Stephanie Lindsay

Date: 5-19-14

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**ALABAMA MEDICAID AGENCY**

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE:** 560-X-62-.05 Probationary Certification of Organizations Seeking to Become Regional Care Organizations

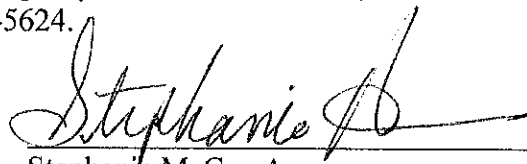
**INTENDED ACTION:** Add New Rule 560-X-62-.05

**SUBSTANCE OF PROPOSED ACTION:** The above referenced rule is being amended to make permanent emergency rule 560-X-62-.05 that was filed May 20, 2014. This rule complies with the Code of Alabama, 1975 Section 22-6-150, et seq. This rule is being added to Chapter 62 to the Alabama Administrative Code which addresses Regional Care Organizations (RCOs) created by Code of Alabama, 1975 Section 22-6-150 et seq. The new rule sets forth requirements for receiving probationary certification as a regional care organization upon submission of an application to the Medicaid Agency that satisfies the requirements of Section 22-6-150 et seq. and Alabama Medicaid Administrative Code.

**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 July 7, 2014.

**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  
Acting Commissioner

# New Rule

## **Rule No. 560-X-62-.05 Probationary Certification of Organizations Seeking to Become Regional Care Organizations**

(1) An organization may receive probationary certification as a regional care organization (Probationary Certification) upon submission of an application to the Medicaid Agency that satisfies the requirements of the Medicaid Administrative Code and Sections 22-6-150, *et seq.* of the Alabama Code.

(2) An organization seeking Probationary Certification shall be 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) all 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 shall have a governing board of directors acceptable to the Medicaid Agency for each Medicaid region the organization plans to serve that meets the requirements of Section 22-6-151(c) of the Alabama Code and the Medicaid Administrative Code.

(4) The Medicaid Agency shall have the 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 regional care organization certification without approval.

(5) An organization seeking Probationary Certification shall have a citizen's advisory committee for each Medicaid region the organization plans to serve that meets the requirements of Section 22-6-151(d) of the Alabama Code and the Medicaid Administrative Code.

(6) All applications for Probationary Certification to be effective October 1, 2014 must be submitted to the Medicaid Agency between May 12 and August 1, 2014. Pursuant to Section 22-6-156 (2), the Medicaid Agency may accept applications for Probationary Certification to be effective January 1, 2015 that are submitted between August 2, 2014 and September 30, 2014.

(7) 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, email 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, medical director and/or administrator of the organization and any other persons responsible for the healthcare 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 each Medicaid region the organization plans to serve;

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

(h) Copies of any organizational and governing 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 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.

(8) All applications for Probationary Certification shall also include the following information concerning its governing Board of Directors for each Medicaid region the organization plans to serve 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;

(c) 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 Medicaid region;

(d) With respect to each Board of Directors member, identification whether each individual:

(i) is himself/herself a risk bearing participant or that he/she represents a risk bearing participant in the organization as described in Section 22-6-151(c)(1) of the Alabama Code, and the nature of his/her participation as a risk bearing participant;

(ii) is a medical professional who provides care to Medicaid beneficiaries in the region and, if so, whether such individual is a primary care physician, an optometrist, or a pharmacist. The organization shall certify that the medical professionals are appointed by the associations or organizations identified in Section 22-6-151 (c)(1)(b) of the Alabama Code and meet the other requirements set forth in that provision;

(iii) is a community representative qualified, elected or appointed consistent with Section 22 - 6 - 151 (c)(1)(c) of the Alabama Code.

(e) With respect to each Board of Directors Member, background information pertaining to any adverse action against any occupational, professional or vocational license or permit; criminal offences other than civil traffic offences; civil judgments involving dishonesty, breach of trust, or foreclosure; and any bankruptcy proceeding.

(f) Certification that a majority of the Board of Directors members do not and will not represent a single provider. Alternatively, certification that only one entity has offered to be a risk-bearing participant in the organization as defined in Section 22-6-151(c)(1) of the Alabama Code.

(9) All applications for Probationary Certification shall also include the following information concerning its citizen's advisory committee for each Medicaid region the organization plans to serve for the Medicaid Agency's review and approval:

(a) The name, occupation, mailing address, email address, and telephone number of each member of the citizen's advisory committee;

(b) Information evidencing that the membership of the citizen's advisory committee is inclusive and reflects the racial, gender, geographic, urban/rural and economic diversity of the region and the members of its citizen's advisory committee;

(c) A description of the method the organization used to select the members of its citizen's advisory committee;

(d) Identification of the members of the citizen's advisory committee who are Medicaid beneficiaries who reside in the Medicaid region the organization plans to serve. It shall be applicant's sole responsibility to obtain all necessary approvals, consents or waivers

from Medicaid beneficiaries and to comply with all applicable laws regarding privacy and confidentiality related to such information before providing it to the Medicaid Agency;

(e) Identification of the members of the citizen's advisory committee who are representatives of organizations that are part of the Disabilities Leadership Coalition of Alabama or Alabama Arise, or their successor organizations.

(10) An organization applying for Probationary Certification shall be organized in a manner consistent with the accomplishment of its stated mission which shall include, as a minimum, delivery of basic health care services in accordance with Section 22-6-150, *et seq.* of the Alabama Code.

(11) 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 of health care services delivery, quality improvement and utilization review programs including biannual meetings at a minimum for the purpose of evaluation and improvement of the health services of the organization and to respond to recommendations and findings of the quality improvement 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 health services. All records must be maintained for not less than five (5) years;

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

(12) 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 in the creation of the organization has been and will continue to be in good faith, (b) that such bargaining 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 to citizens who are Medicaid eligible at the lowest possible cost, (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 services to Medicaid beneficiaries in all counties of each Medicaid region the organization plans to serve.

(13) 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.

(14) 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 regional care organization 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 medical service delivery network, potential funding sources, organizational issues and other topics may be discussed.

(15) The Medicaid Agency shall review the application and any additional documentation and information and, if the Medicaid Agency in its discretion determines that the applicant meets the requirements for probationary certification, the Medicaid Agency shall issue the organization a Probationary Certificate as a Regional Care Organization.

(16) A Probationary Certificate as a Regional Care Organization shall be effective immediately upon issuance by the Medicaid Agency and shall expire no later than the date specified in Section 22-6-159(a)(2). The issuance of a Probationary Certificate as a Regional Care Organization provides no presumption that an organization shall be certified as a Regional Care Organization.

(17) The holder of a Probationary Certificate as a Regional Care Organization (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 suspend or revoke a Probationary Certification upon a finding that the organization no longer meets the requirements for Probationary Certification.

(18) All applications submitted pursuant to this rule, all Probationary Certificates as a Regional Care Organization, and the names and addresses of all organizations and contact persons to whom the Medicaid Agency issues Probationary Certificates as a Regional Care Organization shall be public records and shall be subject to disclosure. The Medicaid Agency may redact confidential or personal information prior to disclosure.

(19) Any person or entity may notify the Medicaid Agency of conduct of a Certificate Holder or a Board of Directors member 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 a Regional Care Organization 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.

(20) Whenever an application for probationary certification as a regional care organization is denied or a Probationary Certificate as a Regional Care Organization is revoked, 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:** Sharon Weaver, Administrator, Administrative Procedures Office.

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

**History:** New Rule: Filed May 20, 2014.