

ALABAMA MEDICAID AGENCY

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 560-X-62-.18 Hazardous Financial Condition and Insolvency

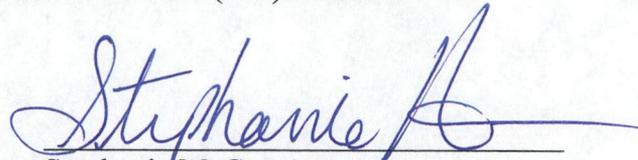
INTENDED ACTION: Add New Rule 560-X-62-.18

SUBSTANCE OF PROPOSED ACTION: The above referenced rule is being created to set forth the considerations and factors used by the Medicaid Agency to determine whether a regional care organization should be deemed to be in a hazardous financial condition.

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-.18 Hazardous Financial Condition and Insolvency – NEW RULE

(1) A regional care organization ("RCO") shall be deemed to be in a hazardous financial condition if the continued operation of the RCO is determined by the Medicaid Agency to be hazardous to the RCO's enrollees, participating providers, or the State. The Medicaid Agency may in its discretion consider any factor or finding determined by the Medicaid Agency to be hazardous to enrollees, participating providers, or the State to determine whether an RCO is in a hazardous financial condition, including but not limited to one or more of the following factors:

- (a) Nonpayment or recurring delinquency in the RCO's payments to providers;
- (b) Adverse findings reported in financial condition examination reports, audit reports, or actuarial opinions, reports or summaries;
- (c) Whether the RCO has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the RCO, when considered in light of the assets held by the RCO with respect to such reserves and related actuarial items including but not limited to the investment earnings on such assets, and the considerations anticipated to be received and retained under such contracts;
- (d) The inability of a stop loss insurance carrier or assuming reinsurer to perform, other than stop loss insurance or reinsurance administered by the Medicaid Agency;
- (e) Whether the RCO's operating losses in the last 12-month period or any shorter period of time is greater than 50 percent of the RCO's remaining capital and surplus in excess of the minimum required;
- (f) Whether a risk-bearing participant which has contributed cash, capital, or other assets to the RCO, or a guarantor, surety, insurer, reinsurer, obligor, or any entity that has a direct or indirect ownership interest in a risk-bearing participant which has contributed cash, capital, or other assets to an RCO, is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations and which, in the opinion of the Medicaid Agency, may affect the solvency of the RCO;
- (g) Contingent liabilities, pledges or guaranties that either individually or collectively involves a total amount that, in the opinion of the Medicaid Agency, may affect the solvency of the RCO;
- (h) An adverse change in the age and collectability of receivables other than from the Medicaid Agency;
- (i) Whether the management of an RCO, including officers, directors or any other person who directly or indirectly controls the operation of the RCO, fails to possess and demonstrate the competence, fitness and reputation determined by the Medicaid Agency to be necessary to serve the RCO in such position;
- (j) Whether management of an RCO has failed to respond properly to inquiries relating to the condition of the RCO or has furnished false and misleading information concerning an inquiry;

(k) Whether the RCO has failed to meet financial responsibility, accountability or filing requirements in the absence of a reason satisfactory to the Medicaid Agency;

(l) Whether management or any other agent of an RCO either has filed a false or misleading sworn financial statement or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the RCO;

(m) Whether the RCO has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(n) Whether the RCO has experienced or there is sufficient evidence that the RCO will likely experience in the foreseeable future cash flow or liquidity problems, or both;

(o) Whether management has established reserves that do not comply with minimum standards established by state laws, regulations, accounting standards, sound actuarial principles and standards of practice;

(p) Whether transactions among affiliates, subsidiaries or controlling persons for which the RCO receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the RCO's ability to meet its outstanding obligations as they mature; and

(q) Any significant monetary judgment or fine filed against the RCO or any significant civil or criminal action brought against or concluded adversely to the RCO.

(2) For the purposes of making a determination of the financial condition of an RCO under these rules or the RCO's contract with the Medicaid Agency, the Medicaid Agency may in its discretion do one or more of the following:

(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer or stop loss carrier that is insolvent, impaired or otherwise subject to a delinquency proceeding;

(b) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates; and

(c) Increase the RCO's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the RCO will be called upon to meet the obligation undertaken within the next 12-month period.

(3) In addition to the other requirements that the Medicaid Agency may impose and actions that the Medicaid Agency may take under the rules of the Medicaid Agency, the risk contract between the RCO and the Medicaid Agency, and applicable state and federal law, if the Medicaid Agency determines that an RCO is in a hazardous financial condition, the Medicaid Agency may in its discretion require the RCO to do one or more of the following:

(a) Reduce the total amount of present and potential liability for enrollee benefits by reinsurance or stop loss insurance;

- (b) Reduce, suspend or limit the volume of business being accepted or renewed;
- (c) Increase the capital and surplus of the RCO above the level required by Rule No. 560-X-62-.16;
- (d) Increase the restricted reserves of the RCO above the level required by Rule No. 560-X-62-.16;
- (e) Suspend or limit distributions and any other payments to members, risk-bearing participants, and other related persons and entities of the RCO, other than payments to providers for covered services;
- (f) Limit or withdraw from certain investments or discontinue certain investment practices if and to the extent the Medicaid Agency determines such action is necessary;
- (g) File reports in a form acceptable to the Medicaid Agency concerning the market value of the RCO's assets;
- (h) In addition to regular annual statements and such other financial statements as may be required by the Medicaid Agency, file interim reports regarding financial and other matters on a form specified by the Medicaid Agency;
- (i) Correct corporate governance practice deficiencies, and adopt and utilize the governance practices acceptable to the Medicaid Agency; and
- (j) Provide a business plan to the Medicaid Agency demonstrating the corrective actions the RCO will take to improve its financial condition and a schedule for taking such actions.

(4) An RCO shall be deemed to be insolvent when such organization is not possessed of admitted assets at least equal in value to the sum of all its liabilities and minimum capital and surplus required by Rule No. 560-X-62-.16 or this rule and the Medicaid Agency declares that the RCO is insolvent. If the Medicaid Agency determines that an RCO is insolvent, the Medicaid Agency shall give notice of the insolvency to all of the RCO's participating providers.

(5) If and when the Medicaid Agency determines from any information, report, document or statement made to the Medicaid Agency or from any audit conducted or contracted for by the Medicaid Agency that an RCO is insolvent, the Medicaid Agency may in its discretion do one or more of the following:

- (a) Immediately proceed to terminate the risk contract between the Medicaid Agency and the RCO;
- (b) Allow the RCO a period of time in which to cure the deficiency with cash or authorized investments; provided that if such deficiency is not cured within the time prescribed, the Medicaid Agency may proceed to terminate the risk contract between the Medicaid Agency and the RCO; and
- (c) Exercise any other remedy provided by the risk contract between the Medicaid Agency and the RCO or applicable law.

(6) The RCO shall be responsible for continuation of services to enrollees during insolvency, for the duration of the period for which payment may be due to providers for covered services.

(7) If the Medicaid Agency determines that an RCO is insolvent, is in a hazardous financial condition, or is otherwise in default under the risk contract between the Medicaid Agency and the RCO, the Medicaid Agency may, in addition to its other rights and remedies, access and disburse the RCO's restricted reserves for the payment of providers in accordance with terms of the Model Depository Agreement provided by the Medicaid Agency.

(8) No enrollee shall be liable for any of the following:

(a) The RCO's debts, in the event of the RCO's insolvency;

(b) Covered services provided to the enrollee, for which the Medicaid Agency does not pay the RCO;

(c) Covered services provided to the enrollee, for which the Medicaid Agency or the RCO does not pay the individual or health care provider that furnishes the services under a contractual, referral, or other arrangement; and

(d) Payments for covered services furnished under a contract, referral, or other arrangement, to the extent that those payments are in excess of the amount that the enrollee would owe if the RCO provided the services directly.

(9) The Medicaid Agency may exercise authority under this rule in addition to or in lieu of any other authority that the Medicaid Agency may exercise under other rules promulgated by the Medicaid Agency, other applicable state and federal laws and regulations, or the risk contract between the Medicaid Agency and the RCO, including without limitation calling for payment under any performance bond securing the RCO's performance of the risk contract, in accordance with the terms thereof. Without limiting the foregoing, the Medicaid Agency may impose any of the sanctions described in 42 CFR §§ 438.700-438.708, as in effect from time to time, in accordance with the provisions thereof and consistent with the risk contract and rules promulgated by the Medicaid Agency, including the appointment of temporary management for the RCO if the Medicaid Agency has made a finding described in 42 CFR § 438.706 permitting or requiring the imposition of temporary management.

Author: Sharon Weaver, Administrator, Administrative Procedures Office.

Statutory Authority: Code of Alabama, 1975 Section 22-6-150 *et seq.* 42 C.F.R. Part 438.

History: New Rule: Filed January 22, 2015.