APA-2

ALABAMA MEDICAID AGENCY

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: Chapter 560-X-33 – Recoupments, Estate Recoveries and Liens

INTENDED ACTION: Amend Chapter 560-X-33 – Recoupments, Estate Recoveries and Liens

SUBSTANCE OF PROPOSED ACTION: The above referenced Chapter is being amended for general updates and to add rules for estate recoveries and liens in accordance with federal law.

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 December 4, 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
Commissioner

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RECOUPMENTS, ESTATE RECOVERY AND LIENS

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Chapter 33 Recoupments, Estate Recovery and Liens

Rule No. 560-X-33-.01 General

Federal regulations require that the State make provisions for handling of recoupments, estate recoveries and liens. The Alabama Medicaid Agency will actively seek recovery of all misspent Medicaid funds and correctly paid benefits recoverable under federal law.

Author: Keith Thompson, Director, Third Party Liability.
Authority: Social Security Act; State Plan; 42 U.S.C. § 1396p; 42 C.F.R. Parts 431, 433 and 455; Ala. Code §§ 22-1-11, 22-6-8 (1975).
History: Rule effective October 1, 1982. **Amended:** Filed October 21, 2015.

Rule No. 560-X-33-.02 Purpose

The purpose of the recoupments, estate recoveries and liens effort is to assure that the state and federal dollars allocated for medical assistance are spent only on those individuals/recipients (hereinafter "recipients") who meet all eligibility criteria; to correct erroneous payments to providers; and to recover benefits correctly paid, but recoverable by law. This mission will be fulfilled through solicitation of voluntary reimbursement and administrative and legal remedies in keeping with limitations set by federal guidelines.

Author: Keith Thompson, Director, Third Party Liability.
Authority: Social Security Act, Title XIX; State Plan; 42 U.S.C. § 1396p; 42 C.F.R. Parts 431, 433 and 455; Ala. Code §§ 22-1-11, 22-6-8 (1975).
History: Rule effective October 1, 1982. **Amended:** Filed October 21, 2015.

Rule No. 560-X-33-.03 Reserved

Rule No. 560-X-33-.04 Recoupments

(1) Direct Reimbursement

At the time of original identification of the expected amount of recoupment, a letter will be sent to the recipient/authorized representative or provider outlining the allegations and stating the amount of reimbursement and the specific dates when overpayment or recoverable benefits occurred. The recipient/authorized representative or provider will be offered the opportunity to present evidence to rebut the requirement for recoupment or to submit the reimbursement. If no rebuttal is offered, the original assessment will be presumed correct. The Alabama Medicaid Agency will accept direct reimbursement from the recipient/authorized representative or provider to satisfy the recoupment.

(2) Time Payment Plan

a. Recipient Recoupment-Upon sufficient justification, the Alabama Medicaid Agency may allow a time payment plan. The recipient will be required to sign a promissory note not to exceed two years.

b. Provider Recoupment-Upon sufficient justification, the Alabama Medicaid Agency may allow a time payment plan. The provider will be required to sign a promissory note not to exceed one year.

(3) Fiscal Agent Recoupment

a. Recipient Recoupment-In the event the provider is the payee for the recipient (in effect, the sponsor) and has received the monies to be recouped, the Agency's fiscal agent will recoup the excess payment from a future adjustment payroll.

b. Provider Recoupment-Upon receipt of a recoupment letter, if the provider does not submit direct reimbursement or agree to a time payment plan or if the provider fails to submit a timely payment pursuant to a promissory note, the Agency's fiscal agent will recoup the amount from a future adjustment payroll.

(4) Civil Actions

Civil actions through the courts may be initiated on cases where the above procedures have not resulted in a satisfactory resolution.

Author: Keith Thompson, Director, Third Party Liability
Authority: Social Security Act Title XIX; State Plan; 42 C.F.R. Parts 431, 433 and 455; Ala. Code §§ 22-1-11, 22-6-8 (1975).
History: Rule effective October 1, 1982. Effective date of amendment April 15, 1983.
Amended: Filed October 21, 2015.

Rule No. 560-X-33-.05 Estate Recovery

(1) Under the estate recoveries provisions in § 1917(b) of the Act, the Alabama Medicaid Agency ("Agency") shall seek adjustment or recovery of any medical assistance correctly paid on behalf of the following categories of recipients:

(a) Permanently Institutionalized Recipients of any age who are inpatients in a nursing facility, ICF/IID, or other medical institution, and who must, as a condition of receiving services in the institution under the State plan, apply their income (all but a minimal amount allowed for personal needs) to the cost of care, the Agency shall seek adjustment or recovery from the recipient's

estate or upon the sale of the property subject to a lien imposed on account of medical assistance paid on behalf of the recipient.

(b) In the case of a recipient who was 55 or older when the recipient received such medical assistance, the Agency shall seek adjustment or recovery from the recipient's estate for all approved medical assistance in accordance with federal law and the approved State Plan, except for Medicare Cost Sharing as described in 42 U.S.C. § 1396a(a)(10(E)).

(c) Recipients with Long Term Care Insurance Policies - If a recipient covered under a long-term care insurance policy received benefits for which assets or resources were disregarded in accordance with the Agency's State plan (State Long-Term Care Insurance Partnership), the Agency will not seek adjustment or recovery from the recipient's estate for the amount of assets or resources disregarded.

(2) Delayed Recovery/Exemptions

(a) Adjustment or recovery may be made only after the death of the recipient's surviving spouse, if any, and when the recipient has no surviving child under age 21, or a blind or permanently or totally disabled child as defined in 42 U.S.C. § 1382c.

(b) If, after the reported death of the recipient, the Agency is prohibited because of exemption conditions, the Agency may postpone recovery until all exemption conditions are no longer present.

(c) Undue Hardship

i. The Agency will waive or delay recovery upon a showing that an undue hardship exist. For purposes of this Rule, "Undue Hardship" is defined as the existence of a situation, established by convincing evidence, that the estate subject to recovery is an asset such as a family farm or family business which produces "limited income" (defined as equal to or less than the income limit established in Rule 560-X-25-.14) and is the sole income-producing asset of one or more heirs to the estate.

ii. An undue hardship is not available in the following circumstances:

a. For recipients with long term care insurance policies who became Medicaid eligible by virtue of disregarding assets because of payments made by a long term care insurance policy or because of entitlement to receive benefits under a long term care insurance policy;

b. If the Agency determines the hardship was created by the recipient by resorting to estate planning methods under which the recipient illegally divested assets in order to avoid estate recovery.

iii. Each heir with an interest in the recipient's estate must apply for a separate undue hardship. If approved, that heir's interest in the estate will be exempt from recovery while any of the remaining heirs that did not apply for an undue hardship or were denied will still be subject to recovery.

(3) Procedures

(a) The Agency may file claims against the estate of a deceased recipient who received benefits incorrectly, in accordance with existing law.

(b) The Agency may file a claim against the estate of a deceased recipient as defined in paragraph (1) above.

(c) In order to protect its right to recover from a deceased recipient's estate, the Agency, after obtaining the concurrence of the Attorney General, may file a petition for letters of administration in situations where the Agency's claim warrants the expense of administering the estate.

Author: Keith Thompson, Director, Third Party Liability
Authority: Social Security Act § 1917b; 42 U.S.C. § 1396p; State Plan; 42 C.F.R. § 433.36; Ala. Code §§ 22-1-11, 22-6-8 (1975).
History: Filed October 21, 2015.

Rule No. 560-X-33-.06 Liens

(1) The Alabama Medicaid Agency ("Agency") will place a lien and may foreclose upon real property of the following recipients to the extent allowed by 42 U.S.C. § 1396p:

(a) Permanently Institutionalized Recipients of any age who are inpatients in a nursing facility, ICF/IID, or other medical institution, and who must, as a condition of receiving services in the institution under the State plan, apply their income (all but a

minimal amount allowed for personal needs) to the cost of care. (See Chapter 28 for a copy of the form to be used.)

(b) The Agency may not impose a lien on such recipient's home if:

i. The recipient's spouse is residing in the home;

ii. The recipient's child under age 21 is residing in the home;

iii. A child who is blind or permanently and totally disabled, as defined in 42 U.S.C. § 1382c, of the recipient is residing in the home; or

iv. A sibling of the recipient who has an equity interest in the home is currently living in the home and has been residing continuously in the home for at least one year immediately before the date of the recipient's admission to the institution.

(2) Delayed Recovery/Exemptions

(a) Adjustment or recovery of a lien on a recipient's home can only be made after the death of the recipient's surviving spouse, if any, and:

i. there is no sibling of the recipient residing in the home, who has resided there for at least one year immediately before the date of the recipient's admission to the institution, and has resided there on a continuous basis since that time; OR

ii. there is no son or daughter of the recipient residing in the home, who has resided there for at least two years immediately before the date of the recipient's admission to the institution, has resided there on a continuous basis since that time, and can establish to the Agency's satisfaction that he/she has been providing care which permitted the recipient to reside at home rather than in an institution.

(3) Procedures

Unless otherwise specified in this rule, the lien will become due, payable, and enforceable in accordance with federal and state law upon sale or transfer of the property, or upon death of grantor.

Author: Keith Thompson, Director, Third Party Liability
Authority: Social Security Act § 1917b; 42 U.S.C. § 1396p; State Plan; 42 C.F.R. § 433.36; Ala. Code §§ 22-1-11, 22-6-8, 33-11-1, et seq. (1975).
History: Filed October 21, 2015.

Rule No. 560-X-33-.07 Appeals

A person aggrieved by a proposed or actual Agency action may request a hearing in accordance with Chapter 3 of the Alabama Medicaid Administrative Code. A recoupment action will not be abated during the time for requesting a hearing. The Agency may at its discretion suspend a recoupment action until after a hearing is held.

Author: Keith Thompson, Director, Third Party Liability
Authority: Social Security Act; State Plan; Ala. Admin Code r. 560-X-3-.01, et seq.; 42 C.F.R. Parts 431, 433 and 455.
History: Rule effective October 1, 1982. Effective date of amendment April 15, 1983.
Amended: Filed October 21, 2015.