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CHAPTER THIRTY-THREE
RECOUPMENTS AND LIENS

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Chapter 33. Recoupments and Liens

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

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

Authority: Social Security Act; State Plan; Alabama Code, Section 22-1-11, Section 22-6-8, and Section 35-1-2; 42 C.F.R. Part 431, Parts 450 and 455; 45 C.F.R. Part 205; 45 C.F.R. Part 233.

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

The purpose of the recoupments, recoveries and liens effort is to assure that the State and Federal dollars allocated for medical assistance are spent only on those individuals who meet all eligibility criteria; to correct erroneous payments; 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.

Authority: Social Security Act, Title XIX; State Plan; 42 C.F.R. Parts 450 and 455. Rule effective October 1, 1982.

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

Recoupment by the Alabama Medicaid Agency will be carried out using administrative procedures and civil and criminal proceedings to ensure that erroneous Medicaid payments are reimbursed and recoverable payments are collected. The methods may include but will not be limited to:

(1) Direct reimbursement by the recipient or his sponsor to the Alabama Medicaid Agency.

(2) Time payment by the recipient or by the sponsor on behalf of the recipient (if terms are acceptable to the Agency).

(3) Recovery of erroneous payments to providers through the fiscal agent from monies due those providers (to be used under special circumstances).

(4) Liens upon real property of recipients for recoverable benefits as permitted by Federal law.

(5) Administrative sanctions on cases involving fraud or abuse of the Medicaid Program.

(6) Civil actions through the courts as deemed appropriate and approved by the Attorney General.

Authority: Social Security Act, Title XIX; State Plan; 42 C.F.R. Parts 450 and 455; Alabama Code, Section 35-1-2, Section 22-6-8, Section 22-1-11; 45 C.F.R. Part 233, 45 C.F.R. Part 302.

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

(1) Direct reimbursement

At the time of original identification of the expected amount of recoupment, a letter will be sent to the recipient/sponsor outlining the allegations and stating the amount of reimbursement and the specific dates when overpayment or recoverable benefits occurred. The recipient/sponsor 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. Legal proceedings will be initiated in the event reimbursement is not received.

(2) Time Payment Plan

The reimbursement amount is due immediately. Upon sufficient justification, Alabama Medicaid Agency may allow a time payment plan. Under no circumstances will such payment schedule exceed two years.

(3) Fiscal Agent 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 excess payment will be withheld from the next adjustment payroll by the fiscal agent.

(4) Liens upon real property of recipients.

Liens will be placed upon and foreclosed upon real property of recipients and deceased recipients to the extent allowed by 42 USC Section 1396(a)(18) and 42 C.F.R. Section 433.36.

(a) Where benefits have been incorrectly paid to or on behalf of a present or former recipient, the Agency after obtaining the concurrence of the Attorney General, may institute

appropriate legal proceedings to obtain a judgement lien against that recipient of former recipient's property or estate; such liens will thereafter be enforced according to law.

(b) In the case of an individual who has received or is applying to receive benefits that are correctly paid due to the individual's being entitled to a temporary property or resource exclusion under the Agency's eligibility rule, the Agency may require said recipient to grant the Agency a lien by recording the same and, when appropriate, after obtaining the concurrence of the Attorney General, institute appropriate legal proceedings to obtain a judgement lien against that individual's property. Such lien may be obtained and secured by execution of a document substantially like Exhibit A, attached. (See Chapter 28 for a copy of the form to be used.) Such liens will become due, payable, and enforceable upon sale or transfer of lease for more than one year of said property, or upon death of grantor, and will otherwise be enforced in accordance with the provisions of 42 USC Section 1396(a)(18) as same may be amended by the Congress of the United States.

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

(d) The Agency may file a claim against the estate of a deceased recipient who correctly received benefits after the recipient was over 65 years of age (where the recipient's eligibility under Agency rules was due to a temporary property or resource exclusion). Enforcement of such claims will be subject to the provisions of 42 USC Section 1396(a)(18) as same may be amended by the Congress of the United States.

(e) If a recipient described in Paragraph (3) and (4) above dies intestate or is believed by the Agency to have died intestate, the Agency, after obtaining the concurrence of the Attorney General, in order to protect its right to file a claim against the deceased recipient's estate, may file a petition for letters of administration in situations where the Agency's claim warrants the expense of administering the estate.

(5) Administrative sanctions.

Cases involving apparent fraud and abuse of the Medicaid Program may be corrected with administrative sanctions within Federal guidelines. Such sanctions may involve one or more years ineligibility from the Medicaid Program and until full restitution has been made.

(6) Civil Actions

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

(7) Criminal Actions

If there are strong indications of fraud and/or abuse of the Medicaid Program, cases will be referred to the appropriate authorities for prosecution.

Authority: Social Security Act, Title XIX; State Plan; Alabama Code, Section 22-1-11, Section 22-6-8, Section 35-1-2; 42 C.F.R. Parts 450 and 455; 45 C.F.R. Parts 233 and 302; 42 C.F.R. Section 401, et seq. Rule effective October 1, 1982. Effective date of amendment April 15, 1983.

Rule No. 560-X-33-.05. Appeals

Any person aggrieved by a proposed or actual recoupment action that is directed at that person can have the same reviewed through the Agency's fair hearing procedures if the matter has not previously been the subject of a Fair Hearing. A hearing must be requested within 60 days of the date of the notice of the recoupment action. 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.

Authority: 42 C.F.R. Section 401, et. seq.; State Plan; Social Security Act, Title XIX. Rule effective October 1, 1982.