

Rule No. 560-X-64-.11 Hazardous Financial Condition and Insolvency – NEW RULE

(1) An integrated care network ("ICN") shall be deemed to be in a hazardous financial condition if the continued operation of the ICN is determined by the Medicaid Agency to be hazardous to the ICN'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 ICN 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 ICN's payments to providers;

(b) Adverse findings reported in financial condition examination reports, audit reports, or actuarial opinions, reports or summaries;

(c) Whether the ICN 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 ICN, when considered in light of the assets held by the ICN 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) Whether the ICN's operating losses in the last 12-month period or any shorter period of time is greater than 50 percent of the ICN's remaining capital and surplus in excess of the minimum required;

(e) Whether a risk-bearing participant which has contributed cash, capital, or other assets to the ICN, or a guarantor, surety, insurer, 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 ICN, 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 ICN, or whether a risk-bearing participant has terminated or stated its intent to terminate its relationship with the ICN as a risk-bearing participant;

(f) 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 ICN;

(g) An adverse change in the age and collectability of receivables other than from the Medicaid Agency;

(h) Whether the management of an ICN, including officers, directors or any other person who directly or indirectly controls the operation of the ICN, fails to possess and demonstrate the competence, fitness and reputation determined by the Medicaid Agency to be necessary to serve the ICN in such position;

(i) Whether management of an ICN has failed to respond properly to inquiries relating to the condition of the ICN or has furnished false and misleading information concerning an inquiry;

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

(k) Whether management or any other agent of an ICN 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 ICN;

(l) Whether the ICN 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;

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

(n) 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;

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

(p) Any significant monetary judgment or fine filed against the ICN or any significant civil or criminal action brought against or concluded adversely to the ICN; and

(q) For organizations that are not incorporated as a nonprofit, whether the ICN's acute medical care service claims exceed the Medicaid Agency's projected amount of acute medical care dollars within the capitation rates subject to fees or taxes assessed pursuant to 26 C.F.R. § 57.1, *et. seq.*

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

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

(b) Increase the ICN's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the ICN 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 ICN and the Medicaid Agency, and applicable state and federal law, if the Medicaid Agency determines that an ICN is in a hazardous financial condition, the Medicaid Agency may in its discretion require the ICN to do one or more of the following:

(a) Reduce, suspend or limit the volume of business being accepted or renewed;

- (b) Increase the capital and surplus of the ICN above the level required by Rule 560-X-64-.06;
- (c) Increase the restricted reserves of the ICN above the level required by Rule 560-X-64-.06;
- (d) Suspend or limit distributions and any other payments to members, risk-bearing participants, and other related persons and entities of the ICN, other than payments to providers for covered services;
- (e) Limit or withdraw from certain investments or discontinue certain investment practices if and to the extent the Medicaid Agency determines such action is necessary;
- (f) File reports in a form acceptable to the Medicaid Agency concerning the market value of the ICN's assets;
- (g) 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;
- (h) Correct corporate governance practice deficiencies, and adopt and utilize the governance practices acceptable to the Medicaid Agency; and
- (i) Provide a business plan to the Medicaid Agency demonstrating the corrective actions the ICN will take to improve its financial condition and a schedule for taking such actions.

(4) An ICN 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 560-X-64-.06 or this rule and the Medicaid Agency declares that the ICN is insolvent. If the Medicaid Agency determines that an ICN is insolvent, the Medicaid Agency shall give notice of the insolvency to all of the ICN'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 ICN 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 ICN;
- (b) Allow the ICN 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 ICN; and
- (c) Exercise any other remedy provided by the risk contract between the Medicaid Agency and the ICN or applicable law.

(6) The ICN 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 ICN is insolvent, is in a hazardous financial condition, or is otherwise in default under the risk contract between the Medicaid Agency and the ICN, the Medicaid Agency may, in addition to its other rights and remedies, access and disburse the ICN's restricted reserves for the payment of providers in accordance with terms of the Model Depository Agreement provided by the Medicaid Agency and/or draw upon any letter of credit provided by the ICN pursuant to 560-X-64-.06.

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

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

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

(c) Covered services provided to the enrollee, for which the Medicaid Agency or the ICN 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 ICN 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 ICN, including without limitation calling for payment under any letter of credit securing the ICN'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 ICN if the Medicaid Agency has made a finding described in 42 CFR § 438.706 permitting or requiring the imposition of temporary management.

Author: Stephanie Lindsay, Administrator, Administrative Procedures Office.

Statutory Authority: Code of Alabama, 1975 Section 22-6-220 et seq. 42 C.F.R. Part 438.

History: New Rule: Filed June 20, 2017.