Rule No. 560-X-37-.08 Sanctions under the Alabama Coordinated Health Network Program – NEW RULE

(1) Bases for Imposition of Sanctions on Alabama Coordinated Health Network Entity. The Medicaid Agency may impose sanctions on an Alabama Coordinated Health Network Entity ("Entity") if the Medicaid Agency determines in its sole discretion that the Entity has violated any applicable federal or state law or regulation, the Alabama Medicaid State Plan, the contract between the Medicaid Agency and the Entity and the exhibits thereto (the "contract"), any policies, procedures, written interpretations, or other guidance of the Medicaid Agency, or for any other applicable reason described in 42 C.F.R. Part 438, Subpart I or the contract, including but not limited to a determination by the Medicaid Agency that an Entity acts or fails to act as follows:

(a) Acts to discriminate among EIs on the basis of their health status or need for health care services (including termination of enrollment or refusal to reenroll an EI, except as permitted under the Alabama Medicaid program, or any practice that would reasonably be expected to discourage enrollment by EIs whose medical condition or history indicates probable need for substantial future medical services);

(b) Misrepresents or falsifies information that it furnishes to Agency or to CMS;

(c) Misrepresents or falsifies information that it furnishes to an EI, Potential EI, or health care Provider;

(d) Distributes directly, or indirectly through any agent or independent contractor, marketing materials that have not been approved in writing by the Agency or that contain false or materially misleading information;

(e) Fails to submit a Corrective Action Plan (CAP) that is acceptable to the Agency within the time period specified by the Agency's written notice or does not implement or complete the corrective action within the established time period;

(f) Violates, as determined by the Agency, any requirement of sections 1932 or 1905(t) of the Social Security Act or any implementing regulations; or

(g) Violates, as determined by the Agency, any applicable requirement of the Alabama Code or the Alabama Medicaid Administrative Code.

(h) Unauthorized use of information.

(i) Failure to safeguard confidential information of Providers, EIs or the Medicaid program.

(2) Types of Sanctions that May be Imposed on Entities. The sanctions imposed by the Medicaid Agency against an Entity are as follows:

(a) requiring the Entity to develop and implement a corrective action plan that is acceptable to the Medicaid Agency;

(b) the intermediate sanctions described in 42 U.S.C. § 1396u-2(e)(2) and 42 C.F.R. Part 438, Subpart I, including but not limited to civil monetary penalties up to the maximum amounts set forth in 42 C.F.R. § 438.704;

(c) grant enrollees the right to disenroll without cause (the Medicaid Agency may notify the affected Enrollees of their right to disenroll);

(d) suspend all new enrollment, including auto-assignment, after the date Department of Health and Human Services or the Medicaid Agency notifies the Entity of a determination of a violation of any requirement under Sections 1932 or 1905(t) of the Social Security Act;

(e) suspend payment for enrollees enrolled after the effective date of the sanction until CMS or the Medicaid Agency is satisfied that the reason for the imposition of the sanction no longer exists and is not likely to recur;

(f) for acts or omissions which are not addressed by 42 C.F.R. Part 438, Subpart I, other provisions of this rule, or the contract and exhibits thereto, and which, in the opinion of the Medicaid Agency, constitute willful, gross, or fraudulent misconduct, the assessment of a monetary penalty amount up to $100,000 per act or omission;

(g) any other sanction available under federal or state law or regulation, including without limitation Rule No. 560-X-37-.01;

(h) termination of the contract, in accordance with the terms therein; and

(i) any other sanction reasonably designed to remedy noncompliance and/or compel future compliance with the contract or federal or state law or regulation, pursuant to the Medicaid Agency's authority under 42 C.F.R. § 438.702(b), including, but not limited to:

Contract Section	Performance Standard	Intermediate Sanction
Section II. M.1.e., II.M.1.f. and II.V.6.	● Distribution of unapproved marketing material or those that contain false or materially misleading information.	● Up to $25,000 for each determination
Section II. M.1.i.	● Unauthorized use of information	● Up to $25,000 for each determination
Section II. M.1.j.	● Failure to safeguard confidential information of Providers, EIs or the Medicaid program.	● Up to $25,000 for each determination
Section II. .M.1.d.	● Misrepresents or falsifies information furnished to the Agency or CMS.	● Up to $100,000 for each determination.
Section II.M.2.a.	● Failure to submit an acceptable CAP	● Up to $1,000 per instance
Section II.M.1.g.	● Failure to comply with the Agency approved CAP	● Up to $1,000 per instance
Section II.S.2.a., and Exhibit F.4.b.	● Failure to deliver quarterly reports as defined by the RFP by the date specified	● Up to $100 per day for each day delinquent per report or review
Section II.S.2.b.i.	● Failure to provide reports as required by the RFP regarding PCP and DHCP participation	● Up to $100 per day for each day delinquent
Section II. U.1.a.	● Failure to input Maternity Data for each EI with a 95% accuracy rate into the Health Information System/Database	● Up to $100 per instance
Section II. U.2.	● Failure to meet technical requirements	● Up to $1,000 per instance
Section II. I.1.f.	● Failure to maintain adequate case load levels necessary to perform the requirements of the Contract	● Up to $1,000 per instance
Section II. I.1.g.	● Insufficient or absence of Care Coordination documentation	● Up to $500 per instance
Section II.M.1.c. and II.O.1.	● Discriminate based on health status or need for health care services	● Up to $25,000 per instance

Section II.U.1.a.	● Failure to input Care Coordination documentation for each EI with a 95% accuracy rate into the Health Information System/Database	● Up to $100 per instance
Section II.V.	● Noncompliance with requirements for the EI services telephone line	● Up to $500 per instance

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Section II. M.1.i.	● Unauthorized use of information	● Up to $25,000 for each determination
Section II. M.1.j.	● Failure to safeguard confidential information of Providers, EIs or the Medicaid program.	● Up to $25,000 for each determination
Section II. .M.1.d.	● Misrepresents or falsifies information furnished to the Agency or CMS.	● Up to $100,000 for each determination.
Section II.M.2.a.	● Failure to submit an acceptable CAP	● Up to $1,000 per instance
Section II.M.1.g.	● Failure to comply with the Agency approved CAP	● Up to $1,000 per instance
Section II.S.2.a., and Exhibit F.4.b.	● Failure to deliver quarterly reports as defined by the RFP by the date specified	● Up to $100 per day for each day delinquent per report or review
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(3) Notice of Sanction. Before the Medicaid Agency imposes a sanction under this rule, it will give the affected Entity timely written notice explaining:

(a) the basis and nature of the sanction; and

(b) if applicable, the organization's right to request a fair hearing.

(4) Waiver of Fair Hearing and Reduction of Sanction. Except as otherwise required by applicable law, in the event of an imposed sanction in the form of a monetary penalty according to this rule, the amount of the sanction imposed will be reduced by thirty five percent (35%) if the Entity waives, in writing, its right to a fair hearing within thirty (30) calendar days from the date of notice imposing the sanction. The reduction under this section only applies to sanctions that could be appealed under this rule and not to any other outstanding sanctions imposed on the Entity by the Medicaid Agency.

(5) An Entity that has been sanctioned by the Medicaid Agency may request a fair hearing:

(a) An Entity's request for a fair hearing with the Medicaid Agency relating to the imposition of a sanction must be in writing and must be filed with the Medicaid Agency within thirty (30) calendar days of the date of the sanction notice. The written request shall include a statement of the factual and/or legal basis for the Entity's dispute or claim and a statement of the relief or action sought. The Medicaid Agency will not accept requests for fair hearings that are outside the filing deadline. The Entity may submit the written request for fair hearing to the Medicaid Agency by mail, hand-delivery, facsimile or electronic mail, and the request must be received by the Medicaid Agency on or before the filing deadline.

(b) Upon filing a written request for a fair hearing, the Entity may also request an informal conference with the Medicaid Agency to seek a resolution of the sanctioned activity.

(c) If mutually acceptable resolution is not reached through informal conference with the Medicaid Agency, the fair hearing shall be conducted before an impartial hearing officer in accordance with the requirements for contested case proceedings under the Alabama Administrative Procedure Act, Section 41-22-1 *et seq*. of the Alabama Code. The hearing authority for all fair hearings of Entity sanctions shall be the Commissioner of the Medicaid

Agency, who shall appoint one or more hearing officers to conduct fair hearings and submit findings and recommendations to the Commissioner for final decision on each Entity grievance. The hearing officer shall not have been involved in any way with the Entity sanction in question.

(d) A fair hearing shall be impartially conducted and held at the Medicaid Agency's central office in Montgomery. Written notice of the date, time, place and nature of the fair hearing shall be sent by certified mail to the Entity's address of record and may also be communicated by email or facsimile transmission by the Director, Hearings of the Medicaid Agency, or the designated hearing officer, at least ten (10) calendar days before the hearing is to be held. The notice shall comply with the requirements of Section 41-22-12(b) of the Alabama Code.

(e) The Entity may be represented at the fair hearing by legal counsel at its own expense. The Entity may call witnesses and may examine witnesses called by other parties.

(f) The Medicaid Agency shall be responsible for payment of the hearing officer(s) fees and expenses and any court reporter's fees and expenses related to the fair hearing.

(g) All fair hearings shall be conducted in accordance with the provisions of Sections 41-22-12 through 41-22-19 of the Alabama Code, unless otherwise noted in this rule. Within thirty (30) calendar days of the conclusion of the hearing, the findings and recommendations of the hearing officer shall be submitted to the Commissioner of the Medicaid Agency, who shall make a final decision within thirty (30) calendar days of the recommendation. The Medicaid Agency shall promptly send a copy of the final decision to the Entity's address of record by certified mail.

(h) The Entity may seek judicial review of the final decision of the Medicaid Agency in accordance with the provisions of Sections 41-22-20 and 41-22-21 of the Alabama Code.

(i) Nothing in this rule is intended to create or establish new causes of action in any court. Nothing in this rule shall be construed as a waiver of any sovereign, qualified, or any other type of immunity.

(6) Pre-termination Hearing. Before terminating the contract as a sanction under this rule and 42 C.F.R. § 438.708, the Medicaid Agency will provide the Entity with a pre-termination hearing to be conducted in accordance with the procedures for fair hearings set forth herein. Prior to such pre-termination hearing, the Medicaid Agency will, in accordance with 42 C.F.R. § 438.710:

(a) Give the Entity written notice of the Medicaid Agency's intent to terminate the contract, the reason or reasons for termination of the contract, and the time and place of the hearing;

(b) After the hearing, give the Entity written notice of the decision affirming or reversing the proposed termination of the contract and, for an affirming decision, the effective date of termination; and

(c) For a decision affirming the determination to terminate the contract, give enrollees of the Entity notice of the termination and information, consistent with 42 C.F.R. § 438.10, on their options for receiving Medicaid services following the effective date of termination.

(7) Sanctions Not Exclusive. The imposition of a single sanction by the Medicaid Agency does not preclude the imposition of any other sanction or combination of sanctions or any remedy authorized under the contract for the same deficiency. The Medicaid Agency may impose sanctions under this rule in addition to or in lieu of exercising any other right, remedy, or authority that the Medicaid Agency may exercise under other rules promulgated by the Medicaid Agency, other applicable state and federal laws and regulations, or any contract between the Medicaid Agency and an Entity. Nothing in this rule shall restrict or prevent the Medicaid Agency or the State of Alabama from obtaining declaratory, injunctive or equitable relief, or from recovering damages from an Entity and/or any other person or entity for breach of contract or any other cause of action.

Author: Bob Kurtts, Health Systems Manager, Network and Quality Assurance Division
Statutory Authority: State Plan; Title XIX, Social Security Act; 42 C.F.R. Part 438; 42 C.F.R. § 438.700 *et seq.*
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