



## NEW YORK STATE DEPARTMENT OF HEALTH, OFFICE OF HEALTH INSURANCE PROGRAMS

### DRAFT Guidance for Enrollee Electronic Notification of Managed Care Organization Determinations

#### I. Overview

Managed Care Organizations (MCO) certified under New York State Public Health Law Article 44 shall have a procedure by which to obtain and maintain an enrollee's preference for receiving MCO benefit and medical necessity determination notices by electronic means in accordance with applicable federal and state statutes and regulations and this guidance. Where the enrollee indicates a preference for notification by electronic means, MCOs shall provide written and phone notice of benefit and medical necessity determinations to their enrollees by electronic means in accordance with applicable federal and state statutes and regulations and this guidance. Federal and state statute and regulation governing MCO electronic noticing includes, but is not limited to: the Social Security Act, the Affordable Care Act, New York State Technology Law, PHL §§4408-a, 4903, 4904; 29 CFR §§2590.503-1(m)(5) and 2520.104b-1(b); 42 CFR §§435.905, 435.918, 438.10, 457.1207; and 9 NYCRR Part 540. The MCO is not required to offer more than one electronic notification method to an enrollee.

This guidance addresses only transmittal methods of MCO notices to enrollees, inclusive of any and all notifications required for MCO coverage determination, complaint, grievance, service authorization, adverse determination, or appeal processes under PHL 4408-a, PHL Article 49, and 10 NYCRR Part 98, including but not limited to: acknowledgement letters, review extension letters, and requests for more information. This guidance **does not** amend or expand any requirements related to the MCO processes and timeframes for determining benefit coverage or medical necessity; time frames for issuing determination notices and other notice requirements related to the determination or appeal processes; the content requirements for such notices; requirements to provide notification in alternative formats and through the provision of auxiliary aids and services in an appropriate manner that takes into consideration the special needs of enrollees with disabilities or limited English proficiency; or any requirement to obtain federal or state approval of notice templates prior to use.

The MCO requirements within this guidance also **apply to management contractors**, who, pursuant to a management agreement with an MCO, notify enrollees of benefit or medical necessity determinations and/or provide other notifications related to the determination process on behalf of the MCO. MCOs remain responsible for oversight of their management contractor activities as required by 10 NYCRR 98-1.11(i)(5).

#### II. Definitions

For the purposes of this guidance, these terms will have the following meanings:

“Determination” means an MCO’s decision regarding a complaint, referral, benefit, grievance, complaint appeal or grievance appeal under PHL 4408-a and 10 NYCRR 98-1.14(e), or regarding a service authorization or an appeal under PHL Article 49 and 10 NYCRR 98-2, or any other MCO decision regarding whether the enrollee is covered for a service under their health insurance plan.

“Electronic” or “electronically” means of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Enrollee” means an individual covered under the MCO’s health plan; the individual’s legal guardian; or a person the covered individual or the individual’s legal guardian authorizes, verbally, in writing or electronically, to act as their designee for the purpose of receiving notifications from the MCO.

“Management contractor,” means any company, organization, or other entity that has entered into a management agreement with an MMCO, pursuant to section 10 NYCRR 98-1.11(j), to take an action on behalf of an MMCO.

“Notice” or “Notification” means information to be provided to an enrollee during and after the completion of the MCO’s determination process.

“Readily accessible” means electronic information and services which comply with modern accessibility standards such as section 508 guidelines, section 504 of the Rehabilitation Act, and W3C’s Web Content Accessibility Guidelines (WCAG) 2.0 AA and successor versions.

### **III. Enrollee Notification Standards**

- A. Enrollees have the right to authorize a designee to receive notifications on their behalf. If the enrollee authorizes a designee, the MCO will ensure all notices are provided to the designee in accordance with federal and state statute and regulations and this guidance. Once an enrollee authorizes a designee, all requirements in this guidance for offering and issuing electronic notification shall apply to the enrollee’s designee in the same manner as for the enrollee.
- B. Enrollees may select their preferred method of notification (as offered by the MCO) for determination notices otherwise required by statute or regulation to be provided in writing, and may select their preferred method of notification (as offered by the MCO) for determination notices otherwise required by statute or regulation to be provided by phone.
  - 1. The enrollee may change their preferred method of notification at any time.
  - 2. If the enrollee does not select their preferred method, the MCO will default to the regular notification method (non-electronic means), as required by statute or regulation, of phone and/or mailed written notice and, upon enrollee request, provide an alternate notification method to accommodate a disability or language need.
  - 3. The MCO may not require enrollees to select an electronic method of notification.
  - 4. The MCO may not retaliate, discriminate, or treat the enrollee differently due to their preferred method of notification.
- C. Where the enrollee selects the electronic method of notification, the MCO shall provide the information in a readily accessible manner and in a format such that the enrollee may electronically retain and print the notification.

- D. The enrollee may request at any time that any electronic notification be sent in paper form through regular mail or an alternate format to accommodate a disability or language need.

#### IV. **Process to Obtain Enrollees' Communication Preferences**

- A. MCOs shall have a procedure for obtaining an enrollee's preference for receiving notifications. Such procedure shall include:
1. Written notification, in plain language and easy to understand format, of the option to receive MCO phone and written notifications by electronic means to enrollees within 14 days of the effective date of enrollment, if such written notice was not provided prior to enrollment. This written notice may be combined with other written MCO material such as welcome letters or applications. This written notice shall include a description of:
    - a) The types of MCO notifications that the enrollee may receive by electronic means;
    - b) The notification methods available to the enrollee and how they work, including information on the minimum software and hardware requirements necessary to access and retain the electronic information;
    - c) The enrollee notification standards listed in Section III above;
    - d) Instructions for selecting the preferred notification option, how to change this option at any time, how to provide their personal contact information, how to update their contact information; and
    - e) how to obtain further instructions or technical assistance for using the electronic notification method;
  2. Notification to enrollees at least annually of their right to choose the preferred method for receiving notifications subject to this guidance; including a description of all the information included in IV.A.1.a) through e) above. The annual notice may be combined with other MCO materials distributed to enrollees such as member newsletters;
  3. Confirmation of the enrollee's election to receive notices electronically sent by regular mail.
  4. Provision of instructions to the enrollee and mechanism to answer the enrollee's questions on how to use the MCO's electronic notification method to access their notifications, available in an appropriate manner that takes into consideration the special needs of enrollees with disabilities or limited English proficiency
  5. Process to revise the enrollee's preference at any time and ensure such change is effective within 5 business days of the enrollee notifying (by any means) the MCO of such change in notification preference.
  6. Information systems to maintain enrollee's current notification preferences, and at a minimum the following information:
    - a) enrollee's personal electronic contact information, as applicable;
    - b) authorization of designees;
    - c) primary language for notification;
    - d) requests for alternate language or formats to accommodate a disability, including date of receipt of the request, and confirmation and date request was fulfilled;
    - e) dates of requests to change electronic notification, designees, language, or format preferences, who requested the change and date request was fulfilled;

- f) time, date, method, content, and receipt confirmations of electronic notifications made pursuant to this guidance; and
  - g) date and confirmation of regular required notices (phone or written) made upon indication electronic noticing was undeliverable.
- 7. Process to ensure that the electronic noticing formats are readily accessible and meet HIPAA and NYS confidentiality requirements.
- 8. Process to present records related to enrollee preferred methods of notification to the Department upon request.
- B. The MCO shall ensure that information about the MCO's electronic notification option and the enrollee notification standards in Section III above are placed in a location on the MCO's website that is prominent and readily accessible.

**V. MCO Electronic Notification Requirements**

- A. Where the MCO uses an electronic/web based portal for electronic notification, the MCO will post notices to the individual's electronic account and send an email or other electronic communication alerting the individual that a notice has been posted to his or her account. The MCO may not include confidential information in an unsecured email or electronic alert. Where the MCO is not using an electronic/web-based portal, electronic notification will be transmitted to the enrollee directly in a secured manner. All such electronic notification must occur within the required determination timeframe for phone or written notice, as applicable.
- B. Where the enrollee selects the electronic method of notification, the MCO shall provide the information in a readily accessible manner and in a format such that the enrollee may electronically retain and print the notification.
- C. If the MCO receives indication that the electronic notification was undeliverable, the MCO shall provide the required phone notice and/or send the required written notification in compliance with applicable law or regulation.
- D. Where the enrollee requests an electronic notification be sent in paper form through regular mail, the MCO shall mail the paper written notice at no charge and within 2 business days of the request.
- E. Where the enrollee requests an electronic notification be provided in an alternate format to accommodate a disability or language need, the MCO will provide such alternate format at no charge and within 5 business days of the request.
  - 1. If, due to the nature of the request and after reasonable effort, the MCO is unable to produce the requested alternate format/language within 5 business days, the MCO shall make reasonable effort to contact the enrollee to offer verbal translation and/or other assistance, such as providing an explanation of the notice and associated appeal rights, while the alternate notice is pending, and, in any event, provide the alternate format/language not later than 30 days after receipt of the request.
- F. Written notification will be considered successfully provided if the MCO meets required content and time frames for issuing such notice and:
  - 1. Provides the notice by electronic means in accordance with this guidance after obtaining the enrollee's preference for notification;
  - 2. Mails a paper written notice to the enrollee's mailing address; or
  - 3. Provides the notice in an alternate accessible format as requested to accommodate an enrollee's disability or language needs.
- G. Phone notification will be considered successfully provided if the MCO meets required content and time frames for such notice:

1. Provides the information by electronic means in accordance with this guidance after obtaining the enrollee's preference for notification; or
2. Makes reasonable effort to contact the enrollee by phone.

DRAFT