



Guidance for Enrollee Electronic Notification of Managed Care Organization Determinations Questions and Answers

	Question/Comment	DOH Response
Implementation		
1.	Managed Care Organizations (MCOs) have noted the complexity of operationalizing this Guidance, for example, one MCO commented that it requires significant coordination among several plan business functions, including IT, clinical management, customer care, member communications, and others, in addition to the plan’s external management contractors (who are also responsible for providing electronic notifications). As such, they will need at least three months from when they receive finalized Guidance to implement.	<i>MCOs will have 90 days to implement e-noticing policies and procedures.</i>
2.	In instances where MCO’s delegated management contractors have not yet implemented the processes and procedures to deliver electronic noticing, are MCOs permitted to take a bifurcated approach?	<i>Yes; MCOs should work with their management contractors to minimize enrollee confusion if the contractor’s implementation schedule differs significantly from the MCO’s (i.e., member notice for electronic option should clearly describe which notices and from who the member will receive via the electronic format).</i>
3.	Does the Department of Health (DOH) intend to provide a template letter for plans to send to both current and new members to determine their notification preference?	<i>DOH will explore the feasibility of issuing a template notice. Please note that template or model language for enrollee selection of electronic notice may be of limited use as MCOs may include the notice in combination with other noticing and may have varying options for electronic notification.</i>
Scope		
4.	Will separate guidance be provided to MCOs for provider notification requirements, beyond what was included in the electronic notification Guidance?	<i>PHL previously required MCOs to transmit written notices to providers electronically in a manner and form agreed upon by the parties; providers now may receive phone notice electronically. No additional DOH guidance for provider notification will be issued at this time.</i>
5.	Does DFS intend to adopt DOH’s Guidance? Or will DFS issue separate and distinct guidance?	<i>DFS will issue a separate guidance.</i>
6.	Does DOH take a position on electronic communications to members that are not	<i><u>The Guidance for Enrollee Electronic Noticing of Managed Care Organization Determinations</u></i>

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	required of the MCO, such as disease management information or information about vaccine programs?	<i>(the Guidance) is not intended to change any other MCO notification requirements, such as for member handbooks.</i>
7.	Does the MCO have to follow the Guidance for instances where the MCO has repeatedly tried to reach a member by phone regarding an appointment, etc. but has not been able to reach the individual and tries to do so by e-mail?	<i>The Guidance is not intended to change any other MCO outreach procedures, such as care management contacts for appointment reminders.</i>
8.	Are certain documents, communications, and notifications out of the scope of the Guidance (i.e., grievances, service authorizations, appeal determination notices, etc.)? We believe the reference to “determination” notices is too narrow. The laws cited in the Guidance refer to preferences for receiving “notifications” under the grievance and utilization review laws. These laws include acknowledgment letters, in addition to determination notices.	<i>The Guidance applies to all noticing associated with and necessary to carry out the requirements of the MCO complaint, grievance and appeal processes in Public Health Law (PHL) 4408-a and Article 49, including intermittent notices such as acknowledgement letters.</i>
9.	MCOs request that they be allowed to offer paperless opt-in preferences for at least the following notices: <ul style="list-style-type: none"> • Explanation of Benefits (EOBs) • QHP/OFF Exchange benefit changes • Prior approval rate change notices • QHP/EP/CHP Delinquency reminder letters • Annual Disenrollment Rights notifications 	<i>The Guidance applies to all noticing, including intermittent notices such as acknowledgement letters, associated with and necessary to carry out the requirements of the MCO complaint, grievance and appeal processes in PHL 4408-a and Article 49. The Guidance is not intended to change any other MCO notification requirements or methods, such as for premium change notifications..</i>
10.	Would DOH consider allowing MCOs to include a notice of the electronic availability of the member handbook (with an option to request a paper copy) when ID cards are mailed? MCOs would provide members with a prepaid envelope.	<i>The Guidance is not intended to change any other MCO notification requirements, such as for member handbooks.</i>
11.	Can DOH please confirm that “referral” refers to UM-related referrals like specialist referrals?	<i>PHL 4408-a includes requirements for grievance procedures upon denial of a referral. Denial of a specialist referral as not medically necessary would be issued pursuant to PHL Article 49. In both circumstances, these notices could be provided to the enrollee electronically pursuant to the Guidance.</i>
12.	We question the inclusion of “benefit” notices in the Guidance, given that the	<i>The Guidance is not intended to change EOB notification requirements established by the</i>

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	<p>recent changes in law are limited to grievances and utilization review notices.</p> <p>Many commercial MCOs already permit enrollees to elect electronic notifications, including EOBs. We believe existing procedures for these types of benefit notices should be continued to be permitted outside of this Guidance.</p>	<p><i>Department of Financial Services (DFS). The Guidance is also developed to be consistent with prevailing federal and state statute for electronic notifications.</i></p> <p><i>However, the Guidance for electronic notification of notices developed pursuant to PHL 4408-a (15) is applicable to notices issued pursuant to the PHL 4408-a(2)(a) requirement to provide grievance procedures with notice of benefit coverage denials.</i></p>
13.	<p>Section III(A) states that 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.</p> <p>Is this applicable only for receipt of electronic notices? Meaning, can enrollees designate an individual to represent the member in the appeal or grievance through this process?</p>	<p><i>Enrollee authorization for a designee to receive notices maybe enabled under a separate process from the authorization of a designee/representative for complaints or appeals, but the MCO may consider combining communications/information to enrollees about these rights to minimize confusion or administrative barriers.</i></p> <p><i>Note, the Guidance does not change commercial MCO subscriber notification requirements related to their dependents covered under the policy.</i></p>
14.	<p>Where the enrollee has authorized a personal representative or has elected to have someone else handle an appeal, does the enrollee's preferences apply to the representative or does the representative get to elect their own preferences with regard to benefit and medical necessity determination notices?</p>	<p><i>The Guidance has been updated to clarify the authorized representative may make their own selection for receiving electronic notices.</i></p>
15.	<p>Can DOH please provide examples of the modes of communication it defines as electronic (e.g., email, fax, text message)?</p>	<p><i>The cited definition is based on NYS Technology Law and is sufficient to describe electronic notifications within the scope of the Guidance. MCOs may contact DOH if there are specific questions about proposed methods of electronic notifications.</i></p>
Preference Procedures		
16.	<p>Can DOH please clarify whether MCOs must provide written notification within 14 days of:</p> <p>(1) a member's enrollment date, or</p> <p>(2) a member notifying the MCO that they would like to receive notifications electronically?</p> <p>Also, many MCOs have approved applications and enrollment forms for HMO</p>	<p><i>This Guidance has been updated to clarify that the MCO is to provide new enrollees written notification of the option to receive MCO phone and written notifications by electronic means no later than the 14th day after the effective date of enrollment of the member. This initial notification may be combined with other notices, such as a welcome letter. The option for electronic notification may also be provided before the</i></p>

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	<p>coverage that include an option for electronic delivery of documents. Using the application for this purpose is the most practical and logical method for obtaining enrollees' preferences. We therefore request that this be included as an optional alternative to the requirement to send a notice within 14 days after enrollment, at least for commercial HMO coverage.</p>	<p><i>effective date of enrollment as part of the MCO application process.</i></p>
17.	<p>The annual notice requirement is burdensome and unnecessary. In this day and age, enrollees are well aware of their ability to receive communications electronically.</p> <p>Can the annual member notice be a part of the assessment process or should MCOs send a separate letter to members, specific to notification preference? Some MCOs believe combining the annual member notice with other annual mailings/notices would be more efficient and member-friendly, and would appreciate the flexibility to do so.</p>	<p><i>The annual notice provides an important opportunity to remind enrollees to update their contact information and/or to newly opt in for electronic noticing.</i></p> <p><i>This annual notice may be combined with other enrollee notices or contacts, such as member newsletters.</i></p>
18.	<p>Section IV(B) requires MCOs to also post information on electronic noticing options on their website.</p> <p>Can DOH please confirm that this would not suffice as notification to the enrollee?</p>	<p><i>MCOs may utilize web posting to provide enrollees with reminders of the electronic notification option and right to change this option at any time, however, posting information regarding the electronic notification option on the MCO's website does not suffice as annual notification required in IV(A)(2).</i></p>
19.	<p>The applicable laws state that MCOs "may" provide notices electronically if an enrollee indicates a preference for receiving them via this method. Based on this, and to further clarify the Guidance, we request that the Guidance be revised to state: "Where the enrollee indicates a preference for notification by electronic means, MCOs may provide grievance and medical necessity notices to their enrollees by electronic means in accordance with applicable federal and state statutes and regulations and this Guidance. Such electronic notice shall satisfy both written and phone notice requirements."</p>	<p><i>The statute provides an option to the enrollee to elect to receive notices electronically for phone and written notice, and once an MCO obtains that choice, the MCO should honor that preference, and is permitted by the statute to do so. The Guidance reflects this requirement.</i></p>

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20.	<p>A commenter initially requested one e-notice enrollee choice for both phone and written notices, particularly since MCOs are only required to offer one method of electronic notice.</p> <p>At the December meeting, DOH asked the associations whether MCOs would prefer that enrollees make their elections for both written and phone notices together or track them separately – The associations reported that of the few MCOs heard from, all said they prefer to track phone and written elections separately, as the regulation timelines differ.</p>	<p><i>There are separate phone notice and written notice timeframe requirements in statute with phone notice is typically required in a shorter timeframe than written notice. Having one e-notice selection satisfying both written and phone requirements could potentially shorten the timeframe for the plan to provide the written notice. The Guidance provides that the enrollee may specify their preference for phone and written notice separately.</i></p>
21.	<p>The requirement to confirm an enrollee’s preference for electronic communications in writing is unnecessary, overly burdensome, and contrary to an enrollee’s preference for receiving notices electronically. While this would be an understandable requirement if electing electronic communications were on an “opt out” basis, given the fact that enrollees must affirmatively choose the option makes the confirmation unnecessary. Also, receiving a written notice after affirmatively electing to receive notices electronically would cause enrollee frustration.</p>	<p><i>The Guidance is a blend of prevailing federal and state requirements. 42 CFR 435.918(b)(1) requires confirmation by regular mail. This procedure is also a security mechanism to confirm electronic/web log on access was actually initiated by the enrollee.</i></p>
Electronic Notification Requirements		
22.	<p>Do all electronic notices need to be compliant with ADA Section 508? MCOs note that 508 conversions of all electronic notices may be costly, particularly for larger materials.</p>	<p><i>Notices issued under the Guidance are required to be readily accessible as defined in Section II of the Guidance, including complying with Section 508, if applicable to the MCO's chosen method of electronic notification.</i></p>
23.	<p>In the absence of a member portal, would an email constitute electronic communication?</p> <p>If MCOs cannot share confidential information in an email, then does that mean that the requirement in effect is to have a patient portal?</p>	<p><i>The Guidance does not require a web-based portal that maintains an account for the enrollee. Emails are an electronic communication. The Guidance has been updated to clarify:</i></p> <ul style="list-style-type: none"> • <i>The MCO may not include confidential information in an unsecured email or electronic alert.</i> • <i>Where the MCO is not using an electronic/web-based portal, electronic notification will be transmitted to the enrollee directly in a secured manner</i>

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24.	<p>What are the HIPAA implications in the event an enrollee designates their adult child as the recipient to receive electronic notifications and for example, the adult child indicates the fax number at their place of employment as the contact information? Can DOH please clarify the protocol in instances other than email?</p>	<p><i>MCOs should consult with their HIPAA legal advisor. If the MCO intends to provide faxing as an option for enrollee notification, the MCO may wish to consider a disclaimer on enrollee options notice that the enrollee is aware/attests the fax receipt location is confidential.</i></p>
25.	<p>MCOs request more flexibility on the turnaround time for requests for paper or alternative formats; for example, to mail a handbook, MCOs must go to their Print Vendor and this process usually takes at least 4 days before it can be mailed out. The requirement to send paper written notice or provide the notification by a requested alternate format within 2 business days of the request is impractical. We request a minimum of a 5 business days.</p> <p>For requests for materials in braille or audio, these may take even longer than 5 days given the time required to make the necessary translations.</p>	<p><i>In response to these concerns the Guidance has been updated to:</i></p> <ul style="list-style-type: none"> • <i>require that the MCO mail paper copies of notices upon request with 2 business days of the request.</i> • <i>If the MCO receives a new request for notice in a non-English language or alternate format, such alternate notice will be provided within 5 business days. If the MCO, due to the nature of the request, is unable to provide the requested material within 5 business days, the MCO will reach out to the enrollee and offer verbal translation or other assistance (such as assuring the enrollee understands the meaning of the notice and their appeal rights) while the alternate notice is pending, and in any event provide such alternate notice in no more than 30 days after the request.</i>
Surveillance Procedures		
26.	<p>Can DOH please clarify how a “reasonable effort” will be measured?</p>	<p><i>MCO reasonable effort is defined in the DOH Reasonable Effort policy.</i></p>
27.	<p>Would DOH be willing to share its audit plan, including what notification data elements MCOs would need to produce during an audit for either enrollees or providers?</p> <p>If a member requests additional notification, in addition to electronic (i.e., electronic and regular mail, “to accommodate a disability or language need”), how are MCOs to report out on such requests to DOH during an audit?</p>	<p><i>DOH survey procedures will be designed to test compliance with PHL and the Guidance and ensure that MCO procedures work as intended. The Guidance was clarified in Section IV.A.6 as to the minimum data elements MCOs should maintain to substantiate compliance. Ad hoc and new survey questions/procedures are shared with MCOs at the time they become available.</i></p>