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BULLETIN NO: 06-17

TO: CARRIERS SUBJECT TO P.L. 2005, C. 352 AND OTHER INTERESTED PARTIES

FROM: STEVEN M. GOLDMAN, COMMISSIONER

RE: P.L. 2005, C. 352 – HEALTH CLAIMS AUTHORIZATION, PROCESSING AND PAYMENT ACT (HCAPPA) – FORMS

- **INDEPENDENT HEALTH CARE APPEALS PROGRAM APPLICATION**
- **NOTICES OF INTENT TO FILE A UM APPEAL**

The Health Claims Authorization, Processing and Payment Act (HCAPPA or the Act), P.L. 2005, c. 352, was enacted on January 12, 2006, and will become effective on July 11, 2006. Although the Department of Banking and Insurance (Department) intends to promulgate rules appropriate to address the provisions of the HCAPPA, the Department will not have any rules in place prior to the effective date of the HCAPPA. Pursuant to the HCAPPA, carriers and health care providers have an obligation to meet certain requirements of the law as of July 11, 2006, regardless of whether the Department has rules in place at that time. Accordingly, the Department is issuing bulletins in an effort to provide guidance and certain tools to carriers, health care providers to meet the requirements of the law pending adoption of rules.

Among other things, the HCAPPA amends the Health Care Quality Act, *N.J.S.A. 26:2S-1 et seq.*, with respect to the Independent Health Care Appeals Program (IHCAP). The HCAPPA establishes a statutory right of a covered person to consent to representation by a health care provider in an appeal of an adverse utilization management (UM) determination¹ presented to the IHCAP. Furthermore, the HCAPPA specifies that the covered person may consent to such representation and to the disclosure of personal health information² *prior* to receiving health care services, and that such consent would be valid for all stages of a UM appeal. In addition, the

¹ An adverse UM determination involves a denial, reduction, termination or other limitation of a covered health care service, or benefits for such service, resulting from the application of a UM review in which the carrier determines that a service otherwise covered under the terms of the health benefits plan is not medically necessary or appropriate, is cosmetic instead of medically necessary, is dental instead of medical, or is experimental or investigational in the particular circumstance.

² Although the HCAPPA does not specifically reference disclosure of personal health information, release of personal health information by a health care provider or a carrier to a third party for the purposes of appealing a UM determination, especially when the third party is not another covered entity or business associate, requires the covered person's consent pursuant to both federal and state law.

HCAPPA requires that a health care provider that obtains consent must provide written notice to the covered person prior to appealing at each stage of the UM appeal process, and the statute specifies that the covered person retains the right to revoke consent at any time.³

Notice of Intent to Appeal an Adverse UM Determination

This bulletin includes three standardized form letters developed by the Department that health care providers may use to provide notice of an intent to file a UM appeal, as required by the HCAPPA amendments to *N.J.S.A. 26:2S-11*. The Department has tailored each notice to address a specific stage of appeal. The Department has also designed the forms for information tracking purposes. Health care providers are urged to use these forms until further notice if the health care provider has obtained consent to make an appeal on behalf of a patient using the *Consent To Representation In Appeals Of Utilization Management Determinations And Authorization For Release Of Medical Records In UM Appeals And Independent Arbitration Of Claims* form (*Consent and Authorization*).⁴ The Department urges health care providers to send these notices to the last recorded home address of the patient and the address of the personal representative (if any) as indicated on the *Consent and Authorization* form, if the personal representative's address is different from the home address on record for the patient. The Department also urges health care providers to send notices using a delivery confirmation process. Please note, a health care provider is not required to send notices using a specific process, but the Department believes it would be helpful if the health care provider has the ability to confirm that delivery was attempted at the last known address of the patient and/or the patient's personal representative.

The requirement that health care providers send notice to patients regarding a health care provider's intent to file an appeal becomes effective as of July 11, 2006. The requirement appears to be independent of whether the health care provider obtains consent to represent the patient in UM appeals prior to services being rendered or after the carrier issues an adverse UM determination. Accordingly, the attached notices are designed to be used regardless of when consent was obtained. However, the notices are designed specifically to be used with the *Consent and Authorization* form. (The *Consent and Authorization* form may be used either before or after services are rendered and before or after an adverse UM determination is issued by the carrier.) These notices are not designed to be used in situations in which consent was obtained through a *Request for Review through the Independent Health Care Appeals Program*⁵.

³ By virtue of state and federal regulations, health care providers heretofore had been permitted to appeal to a carrier on behalf of a covered person with the covered person's consent. Health care providers had also been permitted to appeal to the IHCAP on behalf of a covered person with that person's consent pursuant to state rules. Notably, the Department had *not* accepted consents for IHCAP appeals when consent was given *prior* to the date that a UM determination was made. Also, the Department had not required any further notice by the health care provider to the covered person, based upon the assumption that the covered person understood when consent was given that the health care provider intended to initiate the appeal.

⁴ The Department also issued the *Consent and Authorization* as part of Bulletin 06-16.

⁵ The Department will continue to accept completed *Request for Review through the Independent Health Care Appeals Program* forms with respect to health care services rendered prior to July 11, 2006. Further discussion is provided in the section discussing the Application for the Independent Health Care Appeals Program.

The notice forms will be posted to the Department's website. The Department suggests that health care providers to modify the forms to make them provider-specific, and maintain a copy of the modified form for the health care provider's use. The Department has designed the electronic form to permit health care providers to add their name (and possibly logos), establish procedures for inserting addresses, inset office contact information, and insert standard sign-off language. Other modifications to the forms will not be permitted.

*Application to the Independent Health Care Appeals Program
Impact of the HCAPPA Effective Date*

The Department has revised the application for IHCAP review. A copy of the revised form is attached. The Department has revised the form so that it may be used by health care providers directly in conjunction with the *Consent and Authorization* form as well as being used by covered persons who may elect to file the application for IHCAP review separately. Health care providers (and covered persons) should use the *Application for the Independent Health Care Appeals Program* to make all IHCAP appeal requests filed on or after July 11, 2006. If the request addresses health care services rendered on or after July 11, 2006 or prior authorizations filed on or after July 11, 2006, the *Application for the Independent Health Care Appeals Program* should be accompanied by the *Consent and Authorization* form. If the request addresses services rendered prior to July 11, 2006 or authorization requests made prior to July 11, 2006, the Department still requires completion of the *Application for the Independent Health Care Appeals Program* but, as evidence of a patient's consent to representation and release of medical information, the health care provider may submit **either** the *Request for Review through the Independent Health Care Appeals Program* signed and dated by a covered person prior to July 11, 2006 (it need not otherwise be completed) **or** the *Consent and Authorization* form **so long as** it is clear that consent was not obtained prior to services being rendered. The Department will not require a copy of the *Notice of Intent to Appeal an Adverse UM Determination – Stage 3* to be attached to the *Application for the Independent Health Care Appeals Program* when the request involves health care services rendered or authorization requests submitted prior to July 11, 2006.⁶

Heretofore, the IHCAP application form was used to apply to the IHCAP, and when appropriate, also provided evidence of a covered person's consent to representation by a health care provider in the appeal process, but only after an adverse UM determination was issued by the carrier. With the HCAPPA amendment to N.J.S.A. 26:2S-11 allowing health care providers to obtain consent prior to services being rendered, and development of the *Consent and Authorization* form, a significant function of the IHCAP application form is changed. This change substantially reduces the Department's reluctance to post the IHCAP application form on the Internet. Accordingly, the Department intends to post the *Application for the Independent Health Care Appeals Program* on the Department's website. The form may be completed online and the completed information saved. However, in no event should any party attempt to modify the form in any other manner.

⁶ Although the Department and its contractors will not require evidence that the health care provider gave notice of the intent to file an appeal in this situation, health care providers are reminded that the language of the *Consent and Authorization* form indicates that the health care provider will send notices prior to filing UM appeals.

Questions regarding this bulletin may be directed to Consumer Protection Services, Office of Managed Care, by phone at (609) 292-5316 ext. 50998, or by fax at (609) 633-0807. Please specify that the question concerns the HCAPPA UM Appeal Notices for speediest reply.

The Department also issued Bulletin 06-16 related to the implementation of Chapter 352, and may issue other bulletins in the coming weeks. Bulletin 06-16 includes the *Consent and Authorization* form, the *Health Care Provider Application to Appeal a Claims Determination* form and discusses use of those forms. Bulletin 06-16 also discusses the effective date of the HCAPPA in general, and the HCAPPA's applicability to various carriers and health care providers.

The Department intends to propose rules in the near future to implement the provisions of the HCAPPA. Notice of the proposed rulemaking and directions for public comment will appear on the Department's website at www.state.nj.us/dobi/legsregs.htm. A copy of this bulletin and other HCAPPA-related bulletins will also be posted to the website.

7/10/06
Date

/s/ Steven M. Goldman
Steven M. Goldman
Commissioner

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