



State of New Jersey

DEPARTMENT OF HEALTH AND SENIOR SERVICES

PO BOX 360
TRENTON, N.J. 08625-0360

www.state.nj.us/health

JAMES E. MCGREEVEY
Governor

CLIFTON R. LACY, M.D.
Commissioner

**BULLETIN
OMC 2004-03**

TO: Carriers subject to the Health Care Quality Act and Organized Delivery Systems

FROM: Marilyn Dahl, Deputy Commissioner, New Jersey State Department of Health and Senior Services

DATE: September 24, 2004

RE: Use of Carrier-generated Consent Forms

It has been brought to the attention of the Department of Health and Senior Services (Department) that some carriers are no longer accepting consent forms generated by health care providers or other parties seeking to represent the interests of the carriers' members in appeals of adverse utilization management (UM) determinations, but rather, are requiring submission of completed consent forms generated by the carriers. Use of carrier-generated consent forms is not prohibited under New Jersey statutes and regulations so long as the requirement does not become an impediment to the appeal process. This bulletin is intended to advise those carriers subject to the Health Care Quality Act, P.L. 1997, c. 192 (as codified, N.J.S.A. 26:2S-1 et seq.), and amendments thereto, of how they may use carrier-generated forms so as not to create an impediment to the appeal process established by N.J.A.C. 8:38-8.4 through 8.7 and N.J.A.C. 8:38A-3.5 or 4.12.

Pursuant to N.J.A.C. 8:38-8.4(b), nothing in the HMO's policies shall prohibit discussions or exercise of the right to an appeal available at N.J.A.C. 8:38-8.5 through 8.7. Thus, the Department is setting forth the following conditions which we believe to be both reasonable and in compliance with New Jersey laws regarding the right to appeal:

- A requirement that the consent be witnessed.
- A requirement that the consent be given only after receipt of an adverse determination disseminated by telephone or in writing to any party, whichever method of dissemination occurs first.
- A requirement that the completed consent be received by the carrier prior to the carrier issuing any decision on the appeal to any representative party.

Conversely, the Department views the following conditions as unreasonable, and those which may have the potential to create both impediments and violations of N.J.A.C. 8:38-8.4(b):

- A requirement that the consent be notarized.
- A requirement that the representative be a natural person.
- A requirement that a witness have a specific title of office, have a familial relationship to the member, or any relationship to the designated representative.
- A requirement that the consent be received by the carrier within a time frame that is less than the time frame established for initiating and processing the appeal.
- A requirement that separate consents be given for separate stages of the appeal process.

In addition, carriers that require the use of a carrier-generated consent form for appeals of adverse determinations may do so only if the carrier includes the carrier-generated form with the written notice of the adverse determination, and at the time of any verbal denial offers to transmit the consent form by fax, email, or other means, or provides information about how to download the form from a web page, so that members and their representatives are not unduly delayed in their efforts to obtain and complete the carrier's form. Please note that the carrier may not rely solely upon use of a downloadable form or email transmissions. Also, it should be noted that the Department has always expected carriers to process appeals on the basis of telephone contact, and that expectation continues. Further, please be advised that in no event may a carrier refuse to start processing an appeal received via phone because a consent form (carrier-generated or by other means) has not been received.

While not prompted by federal rules at 29 C.F.R. 2560.503 (which set forth procedures for appealing adverse determinations), the federal rules allow an authorized representative of a claimant to act on behalf of such claimant in pursuing a benefit claim or appeal of an adverse benefit determination and permit carriers to establish reasonable procedures for determining whether an individual has been authorized to act on behalf of a claimant. The Department believes that carriers may readily comply with New Jersey's rules regarding appeals and the Federal rules at 29 C.F.R. 2560.503, including taking advantage of the opportunity to put in place procedures for determining that representation has been authorized, based on the guidance contained in this bulletin. Naturally, carriers should structure their consent forms to comply with all other applicable state and federal rules.

Questions regarding this matter may be directed to Sylvia Allen-Ware, Director of the Office of Managed Care, by email at Sylvia.Allen-Ware@doh.state.nj.us, by facsimile at (609) 633-0807, or by phone at (609) 633-0660.