



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

### **Guidance for Required Changes to Medicaid Model Notices**

#### **I. Purpose**

To provide guidance to Medicaid Managed Care Plans (MMCPs), including Mainstream Managed Care Plans (MMC), HIV Special Needs Plans (HIV SNP) Health and Recovery Plans (HARP), Managed Long Term Care Partial Capitation Plans (MLTCP), Medicaid Advantage Plans (MA), and Medicaid Advantage Plus Plans (MAP) on required changes to Medicaid model notices. This guidance applies to MMCPs and their management contractors who are delegated to conduct and issue coverage and/or utilization review determinations.

#### **II. Authority**

Centers for Medicare and Medicaid Services (CMS) Regulations at 42 CFR Part 431 and Part 438, New York State Social Services Law §364-j, New York State Public Health Law §4408-a, Medicaid Managed Care/Family Health Plus/HIV Special Needs Plan/Health and Recovery Plan Model Contract, Managed Long Term Care Partial Capitation Model Contract, Medicaid Advantage Model Contract, and Medicaid Advantage Plus Model Contract.

#### **III. Overview of Program Changes Impacting Medicaid Model Notices**

##### **a. Federal Regulations**

###### **i. 42 CFR Part 438**

- A. In November 2020, CMS published an amendment to the 2016 Final Rule that removed the requirement that an oral appeal be confirmed in writing unless an expedited appeal resolution was requested.
- B. Initial Adverse Determination (IAD) model notices currently contain language that describes the eliminated requirement.

###### **ii. 42 CFR Part 431**

- A. Final Adverse Determination (FAD) model notices must include reference fields for the appeal filing date and appeal determination date to ensure compliance with requirements at 42 CFR 431.244(f).

##### **b. State Statute**

###### **i. Chapter 318 of the Laws of New York 2020**

- A. This law requires the name, address, phone number and website for the Department of Health (DOH) designated independent consumer assistance program and the independent substance use disorder and mental health ombudsman be included on all notices of adverse determinations, grievances, and appeals.

- B. DOH Designated Independent Consumer Assistance Programs and Independent Substance Use Disorder and Mental Health Ombudsman
  - 1. Independent Consumer Advocacy Network (ICAN)
    - a. ICAN is an independent consumer assistance program that serves enrollees in MLTCP, MAP and HARP; and enrollees in MA, MMC and HIV SNP who are receiving Long Term Supports and Services (LTSS).
    - b. Note: ICAN language currently included on Medicaid model notices does not meet Chapter 318 requirements.
  - 2. Community Health Advocates (CHA)
    - a. CHA is an independent consumer assistance program that will begin serving enrollees in MA, MMC or HIV SNP who are not receiving LTSS services.
  - 3. Community Health Access to Addiction and Mental Healthcare Project (CHAMP)
    - a. CHAMP is the independent substance use disorder and mental health ombudsman that will begin serving enrollees in all MMCPs.

#### IV. Impacted Medicaid Model Notices

- a. The following Medicaid model notices must be updated to comply with the program changes described in Section III of this guidance:
  - i. Complaint
  - ii. Complaint Appeal
  - iii. Extension
    - A. Note: Medicaid enrollees have a right to file a complaint regarding a plan-initiated extension, therefore DOH is requiring Extension notices be updated to include Chapter 318 required information.
  - iv. Initial Adverse Determination (with and without aid continuing)
  - v. Final Adverse Determination (with and without aid continuing)
- b. Note for MA and MAP plans: CMS notices for Organization Determinations regarding services determined to be a benefit under both Medicare and Medicaid, Coverage Determinations and Appeal Decisions are also impacted. Plans will receive updated notices from CMS.

#### V. Required Model Notice Changes

- a. State Statutory Updates
  - i. MLTCP and HARP
    - A. All notices described in Section IV(a) must be updated with revised ICAN language and CHAMP language.
  - ii. MAP
    - A. Notices described in Section IV(a)(i) and (ii) must be updated to include revised ICAN language and CHAMP language.
  - iii. MA, MMC and HIV SNP
    - A. Notices described in Section IV(a) must be updated to include the following:
      - 1. revised ICAN language if the notice is used for LTSS decisions.

2. CHA language if the notice is used for non-LTSS decisions.
  3. CHAMP language.
- b. Federal Regulatory Updates
- i. MLTCP, MA, HARP, MMC and HIV SNP
    - A. Notices described in Section IV(a)(iv) must be updated to remove the sentence “*If you ask for a Plan Appeal by phone, unless it is fast tracked, you must also send your Plan Appeal to us in writing*”, as outlined in Attachment B.
    - B. Notices described in Section IV(a)(v) must be updated to include reference fields for the date the appeal was filed, and the date of the appeal determination, as outlined in Attachment B.

## VI. Model Notice Submission Process

- a. MMCPs must resubmit their model notices, with the required changes described in Section V, to DOH for review and approval prior to implementing the changes. Model notice submissions should be sent to DOH no later than **12/3/21**.
- b. Model notice submissions should be sent to the following mailboxes:
  - i. [bigaplans@health.ny.gov](mailto:bigaplans@health.ny.gov) for MMC, HARP and HIV SNP, or;
  - ii. [mltcmode notices@health.ny.gov](mailto:mltcmode notices@health.ny.gov) for MLTCP, MA and MAP.
- c. Reminder: only MMCPs may submit model notices for review. Model notice submissions received from management contractors will be returned.
- d. Model notice submissions must include:
  - i. A coversheet for each model notice
    - A. Additional requirement for MMC and HIV SNP notices: Coversheets with LTSS selected as a decision type must include a clear statement in the Comments/Notes section of the coversheet indicating if the notice is used for LTSS decisions only or if it is used for both non-LTSS and LTSS decisions.
  - ii. Model notices with the required changes outlined in Section V in redline
  - iii. An estimated date of implementation of the changes for both the MMCP and each of their management contractors
  - iv. Submissions that include previously approved model notices should also include an attestation that states that the only changes made to the notices are the required changes described in this guidance
- e. Model notice submissions that do not include all applicable information outlined in Section VI(d) will be returned to the MMCP for correction. Model notice submissions that include all applicable information outlined in Section VI(d) will be reviewed for approval. Once approved, the MMCP will receive an updated model notice tracking sheet for their records.
- f. Updated model notice templates can be found on the Service Authorization and Appeals webpages:
  - i. For Mainstream Medicaid Managed Care Plans, HARP and HIV SNP ([https://www.health.ny.gov/health\\_care/managed\\_care/plans/appeals/](https://www.health.ny.gov/health_care/managed_care/plans/appeals/))
  - ii. For Medicaid Managed Long Term Care Plans ([https://www.health.ny.gov/health\\_care/managed\\_care/plans/appeals/42\\_cfr\\_438.htm](https://www.health.ny.gov/health_care/managed_care/plans/appeals/42_cfr_438.htm))

## VII. Implementation

- a. MMCPs and their management contractors shall implement the required changes after receiving DOH approval, as soon as possible and no later than **4/1/22**.
- b. Questions about this guidance can be sent to the following mailboxes:
  - i. [bigaplans@health.ny.gov](mailto:bigaplans@health.ny.gov) for MMC, HARP and HIV SNP, or;
  - ii. [mltcmodeInotices@health.ny.gov](mailto:mltcmodeInotices@health.ny.gov) for MLTCP, MA and MAP.

## Attachment A: Chapter 318 Required Language

### Revised ICAN language:

{Insert for all MLTCP/MAP/HARP; Insert for MA/MMC/HIV SNP only when services are LTSS or Delete} [You can also call the Independent Consumer Advocacy Network (ICAN) to get free, independent advice about your coverage, complaints, and appeals' options. They can help you manage the appeal process. Contact ICAN to learn more about their services:

Independent Consumer Advocacy Network (ICAN)  
Community Service Society of New York  
633 Third Ave, 10<sup>th</sup> Floor  
New York, NY 10017  
**Phone:** 1-844-614-8800 (**TTY Relay Service:** 711)  
**Web:** [www.icannys.org](http://www.icannys.org) | **Email:** [ican@cssny.org](mailto:ican@cssny.org)]

### CHA language:

{Insert for MA/MMC/HIV-SNP for non-LTSS Services or Delete} [For advice about your coverage or help filing a complaint or appeal, you can contact Community Health Advocates (CHA) at:

Community Health Advocates (CHA)  
Community Service Society of New York  
633 Third Ave, 10<sup>th</sup> Floor  
New York, NY 10017  
**Phone:** 1-888-614-5400 (**TTY Relay Service:** 711)  
**Web:** [www.communityhealthadvocates.org](http://www.communityhealthadvocates.org) | **Email:** [cha@cssny.org](mailto:cha@cssny.org)]

### CHAMP language:

Are you having trouble getting the substance use disorder or mental health services that you need? The Community Health Access to Addiction and Mental healthcare Project (CHAMP) is an ombudsman program that can help you with insurance rights and getting coverage for your care. CHAMP can help! Contact:

Community Health Access to Addiction and Mental Healthcare Project (CHAMP)  
Community Service Society of New York  
633 Third Ave, 10<sup>th</sup> Floor  
New York, NY 10017

**Phone:** 1-888-614-5400 (**TTY Relay Service:** 711)

**Web:** <https://www.cssny.org/programs/entry/community-health-access-to-addiction-and-mental-healthcare-project-champ>

**Email:** [ombuds@oasas.ny.gov](mailto:ombuds@oasas.ny.gov)

**Attachment B: Federal Regulatory Compliance Updates**

**IAD language- to be removed:**

**Step 2 – Send us your Plan Appeal.**

Give us your information and materials by phone, fax, [email,] mail, [online,] or in person:

Phone..... [1-800 MCO number]  
Fax..... [fax number]  
Email..... [email address]  
Mail..... [address] [city, state zip]  
Online..... [web portal]  
In Person..... [address] [city, state zip]

~~If you ask for a Plan Appeal by phone, unless it is fast tracked, you must also send your Plan Appeal to us in writing.~~ To send a written Plan Appeal, you may use the attached Appeal Request Form, but it is not required. Keep a copy of everything for your records.

**FAD reference fields- to be added\*:**

**FINAL ADVERSE DETERMINATION  
DENIAL NOTICE**

[Date]

[Enrollee]

[Address]

[City, State Zip]

Enrollee Number: [ID number or CIN]

Coverage type: [coverage type]

Plan reference number: [plan reference number]

Provider: [provider to perform the service]

Facility: [Facility]

Service developer/manufacturer: [service developer/manufacturer]

~~Date appeal filed: [date appeal filed]~~

~~Date of appeal determination: [date of appeal determination]~~

*\*Note: These fields should be added to both FAD with A/C and FAD no A/C notices.*