



**Guidance for Enrollee Electronic Notification of Managed Care Organization Determinations  
Questions and Answers  
Updated 10/3/22**

**Changes to previous DOH responses are highlighted in yellow**

	Question/Comment	DOH Response
<b>Implementation</b>		
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>MMCPs will have 90 days after receipt of State approval of the required documents to implement Electronic Notification 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>A template letter was developed for the purposes of notifying members of the option to select electronic noticing. MMCPs are required to use the template Electronic Notice Option Letter to meet the requirements in Section IV (A)(1) and (2) of this Guidance.</i>
<b>Scope</b>		
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>



	Question/Comment	DOH Response
6.	Does DOH take a position on electronic communications to members that are not required of the MCO, such as disease management information or information about vaccine programs?	<i>The <u>Guidance for Enrollee Electronic Noticing of Managed Care Organization Determinations</u> (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.	<p>Are certain documents, communications, and notifications out of the scope of the Guidance (i.e., grievances, service authorizations, appeal determination notices, etc.)?</p> <p>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.</p>	<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.	<p>MCOs request that they be allowed to offer paperless opt-in preferences for at least the following notices:</p> <ul style="list-style-type: none"> <li>• Explanation of Benefits (EOBs)</li> <li>• QHP/OFF Exchange benefit changes</li> <li>• Prior approval rate change notices</li> <li>• QHP/EP/CHP Delinquency reminder letters</li> <li>• Annual Disenrollment Rights notifications</li> </ul>	<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>



	Question/Comment	DOH Response
12.	<p>We question the inclusion of “benefit” notices in the Guidance, given that the 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>The Guidance is not intended to change EOB notification requirements established by the 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><b><i>This Guidance is intended to implement electronic transmittal methods of MCO notices to enrollees and their designees. It is not intended to amend or expand any requirements around authorizing designees.</i></b></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>
16.	<p>We recommend revising the guidance by deleting the term “Determination, as not all notices subject to the guidance are determinations. We also recommend using the defined terms “Notification” to apply to all notices subject to the guidance in order to streamline and clarify the guidance.</p>	<p><i>The definition of Notice/Notification has been updated to mean information to be provided to an enrollee during and after the completion of the MCO’s Determination process, including but not limited to Determination notices along with any applicable forms, acknowledgement letters, review extension letters and requests for more information.</i></p>



	<b>Question/Comment</b>	<b>DOH Response</b>
17.	<p>Please confirm this guidance includes:</p> <ul style="list-style-type: none"> <li>• Initial Adverse Determinations (IADs), including the Appeal Request Forms</li> <li>• Final Adverse Determinations (FADs), including the Managed Care Decision Fair Hearing Request Form.</li> </ul>	<p><i>The definition of Notice/Notification has been updated to clarify that it includes, but is not limited to, Determination notices along with any applicable forms.</i></p>
18.	<p>Are there any exceptions to members that are 'allowed' to request electronic noticing (e.g. Foster Children)?</p>	<p><i>The option to receive notices by electronic means is written into State statute in PHL 4408-a, 4903 and 4904 and is not limited to certain members.</i></p>
19.	<p>Please clarify if the NYSDOH Guidance will apply to the following:</p> <ul style="list-style-type: none"> <li>• Integrated Medicaid Advantage Plus (MAP) Plans</li> <li>• Child Health Plus (CHPlus) Plans</li> <li>• Essential Plan (EP)?</li> </ul>	<p><i>NYSDOH Medicaid Managed Care, Child Health Plus and the Essential Plan program areas will each issue separate guidance to their plans.</i></p>
20.	<p>Our plan provides electronic noticing if requested by member or caregiver. Many mailings have a notice of non-discrimination that provides information on how to request electronic noticing. MLTC does not offer this preference upon enrollment and on the Q6 month reassessment. Due to our membership, smart phone or tablets is not the norm.</p> <p>We suggest that this be an option upon request, which we are in currently in compliance with.</p>	<p><i>The option to receive notices by electronic means is written into State statute and is not limited to instances only where an enrollee requests it to accommodate a disability. MCOs must provide all enrollees the option to select electronic noticing as their preferred method of notification and if the enrollee chooses electronic noticing, the MCO must provide notice by that electronic method.</i></p>
21.	<p>The laws the guidance is implementing are limited to grievance and utilization review notices. As written, the guidance is broader than the authorizing laws. Specifically, the guidance includes "complaint" notices. However, the laws allowing members to express their preferences for delivery of notices do not apply to complaints. 10 NYCRR 98-1.14 expressly states this fact: "For purposes of this Subpart, a complaint is any issue of dissatisfaction with the MCO's operations other than those grievances identified in article 4408--a of the Public Health Law".</p> <p>We therefore request that references to complaints be deleted from the guidance as beyond the scope of the guidance's statutory authority.</p>	<p><i>NYSDOH has made a programmatic decision to include complaint notices to allow for consistency in noticing and ease of MCO implementation of this Guidance.</i></p>



	<b>Question/Comment</b>	<b>DOH Response</b>
22.	<p>We request that there be one e-notice choice for both phone and written notices. Having to track whether a particular member has requested one type of notice electronically but not another is overly burdensome. We believe this is supported by the statutory language which provides that “Written and telephone notification to an enrollee or the enrollee’s designee under this section may be provided by electronic means where the enrollee or the enrollee’s designee has informed the organization in advance of preference to receive such notifications by electronic means.”</p> <p>At a minimum, Plans should be given the option of whether to permit a single method of delivery for both types of notices.</p>	<p><i>Timeframes for phone notice and written notice differ within statute and combining both into one notice requires MCOs to comply with the shorter timeframe. MCOs were outreached by the Trades after discussion with DOH in December 2020 and of the MCOs that responded, all said they would prefer tracking separately.</i></p> <p><i>Statute amendments at PHL 4408-a(15), 4903(9) and 4904(3)(b) state that written and telephone notification under these sections may be provided electronically if the enrollee/designee inform the MCO that they prefer to receive them electronically. Currently two separate and distinct notices are required to be provided and the Guidance does not amend or expand any existing notice requirements.</i></p>
23.	<p>The permission for electronic notice given in section 438.10 is limited to non-individualized member information. All adverse determination notices must be mailed to the consumer in addition to being provided electronically. This is because federal managed care regulations state that the plan must “mail” adverse determination notices within specified timeframes . 42 C.F.R. § 438.404(c).</p> <p>The federal regulations simply require that plan notices be sent by mail. 42 C.F.R. § 438.404(c). That regulatory section was updated in 2016, after the ACA regulations were developed which included electronic notification for eligibility recertifications. If electronic notification was contemplated for individualized plan notices, CMS could have included that in the 2016 amendments to the managed care regulations. For these reasons, even where electronic notifications are used in response to a consumer’s expressed preference, certain notices of adverse determination must also be mailed.</p>	<p><i>As noted in the comment, federal regulation requires that “notice of adverse benefit determination” be made “in writing consistent with... § 438.10.” 42 CFR § 438.404. Section 438.10 permits electronic member notifications. See 42 CFR § 438.10. The commentary to the Final Rule for Part 438, as published in the Federal Register on May 6, 2016 specifically discusses the electronic mailing of adverse benefit determinations and notes that they are permitted under 42 CFR § 438.10. See Federal Register, Vol. 83, No. 88, May 6, 2016, 27637 (With regard to 42 CFR § 438.420, the filing for a continuation of benefits following an adverse benefit determination, it is noted “[i]n the final rule, we will replace the term “mailing” with “sending” to recognize that electronic communication methods, subject to § 438.10, may be used.)</i></p> <p><i>State statute provides enrollees the option to receive notices by electronic means. Further, it states that where an enrollee elects noticing by electronic means, the MCO must provide notice to the enrollee by that electronic means. Requiring MCOs to provide notice by both mail and electronic means to enrollees who have elected to receive notices electronically not only goes against the enrollee’s wishes to receive notice electronically, but also eliminates the administrative cost savings that will be achieved by this initiative.</i></p>



	<b>Question/Comment</b>	<b>DOH Response</b>
24.	<p>The technological resources and skill set of the Medicaid managed care population must be taken into account, particularly the MLTC population which is exclusively elderly and/or disabled. While one might think those without skills or computer access simply will not opt for electronic notification, some may do so just because they have an e-mail address. However, they may still lack the technological skills, software and devices needed to navigate secure portals, and to open, read and save password-protected emails and attachments. Others may be unable to complete all of these actions using a mobile phone to access the internet, which may be their only device. Those using accessibility technology may have difficulty opening, reading and downloading PDFs with their screen readers, due to compatibility or other issues.</p> <p>Perhaps most importantly, Medicaid benefits are protected by due process rights, which other insurance benefits are not. Given the risk that a notice may not be received electronically, protective procedures and safeguards are essential that may not be necessary for other populations.</p>	<p><i>NYSDOH believes the Guidance contains sufficient safeguards including: allowing designees to receive notices electronically, requiring that MCOs provide instructions to the enrollee on how to use their electronic notification method and answer enrollee's questions related to the method, allowing enrollees to change their preference at any time, allowing enrollees to request any electronic notice be provided in paper form, and requiring that when an MCO receives indication that an electronic notice was undeliverable the MCO must provide the required notice by phone and mail in compliance with applicable law/regulation.</i></p>
25.	<p>While we have long supported giving consumers the option of designating a third party to receive copies of notices, this does not replace notice to the consumer. Also, critical protections are needed. First, the plan must send the proposed designee information explaining their responsibilities and obtain their written consent. DOH should develop a template for that letter to the proposed designee, which also offers the designee the option to receive notices electronically.</p> <p>Second, adverse determinations should be sent to both the consumer and the designee. Due process consideration requires that the beneficiary be noticed of any changes to their benefits. Notice to a third-party can be a good protection for the consumer, but the bottom line is that the consumer has the right to receive adverse notices directly by regular mail.</p>	<p><i>A template letter was developed for the purposes of notifying members of the option to select electronic noticing. MMCPs are required to use the template Electronic Notice Option Letter to meet the requirements in Section IV (A)(1) and (2) of this Guidance.</i></p> <p><i>The Guidance does not amend any requirements related to notices, therefore the enrollee and their designee will both continue to be noticed in accordance with federal and state statute and regulations, which may be by electronic means.</i></p>



	<b>Question/Comment</b>	<b>DOH Response</b>
26.	Do case files and evidence packets qualify for electronic notification?	<i>Case files and evidence packets are not within the scope of this Guidance.</i>
27.	The guidance says consumers may elect one type of notification for notifications normally given in writing, and a different type of notification for those given by phone. III.B. We are at a loss for what types of notifications would normally be given by phone, given that that the guidance overview lists notifications covered by this guidance as those normally given only in writing: "...notifications required for MCO coverage determination, complaint, grievance, service authorization, adverse determination, or appeal processes..., including but not limited to: acknowledgement letters, review extension letters, and requests for more information."	<i>Public Health Law was amended at 4408-a(15), 4903(9) and 4904(3)(b) to provide for written and telephone notification to an enrollee or the enrollee's designee by electronic means where the enrollee or the enrollee's designee has informed the organization in advance of preference to receive such notification. Public Health Law requires phone notice for determinations at 4408-a(6), 4903(2)(a), 4903(2)(b), and 4903(3).</i>
28.	Consumers, and their beneficiaries and advocates, should have the right to submit requests electronically in these and other situations: Requesting a plan appeal, requesting documents, requesting prior authorization or concurrent review.	<i>This is outside of the scope of this Guidance.</i>
29.	Can a designee be the member's physician? If so, will we need to require written notification of this election?	<i>This Guidance is intended to implement electronic transmittal methods of MCO notices to enrollees and their designees. It is not intended to amend or expand any requirements around authorizing designees.</i>



	Question/Comment	DOH Response
30.	<p>The guidance states that “enrollees have the right to authorize a designee to receive Notifications on their behalf.” We note that all of Article 49, as well as section 4408-a permits an enrollee to appoint a designee. This includes receiving notices and filing grievances and appeals. The guidance is written such that it sounds that an enrollee can authorize a designee to receive electronic notifications separate from appointing a designee for grievances and utilization review in general.</p> <p>We request that the guidance clarify that a designee may be appointed for purposes of section 4408-a and Article 49 in general and that if such a designee is appointed, then the electronic preference section applies to the designee as well.</p>	<p><i>The Guidance has been updated to clarify that it is not intended to amend or expand any requirements around authorizing designees. If the enrollee authorizes a designee, the MCO will ensure notices are provided to the designee in accordance with federal and state statute and regulations and the Guidance.</i></p>
<b>Preference Procedures</b>		
31.	<p>Can DOH please clarify whether MCOs must provide written notification within 14 days of:</p> <ul style="list-style-type: none"> <li>(1) a member’s enrollment date, or</li> <li>(2) a member notifying the MCO that they would like to receive notifications electronically?</li> </ul> <p>Also, many MCOs have approved applications and enrollment forms for HMO 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>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 effective date of enrollment as part of the MCO application process.</i></p>





	Question/Comment	DOH Response
32.	<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>
33.	<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, or adding this information to the MCO's member handbook, does not suffice as annual notification required in IV(A)(2).</i></p>
34.	<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>
35.	<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>



	<b>Question/Comment</b>	<b>DOH Response</b>
36.	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.	<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>
37.	Does the information regarding the electronic option on the Plan website have to be contained on the public site or can it be available through the member portal which would require a log-in?	<i>The Guidance has been updated to clarify that this information must be placed in a public facing location on the MCO's website that is prominent and readily accessible.</i>
38.	To improve data quality, could NYS supply member email addresses as part of the 834 enrollment file transactions?	<i>The MCO should collect this information directly from the enrollee/designee.</i>
39.	In the initial and annual member preference collection process, MCO should be allowed to mention that it is the member's responsibility to ensure the phone number and/or email address on file with MCO is current and updated as soon as possible when changed.	<i>Nothing precludes the MCO from including this language in their preference collection process.</i>
40.	MCP will need at least 10 business days for the process to revise the enrollee's preference at any time and ensure such change is effective upon enrollee's notifying (by any means) the MCO of such change in notification preference.	<i>The Guidance has been updated to reflect that preference change requests made by electronic means must be effective within 5 business days from receipt of the request. Preference change requests made by mail must be effective within 10 business days from receipt of the request.</i>
41.	We request that the annual notice requirement be eliminated if a Plan regularly communicates that digital notification option exists if they choose to select.	<i>Annual notification requirements outlined in Section IV(A)(2) must be met for the MCO to be considered in compliance with the Guidance.</i>
42.	The written confirmation should request that the consumer confirm their election of electronic noticing by giving them instructions to establish an online account, if that is the method the plan will use, followed by a test notification, which the consumer confirms receiving and being able to open a document. Or the plan should send a test notification to the consumer, requiring that they open a document delivered electronically and confirm the ability to open the document.	<i>Nothing precludes the MCO from testing the enrollee's preferred electronic method of communication prior to sending notices via that method.</i>
<b>Electronic Notification Requirements</b>		



	Question/Comment	DOH Response
43.	<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>
44.	<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"> <li>• <i>The MCO may not include confidential information in an unsecured email or electronic alert.</i></li> </ul> <p><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></p>
45.	<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?</p> <p>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>
46.	<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"> <li>• <i>require that the MCO mail paper copies of notices upon request with 2 business days of the request.</i></li> </ul> <p><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></p>



	<b>Question/Comment</b>	<b>DOH Response</b>
47.	<p>There are privacy and special population considerations that must be made. For example, confidentiality of minors (SUD, HIV, birth control). What is the reasonable expectation of MCOs to protect member privacy if a phone number and email address is furnished and the MCO cannot validate the owner?</p> <p>Are there any additional considerations that need to be addressed to ensure confidentiality?</p>	<p><i>MCOs should consult with their HIPAA legal advisor to ensure electronic noticing is provided in a HIPAA compliant manner.</i></p>
48.	<p>If an electronic notice is sent to a member, but returned as undeliverable, what is required by the MCO (e.g. default back to paper communication; continuing sending the communication in the designated manner)?</p>	<p><i>The Guidance states in Section V(C) that the MCO should provide the required phone notice/and or send the required written notice in compliance with applicable law or regulation if it receives indication that the electronic notice was undeliverable.</i></p>
49.	<p>If a member's eligibility should terminate for any reason, how long after the end-date of their coverage should the MCO maintain their access to the electronic notices?</p>	<p><i>Section VI(A) has been added to the Guidance to clarify that MCOs using an electronic/web-based portal for electronic notification must maintain enrollee's access to the portal for 120 days from the date of disenrollment. MCOs not using an electronic/web-based portal for electronic notification must make the enrollee's notices readily available to them for 120 days from the date of disenrollment.</i></p>
50.	<p>If using a web portal methodology for the member to access their electronic notification, is there an expected time frame that such notices need to be held on the portal and available to the member to access?</p>	<p><i>The Guidance has been updated to clarify that the MCO must make electronic notices for their current enrollees readily available for up to 1 year.</i></p>
51.	<p>Section V(D) states "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."</p> <p>The guidance is allowing 5 business days for MCOs to send out the notice in an alternate format. Would it be possible to move this to 5 business days as well?</p>	<p><i>This timeframe is tied to regulatory notification requirements and cannot be changed. MCOs should be able to meet this requirement as, in some instances, timeframes require faster noticing than 2 business days.</i></p>



	<b>Question/Comment</b>	<b>DOH Response</b>
52.	<p>In order to clarify that the right to request that any electronic Notification be sent in paper form through regular mail or an alternate format to accommodate a language need does not expand on the existing language accessibility requirements, we request the following be added at III(D):            “Accommodations for language needs will be made in accordance with federal and state law requirements.”</p>	<p><i>Section I of the Guidance already clarifies that the Guidance does not amend or expand any requirements related to providing notifications in alternate 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.</i></p>
53.	<p>Can DOH reconsider the extensive paper mail requirements related to the process of obtaining an enrollee’s communication preferences? One plan noted that the annual reminder mailing alone will result in high mailing costs.</p>	<p><i>Sections IV(A)(1) and (2) of the Guidance allow for notification to the enrollee of the option to receive notices electronically to be combined with other MCO materials distributed to enrollees.</i></p>
54.	<p>The notification must indicate if the message is urgent where the notice is adverse and alert the consumer that there is a deadline to request an appeal.</p> <p>The notification should also tell the consumer that they may request that the notice be mailed and explain how to do so.</p>	<p><i>Nothing precludes the MCO from including this language in a notification.</i></p>
55.	<p>Where the enrollee requests a mailed copy, the time to request an appeal should be tolled for 5 days to allow time for mailing.</p>	<p><i>42 CFR 438.404(c) outlines the specific timing requirements for MCOs to mail notice of adverse benefit determinations and 438.402(c)(2)(ii) provides an enrollee 60 calendar days from the date on the adverse benefit determination notice to file a request for an appeal to MCO.</i></p>
56.	<p>The guidance should require the plan to provide the required phone notice or send the required written notice within one day after receiving indication that the electronic notification was undeliverable.</p> <p>As now written, there is no required time limit for the plan to send the notice, which is unacceptable. If the notice is an adverse determination reducing home care hours or other services, where only 10 day advance notice is given, the effective date of the mailed notice should be changed to be 10 days after the date of mailing, to allow sufficient time to appeal with Aid Continuing.</p>	<p><i>MCOs must comply with Section V(C) which requires providing notice, by phone or by mail, in compliance with applicable law or regulation if it receives indication that an electronic notice was undeliverable.</i></p>



	Question/Comment	DOH Response
57.	A plan noted that capturing the date, method, content and receipt confirmation of electronic notices should be sufficient for tracking, reporting, and auditing purposes. Adding “time” to this requirement would require additional coordination and significant configuration between multiple systems to capture a timestamp, especially since several plans’ business units and management contractors are impacted by this policy.	<i>The time requirement at Section IV(A)(6)(f) cannot be removed as this is how compliance with regulatory timeframes for determination and noticing will be determined.</i>
58.	Plan emails should request a “delivery” receipt and “read” receipt, as is available through most email programs. If such receipts don’t confirm the email is delivered and read within 24 hours of the date of the email, then the plan should mail the notice, with the date updated to the mailing date. Delivery/ Read receipts should be saved in the member file and be included in Evidence Packets for plan appeals and hearings.	<p><i>The Guidance does not amend or expand any existing notice requirements.</i></p> <p><i>Section V(C) of the Guidance already requires MCOs to provide phone and written notice in compliance with applicable law or regulation when it receives indication that the electronic notice was undeliverable.</i></p>
59.	The mailed notice described in Section V(D) must have an updated effective date of the adverse action to allow the requisite 10 days advance notice. For an IAD or FAD reducing services, for example, the effective date of the notice must be adjusted to be at least 2 days later if it is not mailed for 2 days.	<i>Notices sent by mail at the request of the enrollee, as described in Section V(D), are notices that have already been sent to the enrollee via their preferred electronic method. Section V(A) requires MCOs to send those electronic notices within the required determination timeframe for phone or written notice, as applicable. Therefore, the mailed notice should not have an updated effective date, as suggested, as the notice has already been considered provided by electronic means.</i>
60.	<p>Templates for requesting plan appeals should be modified to ask every consumer who requests an appeal whether they received the adverse determination notice electronically or by mail.</p> <p>If a consumer who opted for electronic delivery reports they received the notice by mail, then they should be taken off electronic delivery, or at the least the consumer contacted to find out their preference and technological ability.</p>	<i>This suggested language for determination notices may cause confusion as enrollees who elect electronic noticing can request their electronic notice be mailed, as provided in Section V(D) of the Guidance. Nothing precludes the MCO from reaching out to the enrollee to verify the accuracy of their provided contact information when the MCO repeatedly receives indication that an electronic notice was undeliverable. Additionally, there is nothing that precludes the MCO from testing the enrollee's preferred electronic method of communication prior to sending notices via that method.</i>
61.	Would the 834 Enrollment File data be considered valid written notice provided prior to enrollment as required by Section IV(A)(1)?	<i>The 834 Enrollment file cannot be used to meet the requirements of Section IV(A)(1).</i>



	Question/Comment	DOH Response
62.	If the Plan is sending electronic notification, do they also need to make the telephone call? Current process is that we send a letter and also call the member.	<i>State statute provides enrollees the option to receive notices that are otherwise required to be provided in writing, and/or by phone, by electronic means. If the enrollee selects electronic notification for notices otherwise required to be provided by phone, then the MCO must send the phone notice by the enrollees preferred electronic means.</i>
63.	Can you provide more clarity/guidance on the 'phone' part of this policy as it applies to outbound calls for UM Decisions and GA Expedited Appeal Decisions? Are plans required to develop a process for the person (UM Nurse, G&A nurse/rep) to trigger an email instead of calling a member. We want to make sure we are understanding the intent.	<i>MCOs should modify their existing policies and procedures to allow for noticing otherwise required by statute or regulation to be provided in writing or by phone to be provided by electronic methods.</i>
<b>Surveillance Procedures</b>		
64.	Can DOH please clarify how a "reasonable effort" will be measured?	<i>Reasonable effort for MMCPs will be measured as defined in the DOH Reasonable Effort policy.</i>
65.	<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>	<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>
66.	<p>What is the State's expectation when a member opted for electronic noticing and the MCO does not receive any indication the electronic notification was undeliverable?</p> <p>For reporting purposes, can it be assumed that once an e-notice is sent, that it is sent in real time and time stamped as such or do we need to somehow track receipt confirmations?</p>	<p><i>Section IV(6)(f) has been updated to clarify that the MCO's information systems must maintain a record of electronic transmittal of notices provided pursuant to the Guidance by the enrollee's documented preferred method.</i></p> <p><i>Absent an indication that the Electronic Notification was undeliverable, the MCO's due diligence is considered completed upon providing DOH proof of the electronic transmittal of the notice by the enrollee's documented preferred method.</i></p>



	<b>Question/Comment</b>	<b>DOH Response</b>
67.	<p>Please confirm this is the State's expectation in respect of the Reasonable Efforts Policy:</p> <ul style="list-style-type: none"><li>• If the outbound email is triggered and we do not receive a failure message, we can consider the notice complete. But, we still have to make the outbound calls to the provider.</li><li>• If an outbound email is triggered, but the email fails, the nurse/GA rep needs to then make an outbound call to the member regardless of what preference the member selected.</li></ul>	<p><i>The Guidance does not change notification requirements to providers. 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.</i></p> <p><i>If the MCO receives indication that a phone notice made by the enrollee's preferred electronic means was undeliverable, the MCO must provide the required notice by phone in compliance with applicable law or regulation, as outlined in Section V(C).</i></p>