

Notice is hereby given that, pursuant to 28 Pa. Code §9.603, the Department of Health, Bureau of Managed Care (the Department), is issuing a technical advisory on enrollee consent for provider-initiated grievances.

The Department is aware plans and providers have been disagreeing regarding what constitutes a valid enrollee consent allowing a provider to go forward with a grievance. Similar issues surfaced during the Department's promulgation of its regulations relating to managed care organizations (28 Pa. Code ch. 9). Because of these disputes, the Department included, in § 9.706(e), the minimum elements that a consent form should have in order to be compliant with the regulations. (28 Pa. Code §9.706(e)). Despite this regulation, plans and providers continue to dispute the size, shape, color and language included in these forms, and these arguments over form are jeopardizing the enrollee's right to have a provider bring a grievance with the enrollee's consent. The Department, therefore, is issuing a sample consent form, which, if a provider and enrollee follow its format, will be deemed by the Department to be compliant with 28 Pa. Code §9.706, and constitute valid enrollee consent for the purpose of a provider grievance.

The Department is also issuing an advisory regarding the proper interpretation of §9.706(b) and §9.706(e)(5). Some plans have viewed these two sections as contradictory in a hospital setting, since the first allows a provider to obtain enrollee consent at the time of treatment, and the second states that the consent form must include the specific service for which coverage was provided or denied. With respect to the policy behind §9.706(b), the Department stated in the Preamble to Final Rulemaking:

The Department is willing to permit a health care provider to use an enrollee consent obtained prior to service, so long as that consent is not obtained as a condition precedent to the enrollee's receiving the service. The Department is aware that some providers serve populations who may be difficult to locate after the service has been rendered. The Department is also aware that some enrollee, not being held financially responsible for the service in any case, may have no motivation to support the provider's pursuit of a grievance. If the provider does not obtain consent at the time of the service, the provider may have difficulties in obtaining consents at a later date.

31 Pa. B. 3114 (June 9, 2001). This remains the Department's position. Therefore, in a hospital admission setting, the Department will deem compliant with both subsections (b) and (e)(5) a statement in the enrollee consent form that the specific services for which the enrollee is providing consent are related to the hospital admission, and the dates of that admission. The consent would then be valid for all services provided during that admission.

Persons with a disability who require an alternative format of this notice or the consent form (for example, large print, audiotape, Braille), or who have any other questions regarding this notice, should contact Stacy Mitchell, Director, Bureau of Managed Care, Pennsylvania Department of Health, P.O. Box 90, Harrisburg, Pa 17108-0090 (717) 787-5193, or, for speech and/or hearing impaired persons, V/TT: (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].