



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

Best Practices for Written Notice to Enrollees Regarding the Provision of Aid Continuing Pending a Fair Hearing Decision

I. Purpose

To provide Mainstream Managed Care Plans (MMC), Health and Recovery Plans (HARP), HIV Special Needs Plans (HIV-SNP), Medicaid Advantage Plus (MAP), and Managed Long Term Care Partial Capitation Plans (MLTCP), collectively referred to as Medicaid Managed Care Plans (MMCPs), with the Department of Health's (the Department) best practices for written notice to enrollees regarding the continuation of services, also referred to as Aid Continuing (AC), pending a fair hearing decision.

II. Background

Pursuant to 42 C.F.R. §438.420, NYS Social Services Law §365–a(8), and 18 NYCRR §360–10.8, enrollees may be eligible to receive AC pending a fair hearing decision under certain circumstances. The New York State Office of Administrative Hearings (OAH) is responsible for determining whether an enrollee who requests a fair hearing with OAH will receive AC during the fair hearing process and provides the enrollee with written notice of their fair hearing and AC status.

There is no federal or state statute or regulation requiring MMCPs to provide written notice to enrollees regarding the provision of AC pending a fair hearing decision, however some MMCPs have elected to provide a written notice for this purpose. This document serves to provide MMCPs with the Department's best practices for such written notices.

III. Medicaid Model Approval Notice

MMCPs should **not** utilize the Department's Medicaid model Approval Notice for the purposes of notifying an enrollee of the provision of AC pending a fair hearing decision. The Medicaid model Approval Notice includes language indicating that services are "approved" and that a "decision" has been made. Utilizing a notice with this language may lead enrollees to believe that the MMCP has issued an approval of services and may be introduced by an enrollee at a fair hearing as proof of eligibility.

IV. Best Practices

MMCPs electing to provide a written notice regarding the provision of AC pending a fair hearing decision should ensure that such notice meets Medicaid reading level requirements, is in at least 12 point font, and complies with the best practices outlined in this section.

- a. Written notice regarding the provision of AC pending a fair hearing decision should:
 - i. **Clearly identify that it is in regard to aid continuing.** For example, the MMCP may utilize a notice title such as “Aid to Continue Notice”;
 - ii. **Include the corresponding fair hearing number;**
 - iii. **Clearly state that the services identified within the notice are being temporarily continued pending a fair hearing decision by OAH.** For example, “We have been directed by the Office of Administrative Hearings to continue the services described in this notice until a fair hearing decision has been made”, and;
 - iv. **Include the OAH toll free phone number and TTY number for enrollee questions about aid continuing.** For example, “If you would like to speak to the Office of Administrative Hearings, please call 1-800-342-3334 TTY 711.”

V. Notice Submission to the Department

MMCPs electing to provide a written notice for this purpose must submit such notice to the Department for review and approval prior to use. Notices should be submitted to the following Department mailboxes:

- a. For MMC, HARP, and HIV-SNP, notices must be sent to bigaplans@health.ny.gov.
- b. For MAP, and MLTCP, notices must be sent to mltc.docs@health.ny.gov.