




**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

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**BULLETIN
Docket No.: INS-17-048-AB**

To: All Health Insurance Companies
From: Roger A. Sevigny
Insurance Commissioner 
Date: December 11, 2017
Re: Annual Notice of Consumer Rights and Access to Out-of-Network Services

This bulletin gives guidance on 2017 N.H. Laws ch. 214 (SB 157), which requires carriers to notify members annually of their consumer rights under New Hampshire's Managed Care Law, RSA chapter 420-J. The new provision, which takes effect January 1, 2018, states as follows:

420-J:7-e Notice of Consumer Rights. –

A health carrier shall, at least annually, in a conspicuous communication as approved by the commissioner which may be included as an insert in an annual mailing or by electronic communication, notify each covered person of his or her consumer rights under this chapter, including, but not limited to, appeal rights and the ability to access services out-of-network in the event covered services are not available in-network. A health carrier shall also notify covered persons of the right to access out-of-network services when the covered person contacts the health carrier directly requesting assistance finding clinically appropriate in-network care. A health carrier shall also provide notification to covered persons of their right to appeal whenever a covered person contacts the health carrier regarding a denial of coverage or when a health carrier verbally informs the covered person of the denial of coverage.

The law creates two requirements for carriers: (1) sending a **conspicuous written communication** approved by the New Hampshire Insurance Department (NHID) to members each year; and (2) **adopting procedures ensuring communication** of some of the same information in response to certain inquiries by covered persons. This communication is in addition to the notification required under RSA 420-J:5, V(d), which is specific to appeals, and is not required to be made annually.¹

¹ RSA 420-J:5, V(d) requires that carriers provide to covered persons a description of internal grievance procedures and a description of the process for obtaining external review, as well as a statement of a covered person's right to contact the commissioner's office for assistance at any time, and a statement that the carrier or other licensed entity will provide assistance in preparing an appeal of an adverse benefit determination. This information must be included in the policy, certificate, membership booklet, or other evidence of coverage provided to covered persons.

As described further below, carriers must ensure that the required information is communicated in a manner that is clear and helpful to consumers. In particular, it must include an explanation of how consumers may obtain carrier assistance in accessing out-of-network services when appropriate, including how consumers may ensure that they continue to be protected against balance billing when covered services are not available in-network.

I. Annual notification of consumer rights

Carriers offering coverage that is subject to New Hampshire's Managed Care Law, RSA chapter 420-J, must provide the notification required under RSA 420-J:7-e to all covered persons at least once annually beginning in 2018. The communication under RSA 420-J:7-e must include, in language appropriate for the product design features of the member's coverage (HMO, POS, etc.) and free of technical detail so as to be understandable to the typical consumer, notification of the following:

- (a) The fact that carriers are required under RSA 420-J:7 to maintain a network that is sufficient in numbers, types, and geographic location of providers to ensure that all services to covered persons will be accessible without unreasonable delay;
- (b) The steps a consumer should take, consistent with the carrier's policies and procedures, if the consumer is having difficulty securing access to covered services in-network, to arrange for services through an out-of-network provider;
- (c) The potential cost consequences, including potential balance billing, of seeking services out-of-network without first consulting with the carrier;² and
- (d) The consumer's right to appeal a carrier decision, including the right to external review for medical necessity determinations, and the location where consumers may access the internal grievance procedures the carrier has adopted under RSA 420-J:5.³

Proposed carrier communications to enrollees under the new law should be submitted for NHID review and approval. The submission should include an explanation of the manner in which the notification will be provided to members (e.g., standalone mailing, insert in another communication, or electronic communication) and a description of the design or formatting approaches that will be used to make the communication "conspicuous" to the member. Further guidance on procedures for making this submission will be provided in early 2018.

² For further information, please see NHID Bulletin INS No. 06-18-AB, referencing RSA 420-J:8 and, for HMO coverage, RSA 420-B:12, I(a).

³ Carriers may wish to reference external review information available on the NHID website, <https://www.nh.gov/insurance/consumers/appeals.htm>, including the Consumer Guide to External Review: https://www.nh.gov/insurance/consumers/documents/ex_rev_guide.pdf.

II. Additional required notifications based on member inquiries

In addition to the annual notice requirement, the new law requires carriers to provide information substantially similar to that of the annual notification when members contact the carrier under certain circumstances.

When a covered person contacts the carrier directly **requesting assistance finding clinically appropriate in-network care**, the carrier must notify the covered person of the right to access out-of-network services by providing information similar to that described in (a) through (c) above. When a covered person contacts a health carrier regarding a **denial of coverage** or when a health carrier verbally informs the covered person of the denial of coverage, the carrier must notify the covered person of the right to appeal by providing information similar to that described in (d) above.

Carriers should adopt appropriate policies and procedures to ensure that the required notifications are made under the circumstances specified in the statute. These policies need not be submitted for NHID review; however, policies requiring use of language substantially similar to language approved by the Department for the annual written notice shall constitute a “safe harbor” for purposes of complying with the additional notification requirements.

Questions regarding this bulletin should be directed to Jennifer Patterson, Director of Health Policy and LAH Market Conduct, at jennifer.patterson@ins.nh.gov or (603) 271-2145.