

## **Louisiana Department of Health and Hospitals**

### **Health Plan Advisory 13-4**

### **April 19, 2013**

#### **Clarification of Bayou Health Policy on Authorized Representatives for Medicaid Members**

The Department of Health and Hospitals is providing the following clarification of Bayou Health policy regarding the designation and verification of Authorized Representatives for Medicaid members:

As you know, Medicaid members may appoint an Authorized Representative (“AR”) to accompany, assist and represent them in matters related to their Medicaid coverage. In addition, some members have an AR who is designated by operation of law or by the action of a court. For example, any unemancipated minor child will have an AR to act on his or her behalf; usually it will be the parent(s) or guardian, although in some cases it may be another person or entity who has been appointed by a court (such as the Department of Children and Family Services (“DCFS”) when it has legal custody of a child in foster care).

The case record maintained by the Louisiana Medicaid Program is the definitive source of accurate information on the identity of a member’s AR. If a Health Plan needs assistance in determining whether a person contacting the Plan is really the AR, it should contact Louisiana Medicaid to obtain verification. This verification should be accepted as the source of truth in confirming or denying who is authorized to speak and act on behalf of the member.

It should be emphasized that the Health Plans, as a major component of the overall Louisiana Medicaid system, need to follow Medicaid’s lead regarding the designation and recognition of ARs. It would be dangerous and unworkable to have an individual recognized as a member’s AR in the Health Plan’s records who is different from the AR reflected in Medicaid’s records. Such a situation would lead to confusion and could result in a privacy breach if a member’s protected health information is disclosed to someone who is not legally entitled to it. Also, a member’s Medicaid eligibility status and the identity of his or her AR are sometimes closely connected.

For example, a change in a minor child's place of residence may trigger a change in both eligibility and the identity of the AR, as when a court places a minor child in (or removes the child from) the legal custody of DCFS. Medicaid and the Health Plans must operate in a unified and consistent manner in maintaining records on eligibility and ARs.

In some cases, a Health Plan may learn of an actual or potential change in a member's AR before Medicaid does. If that happens, the Health Plan should be proactive in educating the member/caller to report changes to Louisiana Medicaid within 10 days and provide direction on contacting Louisiana Medicaid for assistance.

Nothing in this advisory should be interpreted as creating a barrier to access to treatment for members who are unable to speak for themselves. For example, if a minor child is brought to a network provider by an adult other than the parent, guardian or other AR designated in the child's record, a reasonable effort should be made to contact the AR to obtain the appropriate consent for treatment; however, even if that attempt is unsuccessful, it is still legally possible for the provider to furnish necessary treatment to the child, particularly in emergency situations.

This advisory does not affect the ability of a duly designated AR to sign an authorization permitting the disclosure of a member's protected health information to a third person. Medicaid does not seek to dictate the precise authorization forms to be used by Health Plans and their providers, other than to require that they be HIPAA compliant. Generally, Medicaid will honor any valid, HIPAA compliant authorization that permits it to disclose the requested information, but will no longer honor it when the person who signed it ceases to be the member's AR. The Health Plans should follow the same policy.

Finally, you are reminded that a disclosure authorization of the type discussed in the preceding paragraph is not the same thing as a written consent for a provider to file a grievance or appeal or to request a state fair hearing on behalf of a member. If a member or a member's AR wishes to permit a provider to take such action on the member's behalf, a disclosure authorization by itself will not be sufficient for that purpose.