

Family Practice Physician. Consumer's attorney advised the grievance panel that Healthsource appeared to be in violation of Rule 850's clinical peer requirements.

9. On May 11, 1999, Healthsource sent Consumer an adverse second level grievance utilization review determination notice stating (emphasis added):

"The Committee reviewed your case and determined to grant your request to have the case reviewed by an independent reviewer. [The independent reviewer] reviewed your case file and has written to Healthsource Maine Inc. with his findings. Based on findings from [the independent reviewer], the Committee determined to uphold the denial based on the fact that medical necessity is not supported for the proposed surgery..."

"The committee is structured so that when reviewing a medical case, we have 3 of the 5 members voting; [Medical Director], [RN, Manager Quality Improvement Department], and one other committee member. [The RN] was not present the day of your grievance, however, a decision was not made on April 19, 1999. In addition, [the RN] reviewed the grievance packet and was kept up to date on how the committee was proceeding with an independent review. The committee would not have rendered a vote unless [the RN] was present... In review of Rule 850, Healthsource believes it meets the Rule, specifically, "or other physician or health care professional with demonstrable expertise to review a case, whether or not the reviewing professional is in the same or similar specialty as the health care professional who made the initial decision". The Associate Medical Director who reviewed this appeal and [the Medical Director] who reviewed your grievance, have demonstrable expertise to review our guidelines for orthognathic surgery to determine medical necessity."

10. Rule 850(9)(D)(2)(a) provides: *"For second level grievances involving an adverse utilization review determination, a health carrier shall appoint a second level grievance review panel for each grievance...The panel must include at least one health care professional who is a clinical peer and was not previously involved with the grievance ."*

11. Healthsource has advised the Bureau that at the time Consumer's initial request for services was reviewed, Healthsource believed its adverse decision process appropriately utilized "clinical peers." After engaging in discussions with the Bureau concerning the requirements of Rule 850, Healthsource has agreed that the "clinical peer" requirement was not met with respect to this Consumer.

12. Rule 850(9)(D)(Rule 850(9)(D)(3) requires that members of the grievance panel be available for direct communication with the consumer at the second level grievance hearing.

13. Among other requirements, Rule 850(9)(C)(1)(b) requires adverse second level grievance decisions to notify consumers of their right to contact the Superintendent's office, and to provide the toll free number and address of the Bureau of Insurance. The May 11, 1999 adverse determination notice failed to contain notice of the covered person's right to contact the Superintendents Office, and failed to provide the toll free number and address of the Bureau of Insurance.

CONCLUSIONS

14. Healthsource failed to comply with the requirements of Rule 850(8)(G)(1)(b), in that Consumer's first level appeal was not evaluated by an appropriate clinical peer. The Associate Medical Director, a pediatric physician, does not have demonstrable expertise with respect to "orthognathic surgery," and therefore does not qualify as a "clinical peer" under the requirements of Rule 850.

15. Healthsource failed to comply with the requirements of Rule 850(9)(D)(2)(a), in that Consumer's second level grievance was not reviewed by an appropriate clinical peer. Healthsource identified the three voting members for the second level grievance procedure as the Medical Director, the RN, and the Director of Member Services referenced at paragraph 9 above. The Medical Director is a family practice physician. None of the three voting members of the second level grievance review panel were qualified under the requirement of Rule 850 to serve as "Clinical Peers" with respect to orthognathic surgery. The clinical peer requirement was not satisfied by the grievance panel's reliance on the report of an independent reviewer who did not participate as a member of the grievance panel at the April 19, 1999 grievance review.

16. Healthsource failed to comply with the requirements of Rule 850(9)(C)(1)(b) in its May 11, 1999 adverse determination notice to Consumer. The May 11th notice failed to notify the consumer of her right to contact the Superintendent's office, and failed to include the toll free number and address of the Bureau of Insurance.

COVENANTS

17. A formal hearing in this matter is waived and no appeal will be made.

18. At the time of executing this Agreement, Healthsource will pay to the Maine Bureau of Insurance a penalty in the amount of two thousand dollars (\$2,000), payable to the Treasurer of the State of Maine.

19. In consideration of Healthsource's execution of and compliance with the terms of this Consent Agreement, the Superintendent agrees to forgo pursuing any disciplinary measures or other civil sanction for the actions described above other than those agreed to in this Consent Agreement.

MISCELLANEOUS

20. This Consent Agreement may only be modified by the written consent of the parties.

21. It is understood by the parties to this Agreement that nothing herein shall affect any rights or interests that any person not a party to this Agreement may possess.

22. Healthsource acknowledges that this Consent Agreement is a public record within the meaning of 1 M.R.S.A. § 402 and will be available for public inspection and copying as provided for by 1 M.R.S.A. § 408.

23. Healthsource has been advised of its right to consult with counsel and has, in fact, consulted with counsel before executing this Agreement.

Dated: _____, 1999

For Healthsource Maine, Inc.

By: _____

Signature

For: _____

Typed Name

Typed Title

this _____ day of _____, 1999.

Notary Public

FOR THE BUREAU OF INSURANCE

Dated: _____, 1999

Alessandro A. Iuppa
Superintendent of Insurance

STATE OF MAINE
KENNEBEC, SS.

Subscribed and sworn to before me
this _____ day of _____, 1999.

Notary Public/Attorney-at-Law

FOR THE MAINE ATTORNEY GENERAL

Dated: _____, 1999

Judith Shaw Chamberlain
Assistant Attorney General