

IN RE: HEALTHSOURCE MAINE,)
INC.)
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CONSENT AGREEMENT
BUREAU OF INSURANCE
DOC NO. MCINS 99 - 28

This document is a Consent Agreement, authorized by 5 M.R.S.A. § 9053(2) entered into by and among Healthsource Maine, Inc. (hereafter "Healthsource") and the Superintendent of the Maine Bureau of Insurance (hereafter also "the Superintendent"). Its purpose is to resolve, without resort to an adjudicatory proceeding, violations of Bureau of Insurance Rule Chapter 850 as set forth below.

FACTS

1. The Superintendent is the official charged with administering and enforcing Maine's insurance laws and regulations.
2. Healthsource Maine, Inc has been a Maine licensed HMO, License # HMD 4, since 1987.
3. On April 9, 1999 Consumer wrote a letter of appeal to Healthsource, stating:

I am writing to you to appeal a decision to take back money that was paid to cover Intrauterine Insemination. I have recently received a call from [Provider] regarding this issue. I believe from my conversation with [Provider] that you are in the process of reversing your payments.

Let me begin from the beginning. In March, 1998, I called Healthsource to inquire about Intrauterine Insemination whether my insurance covered this procedure or not. The answer I received was yes but I would have a small percentage I would pay. I thought great, I can afford this. So I call [Provider]

about starting the process and received the same answer from them that this is a covered procedure. I had my first insemination in April, 1998, when I received the "explanation of benefits/coverage" from Healthsource I had a remainder of \$25.00 + to pay. So when the first insemination didn't take I felt comfortable that I could continue to pay the same amount to keep trying. So I did, until September, 1998.

During the five months (4/8, 6/1, 7/7/, 8/5, 9/2) I had the insemination done all I had to pay was under \$30,00. I was never informed during this time that part of this wasn't covered. Each time a bill was submitted, the payment to [provider] was inconsistent, varying from 20+ to 30+ dollars.

I am informed by [Provider] that there was an incorrect code put in (99070), which is a generic code. I did not make this error nor was I informed during the last 13 months, till now.

My appeal to this is that if I had been informed on the initial call to Healthsource or even after I received the first or second explanation of benefit that part of the insemination process was not a covered benefit, I would not have continued to have this done for I couldn't have afforded it. I do not feel I should have to pay the \$900.00 to \$1000.00 amount that was not covered for I wouldn't have done and it was not my error it was coded incorrectly.

I am truly upset by this a) because it didn't work; and b) I am not financially able to afford this bill, again if I had known I wouldn't of had it done, because I wouldn't have been able to pay for it.

4. On May 7, 1999 Healthsource sent Consumer an adverse appeal determination letter which stated in relevant part:

Thank you for your recent letter of appeal requesting Healthsource Maine approve and pay for Intrauterine Insemination on 4/8/98, 6/1/98, 7/7/98, 8/5/98, and 9/2/98, at [Participating Provider].

For future reference, Medically Necessary and Infertility information was outlined in your Group subscriber Agreement on pages 13, 17, and 21 as follows:

Page 13.) Determinations for Medically Necessary services are based upon regional and national standards of care and clinical criteria established by Participating Providers of Healthsource. Primary Care Physicians and other health care professionals shall provide Healthsource with information necessary to determine coverage of health care services. The Medical Director will, as necessary, consult with participating specialists to review a Member's care to determine if the requested services are Medically Necessary and appropriate. A decision will be made within 2 business days of receiving all necessary information

Page 17.) Infertility Services: Coverage is provided for procedures, treatment and services related to the Treatment of infertility. Benefits provided for methods of impregnation are provided when Authorized or provided by your Primary Care Physician. These include only invitro fertilizaiton, Artificial insemination and gamete intrafallopian (GIFT). Coverage is limited to Members who have undergone extensive screening and counseling and have been selected for Invitro fertilization, artificial insemination, and GIFT treatment for any one of the following Reasons:

absent or irreparably damaged fallopian tubes or severe tubal disease; low male sperm count; or idiopathic fertility.

Surrogate donors, male or female, are not covered.

P. 21. Infertility treatments not specifically addressed in Section 4.H. (5) are not covered."

5. Rule 850(9)(C)(1)(b)(ii) requires that if a decision in a first level appeal is adverse to the covered person, the written decision shall contain:

A statement of the reviewers' understanding of the covered person's grievance and all pertinent facts.

6. Consumer filed a formal complaint, complaint # 1999505507, on May 18, 1999, concerning the same issues that she raised in her first appeal letter, set forth in paragraph 3, above.

7. On that same date, May 18, 1999, Consumer also filed a second level appeal with Healthsource, again raising the same issues that she raised in her first appeal letter, set forth in paragraph 3, above.

8. On June 25, 1999, Healthsource wrote to Consumer granting her second level appeal. The June 25, 1999 approval letter states in part:

The Management Grievance Committee reviewed your case and determined that this request will be approved as an exception. This decision was based on the fact you were unaware that this procedure was not covered prior to services rendered. You were unaware until April, 1999 that these services are not covered under the State of Maine plan because the claims were processed incorrectly at Healthsource Maine. The claims will be re-processed and paid at 80% of the usual and customary charges. These services will be applied to the \$20,000 lifetime maximum for infertility services.

CONCLUSIONS

9. As described in paragraph 3 and 4 above, Healthsource's first level adverse appeal determination letter violated Rule 850(9)(C)(1)(b) by failing to include a "*statement of the reviewers' understanding of the covered person's grievance and all pertinent facts.*" In particular:

- *The first level adverse appeal determination notice failed to acknowledge or address Consumer's assertion that her Explanation of Benefits statements led her to a reasonable belief that her out of pocket expenses would be only \$25 or \$30 dollars per treatment.*
- *The first level adverse appeal determination notice failed to acknowledge or address Consumer's argument that the billing code error was not her fault and therefore she should not be held responsible.*
- *The first level adverse appeal determination notice failed to acknowledge or address Consumer's argument that she would not have been able or willing to undertake additional treatment had she been made aware early on of the cost of those treatments.*

COVENANTS

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

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

12. 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

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

14. 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.

15. 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.

16. 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