



JEB BUSH, GOVERNOR

ALAN LEVINE, SECRETARY

January 1, 2006

06-01

Re: *Hernandez* Settlement Agreement

Dear Medicaid HMO Provider:

As you may know, the Agency entered into a settlement agreement relating to the type of notification a pharmacy shall give a Medicaid recipient when the pharmacy refuses to fill a prescription. As part of the Medicaid HMO Contract (the "Contract"), the Plans accepted the responsibility to ensure that the pharmacies comply with all aspects of the *Hernandez* Settlement Agreement (the "HSA"). This transmittal will explain the procedures the Plans must follow in order to oversee compliance. Specifically, in order to comply with the requirements set forth in the HSA, the Plan:

- A. Shall assure that all Participating Pharmacy Locations are in compliance with the HSA. An HSA situation arises when an Enrollee attempts to fill a prescription at a Participating Pharmacy Location and is unable to receive his/her prescription as a result of:
 - (1) An unreasonable delay in filling the prescription;
 - (2) A denial of the prescription;
 - (3) The reduction of a prescribed good or service; and/or
 - (4) The termination of a prescription.
- B. Shall ensure that all Participating Pharmacy Locations follow the requirements set forth in the HSA. The Plan shall provide copies of all *Hernandez*-related policies and procedures to the Bureau of Managed Health Care for review and written approval.
- C. Shall conduct an on-site survey (the "HSA Survey"), on an annual basis, of no less than five percent (5%) of all Participating Pharmacy Locations to ensure compliance with the HSA.
 - (1) The Plan may survey less than five percent (5%), with written approval from the Agency, if the Plan can show that the number of participating pharmacies it surveys is a statistically significant sample that adequately represents the pharmacies that have contracted with the Plan to provide pharmacy services.



- (2) The Plan shall require all Participating Pharmacy Locations that fail any aspect of the HSA Survey to undergo mandatory training within six (6) months and then be reevaluated within one (1) month of the Plan's HSA training to ensure that the Participating Pharmacy Location is in compliance with the HSA.
- D. Shall offer to train all new and existing Participating Pharmacy Locations regarding the HSA requirements.
 - (1) The Plan may delegate any or all functions to one (1) or more TPAs, so long as none of the TPAs are owned, operated, related to, or subsidiaries of, any pharmacy. Before entering into a Subcontract, the Plan shall:
 - (a) Provide a copy of the model subcontract to the Bureau of Managed Health Care in compliance with Section 70.0 of the Contract; and
 - (b) Receive written approval from the Bureau of Managed Health Care for the use of said model subcontract.
- E. Shall not include in the HSA Survey any Participating Pharmacy Location that the Plan found to be in complete compliance with the HSA requirements within the last 12 months.
- F. May allow customer service representatives to act as "*Hernandez* Ombudsman," pursuant to the terms of the HSA, so long as the Plan maintains a "*Hernandez* Ombudsman Log." The Plan may maintain the *Hernandez* Ombudsman Log as part of the Plan's customer service log, so long as the Plan can access the *Hernandez* Ombudsman Log information separately for reporting purposes. The *Hernandez* Ombudsman Log shall contain, at a minimum, the following information:
 - (1) The Enrollee's name, address, telephone number and any other contact information;
 - (2) The reason for the Participating Pharmacy Location's denial (and unreasonable delay in filling a prescription, a denial of a prescription and/or the termination of a prescription);
 - (3) The date of the call;
 - (4) A detailed explanation of the resolution; and
 - (5) The name of the prescribed good or service.

- G. Shall file reports on February 1 and August 1 of each year to the Bureau of Managed Health Care detailing the following:
- (1) The results of the survey described in Section C, above;
 - (a) The survey results shall include the following information:
 - (i) The total number of Participating Pharmacy Locations surveyed;
 - (ii) The HSA areas surveyed;
 - (iii) Those HSA areas in which the Participating Pharmacy Location were delinquent; and
 - (iv) The process by which the Plan selected the Participating Pharmacy Locations.
 - (2) A copy of the Hernandez Ombudsman Log.
- H. The survey requirements set forth herein do not replace the requirement that all of a Plan's Participating Providers have to be in compliance with the Hernandez Settlement Agreement.

Thank you for your understanding in this matter. Should you have any questions or concerns, please do not hesitate to contact Doug Harper at (850) 488-9287.

Sincerely,

Thomas W. Arnold
Deputy Secretary for Medicaid

Attachment I

The number of pharmacy locations that the Plan surveys must be statistically significant and selected by random sampling.

Suggestions for selecting random samples are:

- a. Discuss the situation with your independent auditor. You may already have the capability to randomly select the sample. If not, the auditor may give you recommendations on the best approach to accomplish this procedure.
- b. Use a computer assisted program to make the random sampling selection from the list of pharmacy locations.
- c. Use systematic (random) sampling. The formula for this is $N/n=k$ where:

N-is the population or Lot size.

n-is the sample size

k-is the interval used to select the locations for survey.

1. The following is an example of systematic (random) sampling:

1000 Lot size

65 is the sample size obtained from table A-1 (below)

$1000/65=15.4$

15 is the interval

- a. Therefore, every 15th pharmacy location should be selected from the Lot.
 - b. The selection of the first pharmacy location is crucial to the randomness of the table.
2. Using the above case as an example, one suggestion is to:
 - a. Number and fold pieces of paper equal to the interval size (if the interval size is 15, number and fold 15 pieces of paper). Have someone select a piece of paper without being able to see the number. The number selected is the starting location on the pharmacy list. Then from that number every 15th pharmacy location is selected until the sample is completed.
 - b. Once the Plan completes the random selection process, the Plan then surveys the selected pharmacy locations for compliance with the *Hernandez Settlement Agreement*.

- c. If the number of pharmacy locations surveyed is within the acceptance number level acquired from Table A-1, below, the Plan need not conduct additional location selection.
 - d. If the sample size has an error rate that is over the acceptance number listed in Table A-1, below, for that sample size, then the Plan must conduct another random sample selection. If this second sampling meets the acceptance level the Plan need not conduct additional sampling. If, however, the second sample group does not meet the acceptance level then the Plan must conduct a third sampling. The process continues until the sample selected meets the acceptance levels.
3. Once the Plan has selected the random sample(s), the Plan must send the pharmacy locations and the method used to obtain the sample to your Plan's Analyst with the Bureau of Managed Health Care. When using Systematic Sampling, as described above, the Plan must include how it selected the first location.
 4. The following Acceptance Sampling Table demonstrates the statistically significant sample of the pharmacy locations to be selected per lot size. Once the sample size is selected, the Plan selects the pharmacy locations by random sampling. Table A-1 uses a 95% confidence level.

Table A-1¹

| Lot Size | Sample Size | Acceptance Number |
|-----------------|--------------------|--------------------------|
| 1-15 | All | 0 |
| 16-50 | 14 | 0 |
| 51-100 | 16 | 0 |
| 101-200 | 35 | 1 |
| 201-300 | 37 | 1 |
| 301-400 | 38 | 1 |
| 401-600 | 60 | 2 |
| 601-800 | 65 | 2 |
| 801-1,000 | 65 | 2 |
| 1,001-2,000 | 95 | 3 |
| 2,001-3,000 | 120 | 4 |
| 3,001-4,000 | 155 | 5 |
| 4,001-5,000 | 155 | 5 |
| 5,000-7,000 | 185 | 6 |
| 7,001-10,000 | 220 | 7 |

¹ **Acceptance Sampling Table** - General Accounting Office; Program, Evaluation and Methodology Division; Revised May 1992.

Explanation of Terms in Table A-1:

Lot size: The number of pharmacy locations under contract with the Plan.

Sample size: The number of pharmacy locations chosen for survey.

Error rate: The number of pharmacies not in compliance.

Acceptance number: The acceptable error rate in which another sample selection is not required.

Using Table A-1:

- (1) If the Plan has 100 or fewer participating pharmacies, uses the random selection method described above, and finds that one (1) or more participating pharmacies are not in compliance, than the Plan must select another sample.
- (2) If the Plan has between 401 and 1,000 participating pharmacies, uses the random selection method described above, and finds that three (3) or more participating pharmacies are not in compliance, than the Plan must select another sample.
- (3) If the Plan has between 1,001 and 2,000 participating pharmacies, uses the random selection method described above, and finds that four (4) or more participating pharmacies are not in compliance, than the Plan must select another sample.
- (4) If the Plan has between 2,001 and 3,000 participating pharmacies, uses the random selection method described above, and finds that five (5) or more participating pharmacies are not in compliance, than the Plan must select another sample.
- (5) If the Plan has between 3,001 and 5,000 participating pharmacies, uses the random selection method described above, and finds that six (6) or more participating pharmacies are not in compliance, than the Plan must select another sample.
- (6) If the Plan has between 5,001 and 7,000 participating pharmacies, uses the random selection method described above, and finds that seven (7) or more participating pharmacies are not in compliance, than the Plan must select another sample.
- (7) If the Plan has more than 7,001 participating pharmacies, uses the random selection method described above, and finds that eight (8) or more participating pharmacies are not in compliance, than the Plan must select another sample.