



# HealthAssistance PARTNERSHIP

A Project of Families USA

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## **Consumer Health Assistance Programs: A Model Act for Legislators and Advocates**

The Health Assistance Partnership has created this model act for a Consumer Health Assistance Program to assist state and local policy-makers and those seeking to establish or to strengthen a program that helps consumers navigate the health care system.

A local or state consumer health assistance program may be the only relief to consumers who need to resolve health care problems. Existing programs vary between and within the states, but all assist individuals with accessing quality health care and with attaining and using health insurance coverage. Some programs serve all consumers while others focus on consumers with specific types of coverage, such as Medicaid or private insurance, or those who are uninsured. Common services offered include screening the uninsured for eligibility in public programs; educating individuals about the health care system; advocating on issues related to public and private health care policies; and assisting in or mediating disputes between consumers and insurers, health care providers, third-party administrators, state health care programs, employers or plan sponsors of group coverage, and/or any other parties.

This model act is based on language from existing state laws as well as ideas and practices from programs that do not operate based on an explicit codified authority. As such, the model act contains provisions that may not be applicable in all jurisdictions and may not contain provisions necessary in other jurisdictions. For example, many existing state laws that establish a consumer health assistance program or an ombudsman were instituted in the wake of the rise of managed care. While there is a great need for consumer education and assistance involving managed care, consumers experience other issues when trying to navigate the confusing, intimidating, and ever-changing health care system.

The intent of this model act is to serve as a starting point for policy-makers and consumer health advocates in pursuit of creating or strengthening programs that help consumers to access quality and affordable health care. You are invited to read this model and to provide any feedback by contacting the Health Assistance Partnership, 1201 New York Avenue NW, Suite 1100, Washington, DC 20005, 202.737.6340, [infohap@healthassistancepartnership.org](mailto:infohap@healthassistancepartnership.org).

Model Act

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For additional information, see the Health Assistance Partnership's issue brief "Assistance for Health Care Consumers: Key Provisions of State Laws," available online at [www.healthassistancepartnership.org](http://www.healthassistancepartnership.org).

## Section 1. Title

This Act shall be known as the Consumer Health Assistance Program Act.

## Section 2. Purpose

The purpose of this Act is to establish a Consumer Health Assistance Program.

- A. The Program will assist individuals with access to quality health care and to health insurance coverage and will help individuals understand their rights or benefits pertaining to health care.
- B. The Program shall assist consumers with all types of health insurance coverage including Medicaid, other government-sponsored health insurance programs, and private insurance in the group and individual market. The Program shall also assist the uninsured and individuals with coverage under a self-insured plan.
- C. The Program shall advocate for health care policies for the public interest in both the public and private markets.
- D. The Program shall assist in or mediate disputes between consumers and insurers, health care providers, third-party administrators, state health care programs, employers or plan sponsors of group coverage, and/or any other parties.

## Section 3. Legislative Findings

The Legislature hereby finds that the state has an interest in ensuring that individuals have access to quality health care and attainable health insurance coverage. The United States Census Bureau reported in 2004 that more than 45 million Americans were uninsured, that millions more Americans are under-insured, and that the under-insured and uninsured are less likely to receive care and more likely to have worse health outcomes than the insured.

The Legislature also hereby finds that the absence of health insurance coverage and the lack of timely access to appropriate health care contribute to medical debt and personal bankruptcy and that poor health outcomes also cost the state millions of dollars per year.

***Drafting NOTE** States are encouraged to include state-specific statistics regarding their uninsured and under-insured, the problems state residents face in securing health care, and the likely costs and consequences to the state as a result of these issues.*

The Legislature acknowledges the existence of internal and external appeal and grievance procedures for health plans, but these remedies are under-utilized for many reasons, namely because consumers are unaware of their rights, are uncertain how to exercise their rights, or do not have confidence in the process. Further, consumers face an array of issues, beyond health plan appeals and grievances, while navigating our confusing, complex, and ever-changing health care system.

***Drafting NOTE** States are encouraged to include state-specific statistics regarding the utilization of internal and external appeals.*

The Legislature also acknowledges that the state Insurance Department has a Consumer Services Division that accepts consumer complaints. However, this Division reviews complaints in the context of whether there are violations of the insurance statute or regulations in its role as a regulatory agency. The Consumer Health Assistance Program will focus solely on assisting consumers without also bearing the responsibility of regulating insurers.

The Legislature concludes that the establishment of the Consumer Health Assistance Program will benefit the citizens of this state.

#### **Section 4. Program Establishment**

- A. There is established a Consumer Health Assistance Program as an independent office that reports to the Governor.

***Drafting NOTE** Given the structure and resources of the state, identify the office that would best serve consumers in your state. In addition to using an independent office that reports to the Governor, the Office of Attorney General or a non-profit organization is recommended. If the Program is established in a non-profit organization, a qualified non-profit organization shall have a public interest mission and shall include organizations with significant staff expertise in health care rights and law, consumer counseling, and/or social service delivery. We do not recommend the establishment of the Program within the Insurance Department because this is the regulatory agency for insurers that are often parties in health care disputes. The Program's mission and objectives should not conflict with any other statutory duties already.*

#### **Section 5. Program Relationship to Other State Agencies and Programs**

- A. State agencies, including but not limited to the Department of Insurance, the Department of Health, the Department of Human Services, and the Department of Professional Licensure, shall cooperate with the Program to ensure the availability of data related to enrollment in state programs, investigative and enforcement records, and other information necessary for the Program to fulfill its statutory duties and to exercise statutory powers.
- B. When appropriate, the Program shall refer consumers to other state agencies for matters under that agency's jurisdiction and, when necessary, the Program shall guide consumers through that agency's administrative or regulatory processes.

#### **Section 6. Staff Qualifications**

- A. Director
  - 1. The Governor shall appoint a qualified individual as the Director of the Program.
  - 2. If the Program is operated by a qualified non-profit organization, the organization's Director or his or her appointee will assume the role of Director of the Program.

3. To qualify as Director, individuals shall have an advanced degree and/or significant experience in law, social work, or a health-related field.
- B. Other Staff
1. The Director shall hire other such staff, which may include a Deputy Director, professional advocates or investigators capable of specializing in Medicaid and private insurance disputes, clinicians, and administrative support staff, as permitted by resources and state law, and as dictated by the needs of the Program.
  2. The Director may delegate to such staff any of the functions, duties, or responsibilities conferred to him or her.
- C. Volunteers: The Director may recruit volunteers for functions in which they are properly trained and appropriately supervised.
- D. Contractors: The Director shall, through formal or informal contracts, collaborate with any necessary health professionals when such expertise is not available on staff.

## **Section 7. Conflict of Interest**

- A. The Director of the Program shall not have any current conflicts of interest due to existing, financial or otherwise, relationships with a health insurer, health insurance plan, or third-party administrator.
- B. If the Program is established within a non-profit organization, the organization shall have no ownership, financial interest, or direct involvement in the licensing, certification, or accreditation of health plans, health providers, or health facilities.

## **Section 8. Annual Report**

- A. The Director shall report annually to the Governor and Legislature on the operations, findings, effectiveness, and recommendations of the Program.
- B. The report shall be made available in written form and include information about the number of individuals served, information about the Program's success assisting consumers, and the barriers preventing adequate access to quality health care and attainable health insurance coverage for the consumers of the state.
- C. The Director shall at minimum report annually to the general public on the activities of the office.

***Drafting** Actual reporting periods should be specified according to when the Program is established and before regular legislative inquiries or budget hearings.*

**NOTE**

## **Section 9. Required Duties**

The Director of the Program shall act as an advocate for the public interest on matters pertaining to access to quality health care and attainable health insurance coverage.

In addition to the other provisions of this Act, the Director shall do the following:

1. In a timely fashion, respond to written, telephonic, and electronic inquiries received from individuals or groups regarding concerns and problems related to health care, payment for health care services, or any related health insurance program or practice;
2. Assist consumers in understanding their rights and responsibilities under health care plans, policies, laws, and regulations;
3. Advocate for consumers through the internal and external appeals process;
4. Identify consumer complaints, investigate, and help consumers to resolve their complaints with health insurers, third-party administrators, employers, providers, debt collectors, public health programs, and other parties involved in health-related matters;
5. When appropriate, refer complaints or the results of an investigation to the Attorney General, Department of Insurance, Department of Health, Department of Labor, Department of Professional Licensure, or other appropriate state or federal regulatory or law enforcement offices for further action;
6. Establish and maintain a system to collect and to track information pertaining to the written, telephonic, and electronic inquiries received by the Program;
7. Based on information and data collected by the Program, analyze and comment on proposed legislation and testify at legislative hearings regarding legal issues that affect health care consumers;
8. Produce and distribute educational information relevant to the purposes of the Program, including a notice suitable for posting in the workplace and community organizations that lists the name, address, phone, and procedures for requesting assistance; and
9. Take such actions as are necessary to ensure public awareness of the existence of the services provided by the Program pursuant to this section, including, as required by state and federal law, language access for non-English-speaking consumers as represented in the state and ensuring that any consumer educational materials produced by the office are at a literacy level understandable by most consumers.

## **Section 10. Discretionary Duties and Powers**

The Director, at his or her discretion, may do any of the following:

1. Provide information and applications to consumers for public programs such as prescription drug programs, state and federal health programs, Social Security Disability Insurance, or other resources which may assist the consumer in obtaining access to needed health care or coverage;

2. Inspect relevant records of the Department of Health, Department of Insurance, Department of Labor, or any other state agency or program when necessary to perform required duties including the handling of a consumer complaint;
3. Hire experts or contract for the services of technically and clinically qualified persons in the area of consumer health assistance matters to assist in the preparation and presentation of issues when required for legal or administrative proceedings;
4. Make recommendations, beyond the content of the Annual Report, to the Legislature concerning necessary action to assist the Program in the enhanced performance of its duties; and
5. Perform such other duties as may be necessary to achieve the purposes of the Program.

## **Section 11. Access to and Confidentiality of Medical and Insurance Records**

- A. The Program may, on behalf of an individual and with written permission from the individual, request and retrieve health, insurance, and/or transactional records from private or public entities in a manner compliant with state and federal laws. Based on written consent of the individual or the individual's guardian or legal representative, the insurer or public entity shall provide the Program access to records relating to that consumer.
- B. The Program shall develop appropriate safeguards to ensure the confidentiality of information provided by or about individual consumers and businesses against which consumers complain.
- C. When appropriate, as determined by the Director of the Program, the Program shall communicate information and exchange data with other state or federal agencies, divisions, departments, or contracted programs, and with other interested parties including, but not limited to, health care providers, insurance companies, or consumers in a manner compliant with applicable state and federal privacy laws.

## **Section 12. Notice Requirements**

Health insurers, managed care entities, and plan sponsors shall include information about the availability of the Program in each member handbook, Summary Plan Description, and all denial notices.

**Drafting NOTE** *It is imperative that consumers are aware of the existence of the Program at critical times such as when a claim is denied. If there are other common events that are likely to cause a consumer to need assistance, then the Act should also require notice to the consumer at that time. States are encouraged to require notice in the same manner and location as required in the insurance statutes.*

### **Section 13. Separability**

Should a court with competent jurisdiction find any section, subsection, clause, subclause, paragraph, or item of this act to be unconstitutional, such finding shall have no effect on the remaining sections, subsections, clauses, subclauses, paragraphs or items of this act.

### **Section 14. Effective Date**

This act shall take effect immediately upon approval provided that where the provisions of this act apply to insurance or other contracts already in force, such provisions shall apply to contracts upon renewal after the effective date.