

To: PerformCare Provider Network
From: Scott Daubert, VP Operations
Date: April 1, 2013
Subject: PC-06 Electronic Signatures

Claims Payment and Clinical Policy Clarification

Question/Issue:

What type of electronic signature is acceptable within medical records? Can an electronic signature pad be used for Member signatures (e.g., encounter forms)?

Source Documentation / References:

55 Pa. Code § 1101 Medical Assistance Manual: General Provisions

Pennsylvania Statutes
Title 73. Trade and Commerce.
Chapter 41. Regulatory Electronic Transactions.
73 P. S. § 2260 Electronic Transactions Act

PerformCare Answer/Response:

55 Pa. Code § 1101.66a clarifies the terms “written” and “signature” in the following manner:

- (a) The term “written” in § 1101.66(b) (relating to payment for rendered, prescribed or ordered services) includes orders and prescriptions that are handwritten or transmitted by electronic means.
- (b) Written orders and prescriptions transmitted by electronic means must be electronically encrypted or transmitted by other technological means designed to protect and prevent access, alteration, manipulation or use by any unauthorized person.
- (c) The term “signature” in § 1101.66(b)(2) includes a handwritten or electronic signature that is made in accordance with the Electronic Transactions Act (73 P. S. §§ 2260.101—2260.5101).

Practitioner Electronic Signatures

The Electronic Transactions Act was enacted in 1999 and covers most forms of electronic records, transactions, and signatures. An *electronic signature* is defined as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record”. Electronic signatures must have appropriate *attribution* that is established through a “commercially reasonable” *security procedure*. An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any *security procedure*

applied to determine the person to which the electronic record or electronic signature was attributable. In other words, a provider must have appropriate safeguards and protocols in place to show that the *electronic signature* was the actual act of that individual. A *security procedure* is defined as “a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure which requires the use of algorithms or other codes, identifying words or numbers, encryption or callback or other acknowledgment procedures.” In summary, in relation to practitioner electronic signatures within a provider’s electronic medical record (EMR), PerformCare considers the signature acceptable if the requirements outlined in the Electronic Transactions Act are met. That is, the electronic signature is: a) attributable to a specific individual and b) the EMR has a commercially reasonable security procedure.

Member Electronic Signatures

55 Pa. Code § 1101.66a is only applicable to practitioner / provider electronic signatures and is silent on the issue of Member electronic signatures. Furthermore, 73 P. S. § 2260.704 Inapplicability to Consumers states that “the provisions of this chapter shall not apply to any electronic transaction to which a consumer is a party.” However, 73 P. S. § 2260.705 and 73 P. S. § 2260.901 outlines that a transaction or any part thereof can occur by electronic means when the consumer agrees to such a provision by a separate and express acknowledgment. Therefore, PerformCare would consider Member electronic signatures as valid (including use of signature pads) when the electronic signature is: a) attributable to a specific individual, b) has a commercially reasonable security procedure, and c) when the record reflects that the consumer agrees to the use of electronic signatures by a separate and express acknowledgment. In summary, PerformCare allows a Member’s electronic signature when it is clearly attributable to a specific individual and to a specific act of that individual (e.g., electronically signing an encounter form for a specific date). It is not allowable nor meets these requirements to electronically store a “signature” for use on multiple forms.

Cc: PerformCare Managers
Pam Marple, MBA Behavioral Health Services of Somerset and Bedford Counties
Deborah Duffy, Lycoming / Clinton Joinder Board
Missy Reisinger, Tuscarora Managed Care Alliance, Franklin / Fulton Counties
Amy Marten-Shanafelt, Blair HealthChoices
Scott Suhring, Capital Area Behavioral Health Collaborative