



November 21, 2017

Commissioner Roderick Bremby
Department of Social Services
55 Farmington Avenue
Hartford, CT 06105

Re: Implementation of Change in Income Eligibility for Parents Under the HUSKY A Program

Dear Commissioner Bremby:

As you are well aware, the General Assembly reduced the income eligibility of the HUSKY A program for adults from 155% to 138% of the federal poverty level, effective January 1, 2018. We know you are familiar with the requirements of federal law ensuring that parents/caretakers with earned income receive TMA for a year and ensuring those without earned income are properly reviewed for coverage under other coverage categories.¹ We were pleased to see, based on a presentation to the Medical Assistance Program Oversight Council on Friday, that DSS intends essentially to follow the procedure it invoked two years ago when the legislature similarly reduced the adult income guidelines for the HUSKY A program:

- (1) DSS will review each affected individual to ascertain whether it has information demonstrating the person is, or may be, eligible for HUSKY A or any other full or limited benefit coverage category, including TMA, and, where there is an indication that continued or alternative eligibility is likely but additional information is needed, will make an individualized request for this;

¹ Federal Medicaid regulations have long provided that a Medicaid agency must “[c]ontinue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible.” 42 C.F.R. § 435.930(b). These regulations were significantly strengthened in 2012, when CMS adopted a new regulation, as part of a set of regulations under the Affordable Care Act, providing that: “*Prior to making a determination of ineligibility, the agency must consider all bases of eligibility, consistent with § 435.911 of this part.*” 42 C.F.R. § 435.916(f)(1)(emphasis added). In turn, Section 435.911(c) and (d) provide that “the agency must collect such additional information as may be needed ... to determine whether such individual is eligible for Medicaid on any basis other than the applicable [MAGI] standard, and furnish Medicaid on such basis.”

While CMS had previously elaborated on the duty to investigate other categories of eligibility under § 435.930(b) in informal guidance, it made it clear in the promulgation of 42 C.F.R. § 435.916(f), in 2012, that individualized reviews of all alternative means of Medicaid eligibility is required, and that information related to any such eligibility must be affirmatively sought from all affected individuals before any termination of Medicaid may occur. 77 Fed. Reg. 17181 (March 23, 2012). These federal requirements are also reflected in a state statute passed two years ago, C.G.S. § 17b-261u.

- (2) DSS will send everyone else, who *might* have information establishing eligibility under a different Medicaid category, a generalized notice inviting them to affirmatively bring this to the attention of the Department before discontinuance; and, thereafter,
- (3) DSS will send a formal termination notice to individuals who are determined not to be eligible for alternative eligibility or who do not respond to either the individualized or the generalized invitations to submit additional information.

We write to confirm our understanding of this detailed process, and to make some suggestions for additional steps which we believe were not taken last time but which may help the Department comply with the detailed requirements governing this process and would also be advisable to minimize the risk of erroneous termination of Medicaid-eligible individuals.

A. Duty to Conduct Individualized Reviews Based on Information Already Available to Agency

As it did two years ago, the Department must ensure that each HUSKY A parent or caretaker relative with income over 138% of the poverty level and thus threatened with termination is individually screened by it to determine whether she or he is still eligible for HUSKY A or eligible under another Medicaid coverage.² However, there will be cases where there is some indication, in light of the individualized *ex parte* review, that the person *might* qualify under TMA or some other eligibility category, but DSS cannot be sure. In these cases, it will need to send individualized notices to these individuals to gather additional information, per the 2012 CMS requirements. As we believe it did last time, the Department should send them a notice identifying all of the potential alternative bases for eligibility and invite the information they would need to submit to establish any such eligibility, but noting the category under which alternative eligibility is believed to be likely for the individual.

B. Duty to Inform All Affected Individuals of the Opportunity to Submit New Information Establishing Eligibility under HUSKY A or Alternative Medicaid Coverage Categories, and to Review All Such Submitted Information Prior to Issuing Termination Notices

Two years ago, all 1,218 adults found to be ineligible for TMA on the basis that they did not have earned income were sent a generalized notice asking them to provide updated/additional information which might establish alternative Medicaid eligibility. As last time, this general notice should also include information about eligibility for the limited benefit Medicaid programs.

Anyone timely responding with information, by phone or in writing, suggesting potential eligibility for any other category of Medicaid must be kept on HUSKY A until the Department has individually reviewed the submitted information and ascertained that the information does **not** establish alternative eligibility and that no additional information might establish this. 42 C.F.R. §§ 435.916(f)(1) and 435.930(b). This includes anyone who responds by asserting they are disabled, while that claim is being adjudicated. *See Crawley v. Ahmed*, 2009 WL 1384147 (E.D. Mich. 2009).

² These include, at least: continuing eligibility as a HUSKY A adult due to an income or family size change; Transitional Medical Assistance; elderly or disabled and thus eligible for MAABD with spenddown; pregnant; breast or cervical cancer; tuberculosis; family planning group.

We are not entirely sure if this was done last time, but the Department should not terminate anyone who timely sends in **any** documents through the scan centers for both AHCT and DSS and has not yet had their documents processed in the respective queues. The Department cannot reliably tell what kind of document is pending until it is actually reviewed by a knowledgeable worker. This means that an individual threatened with termination who in fact is eligible under another Medicaid benefit category, realizes this after getting a notice and timely responds to advise the Department accordingly will nevertheless be at risk of improper termination. Since, “[p]rior to making a determination of ineligibility, the agency must consider all bases of eligibility,” and “the agency must collect such additional information as may be needed ... to determine whether such individual is eligible for Medicaid on any basis,” 42 C.F.R. §§ 435.916 and 435.911(c)(2), the Department may not terminate anyone whose pending but un-reviewed information potentially could establish this.

C. Duty to Issue Appropriate Advance Termination Notices

As was done two years ago, individuals who, after *ex parte* review, and the provision of an opportunity to submit new information and the review of anything submitted, are nevertheless determined to be ineligible for Medicaid under any category, including TMA, must receive a detailed advance termination notice pursuant to 42 U.S.C. § 1396a(a)(8); 42 C.F.R. § 431.200, et seq. Because the reduction in income limits only impacts parents and caretakers, it will be critically important for the final termination notice to reassure recipients that their children continue to be eligible for HUSKY A, and advise recipients of the right to a hearing if the adult thinks a mistake was made for them. Benefits must continue if someone requests a hearing before the discontinuance effective date.

But other information is warranted in the final termination notices as well. It is our understanding that the termination notices issued by the Department two years ago provided information regarding the various Medicaid coverage categories, as well as appropriate information about potential access to limited benefit family planning coverage and coverage through a Qualified Health Plan on the exchange,³ see C.G.S. 17b-261u(b), along with the information to comply with basic due process requirements. Similarly, we believe that, at least in a different set of termination notices (for the terminations based on HUSKY A income guideline reductions in 2003), the Department stated: “If you think we have made a mistake [in calculating your income], call your worker right away. You should also call your worker, if you have income under the limits, or you are pregnant, disabled, have high medical expenses, child care expenses, or you have breast or cervical cancer” – and, if an individual called a caseworker in response to that notice, she or he was continued until a caseworker reviewed the file to determine whether any alternative Medicaid criteria were met.

We believe that this is the right course to follow in this situation too, with the current group having even lower incomes, and thus fewer options, than the vulnerable individuals cut off two years ago.

Suggested Additional Protections

We recognize that the Department’s under-resourced systems may require individuals calling the Department’s call centers to wait long periods to reach a live person, and that many may give up as a result. Based on the agency’s data, the wait times have grown significantly in recent months.

³ An individual can be eligible for both limited benefit Medicaid coverage and subsidized insurance on the exchange because limited benefit Medicaid is not “minimum essential coverage” disqualifying them from such subsidies.

Accordingly, we urge the Department to have a dedicated telephone line at either DSS or AHCT with a separate queue for all HUSKY A terminations related to the change in the income guidelines, with that number prominently provided on all information solicitation or termination notices, and with sufficient staff so that average waits are far below the current average wait times for the ConneCT call center. Possibly, the dedicated number can also be issued to anyone being cut off of the Medicare Savings Programs, which terminations, also due to income guideline reductions, are effective at the same time.

In part to comply with ADA requirements, for those who do not respond to the generalized notice but who are identified as disabled by the Department, pursuant to UPM § 1005.10, we also believe that termination notices should not be issued unless and until an attempt is first made to reach the individual **by telephone** to confirm that they in fact do not have earned income, that a material mistake in the amount of their income or family size was not made, and that they are not eligible under any Medicaid benefit category, including spending down to HUSKY C with medical bills.

Implementing these two protections will help comply with federal Medicaid requirements, and ensure that eligible individuals do not needlessly fall through the cracks and lose their coverage.

Conclusion

Given all the challenges DSS already faces, this will no doubt be a daunting undertaking. But we trust that, as last time, the Department will ensure that the transition to TMA or other Medicaid eligibility groups is as seamless as possible, and that, per federal law, no individuals are cut off without an individualized review by DSS including a reasonable opportunity, for those not apparently eligible under any category, to affirmatively submit any new information which might establish their alternative eligibility prior to being terminated. We also hope you will consider our additional suggestions provided herein. Finally, we would welcome the opportunity to have input on the draft form notices which the Department or AHCT will be sending out to the affected individuals. This is a courtesy extended last time, and we believe it was effective in improving the contents of the notices during the last round of HUSKY A cuts.

Thank you.

Respectfully yours,

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