

DHB ADMINISTRATIVE LETTER NO: 03-19, HAWKINS V. COHEN PROCEDURE

DATE: May 13, 2019

SUBJECT: Hawkins v. Cohen Procedures

DISTRIBUTION: County Directors
Medicaid Supervisors
Medicaid Staff

I. BACKGROUND

Hawkins v. Cohen (5:17-CV-581 E.D.N.C.) is a federal lawsuit filed in 2017 on behalf of Medicaid beneficiaries in North Carolina. The Court has ordered N.C. Department of Health and Human Services (DHHS) and all 100 county Department of Social Services (DSS) to stop terminations or reductions of Medicaid benefits until eligibility under all Medicaid categories, including Medicaid for the Disabled (MAD), has been considered and proper notice of the termination has been sent.

The new procedures are **mandatory** and are explained in this letter. The local agency must ensure:

- All Medicaid eligibility staff and front desk staff are trained on these instructions.
- DSS may not discourage MAD applications by beneficiaries already receiving Medicaid in another program.

DHHS will be monitoring to ensure counties are in compliance with these instructions and will order corrective action if needed, including requiring repayment by the county for errors and delays.

II. POLICY PRINCIPLES

Hawkins v. Cohen federal lawsuit requires N.C. DHHS to send a **NOTICE OF POTENTIAL CHANGE IN MEDICAID ELIGIBILITY** along with the **Notice Of Your Rights Under Hawkins v. Cohen** to Medicaid beneficiaries. The notice must be sent 180 days in advance of the end of the certification period or before the end of a month in which potential benefit reduction or termination would result from a critical age change or end of pregnancy. The notice will inform the Medicaid beneficiary that eligibility must be redetermined before a specific date and for one of the following reasons:

- The certification period will **end** in 180 days
- The caretaker's youngest child will turn age 18 **within** 180 days
- The beneficiary will turn age 19 **within** 180 days
- The pregnancy is expected to end 60 days **before** 180 days

These notices will be sent to beneficiaries that are receiving Family and Children's Medicaid categories (MIC, MPW, or MAF but **not** Family Planning or TMA).

III. EARLY NOTICE - RECERTIFICATIONS ENDING MAY 2019 – SEPTEMBER 2019

A. The beneficiary will receive a NOTICE OF POTENTIAL CHANGE IN MEDICAID ELIGIBILITY- EARLY notice along with the Notice Of Your Rights Under Hawkins v. Cohen from the mail service center. The notices are sent to those beneficiaries whose:

1. Certification periods are ending May 31, 2019 through September 30, 2019, or
2. Benefits potentially reduced or terminated before the end of a month as a result of:
 - a. Critical age change, or
 - b. End of pregnancy

B. The notice informs the beneficiary of the right to allege disability for any member of the Medicaid household and includes instructions on how to apply for Medicaid.

C. If the beneficiary contacts the local agency to attest disability, the local agency is responsible to assist the beneficiary to complete an application in person, by phone, ePASS, fax, email or by mail.

1. If the beneficiary requests an application to be mailed, the local agency MUST document in the following location in NC FAST: Person Page> Client Contact Tab> Notes Tab.
2. Documentation MUST include the date of contact and the date the application was mailed.

D. The local agency should follow application processing procedures in MA-2300, Application and MA-2525, Disability policies. The local agency must:

Complete the disability determination packet and forward to Disability Determination Services (DDS), if the beneficiary has not previously been determined disabled.

E. The caseworker should process the current change or exparte review prior to the end of the certification period or critical age change or end of post-partum period on the current active case for:

1. Parent/caretaker whose youngest child has reached age 18
2. NCHC child who has reached age 19
3. MPW at the end of the 60-day post-partum period

The caseworker MUST send the appropriate notice.

- F. There will be no protection of current Medicaid eligibility for these beneficiaries who receive the “Early” notice.
- G. NC Fast will generate a report for each of the months (May-September) that includes beneficiaries who received the “Early” notice. The *MA-Hawkins Early Report* will be located in NC FAST Help under the reports tab. The report is for tracking purposes only.

IV. DHB-2187 NOTICE - RECERTIFICATIONS FOR OCTOBER 2019 AND ONGOING

- A. The beneficiary will receive a DHB-2187, NOTICE OF POTENTIAL CHANGE IN MEDICAID ELIGIBILITY notice along with the Notice Of Your Rights Under *Hawkins v. Cohen*. Until NC FAST automates the notice, the notice will be generated and sent from the mail service center. The notices are sent to those beneficiaries whose:
 - 1. Certification periods are ending October 31, 2019 and ongoing, or
 - 2. Benefits potentially reduced or terminated before the end of a month as a result of:
 - a. Critical age change, or
 - b. End of pregnancy
- B. The notice informs the beneficiary of the right to allege disability for any member of the Medicaid household and includes instructions on how to apply for Medicaid.
- C. The caseworker is responsible to assist the beneficiary to complete an application in person, by phone, ePASS, fax, email or by mail.
- D. If the beneficiary submits an application to attest disability within 30 days of the date of the DHB-2187, or requests an application to be mailed, the current Medicaid benefits are “protected.” The current benefits cannot be changed, reduced or terminated until a disability decision is made. The caseworker must do the following:
 - 1. If the beneficiary submits an MAD application within 30 days of the notice:
 - a. Complete the disability determination packet and forward to Disability Determination Services (DDS) if the beneficiary has **not** previously been determined disabled. Follow MA 2300 Application and MA 2525 Disability procedures.
 - b. The caseworker must extend the current benefits until a disability decision is made.

2. If the beneficiary requests an application to be mailed within 30 days of the date of the mailing, the local agency caseworker **MUST**:
 - a. Document the request in the following location NC FAST: Person Page> Client Contact Tab> Notes Tab.
 - b. Documentation **MUST** include the date of contact and the date the application was mailed.
 - c. The date of contact is crucial in determining if the beneficiary has applied **within** 30 days of the mailing of the Medicaid application, to ensure the “protection” of the current Medicaid benefits, while pending a disability determination.
3. If the beneficiary submits an application within 30 days of the mailing of the application:
 - a. Complete the disability determination packet and forward to Disability Determination Services (DDS) if the beneficiary has **not** previously been determined to be disabled, following MA 2300 Application and MA 2525 Disability procedures.
 - b. The caseworker must extend the current benefits until a disability decision is made.
4. **If the beneficiary submits the application after the 30-day protection period, the current benefits are not protected. The caseworker should complete the MAD application following MA Application and MA 2525 Disability procedures.** The caseworker should complete the ex-parte on the current case prior to the end of the certification period.

The caseworker **MUST** send appropriate notice.

E. At recertification, critical age change or end of post-partum period, the caseworker must verify an application was submitted:

1. If an application for MAD was submitted **within** the time frames listed in B. above, and is currently still pending, the caseworker must extend the current Medicaid benefits. **Current benefits cannot be changed, reduced or terminated until a disability decision is made.**

- a. For parent/caretakers whose youngest child has reached age 18, the parent/caretakers' case should be **extended** in MAFC.
 - b. For beneficiaries receiving MPW, at the end of the 60-day post-partum period, the benefits must be extended in MAFC/N following **forced eligibility** guidelines.
 - c. For beneficiaries receiving NCHC and who have reached age 19, the benefits must be extended in MAFN following **forced eligibility** guidelines.
2. If an application was **not** submitted within 30 days of the date of the DHB-2187 or within 30 days of the mailing of the notice, the caseworker should proceed to complete the ex-parte on the current case prior to the end of the certification period.

The caseworker **MUST** send appropriate notice.

F. NC FAST will generate a report for each of the months (October 2019 and ongoing) that includes beneficiaries who received the “DHB-2187” notice. The *MA-Hawkins 180 Day Report* will be located in NC FAST Help under the reports tab. The report will assist the county in determining which beneficiaries received the DHB-2187 to ensure appropriate action is taken at ex-parte review.

G. When processing the critical age change, or ex-parte review, the caseworker **MUST:**

1. **Check NC FAST to see if there is a pending MAD application.**
2. Determine if the application was submitted within the time frames in D. above.
 - a. Refer to the MA Hawkins-180 Day report to determine date of notice.
 - b. Review notes in NC FAST to determine if the beneficiary requested an application be mailed.
3. Complete the ex-parte review or extend the case according to guidelines in E., above.

V. TIMELY PROCESSING OF MEDICAID ELIGIBILITY REDETERMINATIONS:

Department of Health Benefits (DHB) has issued guidance previously in DMA Administrative Letter 01-19 “Extension of Eligibility at Recertification,” which stated federal regulations prohibit ending Medicaid coverage for a Medicaid beneficiary unless determined ineligible under all Medicaid categories or benefits reduced to a lesser program and timely notice requirements are met. **It is critical that all active Medicaid cases in all categories which are due for recertification, be processed timely to allow for appropriate notice to the beneficiary.**

Failure to complete the redetermination or manually extend the case by the workday prior to the last workday of the month will result in automatic extension for the following month. NC FAST will extend/force beneficiaries who are receiving:

- MIC to continue receiving MIC,
- MAF to continue receiving MAF,
- MPW will become eligible for MAF-C, or
- NCHC at the age of 19 will become eligible for MAF-N.

The local county will be responsible for Medicaid payments in cases that were automatically extended and determined to be ineligible after ex-parte is completed.

If you have questions regarding information in this letter, please contact your Medicaid Operational Support Team Representative.

A handwritten signature in black ink, appearing to read "Dave Richard". The signature is stylized and cursive.

Dave Richard
Deputy Secretary, NC Medicaid