



North Carolina Department of Health and Human Services
Division of Social Services

Pat McCrory
Governor

Richard O. Brajer
Secretary

Wayne E. Black
Director

February 17, 2016

Dear County Managers and Directors of Social Services:

RE: Factors Impacting County Administration of Economic Services Programs

Over the past several years, the administration of the major economic services programs, Food and Nutrition Services, and Medicaid, by County Social Services agencies has been significantly impacted by many factors. It began with the "Great Recession" of 2008, which significantly increased the number of families needing assistance. Between July, 2008 and June, 2013 the statewide Food and Nutrition Services caseload increased by 75% and the Medicaid caseload increased by 25%.

The implementation of NC FAST for processing Food and Nutrition Services (FNS) from April 2012 – March 2013 and Medicaid, Work First, Special Assistance and Refugee Services from October 2013 – December 2014 created new challenges for county leadership and staff. The implementation of Affordable Care Act (ACA) requirements in October 2013 also added to county workloads. Additional requirements of the ACA continue adding to county workload responsibilities. Through new guidelines issued on Oct. 1, 2014 and an advance warning letter sent in May 2015 by USDA, North Carolina and other states are now being held to rigid standards for FNS application processing timeliness. The implementation of new work requirements in FNS will impact all 100 counties by July 1, 2016.

While caseloads have stabilized since 2013, a number of factors continue to significantly impact county workloads in Medicaid and Food and Nutrition Services. These are ongoing factors which shape what may be called the "New Normal" in administration of these programs. These include the following:

A. NC FAST

1. Implementation

NC FAST (Families Accessing Services through Technology) is a new eligibility determination and case management system that integrates various social service programs administered across N.C.'s 100 counties. The system's implementation has had the same challenges most major technology efforts have:

- a. The new system is more comprehensive and rules-based, and therefore requires more data to be collected for each application than what was historically collected or is available in the 20 to 30-year-old legacy systems.
- b. With all new systems, sometimes defects occur that must be corrected. These issues have created personnel challenges and additional work for county staff as the system continues to be rolled out.

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2. New Channels for Applications

NC FAST created a new online method for submitting applications through the Internet, with FNS implementation in April 2012 and Medicaid in October 2013. Federal regulations prevent the applications from requiring complete and verified information at the time of submission. County staff may need to follow up with applicants to collect missing information. This adds to ongoing workload requirements.

B. AFFORDABLE CARE ACT AND MEDICAID REQUIREMENTS

1. New Medicaid Eligibility Requirements

- a. ACA created new Modified Adjusted Gross Income (MAGI) eligibility requirements for Family and Children's Medicaid recipients, changing the income and household eligibility rules for all Family Medicaid programs, and requiring caseworkers to obtain tax information from households, adding to the ongoing workload.
- b. Ex parte reviews are required for all Medicaid/NCHC programs, forcing caseworkers to complete electronic verifications and evaluate all Medicaid cases prior to contacting the household for information that is not available through another source. The reviews also give MAGI households 30 days to provide information needed for review, instead of the previous 12 days. The review process must begin sooner to allow for this requirement. This adds to the ongoing workload.

2. Open Enrollment

Open enrollment will occur every year. For each of the past two years, during the annual Open Enrollment period (November-February), North Carolina received approximately 87,000 Medicaid applications from the Federal Marketplace. Approximately 10-13 percent of those were determined to be eligible. However, all applications must be processed. This adds to seasonal workload requirements.

3. Medicaid Processing Requirements

Centers for Medicare & Medicaid Services requires all applications to be approved in a timely manner. With the growth in caseloads and new MAGI requirements, counties have had difficulty maintaining required processing standards. In addition, several counties continue struggling to meet recertification requirements, resulting in cases being extended. Achieving and sustaining these requirements is an ongoing workload requirement.

4. New Supplemental Security Income (SSI) Case Requirements

- a. County Transfers – The caseworker must evaluate the address and determine if a county transfer is needed. It was previously an automated county transfer for most of these cases.
- b. A SDX case creation triggers a reassessment of all cases associated with that income support case. All of these changed decisions have to be reviewed by the county caseworker.
These requirements add to the ongoing workload.

5. Mandated Tax Form

The new 1095-B tax form must be mailed annually by the N.C. Department of Health and Human Services to households with a resident receiving Medicaid/NCHC during any period over the previous year. Approximately 1.5 million such forms have to be mailed in February and March. DMA established a call center, but, recipients can still call their County DSS and undeliverable letters are still returned to the County DSS for processing, adding to the seasonal workload.

C. USDA FOOD AND NUTRITION SERVICES REQUIREMENTS AND RELATED IMPACTS

1. Timeliness Requirements

The USDA mandates a high standard for timely applications for states. North Carolina must achieve and sustain a 95 percent timeliness rate for FNS applications, a rate that North Carolina and other states have struggled to achieve because of the "Great Recession of 2008" which significantly impacted the workload of counties. Failure to achieve USDA timeliness requirements may result in suspension or disallowance of federal reimbursement to county departments of social services and State DSS from USDA. Annually the State draws down approximately \$80 million in federal reimbursement for counties for the administration of the FNS Program. If federal funds are disallowed or suspended counties will have to replace lost federal funds for the continued administration of the FNS Program. Federal requirements also apply to payment accuracy and recertifications – both need improvement. Achieving and sustaining these USDA requirements create ongoing workload demands.

2. Able Bodied Adults Without Dependents (ABAWD) Requirements (FNS)

The statewide waiver in place since 2008 ended in January 2016 for the 23 counties implementing ABAWD requirements. The remaining 77 counties will implement effective July 1, 2016. Additional time will be needed for caseworkers to explain policies and to assess each recipient. This adds to ongoing workload requirements.

3. FNS Employment and Training Programs

While this is voluntary, counties are strongly encouraged to implement Employment and Training (E&T) programs in collaboration with community partners to support FNS recipients going to work and help meet the time limit requirements for the ABAWD. Participation in an E&T Program allows an ABAWD to meet qualifying components and continue receiving FNS benefits beyond the time limit.

4. FNS Applications Generated by Tax Preparation Companies

Counties received over 12,000 faxed applications from Intuit Turbo Tax last year. Others came via referrals to the ePASS on-line portal. Turbo Tax will refer tax filers to ePASS for FNS applications this year. While less than 20 percent were approved last year, all applications still must be processed. Other tax preparation companies could begin to provide this customer service. This adds to the seasonal workload and coincides with the ACA Open Enrolment period.

D. PROGRAM INTEGRITY REQUIREMENTS

North Carolina is under a Corrective Action Plan regarding compliance with Program Integrity requirements in Food and Nutrition Services (FNS) by USDA. Many counties have utilized their Program Integrity staff to help meet FNS and Medicaid processing requirements. Counties must assure adequate staffing to perform program integrity functions.

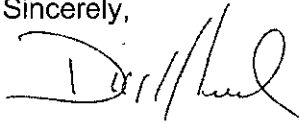
All of these factors contribute to the "New Normal" facing County Social Services agencies in administration of Economic Services programs.

Failure by North Carolina to achieve these program requirements could result in significant financial penalties and/or additional workload burdens. The attached document; "Potential Consequences of Failure to Achieve Federally Mandated Processing Requirements for Economic Services Programs", details some of these potential penalties.

Please direct questions regarding these factors impacting County Social Services agencies to Wayne Black, Director of the Division of Social Services, at Wayne.Black@dhhs.nc.gov or 919-527-6336.

Thank you for your continued commitment to the provision of timely and efficient services to the residents of North Carolina.

Sincerely,



Dave Richard
Deputy Secretary for Medical Assistance
Division of Medical Assistance



Wayne E. Black
Director of the Division of Social Services

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Attachments

cc: Linda Millsaps, NCACC
Sharnese Ransome, NCACDSS
County Managers
County Finance Officers
County Human Services Directors/Assistant County Managers
for Human Services

DIR-03-2016

Potential Consequences of Failure to Achieve Federally Mandated Processing Requirements for Economic Services Programs

North Carolina is required by federal regulations to achieve and maintain mandated processing standards in the administration of economic services programs. These standards include application processing timeliness, timeliness in completion of recertifications and accuracy in delivery of program benefits. Major federal programs include Medicaid and Food and Nutrition Services (FNS) (formerly referred to as Food Stamps).

Food and Nutrition Services: Timeliness

On Oct. 1, 2014 the United States Department of Agriculture (USDA) issued guidance on its plan to escalate the intervention process and promote significant improvements in the timely processing of FNS applications for states performing below acceptable levels. According to the USDA, the national timeliness average decreased from 91 percent in 2004 to 88 percent in 2013, the same year North Carolina's timeliness rate was approximately 75 percent.

On May 21, 2015 North Carolina received an advance warning letter from the USDA that required an aggressive corrective action plan to achieve and maintain a 95 percent timeliness rate for FNS application processing.

The advance warning letter states **that North Carolina could be subject to suspension or disallowance of federal funds to administer the FNS program** if we do not achieve significant progress toward meeting the required benchmark of a 95 percent average timeliness rate from January through June 2016. **The total annual federal reimbursement to North Carolina for administration of the FNS program is projected to be approximately \$80 million for FY 2015-2016.**

Food and Nutrition Services – Payment Accuracy

The USDA mandates a payment error rate of less than 6 percent by states to avoid financial penalties. Calculated from a quality control review of a random sample of cases, North Carolina's payment error rate for FFY 2014-2015 was 6.64 percent, exceeding the mandated 6 percent threshold. **Failure to reduce the payment error rate could result in a financial penalty of approximately \$1 million for North Carolina.**

Medicaid – Timely Processing of Applications

The Center for Medicare and Medicaid Services (CMS) requires Medicaid applications to be processed within a specified timeframe of filing. Meeting this requirement is a challenge for some counties in North Carolina. In addition, some counties are unable to complete all recertifications in a timely manner, resulting in the required extension of Medicaid coverage until ongoing eligibility can be determined.

Client advocacy groups continue to express concerns regarding North Carolina's application processing performance. Almost everyone who works in Social Services is familiar with the 1974 class action lawsuit *Alexander v. Hill*, which through various settlement agreements and further lawsuits (*Alexander v. Flaherty*, *Alexander v. Britt*, *Alexander v. Bruton*, et.al.) significantly added to county time, effort, and resources over the previous 40-plus years. In order to improve and closely monitor the timeliness of the counties in the processing of public assistance applications, the court orders imposed significant additional administrative requirements. In several cases, these additional requirements exceeded even the federal program requirements. Counties were required to maintain cumbersome daily logs and additional reporting and monitoring requirements were imposed. The requirements added to the workload and administrative time demands of the clerical and eligibility staff. The court also required that counties provide additional notices which resulted in increased postage expenses. **This tremendous amount of burdensome work to document activities, which has no direct impact on the actual delivery of benefits to eligible recipients, was one outcome of the lawsuit. Over the years, the additional administrative costs from this settlement is estimated to be in the millions. We must achieve and sustain timely Medicaid processing requirements in order to avoid further legal action and additional administrative cost burdens.** (For those of you unfamiliar with the *Alexander v. Bruton* case, attached is a brief one page summary of the case.)

Food and Nutrition Services – Recertification Timeliness

North Carolina is currently operating under a corrective action plan with the USDA regarding timely processing of FNS recertifications. With a recertification timeliness rate for FFY 2014-15 of 83.04 percent, **North Carolina must significantly improve the rate of timely completion of FNS recertifications or become subject to possible financial penalties.**

Alexander v. Bruton

Alexander v. Bruton, Civil No. CC-74-183-M (Western District of North Carolina, Charlotte Division) was a class action lawsuit filed in 1974 the U.S. District Court for the Western District of North Carolina. The litigation took place over 28 years between 1974 and 2002. The case ended in 2002 after CMS (then HCFA) approved the DHHS Exit Plan (“Plan to Assure Timely and Quality Services to Applicants for Medicaid”) which was approved by the Court.

Parties and claims. The lawsuit was filed by the Legal Aid Society of Mecklenburg County on behalf of all North Carolina applicants for Medical Assistance (Medicaid) and the Aid to Families with Dependent Children (AFDC) programs.¹ Defendants were the Division of Social Services and the Mecklenburg County Department of Social Services. The lawsuit alleged, and the Court found, that State and County administrators in all counties were failing to process applications for Medicaid and AFDC in a timely manner, in violation of federal requirements. Plaintiffs sought declaratory and injunctive relief to ensure that County DSS offices would process all applications on time and ensure that no benefits would be delayed to qualified applicants.

Litigation history. In 1975, the Court ordered defendants to implement a plan for the timely processing of applications. In 1977, the Court ordered defendants to take additional affirmative steps to ensure that all applications be timely processed, absent good cause. To monitor these obligations, the Court ordered defendants to submit reports showing the number of applications processed and pending in each county each month. In 1981, the Court found that approximately 20% of Medicaid applications, and approximately 15% of AFDC applications, in Mecklenburg, Wake and Stokes counties, were not being processed on time. Based on these findings, the Court determined that, statewide, State and County officials had “seriously failed” to comply with their obligations under federal law, and with earlier Court orders. The Court ordered defendants to accelerate their efforts and, as a remedial sanction, that each applicant be paid \$50 per week for each week that his or her application was delayed. Many of the Court ordered remedies actually exceeded the federal requirements and resulted in substantial additional expenditures by the counties in processing applications for public assistance.

In 1992, the parties entered into a detailed Consent Order. The 41-page Consent Order provided that applications for the Medicaid and AFDC programs will be processed in conformity with applicable federal law and regulations. As part of the Consent Order, the Court retained jurisdiction for six years to monitor defendant’s compliance with federal law. This Consent Order included significant monitoring requirements to allow Plaintiffs’ counsel and the Court to monitor NC’s performance.

The end of the litigation. In 1999, the Court directed defendants to submit an Exit Plan to the Health Care Financing Administration (“HCFA”) (now named CMS). In 2001, HCFA confirmed that the Exit Plan complied with all federal requirements for the processing of Medicaid applications. Based on HCFA’s approval of the Exit Plan, the Court dismissed the case on February 5, 2002. This ended one of the most onerous class action lawsuits in North Carolina history; a lawsuit that resulted in the State and counties incurring significant expenditures to achieve compliance with various Court orders and a lawsuit which lasted almost 25 years. Many effects of this suit are still in place today.

¹ The AFDC program was eliminated in 1996.