Medicaid Work Requirements & Due Process Q&A Series – Notice (January 20, 2026)

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Introduction

Due process will be central to mitigating the significant coverage loss that will occur as states implement Medicaid work requirements. In this Q&A series, NHeLP will analyze the role of due process in implementation. This first set of Q&As focuses on Notice.

> NOTE: This Q&A series assumes familiarity with the requirements for work requirements as set forth in the Medicaid Act. Readers who need to review these requirements are referred to NHeLP's other materials about work requirements including: *Eligibility and Enrollment Provisions in OBBBA* and *How to Prepare for Medicaid Work Requirements* (webinar).

Q. 1: For work requirements, what types of notice must states send and when?

One of the newest provisions of the Medicaid Act, 42 U.S.C. § 1396a(xx), sets forth work requirements (also referred to as "community engagement" requirements) for those in Medicaid expansion groups. This provision mandates that states provide at least three types of notice in implementation of these requirements.

First, *initial and ongoing outreach*: states must provide outreach to "applicable individuals" in the Medicaid expansion group. "Applicable individual" is defined to be someone who is not a "specified excluded individual" and is: 1) eligible to enroll (or enrolled) in the expansion population (42 U.S.C. § 1396a(a)(10)(A)(i)(VIII)) under the state plan or eligible to enroll (or enrolled) under a waiver that provides minimum essential coverage; and is 2) between the ages of 19 and 64, not pregnant, not Medicare eligible, and not otherwise eligible to enroll under the state plan. *Id.* § 1396a(xx)(9)(i).

Outreach must begin at least four months before the state's initial implementation of work requirements. *See id.* § 1396a(xx)(8)(A). For states that set the look-back period for compliance at more than one month, then states must lengthen their outreach period by that number of months.[1] For example, for states that adopt the requirement that an applicant comply with work requirements for three consecutive months, then state outreach must begin six months prior to implementation. States must engage in periodic outreach after the initial implementation has occurred.
[2]

The state's outreach notice must include: how to comply with requirements, a description of all exemptions, an explanation of who is subject to the requirements, the consequences of failing to comply, and how to report a change in status when one becomes eligible for an exemption. *Id.* § 1396a(xx)(8)(A)(i)-(iii).

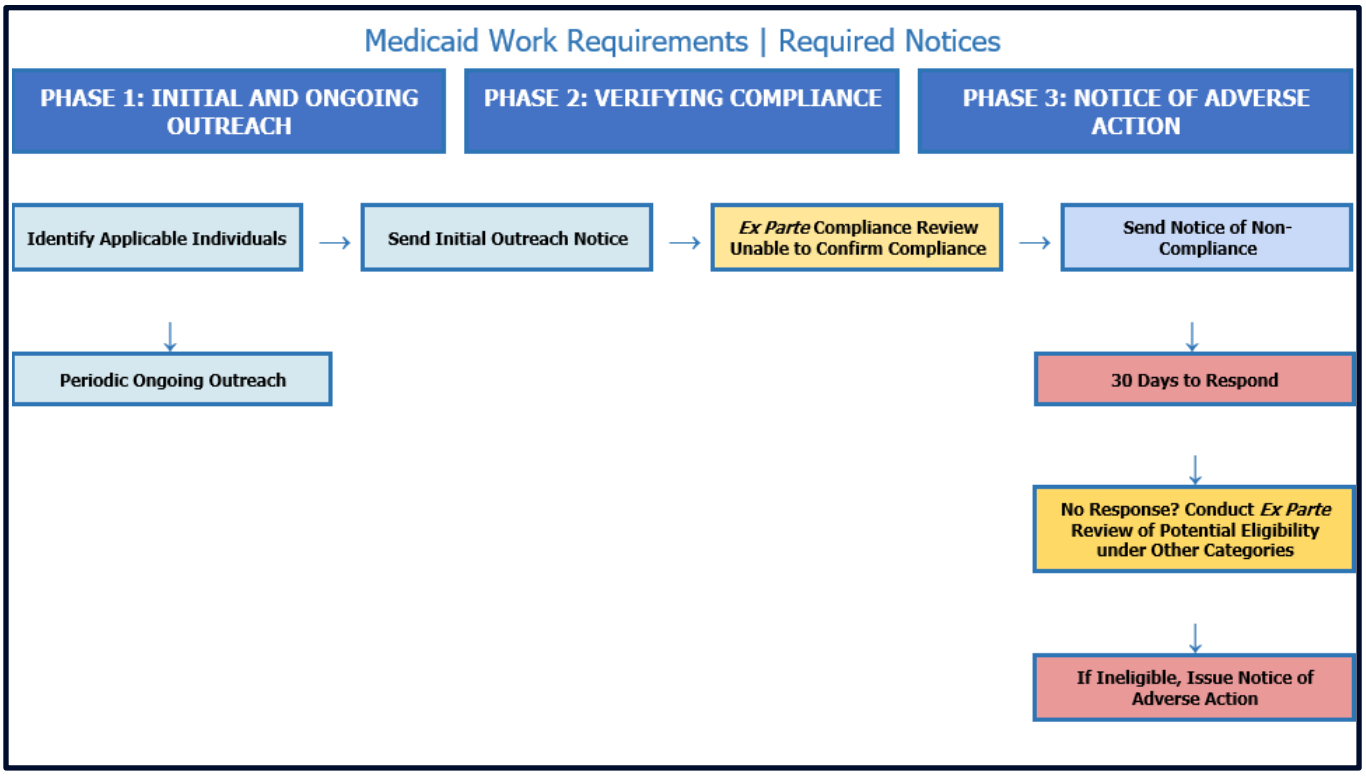
[1] Note that in the chart provided by CMS detailing outreach timelines, "implementation" refers to the date that the state begins to verify work requirement compliance, which is later than when individuals must begin to demonstrate compliance (depending on the number of compliance months the state elects). *See* CMS, CMCS, *Section 7119 of the "Working Families Tax Cut" Legislation, Public Law 119-21: Requirements for States to Establish Medicaid Community Engagement Requirements for Certain Individuals* at 13 (Dec. 8, 2025), https://www.medicaid.gov/federal-policy-guidance/downloads/cib12082025.pdf.

States must send the notice by regular mail (or, if elected by the individual, in electronic format) as well as in one or more additional forms (including telephone, text, website posting, or other commonly available means). *Id.* § 1396a(xx)(8)(B).

Second, *verifying compliance*: When a state has not been able to verify that an applicable individual is in compliance with work requirements, the state must send them a "notice of non-compliance." *Id.* § 1396a(xx)(6)(A)(i). This notice must contain information about how an individual can make a "satisfactory showing" of compliance or qualifying for an exemption. *Id.* § 1396a(xx)(6)(B)(i). The notice must also provide information about the ability to reapply for Medicaid where an application is denied or eligibility is terminated. *Id.* § 1396a(xx)(6)(B)(ii).

Although the statute only contemplates the notice of non-compliance, the statute and current CMS guidance do not prohibit states from sending a "request for information" after an application or renewal form is submitted (but before the state issues a notice of non-compliance) to collect information not in the state's possession or to clarify information in its possession that is questionable.

Third, notice of adverse action: After sending a notice of non-compliance, states must give individuals 30 days to demonstrate they are in compliance or meet an exemption. *Id.* § 1396a(xx)(6)(A)(ii). If, at the end of the 30 days, an individual fails to provide the requested information, the state must issue a notice of adverse action that provides an opportunity for a fair hearing. *Id.* § 1396a(xx)(6)(A)(iii)(II). Importantly, prior to issuing the notice of adverse action, states must undertake an *ex parte* review to determine whether the individual continues to qualify for coverage under any other category of Medicaid. *Id.* § 1396a(xx)(6)(A)(iii)(I).



Q. 2: How should states identify who should receive outreach notices?

Those who are or may become subject to work requirements must receive notice about the compliance criteria, particularly given that the state will require that beneficiaries demonstrate compliance for at least one month (but not more than six months). *Id.* § 1396a(xx)(1)(A)-(B).

Under 42 U.S.C. § 1396a(xx)(8)(A), states must send outreach notices to all "applicable individuals" already enrolled in the state's Medicaid program. Of course, states can engage in more outreach than that required by the law. The need to engage in additional outreach would be a good topic to address with state agencies. That conversation should include discussion around the complexities of who is subject to work requirements and when they become subject.

For example, individuals who are not "applicable individuals" because they are not enrolled through the expansion group may lose that status in the middle of a certification period (*e.g.*, an 18-year-old child turns 19). If your state moves these individuals between categories prior to their renewal date, then the individuals will need advance notice of work requirements to ensure they know to comply (particularly if the state requires compliance in more than one month per certification period). The same concerns would apply to those who lose an exemption in the middle of a certification period (*e.g.*, their child turns 14). In all cases, the

outreach activities should be driven by the need to provide accurate information and avoid undue confusion.

Q. 3: What procedures must states follow prior to issuing a notice of adverse action?

If a state cannot establish that someone met the community engagement requirements or was not required to do so, it must provide notice of noncompliance and allow the applicant or beneficiary 30 calendar days from the date such notice is received to demonstrate compliance or show that the requirement does not apply to them. 42 U.S.C. § 1396a(xx)(6). This notice must include information about how to demonstrate compliance or show that the requirement does not apply, and how to reapply for medical assistance if the individual's application is denied or if the beneficiary is disenrolled. A state must continue to provide an enrolled beneficiary with medical assistance during the 30-day period.

If no satisfactory showing of compliance with or inapplicability of the requirement is made, the state must determine whether the individual has any other basis for eligibility for Medicaid and must continue the beneficiary's eligibility until that assessment is complete. *Id.* § 1396a(xx)(6)(A)(iii)(I); 42 C.F.R. § 435.916(f). Federal courts have interpreted the federal regulations to require automatic, *ex parte* redeterminations. *See*, *e.g.*, *Crippen v. Kheder*, 741 F.2d 102, 107 (6th Cir. 1984); *Mass. Assn. of Older Ams. v. Sharp*, 700 F.2d 749, 753 (1st Cir. 1983) (holding beneficiaries who had been terminated from Medicaid were entitled to continued coverage until their Medicaid eligibility was redetermined); *Hawkins v. Cohen*, 327 F.R.D. 64, 87 (E.D.N.C. 2018). The state cannot request additional information from the beneficiary to determine eligibility under another basis if it already possesses it. *See* 42 C.F.R. § 435.916(d)(1(i); *see also* 42 U.S.C. § 18083(c)(3). If the state concludes the beneficiary does not qualify for Medicaid on any other basis, then it must provide the person with written notice and the opportunity for a fair hearing. 42 U.S.C. § 1396a(xx)(6)(A)(iii)(II), (a)(3). Where the state has determined the beneficiary ineligible for Medicaid (or CHIP), the agency must transfer the beneficiary's electronic account to the federal or state-based marketplace. 42 U.S.C. § 18083(a); 42 C.F.R. § 435.916(f)(2) and § 457.350; *see also* CMS, CMCS Informational Bulletin, *Medicaid and Children's Health Insurance Program (CHIP) Renewal Requirements* (Dec. 4, 2020), https://www.medicaid.gov/federal-policy-guidance/downloads/cib120420.pdf.

Q. 4: What information must states include in notices of adverse action?

The Medicaid Act requires states to provide individuals with the opportunity for a fair hearing when the claim for medical assistance is denied or not acted on promptly. 42 U.S.C. § 1396a(a)(3). The recently enacted community engagement provisions further alert states to these notice and fair hearing rights. *Id.* § 1396a(xx)(6)(B). The law specifically requires states to provide written notice and fair hearing rights in accordance with 42 C.F.R. part 431 subpart E. *Id*. As of the date of OBBBA's enactment, part 431 establishes the following requirements for the notice, including advance notice in the case of an eligibility termination: the notice must contain a statement of the intended action, the action's effective date, the specific reasons and legal support for the action, and an explanation of the individual's hearing rights, rights to representation and to continued benefits. *See* 42 C.F.R. §§ 431.206(b), 431.210, 435.916(a)(3)(i)(C). The notice must be written in plain language and be accessible to individuals with disabilities and persons with limited English proficiency. *See* 42 C.F.R. §§ 435.916(g), 435.917(a), 431.206(e), 435.905(b). Furthermore, states must provide individuals with a choice to receive notices in an electronic format or by regular mail. 42 C.F.R. § 435.918(a). For terminations of eligibility, a notice must generally be sent at least ten days before the date of the action, with some limited exceptions. 42 C.F.R. § 431.211

In addition to rights under the Medicaid Act, individuals also have constitutional due process rights. A Supreme Court case, *Mathews v. Eldridge*, establishes a balancing test for determining what process is due, including notice, and requires courts to evaluate: (1) the private interest that will be affected by the official action, (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) the government's interest, including the financial and administrative burdens of additional procedures. 424 U.S. 319, 335 (1976). Notices that deny, reduce, or terminate Medicaid coverage must be "reasonably calculated, under all circumstances, to apprise parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Of course, courts have not yet applied these standards to Medicaid work requirement notices; however, cases involving SNAP work requirement notices provide useful analysis. For example, in *Brooks v. Roberts*, 251 F.Supp.3d 401 (N.D.N.Y. 2017), after New York state re-implemented SNAP work requirements in certain counties, it sent notices terminating non-compliant individuals from the program. Those notices did not: (1) specifically explain why the individual must comply with work requirements, (2) identify which months the individual was

out of compliance, (3) contain clear instructions about how to demonstrate compliance, or (4) offer sufficient details about available exemptions and how to pursue them. *Id.* at 413. After determining the state had deprived plaintiffs of a protected property interest, the court applied the *Mathews* balancing test to determine whether the notices complied with constitutional due process. *Id.* at 426. Addressing the risk of erroneous deprivation, the court found that the notices were overly general because they lacked specific reasons as to why an individual did not meet a particular work requirement and did not adequately explain available, applicable exemptions in plain, understandable language. Due to these deficiencies, the court held the notices violated due process. *Id.*

The court in *Brooks* is not the first to find that a state must include available exemptions in a notice of adverse action. *See*, *e.g.*, *Aacen v. San Juan Cnty. Sheriff's Dep't*, 944 F. 2d 691, 697 (10th Cir. 1991) (applying *Mullane* and finding that since "[e]xemptions are not fungible…notice of a single exemption does not necessarily meet the due process requirements as to any additional exemptions"); *Dionne v. Bouley*, 757 F.2d 1344, 1350-51 (1st Cir. 1985) (affirming that notice was inadequate where it failed to advise affected individuals of relevant exemptions and the means to assert them); *Kirby v. Sprouts*, 722 F.Supp.516, 522 (C.D. Ill. 1989) (due process requires notice about possible exemptions and procedures by which those exemptions may be asserted, *i.e.* a hearing); *Green v. Harbin*, 615 F. Supp. 719, 725 (N.D. Ala. 1985) (constitutional due process requires that, when the government issues a writ of garnishment, individuals be served contemporaneous notice of their basic exemption rights); *Philadelphia Welf. Rights Org. v. O'Bannon*, 525 F.Supp.1055, 1061 (E.D. Pa. 1981) (finding food stamp notice of adverse action "constitutionally deficient [in part] because it does not include an explanation of the statutory change necessitating the reductions and/or termination in benefits…[and]…because it does not contain an explanation of the two [statutory] exceptions (that is, the presence of an elderly or disabled person in the household…").

Under both the Medicaid Act and the U.S. Constitution, a notice of adverse action that denies or terminates coverage based on the failure to comply with work requirements must set forth specific, individualized facts that detail the basis for requiring compliance, identify the time period in which compliance is required, describe why the individual is not in compliance, provide clear instructions about how to comply, and include all available exemptions.

Q. 5: What are the due process considerations if a state relies on a separate portal or entity to collect compliance information?

Some states may delegate work compliance checks to separate entities or develop separate portals to collect information needed to determine compliance. These states must take extra steps to ensure their statutory and constitutional due process obligations are satisfied.

For example, states may design a system where the separate entity or portal transmits a binary "yes" or "no" answer to the state's electronic eligibility system about whether an individual is complying. This binary transmission would lack the underlying facts the entity used to reach an eligibility determination. Without a separate mechanism for capturing and conveying that information to an applicant or enrollee, the state will run afoul of its legal obligation to explain the factual and legal underpinnings of the decision to the individual, which the individual needs to decide whether or not to challenge the action. A yes/no response also raises due process problems because it cloaks the underlying basis for the decision, thus creating a secret decision-making process that is shielded from review. *See, e.g.*, *K.W. by D.W. v. Armstrong*, 683 F. Supp. 3d 1125, 1135 (D. Idaho 2023) ("[T]he very foundation of the adversary process assumes that the use of undisclosed information will violate due process because of the risk of error.") (quoting *American-Arab Anti-Discrimination Committee v. Reno*, 70 F.3d 1045, 1069 (9th Cir. 1995)).

Similarly, states cannot fail to keep a record of the basis for its eligibility determination and, instead direct an individual to contact another entity to learn why they are ineligible. *See Barry v. Corrigan*, 79 F.Supp.3d 712, 743 (E.D. Mich. 2015) ("defendant cannot satisfy due process by requiring notice recipients to call elsewhere) (citing *Boatman v. Hammons*, 164 F.3d 286, 290 (6th Cir. 1998)). However, while the state must convey the specific factual basis for its decision in writing, that basis does not have to be entirely conveyed in a single termination notice. *Rosen v. Goetz*, 410 F.3d. 919, 931 (6th Cir. 2005)) ("Due process does not require 'reasonably calculated' notice to come in just one letter, as opposed to two.").

Thus, if your state is considering whether to delegate collection of compliance activities to another entity or even to be captured within a separate eligibility portal, it will be important to remind them that they remain obligated to provide all the relevant information used to reach an eligibility determination.

Q. 6: What if the state fails to send notice?

Given the stress on state eligibility systems that work requirement implementation will cause, states may fail to abide by core protections, like providing notice of adverse action upon denial of an application or prior notice of adverse action when terminating benefits. When a state fails to send notice of an adverse action, it violates the Medicaid Act and constitutional due process. *See* 42 U.S.C. §§ 1396a(a)(3), 1396a(xx)(6)(A)(iii)(II); *Goldberg v. Kelly*, 397 U.S. 254, 268-71 (1970). Reminding the state, other advocates (*e.g.*, enrollment assisters), and Medicaid enrollees about these rights is an essential part of preparing them for erroneous coverage losses that will occur as work requirements in Medicaid are implemented for the first time.