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PROFESSIONAL REGULATORY
REVIEW COMMISSION

December 23, 2004

Office of Income Maintenance
Bureau of Policy

Department of Public Welfare
Office of Income Maintenance
Edward J. Zogby, Director
Bureau of Policy
Room 431 Health and Welfare Building
Harrisburg PA 17120

DEC 29 2004

REFER TO: OGC

Re: Proposed Rulemaking
Special MA Eligibility Provisions
55 PA Code Chapter 140

Dear Mr. Zogby:

We are writing to comment, on behalf of our affected clients, on the proposed regulations published by the Department on November 27, 2004 at 34 Pa. B 6335, concerning the Breast and Cervical Cancer Prevention and Treatment (BCCPT) Medical Assistance (MA) program. We are very pleased that DPW has taken this federal option. We have frequently assisted low income women with breast and cervical cancer who would otherwise have no way to pay for treatment, and for whom the BCCPT MA program has literally been a lifesaver. Our BCCPT clients are usually low income working mothers, who have struggled to continue working as many hours as they can, while receiving radiation and chemotherapy or other treatment. Many had postponed urgently needed breast cancer surgery and other treatment, because they had no means to pay for it, until we connected them with the BCCPT MA program. **We want to thank the Department for adopting the BCCPT MA program.**

While we are very pleased with the Department's choice to expand Medicaid to include women eligible for the BCCPT program, we have two technical corrections to offer to the proposed regulations, concerning sections 140.621 (1)(iii) and 140.633(a) (2).

1. Section 140.621(1)(iii)

Section 140.621(1)(iii) should read "Chapter 150 (relating to citizenship and alienage)."

Section 140.621(1)(iii) should be modified to incorporate the correct citation for

citizenship and alienage requirements in Pennsylvania's Medical Assistance programs. As section 140.621(1)(iii) is presently written, it incorrectly refers to a Chapter of the Pennsylvania Code dealing with citizenship and alienage requirements *in the former AFDC program, rather than to the relevant Medical Assistance chapter.*

2. Section 140.633(a)(2)

Section 140.633(a)(2) should read "Verification that the woman is a United States citizen, a qualified alien, or otherwise PRUCOL as defined in Chapter 150. An applicant applying for BCCPT for an emergency medical condition is not required to verify alien status."

Section 140.633(a)(2) should be modified to reflect the correct citizenship/alienage requirements as stated in Chapter 150, which including citizens and qualified aliens, and enumerates several other groups of eligible non citizens described as "PRUCOL," or non citizens who are permanently residing in the United States under color of law. It should also be modified to reflect the exception to MA verification requirements for emergency medical conditions noted in Section 150.1(e).

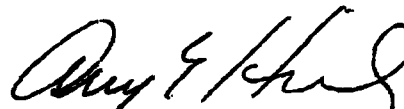
As Section 140.633(a)(2) is presently written, it incorrectly requires non citizens to present verification of either citizenship or qualified immigrant status, *excluding all eligible non citizens in PRUCOL categories.* It also fails to mention the exception to the citizenship/alienage verification requirements for MA applicants with emergency medical conditions.

We encourage the Department to adopt these technical changes as they correctly reflect established law on immigrant eligibility for MA benefits.

Finally, we are disturbed by two aspects of the program resulting from federal law. First, we believe that limiting the program to women unconstitutionally excludes men with breast cancer. Although breast cancer is less common among men, it does occur. Second, we believe that limiting the program to women who are screened through the Healthy Woman Project sites creates unnecessary obstacles to accessing the program for low income women whose breast or cervical cancer is initially detected through another health-care provider.

We want to reiterate how pleased we are that the Department has taken the option to create a BCCPT MA program, and how critically important this coverage is for low income women with breast and cervical cancer.

Very truly yours,



Amy E. Hirsch
Sofia Memon
John Whitelaw
Attorneys



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FAX TRANSMITTAL COVER SHEET FAX NUMBER: (215) 227-2435

DATE: 12/27/04

TO: Ed Zogby

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FROM: AMY HIRSCH

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TOTAL NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 3

RE: Comments on BCIPT regulations

MESSAGE: Thanks! Happy New Year-

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Office of Income Maintenance
Bureau of Policy

December 27, 2004

DEC 28 2004

Department of Public Welfare
Office of Income Maintenance
Edward J. Zogby, Director
Bureau of Policy
Room 431 Health and Welfare Building
Harrisburg, PA 17120

REFER TO: OGC

Re: Proposed DPW Regulations—55 PA Code Chapter 140

Dear Mr. Zogby,

The following comments are submitted on behalf of our clients, The Armstrong County Low Income Rights Organization, The Philadelphia Welfare Rights Organization, and the Consumer Subcommittee of the Medical Assistance Advisory Committee (MAAC) regarding the draft regulations to provide Medicaid coverage to uninsured women under 65 years of age who are diagnosed with and found to need treatment for either breast or cervical cancer, or a precancerous condition of the breast or cervix.

The BCCPT program has been invaluable to low-income women who are uninsured or without creditable coverage, in providing coverage for the treatment that they need following a diagnosis of breast or cervical cancer, or a precancerous condition. As of December 3, 2004, over 700 women in PA were enrolled in the program.

Nonetheless, we do have some concerns and suggestions for the final regulations.

1. The regulations should reference other sources of more detailed information such as MA Bulletins (99-01-12 and 99-02-06) and Medical Assistance Operations Memorandum OPS011208. This is crucial in order for consumers, providers and other interested parties to know where to obtain more detailed information about program eligibility, and the interaction between the Healthy Woman Project and the BCCPT, as well as detailed information on the operation of the program.

Problem: The BCCPT program has been in operation for almost three years without promulgated regulations. Instead, several Bulletins and an Ops Memo have been issued by DPW that govern this program and detail how it will operate. Neither the preamble nor the

proposed regulations reference those Bulletins and Memo or the information contained in them.

The regulations are vague and sparse and they leave a reader with many questions about who is or is not eligible for the program, about the interaction between the Healthy Woman Project (HWP) and BCCPT, and program implementation. We want to make sure that the MA Bulletins and MA Operations Memorandum cited above, that were issued before these proposed regulations, continue in effect and are valid and accurate guidance for how the BCCPT program is run.

Solution: We recognize that these regulations address eligibility for the BCCPT and do not need to contain detailed information about how the program is implemented. However, it is critical that at least the preamble to the regulations reference the two MA Bulletins and the MA Operations Memorandum cited above (provided they are still in effect) so that consumers and providers can get more detailed information about eligibility for BCCPT as well as the operation of the program.

The following are some examples of information that is contained in the aforementioned MA Bulletins and MA Operations Memorandum, but not addressed in the regulations:

- Eligibility for women who are screened and diagnosed outside of the HWP, who otherwise meet eligibility criteria to be enrolled in the HWP, and qualify for full MA coverage under BCCPT program;
- Explanations of what information is needed from providers to verify the continued need for treatment that must be provided at each partial and complete redetermination;
- Persons eligible for the BCCPT remain in the FFS delivery system, even if they live in a HealthChoices county;
- A definition of what is considered “treatment for breast or cervical cancer”.

2. In Sections 140.621(2)(ii) and 140.633(1), the phrase “need treatment” should be more clearly defined and should include “taking Tamoxifen or any other medication that is aimed at preventing the recurrence of breast or cervical cancer”.

Section 140.621(2)(ii) states that in order for a woman to be eligible for categorically needy BCCPT, she shall be “screened under the CDC’s NBCCEDP and diagnosed with either breast or cervical cancer or a precancerous condition of the breast or cervix, and need treatment for either breast or cervical cancer, or a precancerous condition of the breast or cervix.”

Problem: The phrase “need treatment” is not defined and may be interpreted differently by different providers. The lack of clear definition has been problematic for consumers trying to access coverage through the BCCPT. Specifically, DPW officials have told us that a woman post-surgery on Tamoxifen is considered to be in a course of treatment and eligible for the BCCPT. However, staff members at the HWP sites have told consumers that being on Tamoxifen is not sufficient for BCCPT eligibility.

Solution: Defining the phrase “need treatment” and clarifying when a woman is considered to be in a “course of treatment” would help to ensure that all women receiving treatment (regardless of phase) are considered eligible for the BCCPT. The definition of “need

treatment” must include taking Tamoxifen or any other medication treatment that is aimed at preventing the recurrence of breast or cervical cancer. This clearly fits within the definition set out on page 6 of the 99-01-12 Bulletin. This would also encourage consistent application throughout the state.

3. Section 140.621(2)(iii) states that a woman must be “uninsured” to be eligible. This language is misleading to the reader and should be changed to “no creditable coverage”.

Problem: Stating throughout the regulations that women must be “uninsured” to be eligible misleads the reader (consumer or provider) to think women cannot have any other insurance at all to be covered by the BCCPT. In fact, women with other insurance are eligible for this program as long as they have “no creditable coverage”.

Solution: The language in the regulations pertaining to being “uninsured” as a condition of eligibility should be changed to having “no creditable coverage” in the regulations and all uses of the word “uninsured” should be deleted.

4. Section 140.621(2)(iv) should provide an exception allowing BCCPT eligibility for MAWD eligible women.

Problem: It is our understanding that MAWD is not considered to be a categorically needy Medicaid program. If MAWD is considered a categorically needy Medicaid program, then Section 140.621(2)(iv) should be amended to add an exception for women who could get creditable coverage through the MAWD program. The reason for this is that a woman who has been receiving, or is eligible to receive, benefits under MAWD should not have to pay a premium for MA (under MAWD) if she could get benefits at no cost under the BCCPT program.

Solution: Change the language to: “Be ineligible for any other categorically needy Medicaid program, except those charging monthly premiums, such as MAWD.”

5. Section 140.631 should reference the regulations/guidelines that describe the income eligibility requirements for CDC’s National Breast and Cervical Cancer Early Detection Program (NBCCEDP) and the HWP.

Problem: The preamble to the proposed regulations states that “Under its grant agreement with the NBCCEDP, the DOH Healthy Woman Project provides breast and cervical cancer screening for uninsured women who are under 65 years of age and have a household income below 250% of the Federal Poverty Income Guidelines (FPIG).” The regulations themselves say the only income limits are “those necessary to be eligible for screening by the CDC’s NBCCEDP”. The following information is unclear:

- How is 250% FPIG determined?
- Is the calculation based on gross income?
- Are there any disregards or deductions?
- Does the income of anyone other than the woman count (i.e., her spouse)?
- What about the income of others in the household (i.e., child support)?

Solution: It is critical for a woman and/or advocates to have this information and to know how the HWP determines eligibility prior to referring women to the Project. Providing a reference in the final regulations for where to find detailed information about how income is counted, or at least about whose income is counted, in regard to eligibility for the HWP/NBCCEDP will direct people to this source of information.

6. Section 140.641 should be edited for clarity and for use of consistent language.

Problem: There are two issues with Section 140.641. First, in subsection (b), the first clause, "For Categorically Needy BCCPT Program for qualified women," is missing some words and should be edited for clarity. Second, subsections (a) and (b) should be edited to use consistent language. Since subsection (a) appears to apply broadly to all women needing a redetermination, the language in subsection (b) separating out "Categorically Needy" women seems to imply that there are non-Categorically Needy BCCPT enrollees. That would fly in the face of MA Bulletin 99-01-12 (p.3) that states women who qualify for BCCPT are considered categorically needy.

Solution: First, the language in the subsection (b) clause should be edited for clarity, perhaps by simply deleting the word "for" (the 6th word). Second, the clause in subsection (b) should also be consistent with the language in subsection (a). This could be achieved by adding "Categorically Needy" terminology to subsection (a), or by replacing the first clause in subsection (b) with "For all enrolled women,...".

7. The reference to Chapter 133 in Sections 140.641(b) and 140.642(b) is confusing and should be clarified.

Problem: The reference to Chapter 133 (relating to redetermining eligibility) seems to conflict with the proposed regulations. Chapter 133 refers to redetermining eligibility for all categories of MA (including categorically needy). The redetermining eligibility provisions for MA for the Categorically Needy in Section 133.73 state that complete redeterminations will be at intervals established in Section 133.23(a)(1)(v) (every 6 months for some categories and every 12 months for others). Also, Section 133.73 establishes that complete redeterminations for NMP clients will be carried out every 6 months and that partial redeterminations "must be done at intervals of not less than 3 months for cases in which there is an employable person...". However, the BCCPT program has its own redetermination timeframes set out in the proposed regulations in Sections 140.641 and 140.642.

In addition, Chapter 133 contains information that is not relevant to the BCCPT program. For example, Section 133.23(2)(ii) lists items subject to review at redetermination (including income, assets, and employment and training) which are not factors that affect eligibility for the BCCPT. Furthermore, the information in Section 133.24(b) about a reapplication interview as part of the redetermining eligibility procedure is not relevant. No such interview is necessary for redetermining eligibility for the BCCPT program.

Solution: The final regulations should be specific about what, if any, provisions in Chapter 133 apply to the BCCPT program.

8. Section 140.661 should reference the section on retroactive eligibility.

Problem: Section 140.661 sets out the standard criteria for eligibility, but does not reference the existence of the provision for retroactive coverage in section 140.671. Without this reference, Section 140.661 (when read in isolation) could lead to a woman being denied retroactive coverage.

Solution: Add the following language to the end of the section: "However, retroactive coverage for services may be available as allowed for by the provisions under Section 140.671 dealing with Retroactive Eligibility."

9. Section 140.681 should be clarified to include what "changes in circumstances that would affect eligibility for participation in the BCCPT" a recipient is required to report within 10 days, and explicitly state to whom these changes must be reported.

Problem: Because the BCCPT has different eligibility criteria from regular MA, this regulation is confusing. A woman would only become ineligible for the BCCPT program if she turned 65 years old, was no longer in need of treatment for either breast or cervical cancer, was no longer without creditable coverage, or became eligible for MA benefits under a different categorically needy program. Does a woman only need to report changes in these areas? If a woman's income changed, would she have to report that change within 10 days? If so, who does the woman report these changes to—the HWP or CAO? There is no income requirement for BCCPT. The only eligibility a change in income might affect is the free screening at a Healthy Woman Provider. Presumably, income changes would not need to be reported to the BCCPT.

Solution: The regulation must list, or at least reference provisions elsewhere that detail, what changes in circumstances need to be reported. In addition, the regulation should say to whom the consumer should report the changes.

10. Section 140.691 should be clarified to explain exactly what the appeal and fair hearing rights under Chapter 275 apply to.

Problem: The regulations state the applicant/recipient is entitled to a fair hearing, but do not specify what parts of the BCCPT application process this applies to. For example, consumers may be confused as to whether fair hearings may apply to HWP determinations in addition to DPW eligibility or services issues. This may cause confusion for individuals who receive an eligibility or service denial from the HWP.

Solution: Add language explaining to which eligibility and service denials the appeal and fair hearing rights do and do not apply. Also provide additional guidance or reference the rules for whether, and how, a woman can appeal from HWP eligibility determinations.

We appreciate your attention to these comments. Any questions about these comments should be directed to Erin Guay, at the Pennsylvania Health Law Project, 412-434-4728.

Sincerely,



Erin E. Guay, Paralegal
M. Francesca Chervenak, Esq.
Leonardo D. Cuello, Esq.

cc: Shirley Beer, The Armstrong County Low-Income Rights Organization
Louise Brookins, The Philadelphia Welfare Rights Organization
Members of the Consumer Subcommittee to the MAAC
Mike Campbell



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PA Health Law

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~~Office of Insurance Maintenance~~
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DEC 28 2004

FAX

REFER TO: _____

DATE: December 27, 2004

TO: Edward Zogby, Director, Bureau of Policy

FROM: Erin Guay

Re: Proposed Rulemaking Special MA Eligibility Provisions-55 PA Code Chapter 140

PAGES (INCLUDING COVER SHEET): 6 7

Message:

Mr. Zogby,

Attached are comments on the proposed regulations published by the Department on November 27, 2004 at 34 Pa B. 6335, concerning the Breast and Cervical Cancer Prevention and Treatment (BCCPT) Medical Assistance (MA) program.

Thank you,
Erin

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