



North Carolina Department of Health and Human Services

2001 Mail Service Center • Raleigh, North Carolina 27699-2001
Tel 919-855-4800 • Fax 919-715-4645

Beverly Eaves Perdue, Governor

Albert A. Delia, Acting Secretary

April 2, 2012

The Honorable Phil Berger
President Pro Tempore
North Carolina Senate
Room 2007, Legislative Building
Raleigh, NC 27601

The Honorable Thom Tillis
Speaker of the House
North Carolina House of Representatives
Room 2304, Legislative Building
Raleigh, NC 27601

Dear President Pro Tem Berger and Speaker Tillis:

I am writing in response to your letter dated March 28, 2012, requesting information regarding Medicaid Adult Care Home Personal Care Services and In-Home Personal Care Services. I have included my answers to your questions below.

1. *What specific comparability proposals has the NC DHHS presented to CMS over the last two weeks? What was CMS response to the Department's proposals? Exactly what steps is CMS requiring before May 1, 2012 in order to grant an extension?*

Regarding CMS's concerns about comparability, we have had many conversations with CMS about how to move forward, with the understanding that we both share the same goal of finding a viable solution.

DHHS anticipates submitting a final and formal action plan to CMS as early as this week. Part of that plan will include the 1915i.

2. *How long of an extension is CMS considering, if any? What happens at the end of the extension, if granted?*

We asked CMS to provide an extension until Dec. 31, 2012. It would include monthly milestones and weekly verbal reports that DHHS would be responsible for in order to



proceed. With that extension – which will require budgetary and legislative support – on Jan. 1 the 1915i will be in effect.

3. *When the PCS Service definition, directed by the 2010 NC Budget (SL 2010-31, adopted by the General Assembly on June 30, 2010 and signed by Governor Perdue on June 30, 2010) was approved by CMS for less than one year due to comparability concerns, why didn't the Dept immediately begin work on a plan after the definition expired?*

We did begin working on our plan immediately. In fact, we have been in conversations with CMS for many years about this issue. In 2010, our focus shifted to the 1915i, which emerged as the best solution to address comparability with the least impact on recipients.

4. *The PCS service definition directed by the 2010 budget section was set to expire before the 2012 session. Given the significant change in legislative membership between 2010 and 2011 session, what specific requests were made by the Dept of the 2011 General Assembly to consider amending the PCS program to help address CMS's growing comparability concerns?*

DMA requested a special provision that was included in the budget bill (S.L. 2011-145, Section 10.38). It requests the flexibility to pursue the 1915i option to continue to fund PCS in ACHs, and addresses alleged comparability issues.

5. *Isn't it true that if the District Court Judge's order issued in Pashby v Delia were in effect the Department could continue providing federally-funded PCS for North Carolinians?*

In an effort to uphold Session Law 2011-145, DHHS appealed the District Court's Order to the 4th Circuit Court of Appeals. The 4th Circuit Court of Appeals, in issuing its Order, determined that the State of North Carolina demonstrated a substantial likelihood of prevailing on the issues on appeal before the 4th Circuit.

6. *Wouldn't providing services under the District Court Judge's order issues in Pashby v Delia make in-home PCS and PCS in adult care homes more comparable? Has the Department implemented the ACH portion of the IHCA state plan amendment?*

No, that is not true. There is no ACH portion of the IHCA state plan amendment.

7. *How many people with the Dept terminate from PCS as a result of the 4th Circuit stay of preliminary injunction issued in Pashby v Delia?*

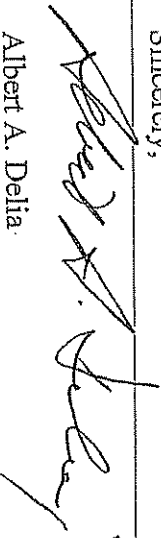
In order to comply with the current North Carolina Medicaid State Plan and the current court order, it is anticipated that 1,700 recipients (out of nearly 25,000 currently receiving services) will be notified that they are no longer eligible to receive PCS services.

8. *Will you, as the named defendant in Rashby v Delia, move immediately for dismissal of your 4th Circuit appeal?*

Current State law requires that a recipient must need assistance with three (3) ADLs in order to receive PCS in home. The District Court's Order required DHHS to provide PCS in a manner that was contrary to state law as well as contrary to the Medicaid State Plan. The District Court's Order could also be used as precedent against the State in future litigation on matters involving due process and the standard for injunctions. Because this is a matter being actively litigated, upon the advice of counsel, further comment on this pending litigation would be inadvisable in order to prevent harming the State's legal interests in this matter.

My staff and I will be available to provide further clarification on Wednesday morning at the Gov Ops meeting.

Sincerely,



Albert A. Delia