Medicaid Unwinding And Franklin Settlement Protections

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charlotte center for legal advocacy

justice lives here.

CONTINUOUS COVERAGE UNWINDING

CONTINUOUS MEDICAID COVERAGE DURING THE PUBLIC HEALTH EMERGENCY

1

Families First Coronavirus Response Act (FFCRA) & Medicaid

FFCRA included a continuous coverage requirement prohibiting states from disenrolling people from Medicaid in exchange for additional federal funds

2

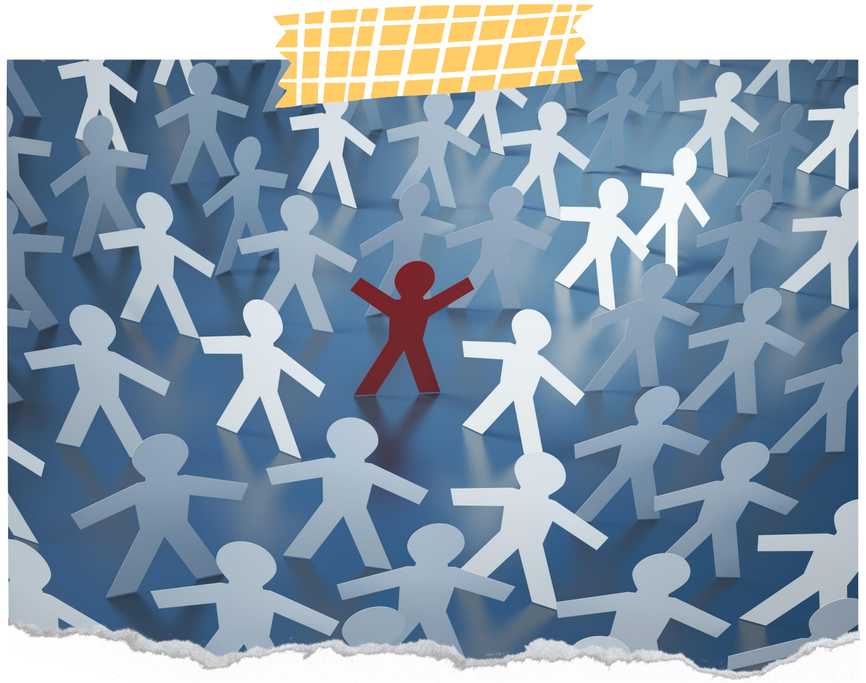
Maintenance of Eligibility (MOE) & Continuous Coverage

- With limited exceptions, members have not been terminated from Medicaid since March 2020, even those who are no longer eligible
- NC has completed redeterminations as scheduled, even though very few could have Medicaid terminated or reduced
- When states return to regular operations, Medicaid redeterminations that result in termination/reduction will begin again – this is referred to as Unwinding

Effect of Public Health Emergency on NC Medicaid Enrollment

- In North Carolina, the number of people enrolled in Medicaid grew from 2.1 million in February 2020 to 2.8 million in July 2022 — an increase of nearly 30 percent.

- At least 265,000 members have been extended due to the continuous coverage requirement despite ineligibility and will potentially lose health care coverage.



265,000 Members

WHO IS MOST LIKELY TO LOSE MEDICAID DURING UNWINDING?

1. Members who are still eligible but are terminated for failure to provide information
2. Parents and caretakers of minor children with increased income
3. Parents and caregivers who no longer have children under the age of 18 years old
4. Young adults who turned 19-21 during the PHE
5. Medically Needy who no longer meet deductible
6. Disabled now working
7. Aged, Blind, or Disabled now getting Social Security of more than 100% of FPL or whose assets have increased

NC UNWINDING SCHEDULE

APRIL 1, 2023

- NC will begin reviewing redeterminations
- Members should start looking for correspondence from DSS this Spring and NOT ignore it!

JUNE 30, 2023

- The first terminations/ reductions will be effective
- As before the pandemic, redeterminations generally take 60 days to process

MAY 31, 2024

- The last termination/ reduction under unwinding will be completed*

*redeterminations will then be conducted as they were prior to the pandemic

- All members will NOT be reevaluated at the same time
- Redeterminations during unwinding will be based on member's current certification period
- Changes of circumstances reported/discovered mid-certification can result in termination or reduction after March 31

UNWINDING SPECIAL ENROLLMENT PERIOD (SEP)

- Marketplace-eligible consumers who submit a new application or update an existing application between March 31, 2023 and July 31, 2024; and attest to a last date of Medicaid or CHIP coverage within the same time period, are eligible for an Unwinding SEP. Consumers are not limited to the 60-day deadline for the traditional loss of coverage SEP.
- Consumers who are eligible for the Unwinding SEP will have 60 days after they submit their application to select a Marketplace plan with coverage that starts the first day of the month after they select a plan.

NC NAVIGATOR CONSORTIUM

AFFORDABLE HEALTH COVERAGE: Let's find it together.

Statewide: **1-855-733-3711**
https://ncnavigator.net/

Family income must be greater than 100% of Federal Poverty Line to qualify for financial assistance (except for those who are ineligible for Medicaid based on immigration status)

NC MEDICAID REDETERMINATION PROCESS

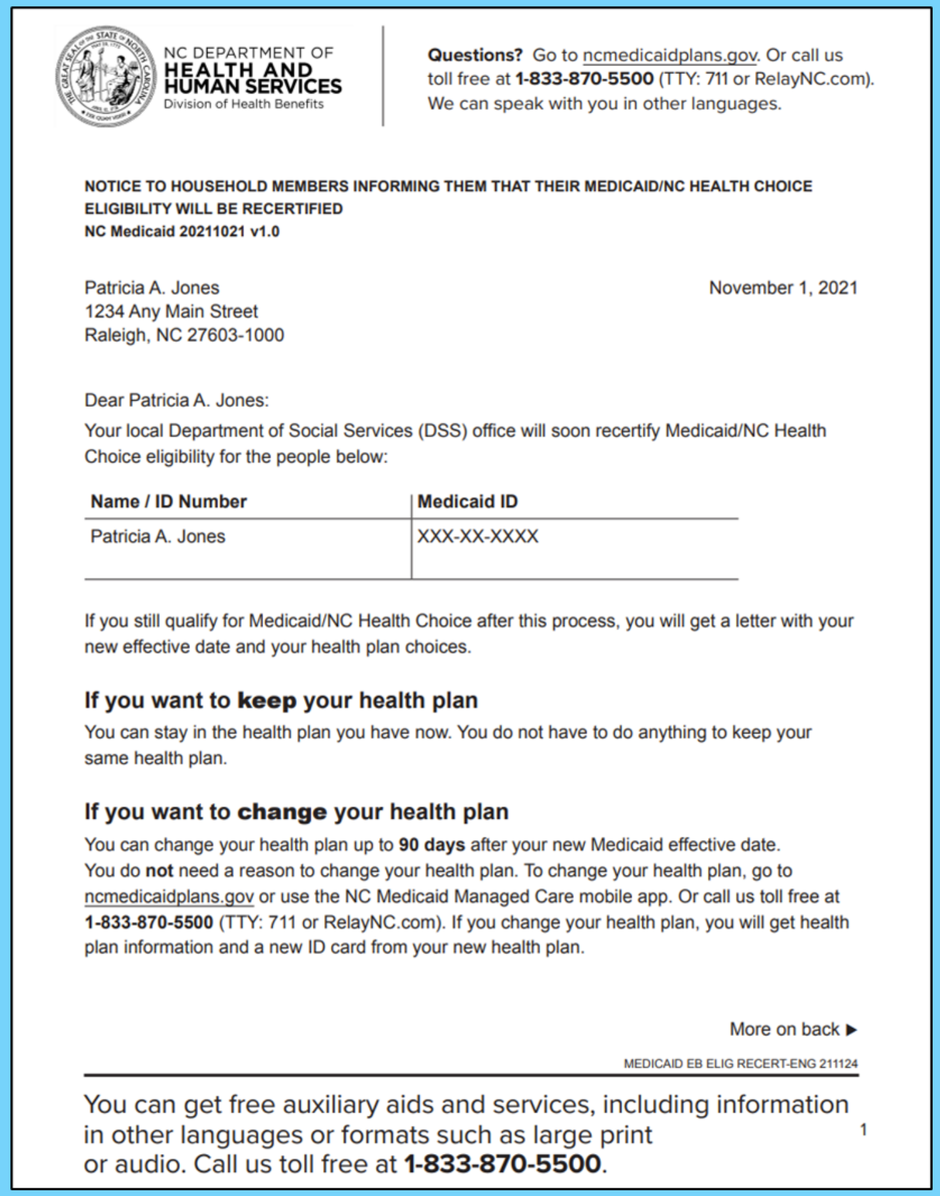
IN A NUTSHELL: MEDICAID REDETERMINATIONS

Redetermination is the process used by DSS to ensure that Medicaid members continue to be eligible for Medicaid coverage.

- All redeterminations are handled by the local Department of Social Services (DSS) except for cases where NCFAST, the state's eligibility system, can approve continued Medicaid.
- Most members are subject to redetermination every 12 months.
- Medicaid can be reduced or terminated during certification period based on a reported change that causes ineligibility.
- Aging out (child turning 19 or parent's youngest child turning 18) also triggers redetermination.
- Redetermination is also required at the end of 12-month post-partum period for Medicaid for Pregnant Women (MPW).

HOW WILL I KNOW?

- Managed Care members receive a notice from the Enrollment Broker informing them that their Medicaid eligibility will be recertified and how to keep/change plans.
- All members receive form DHB- 5085, Important Information about Rights and Responsibilities during the Recertification Process, prior to their redetermination.



NC DEPARTMENT OF HEALTH AND HUMAN SERVICES
Division of Health Benefits

Questions? Go to ncmedicaidplans.gov. Or call us toll free at **1-833-870-5500** (TTY: 711 or RelayNC.com). We can speak with you in other languages.

NOTICE TO HOUSEHOLD MEMBERS INFORMING THEM THAT THEIR MEDICAID/NC HEALTH CHOICE ELIGIBILITY WILL BE RECERTIFIED
NC Medicaid 20211021 v1.0

Patricia A. Jones
1234 Any Main Street
Raleigh, NC 27603-1000

November 1, 2021

Dear Patricia A. Jones:

Your local Department of Social Services (DSS) office will soon recertify Medicaid/NC Health Choice eligibility for the people below:

Name / ID Number	Medicaid ID
Patricia A. Jones	XXX-XX-XXXX

If you still qualify for Medicaid/NC Health Choice after this process, you will get a letter with your new effective date and your health plan choices.

If you want to keep your health plan

You can stay in the health plan you have now. You do not have to do anything to keep your same health plan.

If you want to change your health plan

You can change your health plan up to **90 days** after your new Medicaid effective date. You do **not** need a reason to change your health plan. To change your health plan, go to ncmedicaidplans.gov or use the NC Medicaid Managed Care mobile app. Or call us toll free at **1-833-870-5500** (TTY: 711 or RelayNC.com). If you change your health plan, you will get health plan information and a new ID card from your new health plan.

More on back ▶

MEDICAID EB ELIG RECERT-ENG 211124

You can get free auxiliary aids and services, including information in other languages or formats such as large print or audio. Call us toll free at **1-833-870-5500**.

1

Enrollment Broker Notice for Medicaid Managed Care Members

GETTING THE EX PARTE STARTED!

- **Ex parte Process** is DSS effort to determine continued eligibility without contacting beneficiary

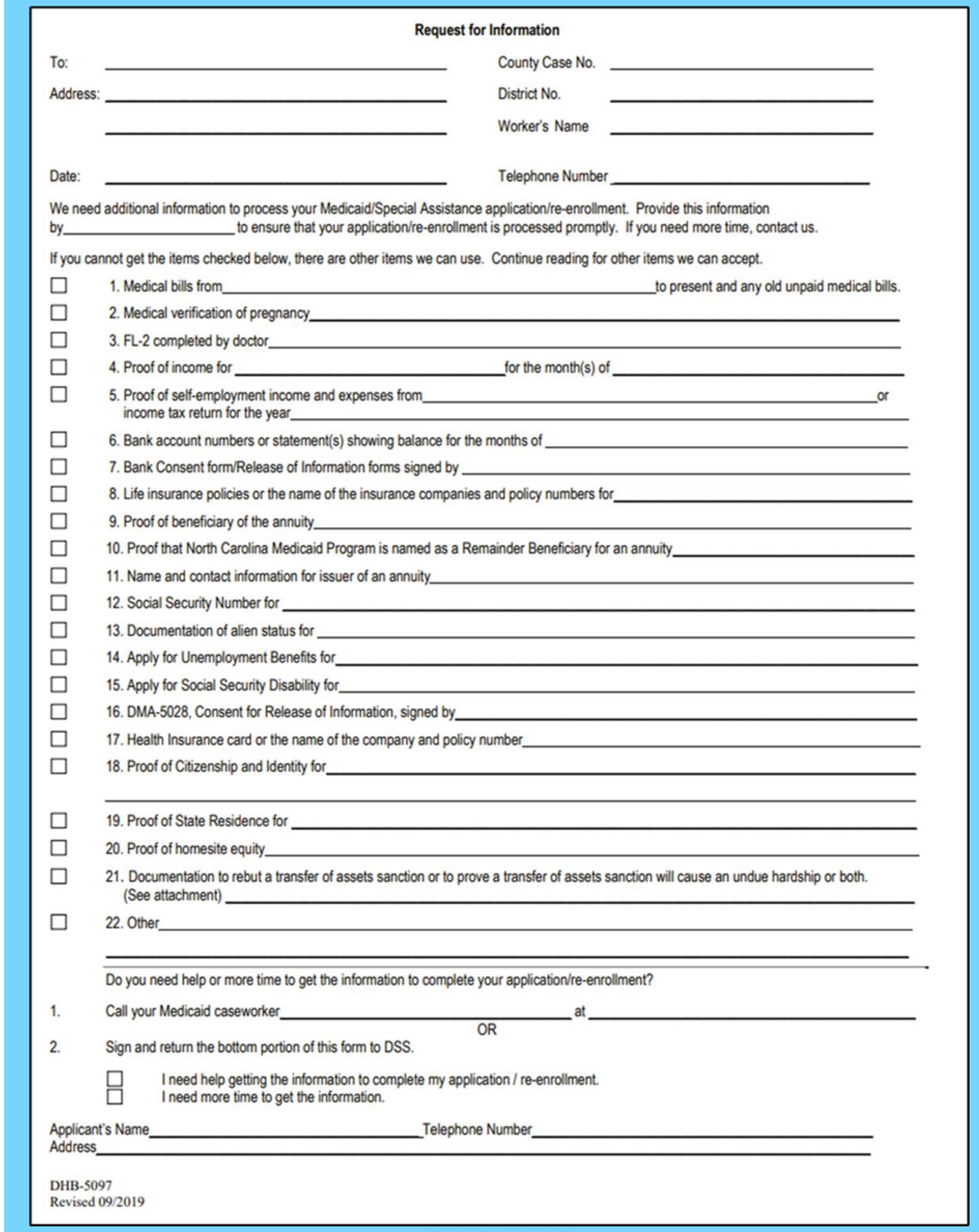
- DSS must contact beneficiary to obtain more information if continued eligibility cannot be determined ex parte OR if ex parte review shows ineligibility or reduction

- All beneficiaries have 30 days to respond to requests for information, including by telephone

MORE INFORMATION NEEDED

When continued eligibility cannot be determined…

- **NCF-20020** is mailed with prepopulated information that member should validate or report changes to for MAGI (family and children) cases.
- **DHB-5097** is mailed requesting information in both MAGI and Non-MAGI (adult, disabled, and blind) cases where information or verification is needed
- Members are allowed **30 calendar days** to provide the necessary information in response to the NCF-20020 or/and DHB-5097
- If more information is still needed, the 2nd DHB-5097 only allows **12 calendar days** to respond.
- Signature is required for NCF-20020 but can do over phone. No signature is required for DHB-5097.



Request for Information

To: _____ County Case No. _____

Address: _____ District No. _____

_____ Worker's Name _____

Date: _____ Telephone Number _____

We need additional information to process your Medicaid/Special Assistance application/re-enrollment. Provide this information by_____ to ensure that your application/re-enrollment is processed promptly. If you need more time, contact us.

If you cannot get the items checked below, there are other items we can use. Continue reading for other items we can accept.

☐ 1. Medical bills from_____ to present and any old unpaid medical bills.
☐ 2. Medical verification of pregnancy_____
☐ 3. FL-2 completed by doctor_____
☐ 4. Proof of income for _____ for the month(s) of _____
☐ 5. Proof of self-employment income and expenses from_____ or income tax return for the year_____
☐ 6. Bank account numbers or statement(s) showing balance for the months of _____
☐ 7. Bank Consent form/Release of Information forms signed by _____
☐ 8. Life insurance policies or the name of the insurance companies and policy numbers for_____
☐ 9. Proof of beneficiary of the annuity_____
☐ 10. Proof that North Carolina Medicaid Program is named as a Remainder Beneficiary for an annuity_____
☐ 11. Name and contact information for issuer of an annuity_____
☐ 12. Social Security Number for _____
☐ 13. Documentation of alien status for _____
☐ 14. Apply for Unemployment Benefits for_____
☐ 15. Apply for Social Security Disability for_____
☐ 16. DMA-5028, Consent for Release of Information, signed by_____
☐ 17. Health Insurance card or the name of the company and policy number_____
☐ 18. Proof of Citizenship and Identity for_____
_____
☐ 19. Proof of State Residence for _____
☐ 20. Proof of homesite equity_____
☐ 21. Documentation to rebut a transfer of assets sanction or to prove a transfer of assets sanction will cause an undue hardship or both. (See attachment) _____
☐ 22. Other_____
_____

Do you need help or more time to get the information to complete your application/re-enrollment?

1. Call your Medicaid caseworker_____ at _____
OR
2. Sign and return the bottom portion of this form to DSS.

☐ I need help getting the information to complete my application / re-enrollment.
☐ I need more time to get the information.

Applicant's Name_____ Telephone Number_____
Address_____

DHB-5097
Revised 09/2019

DHB-5097

REDETERMINATION COMPLETED

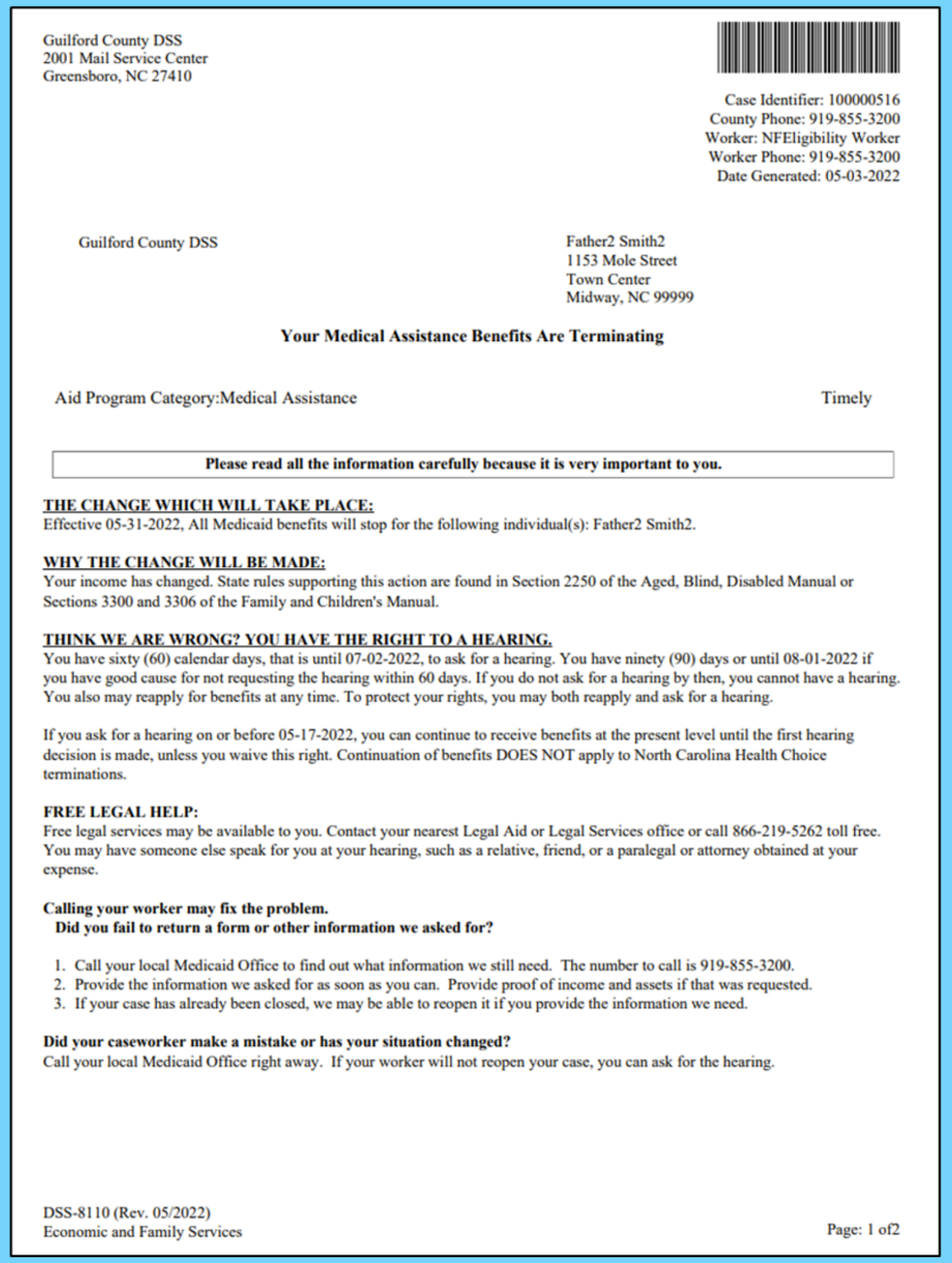
Notices Issued at completion of process:

DSS-8110: Notice of Modification, Termination, or Continuation of Public Assistance.

Generated by NC FAST based on evidence in NC FAST.

DHB-5046: Medical Transportation Assistance Notice of Rights

Generated and mailed by NC FAST



Guilford County DSS
2001 Mail Service Center
Greensboro, NC 27410

Case Identifier: 100000516
County Phone: 919-855-3200
Worker: NFEligibility Worker
Worker Phone: 919-855-3200
Date Generated: 05-03-2022

Guilford County DSS

Father2 Smith2
1153 Mole Street
Town Center
Midway, NC 99999

Your Medical Assistance Benefits Are Terminating

Aid Program Category:Medical Assistance — Timely

Please read all the information carefully because it is very important to you.

THE CHANGE WHICH WILL TAKE PLACE:
Effective 05-31-2022, All Medicaid benefits will stop for the following individual(s): Father2 Smith2.

WHY THE CHANGE WILL BE MADE:
Your income has changed. State rules supporting this action are found in Section 2250 of the Aged, Blind, Disabled Manual or Sections 3300 and 3306 of the Family and Children's Manual.

THINK WE ARE WRONG? YOU HAVE THE RIGHT TO A HEARING.
You have sixty (60) calendar days, that is until 07-02-2022, to ask for a hearing. You have ninety (90) days or until 08-01-2022 if you have good cause for not requesting the hearing within 60 days. If you do not ask for a hearing by then, you cannot have a hearing. You also may reapply for benefits at any time. To protect your rights, you may both reapply and ask for a hearing.

If you ask for a hearing on or before 05-17-2022, you can continue to receive benefits at the present level until the first hearing decision is made, unless you waive this right. Continuation of benefits DOES NOT apply to North Carolina Health Choice terminations.

FREE LEGAL HELP:
Free legal services may be available to you. Contact your nearest Legal Aid or Legal Services office or call 866-219-5262 toll free. You may have someone else speak for you at your hearing, such as a relative, friend, or a paralegal or attorney obtained at your expense.

Calling your worker may fix the problem.
Did you fail to return a form or other information we asked for?

1. Call your local Medicaid Office to find out what information we still need. The number to call is 919-855-3200.
2. Provide the information we asked for as soon as you can. Provide proof of income and assets if that was requested.
3. If your case has already been closed, we may be able to reopen it if you provide the information we need.

Did your caseworker make a mistake or has your situation changed?
Call your local Medicaid Office right away. If your worker will not reopen your case, you can ask for the hearing.

DSS-8110 (Rev. 05/2022)
Economic and Family Services

Page: 1 of2

DSS-8110

NO NOTICE?

MAKE SURE MEDICAID HAS STOPPED

- Sometimes Medicaid members go to a doctor or drug store and are told their Medicaid coverage is not active. This is often because their managed care plan has changed or due to another data error.

- If member did not get an DSS-8110 Termination/Reduction Notice from DSS, call **DSS** or **Medicaid Contact Center** at **888-245-0179** to verify whether Medicaid was stopped and, if so, on what date and for what reason.

WHAT TO DO ABOUT MEDICAID TERMINATIONS AND REDUCTIONS

Turning to the ACA

- DHHS must forward to Federal Marketplace (FFM) those who lose full Medicaid who may be ACA eligible **BUT** this will **not** include members terminated for procedural reasons
- FFM should send letter to member to contact them to complete application for ACA coverage.
- CMS created a process to also refer these cases directly to NC Navigator Consortium called the MAC program
- DSS-8110 also encourages member to contact NC Navigator Consortium.
- Unwinding SEP allows individuals who lose Medicaid coverage during the unwinding period to enroll in coverage at any time during unwinding period

Appealing a Change or Termination

- Member receives the DSS-8110
- To maintain Medicaid pending the appeal member must appeal on or before 10 business days after the notice is mailed or given to member
- 60 days to appeal the decision by requesting a hearing (90 days with good cause)
- **BUT REMEMBER** if case is terminated for failure to provide, member has 90 days to provide requested information to get case reopened (applies to MAGI and Non-MAGI)

FRANKLIN SETTLEMENT PROTECTIONS

FRANKLIN v. KINSLEY f/k/a ***HAWKINS v. COHEN***
SUMMARY OF LITIGATION

A Federal class action filed in 2017 by Charlotte Center for Legal Advocacy and NHeLP challenging improper terminations of Medicaid benefits.

- In 2018, the Court certified a class and entered a preliminary injunction.
- In 2022, the parties reached a detailed settlement agreement that was approved by the Court on January 13, 2023.
- The Settlement Agreement became effective on March 14, 2023 except for some changes to notices, changes to the NCF-20020, and creation of online recertification process that will follow on a later timeline.
- The Settlement Agreement requires extensive and very detailed changes to DHHS procedures, forms, and notices for redetermining Medicaid eligibility for the 2.8 million North Carolinians currently enrolled in Medicaid.
- The requirements in the Settlement Agreement remain in effect AFTER the unwinding.

KEY RIGHTS UNDER FRANKLIN:

- ✓ To have eligibility considered under **all categories** before Medicaid is stopped or reduced;
- ✓ To have Medicaid continue past end of the certification period when the local agency has **not timely redetermined eligibility**;
- ✓ To be asked to verify only eligibility factors **subject to change;**
- ✓ To have **claim of disability** fully considered prior to termination or reduction of MAGI Medicaid;
- ✓ To have Medicaid continue **without action by member** if the local agency has information from **other sources** to show that continued eligibility (ex parte review);
- ✓ To **receive assistance from DSS** in obtaining information needed to redetermine eligibility if assistance is requested, if there is a fee involved, or if the member is physically or mentally incapable;
- ✓ To not be asked for information about persons in household **not receiving or applying for Medicaid** unless they are financially responsible for those who are seeking Medicaid;
- ✓ **To have rights and responsibilities explained during any in person or telephone contact.**

KEY RIGHTS UNDER FRANKLIN:

- ✓ To be able to reach DSS promptly by **telephone**;
- ✓ To have any reported change, including a change of address, phone number, or language preference, entered into NCFAST within **seven business days**;
- ✓ To not have Medicaid stopped based on member request for same **unless the request is in writing** (except on basis of having moved out of state);
- ✓ To not have Medicaid **effectively terminate** because of failure of NCFAST to transfer eligibility information to NCTRACKS;
- ✓ To receive a **written notice** before Medicaid is reduced or terminated that clearly and specifically states why the action will be taken;
- ✓ To have the case **reopened** if member provides the necessary information to the local agency within **90 days** after benefits are stopped;
- ✓ To receive written notice of **rights and responsibilities** during redetermination process, including a **notice of rights under this lawsuit** and how to reach Plaintiffs' attorneys (for 12 months).

GETTING HELP

Examples of Assistance that should be provided by DSS:

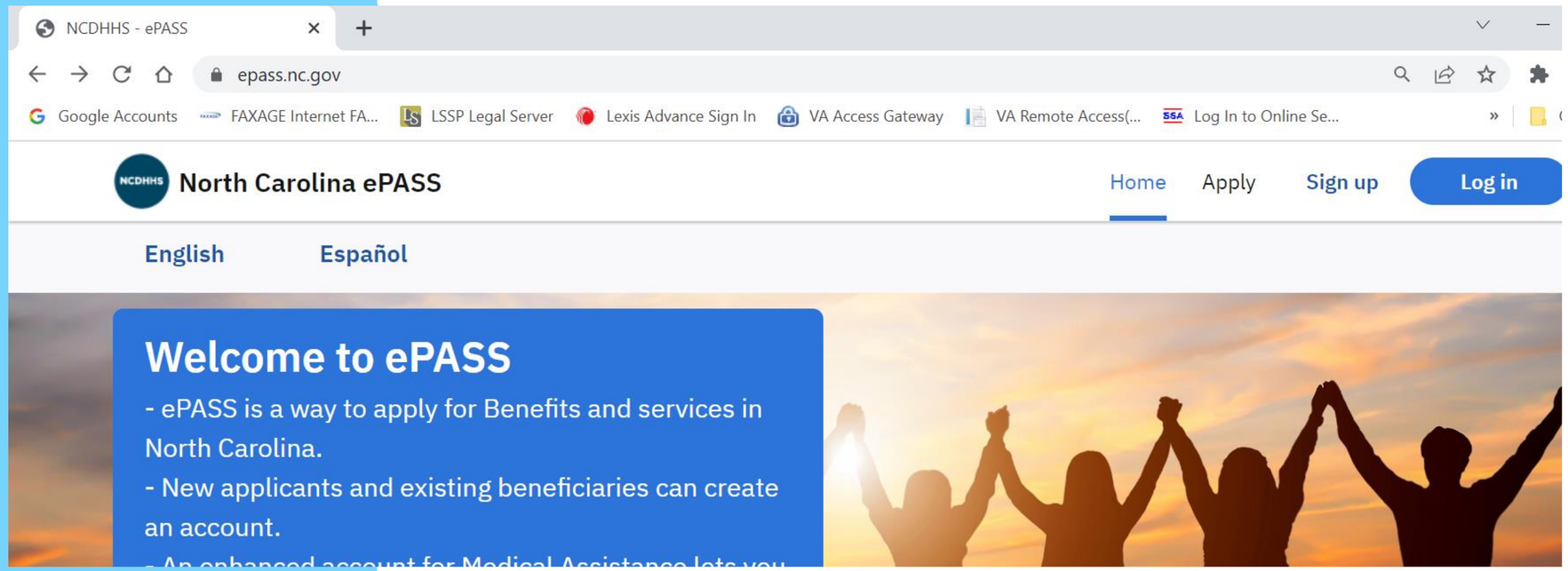
- Providing information on insurance affordability programs and coverage options
- Helping individuals complete an application or renewal
- Working with the individual to provide required documentation,
- Submitting applications and renewals to the agency
- Assisting individuals with responding to any requests from the agency
- Managing their case between the eligibility determination and regularly scheduled renewals.

- DSS must provide assistance to any individual seeking help with the renewal process in person, over the telephone, and online, and in a **manner that is accessible** to persons with limited English proficiency and persons with disabilities.
- All requests for assistance, accommodation, or extension of time **must be documented** in NC FAST.
- Any **renewal form or notice** must be accessible to persons with limited English proficiency and persons with disabilities.
- DSS must allow individual(s) of the **member's choice** to assist during a renewal of eligibility.
- **Home visits** may be made at the request of the member when due to incapacity or other good cause.
- **This applies to MAGI and Non-MAGI**

ENHANCING ePASS ACCOUNTS

- The local agency must inform members and applicants at least once per year, in a manner that is accessible to persons with limited English proficiency and persons with disabilities, **how to set up an ePASS account that allows them to receive notices**, report changes, upload documents, request assistance, and contact their local agency worker electronically.

- The local agency **must offer to assist** in setting up and enhancing a member's ePass account, including assisting with alternative means of identity verification for parents without Social Security Numbers.



PHONE ACCESS REQUIREMENTS

1. The local agency must **avoid busy signals** by rolling over calls to another staff member or to an option to leave a message.
2. The local agency must provide **ability to leave a message** after work hours and on weekends.
3. The local agency must **limit hold times** to a reasonable length of time.
4. The local agency must permit members to **leave a detailed message** instead of remaining on hold.
5. The local agency must **avoid hang ups and messages that no one can take the call** with no option to leave a detailed message.
6. The local agency must **return phone messages** within 5 workdays.
7. The local agency must **report** when system changes to meet these requirements have been implemented and must **monitor** compliance with these requirements.

EXAMPLES OF IMPROPER TERMINATIONS

- Terminations for **failure to provide information** where:
  - DSS did not follow all rules for redeterminations
  - Member tried to provide the information but could not get through to DSS worker.
  - Member reported new address, but DSS didn't update address in NCFAST
  - DSS made inadequate efforts to reach member when mail returned undelivered
  - Member could not reach DSS by phone.
- Terminations without considering **all possible Medicaid categories**.
- Terminations because **member lost SSI** without completing full Medicaid redetermination.

WHY IS MONITORING IMPORTANT?

- Any local agency in **substantial noncompliance** with the settlement agreement must stop all Medicaid reductions and terminations until corrective action is taken
- Repeated violations of these settlement provisions may allow **court order** to be extended and court to retain jurisdiction until State is in compliance
- Successful monitoring and implementation will increase **equitable access to health coverage** for North Carolinians

Call our dedicated line at

1-800-936-4971

or email

hawkinsinfo@charlottelegaladvocacy.org

HOW YOU CAN HELP MEDICAID MEMBERS DURING UNWINDING

- ✓Advise members about their appeal rights and help them find their local legal services provider at www.ncmedhelp.org
- ✓Advise members to provide missing information to DSS within 90 days of termination if they were terminated for failing to provide information
- ✓Refer members to Health Insurance Navigators to discuss options at 1-855-733-3711
- ✓Refer any Franklin violations by DSS to the 1-800-936-4971 or hawkinsinfo@charlottelegaladvocacy.org.

Specific Franklin/Hawkins Violations

1. Failure to provide prompt phone access
2. Notices with incorrect/unclear language on reason for action taken
3. Requesting information not needed to redetermine eligibility
4. Discouragement of Medicaid for the Disabled applications because individual is already receiving Medicaid
5. Failure to provide assistance during redetermination process if requested or member clearly needs assistance
7. Terminating Family & Children Medicaid less than 60 days after DHB-2187 is mailed
8. Terminating Family & Children Medicaid before a denial or appeal decision is reached for Medicaid for the Disabled.

Call our dedicated line at

1-800-936-4971

or email

hawkinsinfo@charlottelegaladvocacy.org

QUESTIONS

CONNECT WITH US

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for legal advocacy

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CharlotteLegalAdvocacy.org

Charlotte Center for
Legal Advocacy

THANK YOU!