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September 23, 2015

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Hartford, CT 06106

Re: Provider Cost Reports for Birth to Three

Dear Mr. Walter and Mr. Johnson:

Thank you for your letter to the Department of Social Services (DSS) and the Office of Early Childhood (OEC) dated September 8, 2015 concerning the Connecticut Birth to Three System. As you know, DSS, in partnership with OEC, is working to modernize and ensure the long-term sustainability of the Birth to Three System. Accordingly, DSS has requested that Birth to Three providers complete Medicaid cost reports in order to support a redesign of the Medicaid reimbursement methodology effective on or after July 1, 2016. Modernizing the reimbursement system is essential because on February 22, 2011, the federal Centers for Medicare and Medicaid Services (CMS), which oversees the Medicaid program, cited Connecticut for not "identifying a methodology for determining payment rates" for Medicaid Birth to Three services. As a result, federal Medicaid matching funds are at risk until the reimbursement system is brought into compliance with current federal Medicaid requirements.

Federal Medicaid law at 1902(a)(30)(A) of the Social Security Act requires rates to be economic and efficient. As the current rates paid to Birth to Three providers are bundled, they are not supported by cost or utilization data and CMS has explained that the Birth to Three reimbursement methodology does not meet current federal requirements. Recent CMS guidance has mandated that rates should be based on actual costs or an appropriate percentage of Medicare reimbursement. Because Medicare does not reimburse for Birth to Three services and there no Medicare equivalent service for in-home Birth to Three Services, cost reports will provide the best basis for establishing a reimbursement methodology that both complies with federal Medicaid requirements and serves to distribute available funding as equitably as possible. While the state could propose the use of alternative data sources, such as Department of Labor state-wide average salaries, those data sources have major constraints. Specifically, it would be

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difficult to design a reimbursement system using Labor Department state-wide average salaries that captures all of the ancillary costs related to providing Birth to Three services to Medicaid recipients. Accordingly, there is significant financial exposure for providers in the form of likely lower rates, if the reimbursement system is designed utilizing data other than provider-specific cost reports.

Your letter states that your principal concern is the confidentiality of information requested in the cost reports, especially employee cost information. As a publicly funded program, transparency is a foundational principle in not only Medicaid's program design, but also in the program's financing. As you correctly note, once they are submitted to DSS, cost reports are generally considered public documents subject to disclosure under the Freedom of Information Act (FOIA). As you are aware, DSS routinely collects cost reports with key financial details from various categories of providers. For Birth to Three providers, employee salaries and other costs are essential portions of the costs and need to be separated by type of employee and specific types of employee credentials in order to accurately determine costs. Specific identifying information on individual employees, including employee names, is not necessary, so long as the cost report is able to identify the number of employees with each type of credential and aggregate salary information for each type of credential.

Your letter asserts that submitting the requested information "would subject providers to unreasonable legal liability". Your letter does not explain the basis for this assertion, nor are we aware of any such liability in this context. The state statute regarding confidentiality of employee records does not apply to situations such as these cost reports, "where the information is limited to the...employee's title or position and wage or salary." Conn. Gen. Stat. § 31-128f. In addition, that statute does not apply when the disclosure is made "to comply with federal, state or local laws or regulations." Conn. Gen. Stat. § 31-128f(5). In this situation, this disclosure is necessary to comply with the federal Medicaid law referenced above (section 1902(a)(30)(A) of the Social Security Act) as well as existing DSS Birth to Three regulations at Conn. Agencies Regs. § 17b-262-599(b)(5) (providers shall "comply with all Medical Assistance Program documentation and other requirements") and 17b-262-604(g) (concerning various documentation requirements).

Although your letter suggests that your concerns could be alleviated if cost reports are sent to a third party contractor of the state to collect aggregate information, contractors operating as agents for the state are not necessarily exempt from FOIA requests. Thus, although the information within the cost report can generally be de-identified and aggregated as needed when DSS sends cost information externally the background information generally remains subject to FOIA. While we understand your concerns, it is critical that the cost reports themselves clearly define and identify costs so that a reimbursement system can be designed to accurately and fairly tie reimbursement to the level of resources needed to provide services in accordance with federal Medicaid requirements. Without this information, it would be challenging to develop a reimbursement methodology that complies with federal Medicaid requirements, captures all appropriate costs, and distributes funds in as equitable a manner as possible.

Your letter also framed 8 specific questions that are addressed below:

1. DSS should provide detailed instruction for counting individuals served in order to avoid wide variation in responses by providers. This definition should be based on a weighted service average to account for all children in order to accurately reflect the true cost to providers.

Response: There is a box in the cost report for the number of “children served”. This should reflect the unduplicated number of children served during the time frame included in the cost report. DSS will also cross reference and reconcile the provider reported figure with the unduplicated count from the OEC data system.

2. The cost report is asking for data from 2014; however, it is important to note that many programs are now operating differently, with different cost implications, following the Rush and Sheldon model. How will DSS accurately measure the cost of the programs using 2014 information if the programs have changed dramatically?

Response: As providers have different financial year-ends, DSS clarified at the August 12, 2015 cost report presentation that a provider can utilize 2014 or 2015 financial data. The cost report also includes a narrative section to allow providers to include additional detail on operational or other financial matters that should be taken into consideration. This would be the section to detail the additional costs for the Rush and Sheldon model if the provider reports the 2014 costs that did not include that model of service.

3. What is the Department’s rationale for requiring information in the cost report including budgets, regarding other programs offered by providers? This appears to be an undue intrusion of providers’ non-Birth To Three operations.

Response: Cost reports should capture all costs for the business entity and should be able to be reconciled to the provider’s audited financial statements. Information related to other programs must be included in the cost report because the provider’s administrative and general costs will need to be appropriately allocated to the various programs. The state will need to demonstrate to CMS that the costs related to the other programs are not allocated to the Medicaid Birth to Three program. In order to simplify the completion of the cost report, DSS clarified at the August 12, 2015 cost report presentation that financial information related to other programs offered by providers could be aggregated and no programmatic detail is required other than total costs by lines.

4. If educational costs in the system will not fall under the Medicaid rate and will be paid for by OEC, why are they in the cost report?

Response: The educational costs are necessary because administrative and general costs will need to be equitably allocated to Medicaid and non-Medicaid costs. Additionally, DSS, in partnership with OEC, will be working with CMS to determine which costs that

are currently characterized by providers as educational are also coverable under Medicaid. Thus, if some of those costs can be included in Medicaid reimbursement, it is critical that they are all accurately included. Otherwise, the reimbursement methodology would be incomplete and could potentially result in a substantially lower rate.

5. Providers' current contracts require that financial records be maintained for three years; however, the cost report requests retention for seven years. How will this be reconciled?

Response: Record retention policies are easily reconciled because the most stringent requirement must be followed. While previous Birth to Three contracts may have historically utilized a different record retention policy than Medicaid, Birth to Three providers will also need to follow the longest applicable Medicaid record retention requirement.

6. Do third party expenses for non-reimbursed work on billing insurance go on line 9 or line 52?

Response: Third party expenses for billing services, regardless of reimbursement status, should be reported on line 19 on the Expense schedule, Third Party Billing Contractual Services.

7. How should providers calculate non-direct care time for staff that are paid an all-inclusive rate?

Response: The allocation of time for direct care staff should be handled by the policy of the provider and should depend on the role of the staff. If staff members are primarily responsible for direct care of children, then their salaries should be reported in the direct care line. If an administrative function is also certified as a Speech and Language practitioner, then the determination of their administrative versus direct time needs to be completed by the Agency, according to generally accepted accounting principles (GAAP) standards.

8. Providers will need many hours of senior administrative staff time, and possibly outside accounting services, to complete the report and that expense is currently not covered. Is the Department willing to provide compensation to offset providers' expense for completing the reports?

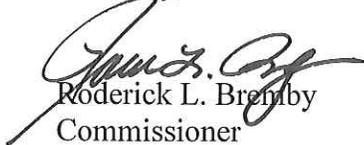
Response: The Cost Report details are details that should be readily available. The source documents will include the company's general ledger, audited financial statements, details necessary for completing IRS Forms W-2 and 1099, and tax return filings.

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Because DSS believes the cost report requirement, while somewhat burdensome, represents a reasonable and necessary reporting requirement for the Medicaid Birth to Three program DSS is unable to delay or financially support the completion of the cost reports.

DSS, together with our partners at OEC, appreciates the cooperation we have received from the individual Birth to Three providers. We look forward to continue moving towards implementation of a Medicaid reimbursement methodology that complies with federal requirements and allocates resources as equitably as possible. If you have any questions, please contact Christopher LaVigne, Director, DSS Office of Reimbursement and Certificate of Need at (860) 424-5719 or christopher.lavigne@ct.gov.

Sincerely,


Roderick L. Brenby
Commissioner

cc: Ben Shaiken, CCPA
Julia Wilcox, CT Nonprofits
Benjamin Barnes, Secretary, OPM
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Judith Dowd, OPM
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