

October 29, 2019

VIA EMAIL

The Honorable Edward R. Tallon Sr.
Subcommittee Chair, House Legislative Oversight Department of Corrections Ad Hoc Subcommittee
518B Blatt Building
Columbia, South Carolina 29201

Dear Representative Tallon:

Thank you for contacting me regarding Medicaid payment of services related to inmates. I have responded to your questions below.

- 1) Was there a time in which SCDC was permitted to consent on behalf of an inmate to enroll the inmate in Medicaid. If yes, when did that change and why?

While the Department acknowledges that, at points in time, SCDC staff and other third parties may have submitted applications on behalf of inmates, it has never been permissible to submit an application for medical assistance on behalf of an individual without their consent or without the delegated authority to do so.

Current SCDHHS Medicaid policy most recently revised in 2015, states:

“Third Party Applicant - A person/entity who submits an application on behalf of another person. The Applicant must be both aware that the Third Party Applicant is submitting an application on his behalf and he must consent to it. (The Eligibility Worker does NOT have to view written consent or contact the Applicant to confirm consent. By signing the application, the Third Party Applicant represents that these requirements have been met.)”

Although SCDHHS does not currently require written verification of consent for the submission of an application, third parties are bound by federal consent regulations. Further, written consent from an inmate would be required to share information with a third-party submitter, such as SCDC.

- 2) What changes would be needed to allow SCDC to consent on behalf of an inmate?

SCDC would need to be authorized by statute, regulation, or court order to apply for Medicaid on behalf of the inmate without the inmate’s consent. SCDHHS’ current policy allows SCDC to submit an application on behalf of an inmate as long as the inmate is aware that SCDC is submitting an application on his/her behalf and he/she must consent to it. However, this does



not have to be written consent. By signing the application, SCDC would be representing that these requirements have been met. SCDHHS' current policy, in accordance with Federal Regulations at 42 CFR 435.923, would also allow SCDC to submit an application and act on behalf of the inmate if (1) the inmate has completed an SCDHHS Form 1282 naming SCDC as an Authorized Representative, or (2) the court has appointed/approved SCDC as a legal representative (e.g. Power of Attorney, guardianship, conservatorship). (Medicaid Policies and Procedures Manual section 101.02.10)

I hope this information is helpful. Please do not hesitate to contact me if additional information is needed.

Sincerely,



Joshua D. Baker

cc: The Honorable Wm. Weston J. Newton
Department of Corrections Ad Hoc Subcommittee
Health and Regulatory Subcommittee