



September 24, 2010

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Dear Under Secretary Concannon, Administrator Paradis, and Associate Administrator Shahin:

We appreciate the many opportunities to discuss important issues with you and members of your staff. We write today to bring to your attention an issue that will greatly affect not only state processes but the impression the public has about the states' management of the Supplemental Nutrition Assistance Program.

On June 11, 2010, the Food and Nutrition Service published a Final Rule, "Supplemental Nutrition Assistance Program: Quality Control Provisions of Title IV of Public Law 1107-171." Within these rules are discretionary provisions that fundamentally alter the negative action (denial, termination, suspension) QC review process.

We find it very disconcerting that while FNS received 22 comments on one or more aspects of the proposal to revise the negative review procedures, with most commenters opposing the proposed changes, the agency decided to implement the proposed rule as written. Those commenting included APHSA, with significant input from its affiliates, particularly the National Association for Program Information and Performance Management.

These changes are effective October 1, 2011. It is unclear what options may be available to us to work together to mitigate the negative effects we anticipate from this rule. We believe there are several issues that must be addressed in light of the rule's changes.

Presentation of the Negative Error Rate to the Public

The negative action QC review process is now fundamentally changed to measure only procedural requirements, not benefit losses. As described in the preamble to the proposed regulation, “Finally, negative reviews are not measuring program losses, but service to clients. Using ‘action’ means the review is based on the reason given the household for negative action.”

The change from the option to use either the “effective date” or “action date” dramatically shifts the focus of the negative action QC review from determining loss of benefits to clients. Instead, the rule replaces it with a new focus on whether the stated reason for the negative action was procedurally correct. This new focus changes the process from a performance outcome measure to a measure that is purely procedural. This change means that states will no longer measure clients who are incorrectly denied the opportunity to participate in SNAP. It is unclear how the new process can help states in improving the administration of SNAP, given that this program is focused on providing timely and accurate food assistance to eligible households.

The long-standing requirement that a “break in participation” (at least one day of lost benefits) had to occur for a case to be included in the negative sample is now removed based on the new focus on initiation of the negative action notice. However, there was no further clarification in the Final Rule that explained how this affects the review process. Therefore, states are being given guidance to sample cases for which a negative action never took effect. This removes the connection between an invalid negative action and any improper loss of benefits to the household.

In addition, we believe these changes will significantly and unnecessarily increase the negative action case error rate. In light of this fundamental change, we strongly urge that you add to and not change this process and its measure (perhaps an additional measure of negative action notice accuracy).

We also urge that this performance measure not be released in the same announcement as the payment accuracy measure. It must not give the impression that the negative error rate measures any improper loss of benefits to households. The measure is more akin to data collected in the required State Management Evaluations that focus on process. The new terminology must reflect that the measure is of proper notice, and not whether the household actually improperly lost benefits to which they were entitled.

This important clarification in the description of the negative error rate must also be conveyed to the Improving Measures of Program Access Workgroup that was researching the issue under Executive Order 13520, “Reducing Improper Payments and Eliminating Waste in Federal Programs.”

Potential Policy Impacts of the New Process

These changes will increase the negative error rate due to inclusion of cases that (1) never experienced a break in participation and (2) were actually ineligible for the month in question but for a different reason than the one presented on the notice.

States are faced with unprecedented caseload growth during these very difficult economic times. States are concerned that cases unintentionally closed for failure to submit an interim report – even though the report had been received and the case reinstated in time to meet the regular issuance date – will be determined to be a “negative error” because the negative notice was issued. These states

may have to reconsider the use of 12-month certifications with an interim report, as encouraged by FNS, and return to six-month certifications just to avoid this outcome. States will have to re-evaluate other policies for their potential impact on the negative error rate to minimize the effect of the changed regulation. Neither states nor the program can afford the adverse publicity likely to occur because of the increase in negative errors resulting from this change in procedural regulation.

Impact of the Prohibition on Expanded Reviews

Under the current system, quality control reviewers may expand the negative action QC review if the case record does not support the negative action. QC reviewers may explore with the household whether it possesses information or verification that supports the validity of the action taken by the eligibility worker. In addition, the reviewer may explore whether there was another reason that would support the action – in other words, ascertain whether the household actually lost benefits they were entitled to receive.

The advantage of the expanded review is that when the final determination is made, the case can be returned to eligibility staff for restoration of lost benefits as appropriate. The expanded review is essential to determining the effects of the negative action. Without this process, states will have incomplete and inaccurate case findings, and program data will be less accurate and informative.

With the changes outlined in the Final Rule, already strained eligibility workers will be burdened with additional work because the QC reviewer will not definitively determine whether benefits were actually lost since this is now irrelevant to the new process. When it is determined that an invalid reason for the negative action was provided, it will now be up to the eligibility staff to follow up. Will the eligibility workers issue a corrected notice when it is determined the incorrect reason was cited in the original notice but the client was in fact ineligible for another reason? Clients will be more confused and will have to contact an already overworked worker for additional explanation.

Eligibility workers will have to contact the household to have the household recall the circumstances from the sample month and provide any missing verification necessary for a redetermination of eligibility and benefits. This process will increase the “multiple household/and or collateral contacts” that the “Department considers ... potentially intimidating” and will fundamentally shift the responsibility from QC reviewers to eligibility workers.

The fact remains that, under the new regulations, client contacts will be necessary to determine whether the household is entitled to restoration of lost benefits. At this time of unprecedented caseloads and stagnant or declining state resources, shifting work from QC to eligibility workers is extremely unfortunate and will inevitably adversely affect other areas of client service including timeliness and payment accuracy.

New Sampling Method

States are given until October 1, 2011, to implement the new definition of negative action for sampling purposes since FNS recognized that it was making “significant changes to the negative review process.”

While this is helpful in the abstract, the fact is that most states will find this quite difficult given the challenges of finding the funding necessary for reprogramming the sampling process. The additional provisions in the preamble to the final regulations will be problematic to implement. For example,

how is a state to identify a case for sampling when the notice is not sent? The preamble suggests that this might occur for a group of negative actions due to a computer programming failure. If this occurs, it might be possible to identify because of the nature of the computer error. However, the process for identifying individual cases where this might have occurred would be exceedingly complex, if it is even possible. FNS must be flexible and practical when reviewing negative sampling plans since capturing the last few outlying cases in any system is frequently more expensive than developing a system that addresses the norm.

Another concern is the effect of the new regulation on the statistical validity of the negative samples. The two sampling plans (actives and negatives) try to definitively place a case as either open or closed. In the current sample, only negative actions that result in a denial/closure/suspension (break in participation) would be reviewed. Under the new process, many of the cases issued a Notice of Adverse Action would remain open as a result of the customer taking the required action. Focusing on just the action would add a number of open cases to the negative sample, creating sample bias. There does not appear to be any way to construct a sample to avoid this bias.

It is also regrettable that the impact of the change in the negative action review process is not estimated in the proposed regulation either in the "Paperwork Reduction Act" section or under "Cost Impact." There is certainly an administrative cost to redesigning the negative action process, which includes computer reprogramming, producing new instructions, and QC staff training, as well as the potential increased costs for reassigning to eligibility workers activities previously completed by QC staff.

We ask that you give serious consideration to our concerns. This is another unfortunate example where prior consultation with states before issuing a final rule with changes of this magnitude would have been a far more productive path. We would like to set a specific date in the near future to meet with you and your staff to discuss potential solutions and how we can mitigate the most problematic elements of this rule.

Sincerely,



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Kathie Wright
President, American Association of SNAP Directors



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