

September 4, 2018

Sarah Pratt
Public Access Counselor
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Sent Via Electronic Mail Only

RE: Request for PAC Review

Dear Ms. Pratt:

We write on behalf of the AIDS Foundation of Chicago (AFC) to request that the Public Access Counselor of the Office of the Attorney General determine whether the Department of Human Services (DHS) and Department of Healthcare and Family Services (HFS) violated FOIA in their responses to AFC's recent FOIA request. The responses from DHS and HFS are incomplete and the public's interest in the agencies' responses is paramount. FOIA requires a balancing of the agencies' burden and the public interest; here, for the reasons set forth below, the weight is overwhelmingly in favor of the public interest and, therefore, the state agencies must be compelled to respond fully and promptly.

AFC issued a FOIA on August 8, 2018 to both HFS and DHS seeking specific data and records about their computer systems and redetermination processes. The following correspondence constitutes all of our communications regarding the FOIA:

- AFC's FOIA Request, dated 08/08/18;
- DHS's Responses to the FOIA: extension request dated 08/15/18, and response dated 08/20/18;
- HFS's Responses to the FOIA, extension request dated 08/15/18, and response dated 08/22/18.

On August 20, 2018, after an initial extension, DHS replied by broadly asserting that the request was unduly burdensome. *See* 08/20/18 Mulcrone Email. DHS seems to have based this claim on a tally of the requests and subparts we submitted rather than an individualized review of the effort involved in responding. DHS also alleged that "many" of the items are maintained by HFS, but the fact that another agency may be the source of the document is not a recognized exception to FOIA. DHS is required to release the records that DHS has in their "custody or possession," even if they are not the agency that officially maintains those documents. 5 ILCS 140/1.2.

On August 22, 2018, after an initial extension, HFS produced some records responsive to one of our requests (No. 4), but also alleged our requests are unduly burdensome. *See* 08/22/18 Mehta Letter. HFS claimed that it would take "three months" to respond to "some" of the requests, and claimed that the "complex queries" required to pull data from their new system had not yet been developed. HFS did not specify which requests would take three months, and apparently did not take steps to produce the other data requested in Nos. 1-3 or 5-16 that are not burdensome. HFS also stated that the information we sought included "confidential program participation status". We have no objection to the redaction of protected health information or customer identities, but we request that the PAC ensure that HFS's

claim was not used to withhold relevant documents that could be released to the public if redacted, in compliance with 5 ILCS 140/7(1).

DHS and HFS have not met their burden of proving the requests are unduly burdensome under existing FOIA law. Under FOIA, all public records in the possession of a public body are “presumed to be open” to the public. 5 ILCS 140/1.2. FOIA’s exceptions that shield information from the public are construed narrowly. See 5 ILCS 140/1. Further, FOIA requires that when an entity claims a request is unduly burdensome, they “specify[] the reasons . . . and the extent to which compliance will so burden the operations of the public body.” 5 ILCS 140/3(g). As described below, DHS and HFS failed to explain how the asserted exemptions apply to each of our requests and the records that they withheld. We further respectfully submit that an adequate review was not conducted and the burdens involved were overestimated.

Moreover, any burdens that are posed by this FOIA are outweighed by the interest that the public has in obtaining this information. See *National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1, 15 (1st Dist. 2010). Thousands of low-income, vulnerable Illinoisans are being incorrectly and wrongfully terminated from Medicaid by HFS and DHS because of computer glitches and other agency errors. Their computer system is rife with glitches, and difficulties persist in other areas as well: opening, scanning, uploading, and otherwise processing documents received from participants by mail, fax, drop-box, and electronically. These glitches and errors are large scale and cause life-threatening disruptions in the health coverage of people who depend on Medicaid. However, HFS and DHS refuse to share accurate and comprehensive data about these problems. Our FOIA request seeks these records to understand the scope of the problem and to advocate with our partners for systems reform. Any burden borne by the agencies is outweighed by the public’s need to know. DHS and HFS are also required by law to maintain some of the data we requested. The General Assembly has determined that compiling this data and reporting on it are burdens the agencies should bear.

We have reproduced our requests and included a brief response to each of the requests we made, below. As we noted in our FOIA request, “Department” refers to both the Department of Healthcare and Family Services and the Department of Human Services. We have added bold to some phrases to help differentiate the requests for the ease of the reader.

1. Any and all documents (electronic or printed) related to the process, procedures, or computer functionalities for terminating or cancelling Medicaid coverage, cases, or recipients/customers in the Integrated Eligibility System (IES) for failure to comply with redetermination requirements in **Medicaid-only cases**. This request includes but is not limited to guidance, manuals, internal or external memoranda, training materials for caseworkers, screen shots, documents and materials created by or for contractors regarding the termination functions in IES. Please also include any and all releases, release notes, or documents related to “defects” that pertain to cancelations or terminations stemming from redeterminations.

AFC Response: We do not believe an adequate review was conducted before the agencies claimed this request was unduly burdensome. It is not believable, for instance, that neither HFS nor DHS have developed training documents regarding termination functions in IES for their own staff and that neither is maintaining a list of defects regarding these processes. These documents should exist and would not take months to compile.

2. Any and all documents (electronic or printed) related to the process, procedures, or computer functionalities for terminating or cancelling Medicaid coverage, cases, or recipients/customers in the Integrated Eligibility System (IES) for failure to comply with redetermination requirements in cases involving **Medicaid plus another Department-administered benefit**. This request includes but is not limited to guidance, manuals, internal or external memoranda, training materials for caseworkers, screen shots, documents and materials created by or for contractors regarding the termination functions in IES. Please also include any and all releases, release notes, or documents related to “defects” that pertain to cancelations or terminations stemming from redeterminations.

AFC Response: We have the same response as to No. 1, as this request repeats the inquiry above but expands the request to cases involving Medicaid and another benefit, such as SNAP.

3. Any and all information or reports on electronic system performance for users accessing a case through IES since January 1, 2017, including time required to “convert” a case, amount of system downtime, error messages, system crashes, progress on converting cases to the new system, average case worker time/productivity, and average rate of system errors.

AFC Response: We do not believe an adequate review was conducted before the agencies claimed this request was unduly burdensome. HFS and DHS are working with a private consulting contractor, Deloitte, on IES problems and we find it unlikely that system downtime and crashes are not being monitored and shared with Deloitte. Also, information about the agencies’ progress on converting cases has previously been publicly reported at Medicaid Advisory Committee Public Education meetings on August 2, 2018, and at the May 24, 2018 Social Services Advisory Council so we respectfully submit that these records exist and producing the records is not unduly burdensome.

4. Any and all documents, including electronic correspondence, related to procedures for processing or otherwise handling redetermination responses, including but not limited to opening mail, maintaining drop-boxes, scanning documents received by customers, and uploading documents to IES for **Medicaid-only** cases.

AFC Response: We appreciate that HFS included some responsive records, but we do not believe an adequate review was conducted. For instance, the records that were produced indicate that there is a hierarchy of priority for opening and scanning mail, so it seems logical that the agency has a list or email ranking these priorities; however, no such list was produced. Further, it does not appear that HFS produced any documents about customer responses received in ways other than mail. We do not believe that these scattered PDFs received only from HFS are the universe of responsive documents, or that compiling the other documents would take months or be unduly burdensome for the agency.

5. Any and all documents, including electronic correspondence, related to procedures for processing or otherwise handling redetermination responses, including but not limited to opening mail, maintaining drop-boxes, scanning documents received by customers, and uploading documents to IES for cases involving **Medicaid plus another Department-administered benefit**.

AFC Response: We have the same response as to No. 4, as this request repeats the inquiry above but expands the request to cases involving Medicaid and another benefit, such as SNAP.

6. Any and all documents related to the processes, procedures, or computer functionalities for determining whether a redetermination “Form 2381” or “Form 2381A” or “Form 2381B” (or other forms signaling ex-parte redetermination or sign-and-return redetermination) will be sent to a recipient in **Medicaid-only** cases.

AFC Response: We do not believe an adequate review was conducted before the agencies claimed this request was unduly burdensome. It is not believable that HFS and/or DHS have not developed some training documents for their internal staff about the redetermination forms and that producing such training materials would take months or otherwise be unduly burdensome.

7. Any and all documents related to the processes, procedures, or computer functionalities for determining whether a redetermination “Form 2381” or “Form 2381A” or “Form 2381B” (or other forms signaling ex-parte redetermination or sign-and-return redetermination) will be sent to a recipient in cases involving **Medicaid plus another Department-administered benefit**.

AFC Response: We have the same response as to No. 6, as this request repeats the inquiry above but expands the request to cases involving Medicaid and another benefit, such as SNAP.

8. Any and all documents, including but not limited to data reports and compilations, regarding the number of Form 2381, Form 2381A, and Form 2381B sent each month since January 1, 2017, for **Medicaid-only** cases.

AFC Response: Information about the number of these forms sent has been publicly reported at Medicaid Advisory Committee Public Education meetings as recently as August 2, 2018, so we respectfully submit that these records exist and producing the records is not unduly burdensome.

9. Any and all documents, including but not limited to data reports and compilations, regarding the number of Form 2381, Form 2381A, and Form 2381B sent each month since January 1, 2017, for cases involving **Medicaid plus another Department-administered benefit**.

AFC Response: We have the same response as to No. 8, as this request repeats the inquiry above but expands the request to cases involving Medicaid and another benefit, such as SNAP.

10. For each month since and including January 1, 2017, the total number of redetermination decisions made, and, of that total number, the number of decisions to continue benefits, change benefits, and the number of decisions to cancel benefits, for cases involving **Medicaid only**.

AFC Response: We interpret 305 ILCS 5/11-5.1(d)(1) as requiring the Department to compile this data. The General Assembly has decided that this is a burden that the Department has to carry. These records must be released to the public.

11. For each month since and including January 1, 2017, the total number of redetermination decisions made, and, of that total number, the number of decisions to continue benefits, change benefits, and the number of decisions to cancel benefits, for cases involving **Medicaid plus another Department-administered benefit**.

AFC Response: 305 ILCS 5/11-5.1(d)(1) requires the Department to collect and disseminate this data. By law, this is a burden that the Department must meet and these records must be created and released to the public. Therefore, the Department cannot claim that the request is unduly burdensome.

12. For each month since and including January 1, 2017, the percentage of cancellation decisions made for **Medicaid-only** cases due to each of the following:
- a. The beneficiary's ineligibility due to excess income.
 - b. The beneficiary's ineligibility due to not being an Illinois resident.
 - c. The beneficiary's ineligibility due to being deceased.
 - d. The beneficiary's request to cancel benefits.
 - e. The beneficiary's lack of response after notices mailed to the beneficiary are returned to the Department as undeliverable by the United States Postal Service.
 - f. The beneficiary's lack of response to a request for additional information when reliable information in the beneficiary's account, or other more current information, is unavailable to the Department to make a decision on whether to continue benefits.
 - g. Other reasons tracked by the Department for the purpose of ensuring program integrity.

AFC Response: 305 ILCS 5/11-5.1(d)(3) as requires the Department to collect and disseminate this data. By law, this is a burden that the Department must meet and these records must be created and released to the public. Therefore, the Department cannot claim that the request is unduly burdensome.

13. For each month since and including January 1, 2017, the percentage of cancellation decisions made for cases involving **Medicaid and another Department-administered benefit**, due to each of the following:
- a. The beneficiary's ineligibility due to excess income.
 - b. The beneficiary's ineligibility due to not being an Illinois resident.
 - c. The beneficiary's ineligibility due to being deceased.
 - d. The beneficiary's request to cancel benefits.
 - e. The beneficiary's lack of response after notices mailed to the beneficiary are returned to the Department as undeliverable by the United States Postal Service.
 - f. The beneficiary's lack of response to a request for additional information when reliable information in the beneficiary's account, or other more current information, is unavailable to the Department to make a decision on whether to continue benefits.
 - g. Other reasons tracked by the Department for the purpose of ensuring program integrity.

AFC Response: 305 ILCS 5/11-5.1(d)(3) requires the Department to collect and disseminate this data. By law, this is a burden that the Department must meet and these records must be created and released to the public. Therefore, the Department cannot claim that the request is unduly burdensome.

14. For each month since and including January 1, 2017, of the total number of benefit cancellations in a month for **Medicaid-only** cases, the number of beneficiaries who return from cancellation within 3 months.

- a. Of the number of beneficiaries for Medicaid-only cases who return from cancellation within 3 months, the percentage of those cancellations that were due to each of the reasons listed in question 12(a)-(g) above.
- b. Of the number of beneficiaries for Medicaid-only cases who return from cancellation within 3 months, the percentage of those beneficiaries who submitted a new application for Medicaid benefits.
- c. Of the number of beneficiaries for Medicaid-only cases who return from cancellation within 3 months, the percentage of those return from cancellations where the cancellation was due to Department error.
- d. Of the number of beneficiaries who return from cancellation within 3 months where the cancellation was due to Department error identified in 13(c) or otherwise identified since January 1, 2017, please provide copies of all documents referencing, describing, or compiling those cases and the reason for Department error. This includes but is not limited to documents referencing return from cancellations where IES did not recognize a redetermination response as having been submitted into the system, or where a redetermination response was timely received but not timely scanned and uploaded.

AFC Response: 305 ILCS 5/11-5.1(d)(3) requires the Department to collect and disseminate this data. By law, this is a burden that the Department must meet and these records must be created and released to the public. Therefore, the Department cannot claim that the request is unduly burdensome.

15. For each month since and including January 1, 2017, of the total number of benefit cancellations in a month for cases involving **Medicaid and another Department-administered benefit**, the number of beneficiaries who return from cancellation within 3 months.
- a. Of the number of beneficiaries (for cases involving Medicaid and another Department-administered benefit) who return from cancellation within 3 months, the percentage of those cancellations that were due to each of the reasons listed in question 13(a)-(g) above.
 - b. Of the number of beneficiaries (for cases involving Medicaid and another Department-administered benefit) who return from cancellation within 3 months, the percentage of those beneficiaries who submitted a new application for Medicaid benefits.
 - c. Of the number of beneficiaries (for cases involving Medicaid and another Department-administered benefit) who return from cancellation within 3 months, the percentage of those return from cancellations where the cancellation was due to Department error.
 - d. Of the number of beneficiaries who return from cancellation within 3 months where the cancellation was due to Department error identified in 14(c) or otherwise identified since January 1, 2017, please provide copies of all documents referencing, describing, or compiling those cases and the reason for Department error. This includes but is not limited to documents referencing return from cancellations where IES did not recognize a redetermination response as having been submitted into the system, or where a redetermination response was timely received but not timely scanned and uploaded.

AFC Response: 305 ILCS 5/11-5.1(d)(3) requires the Department to collect and disseminate this data. By law, this is a burden that the Department must meet and these records must be created and released to the public. Therefore, the Department cannot claim that the request is unduly burdensome.

16. Any and all documents, reports, aggregated data, or data sets related to the reporting requirements of P.A. 99-0086 and/or 305 ILCS 5/11-5.1(d).

AFC Response: We do not believe an adequate review was conducted before the agencies claimed it would be unduly burdensome to respond to this request.

Thank you in advance for your work in ensuring that DHS and HFS follow FOIA. We look forward to assisting in your review.

Sincerely,

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Encls.:

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