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Opinion No. 02-124

Status of Dislocated Workers Under the New TennCare Waiver

QUESTION

Is the new TennCare waiver that took effect on July 1, 2002 inconsistent with the provisions of Tenn. Code Ann. § 71-5-135 concerning the eligibility of dislocated workers for enrollment in the TennCare program?

OPINION

No. Under the express terms of § 71-5-135, the provisions of the new TennCare waiver control the issue of the eligibility of dislocated workers. Some aspects of the program design of the new waiver impact the future TennCare eligibility of individuals who have access to health insurance coverage under COBRA.

ANALYSIS

Under the terms of Tenn. Code Ann. § 71-5-135, a person who became uninsured due to the bona fide closure of his employer's business or plant was "eligible to enroll in the TennCare program at the expiration of the eighteen (18) month period authorized for continuing insurance coverage under COBRA." [1] An application for TennCare coverage was to be accepted prior to the expiration of the 18 month period, so that health insurance through TennCare could begin immediately upon expiration of COBRA coverage.

[1]The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), codified at 29 U.S.C. §§ 1161, *et seq.*, generally enables a covered employee to continue coverage under a group health insurance plan for a specified period of time after employment ends, subject to payment of the applicable premium.

In fact, pursuant to the rules governing the program under the previous waiver, dislocated workers and their families were considered "eligible for TennCare coverage without regard to the availability of COBRA benefits," with enrollment in TennCare to continue until employer sponsored health insurance became available to the worker or his/her spouse, assuming other requirements of eligiblity continued to be met. Tenn. Comp. Adm. R. & Regs. 1200-13-12-.02(4)(a)(4) (March 2002). In other words, the availability of insurance coverage under COBRA was not considered to be "access to insurance" that disqualified an applicant, including one who simply chose not to purchase such insurance, from eligibility for TennCare coverage as an uninsured person.

Section 71-5-135 also contains another provision, however, that bears directly on the question presented. "It is the legislative intent that this section be implemented only to the extent that it is determined to be consistent with the terms, conditions and eligibility criteria of the TennCare waiver as approved by the United States [D]epartment of [H]ealth and [H]uman [S]ervices." The terms of the TennCare waiver, then, control the issue of the eligibility of dislocated workers, by express legislative intent.

The new TennCare waiver that took effect on July 1, 2002, pursuant to the approval of the Centers for Medicare and Medicaid Services (CMS) of the Department of Health and Human Services, replaced the program that had been in place since January 1, 1994, and made significant changes in TennCare's structure, scope, and eligibility criteria. Some of those changes directly impact the future TennCare eligibility of individuals who have access to health insurance coverage under COBRA.

Under the program design of the new TennCare waiver approved by CMS, there are two distinct parts: TennCare Medicaid and TennCare Standard. TennCare Medicaid covers those individuals who meet the requirements for Medicaid eligibility as set forth in the approved Medicaid State plan. These eligibility standards are unchanged from those in effect under the prior waiver. TennCare Standard (a new aspect of the program) has two components, both of which require that the individual be uninsured and lack access to health insurance. The component that is relevant to the question presented corresponds roughly with the former "uninsured" category. To qualify under this component of TennCare Standard, an individual must be ineligible for Medicaid, be uninsured and lack access to insurance, and have income that does not exceed specified levels to be set annually by the Legislature, which may differ between children and adults but which cannot exceed 200% of the federal poverty level. A new applicant without insurance or access to group health insurance, whose income falls within the poverty levels established by the General Assembly, may qualify for TennCare Standard as a qualified uninsured person only during a time designated as a period of open enrollment.

In keeping with federal regulations, Medicaid-eligible individuals may have, or have access to, other health insurance and still be eligible for TennCare. (Their private insurance is considered their primary insurance, with TennCare Medicaid being secondary.) In contrast, under the program design of the new TennCare waiver as submitted by the State and approved by CMS, the concept of

disqualifying "access to group health insurance" reflects the State's intention that, for non-Medicaid eligible persons, TennCare is to "be a safety net, and not a choice among available insurance options." (TennCare Program Design and Waiver Modifications, submitted to CMS February 12, 2002, p. 19.) Specifically, for purposes of enrollment in TennCare Standard "[i]f a person could have enrolled in work-related insurance during an open enrollment period and simply chose not to enroll . . . he or she would not be considered to lack access to insurance once the open enrollment period is closed. . . . For example, a person who has access to COBRA coverage for an 18-month period but who is allowed to enroll in COBRA only during the first 60 days of that 18-month period would be considered to have access to insurance for 18 months, even if he/she chose not to enroll during the first 60 days." *Id.* In other words, under the new TennCare waiver access to coverage under COBRA is "access to group health insurance" and is a basis for disqualification for TennCare Standard until the entire COBRA period has expired.[2] After that point, if he remains uninsured and without access to insurance, the person may apply at any time for the second component of TennCare Standard as a "medically eligible" individual, if his income is below 100% of the federal poverty level. Otherwise, the person may apply for TennCare Standard as a qualified uninsured person only during a designated open enrollment period and only if his income is below a specified level which cannot exceed 200% of the poverty level. Individuals may apply for TennCare at any time as Medicaid eligible.

Under the new TennCare waiver, access to insurance under COBRA will not be a cause for disqualification of individuals who were enrolled in TennCare as dislocated workers as of June 30, 2002. Individuals in this "grandfathered" eligibility category must go through the current eligbility redetermination process for waiver enrollees and will be allowed to remain on TennCare if they meet all eligibility criteria, other than access to COBRA benefits, in effect at the time of the review. *See* Rule 1200-13-14-.02(2)(a)(9)(ii), .02(3)(b), .02(3)(g) (December 2002).

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[2]In this respect, the new waiver is consistent with the terms of § 71-5-135 providing for expiration of the 18-month period under COBRA before TennCare eligibility arises.

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