

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 2008

Short Title: Medicaid Appeals Change. (Public)

Sponsors: Senators Nesbitt; Atwater, Bingham, and Purcell.

Referred to: Judiciary I (Civil).

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE APPEALS PROCESS FOR MEDICAID RECIPIENTS
AND PROVIDERS APPEALING DEPARTMENT OF HEALTH AND HUMAN
SERVICES DECISIONS PERTAINING TO ELIGIBILITY AND SERVICES
UNDER THE MEDICAID PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Effective October 1, 2008, the Title of G.S. 108A-79 reads
as rewritten:

"§ 108A-79. Appeals. Appeals of county level decisions."

SECTION 1.(b) Effective October 1, 2008, Article 4 of Chapter 108A of the
General Statutes is amended by adding the following new section to read:

"§108A-79.1. Appeals by Medicaid applicants and recipients.

(a) An action by the Department to deny, terminate, suspend, or reduce Medicaid
eligibility or to deny, terminate, suspend, or reduce Medicaid services is a "contested
case" subject to the provisions of Chapter 150B of the General Statutes, except as
provided by this section. At the time of providing the notice required under subsection
(b) of this section, the Department shall file a petition with the Office of Administrative
Hearings to determine the Medicaid applicant's or recipient's rights, duties, or
privileges.

(b) In addition to the notice requirements of G.S. 150B-23, the Department shall
provide within 30 days of its decision written notice to the aggrieved applicant or
recipient, or the applicant's or recipient's legal guardian, which notice shall include:

(1) An explanation of the Department's decision.

(2) A clear and concise statement of what service is being reduced,
terminated, or denied and the basis upon which the decision was made.

(3) A statement that the Department has filed a petition for administrative
review of its decision on behalf of the applicant or recipient and that
the applicant or recipient has 30 days from the date of the

1 Department's decision to decide whether or not to proceed with the
2 hearing.

3 (4) A clear explanation of how the hearing will proceed, what is required
4 of the applicant in order to proceed or to decline to proceed, and that
5 the applicant or recipient may be represented by an attorney at the
6 hearing.

7 (5) A statement that the recipient will continue to receive Medicaid
8 services at the level provided on the day immediately preceding the
9 Department's decision pending a final decision.

10 (6) The telephone number of a contact person at the Department to
11 respond in a timely fashion to applicant or recipient questions.

12 (7) A brochure supplied by the North Carolina Protection and Advocacy
13 System that explains the rights of applicants and recipients under the
14 State Medical Assistance program, including the rights to appeal
15 decisions of the Department.

16 (c) The agency has the burden of proof to establish by a preponderance of the
17 evidence the facts necessary to support the agency's action.

18 (d) The Medicaid recipient may appeal the final agency decision to superior court
19 as provided in Article 4 of Chapter 150B of the General Statutes."

20 **SECTION 2.(a)** G.S. 150B-1(e) is amended by adding the following new
21 subdivision to read:

22 "(e) Exemptions From Contested Case Provisions. – The contested case
23 provisions of this Chapter apply to all agencies and all proceedings not expressly
24 exempted from the Chapter. The contested case provisions of this Chapter do not apply
25 to the following:

26 ...
27 (16) Hearings arising under the Medical Assistance program established
28 under Part 6 of Chapter 108A of the General Statutes and pursuant to
29 Title XIX of the Social Security Act, conducted in accordance with
30 G.S. 108A-79.1."

31 **SECTION 2.(b)** Article 4 of Chapter 108A of the General Statutes is
32 amended by adding the following new section to read:

33 "§ 108A-79.2. Medicaid provider appeals of Department level decision.

34 (a) A provider of Medicaid services aggrieved by a decision of the Department to
35 reduce, deny, recoup, or recover reimbursement or to deny, suspend, or revoke a
36 provider agreement shall be entitled to a hearing. A hearing shall be commenced by
37 filing a petition with the chief hearings clerk of the Department within 30 days of the
38 mailing of the notice by the Department of the action giving rise to the contested case.
39 The petition shall identify the petitioner, be signed by the party or representative of the
40 party, and shall describe the agency action giving rise to the contested case. As used in
41 this section, "file or filing" means to place the paper or item to be filed into the care and
42 custody of the chief hearings clerk of the Department and acceptance thereof by the
43 chief hearings clerk, except that the hearing officer may permit the papers to be filed

1 with the hearing officer, in which event the hearing officer shall note thereon the filing
2 date. The Department shall supply forms for use in these contested cases.

3 (b) If there is a timely request for an appeal, the Department shall promptly
4 designate a hearing officer who shall hold an evidentiary hearing. The hearing officer
5 shall conduct the hearing according to applicable federal law and regulations and shall
6 ensure that:

7 (1) Notice of the hearing is given not less than 15 days before the hearing.
8 The notice shall state the date, hour, and place of the hearing and shall
9 be deemed to have been given on the date that a copy of the notice is
10 mailed, via certified mail, to the address provided by the petitioner in
11 the petition for hearing.

12 (2) The hearing shall be held in Wake County, except that the hearing
13 officer may, after consideration of the numbers, locations, and
14 convenience of witnesses and in order to promote the ends of justice,
15 hold the hearing by telephone or other electronic means or hold the
16 hearing in a county in which the petitioner resides.

17 (3) Discovery shall be no more extensive or formal than that required by
18 federal law and regulations applicable to the hearings. Prior to and
19 during the hearing, a provider representative shall have adequate
20 opportunity to examine the provider's own case file. No later than five
21 days before the date of the hearing, each party to a contested case shall
22 provide to each other party a copy of any documentary evidence that
23 the party intends to introduce at the hearing and shall identify each
24 witness that the party intends to call.

25 (4) The hearing officer shall have the power to administer oaths and
26 affirmations, subpoena the attendance of witnesses, rule on prehearing
27 motions, and regulate the conduct of the hearing.

28 (5) At the hearing, the parties may present such sworn evidence, law, and
29 regulations as are relevant to the issues in the case.

30 (6) The petitioner and the respondent agency each have a right to be
31 represented by a person of his choice, including an attorney obtained at
32 the party's own expense.

33 (7) The petitioner and the respondent agency shall each have the right to
34 cross-examine witnesses as well as make a closing argument
35 summarizing his view of the case and the law.

36 (8) The appeal hearing shall be recorded; however, no transcript will be
37 prepared unless a petition for judicial review is filed pursuant to
38 subsection (f) of this section, in which case the transcript shall be made
39 a part of the official record. In the absence of the filing of a petition for
40 a judicial review, the recording of the appeal hearing may be erased or
41 otherwise destroyed 180 days after the final decision is mailed as
42 provided in G.S. 108A-79(i)(5).

43 (c) The hearing officer shall decide the case based upon a preponderance of the
44 evidence, giving deference to the demonstrated knowledge and expertise of the agency

1 as provided in G.S. 150B-34(a). The hearing officer shall prepare a proposal for the
2 decision, citing relevant law, regulations, and evidence, which shall be served upon the
3 petitioner or the petitioner's representative by certified mail, with a copy furnished to
4 the respondent agency.

5 (d) The petitioner and the respondent agency shall have 15 days from the date of
6 the mailing of the proposal for decision to represent written arguments in opposition to
7 or in support of the proposal for decision to the designated official of the Department
8 who will make the final decision. If neither written arguments are presented, nor
9 extension of time granted by the final agency decision-maker for good cause, within 15
10 days of the date of the mailing of the proposal for decision, the proposal for decision
11 becomes final. If written arguments are presented, such arguments shall be considered
12 and the final decision shall be rendered. The final decision shall be rendered not more
13 than 90 days from the date of the filing of the petition. This time limit may be extended
14 by agreement of the parties or by final agency decision-maker, for good cause shown,
15 for an additional period of up to 30 days. The final decision shall be served upon the
16 petitioner or the petitioner's representative by certified mail, with a copy furnished to
17 the respondent agency. In the absence of a petition for judicial review filed pursuant to
18 subsection (f) of this section, the final decision shall be binding upon the petitioner and
19 the Department.

20 (e) A petitioner who is dissatisfied with the final decision of the Department may
21 file, within 30 days of the service of the decision, a petition for judicial review in the
22 Superior Court of Wake County or of the county from which the case arose. The judicial
23 review shall be conducted according to Article 4 of Chapter 150B of the General
24 Statutes.

25 (f) In the event of a conflict between federal law or regulations and State law or
26 regulations, federal law or regulations shall control."

27 **SECTION 3.** There is appropriated from the General Fund to the
28 Department of Health and Human Services, Division of Medical Assistance, the sum of
29 five million dollars (\$5,000,000) for the 2008-2009 fiscal year. These funds shall be
30 used to increase the number of hearing officers in the Department to hear provider
31 appeals under G.S. 108A-79.2, as enacted by this act, and may also be used to pay for
32 services provided by mediation centers and legal services organizations that assist
33 Medicaid recipients that have filed a petition with the Office of Administrative Hearings
34 pursuant to G.S. 108A-79.1, as enacted by this act.

35 **SECTION 4.** Effective October 1, 2008, the Department of Health and
36 Human Services shall discontinue its informal settlement process with respect to
37 appeals by Medicaid recipients. All informal appeals by Medicaid recipients pending
38 on that date that have not been held on the merits or for which notices have not been
39 sent to the Medicaid applicant or recipient shall be deemed a contested case under
40 Chapter 150B of the General Statutes pursuant to G.S. 108A-79.1 and Article 3 of
41 Chapter 150B of the General Statutes and shall be filed with the Office of
42 Administrative Hearings pursuant to G.S. 108A-79.1, as enacted by this act.

43 **SECTION 5.** This act becomes effective October 1, 2008, and applies to all
44 petitions that are filed by a Medicaid provider on or after that date and for all Medicaid

1 provider petitions that have been filed at the Office of Administrative Hearings previous
2 to this date but for which a hearing on the merits has not been commenced prior to the
3 effective date of this act. The requirement that the agency decision must be rendered
4 not more than 90 days from the date of the filing of the petition for hearing shall not
5 apply to petitions that were filed at the Office of Administrative Hearings prior to the
6 effective date of this act. The Office of Administrative Hearings shall transfer all cases
7 affected by Section 2 of this act to the Department of Health and Human Services
8 within 30 days of the effective date of this act. This act preempts the existing informal
9 appeal process and reconsideration review process at the Department of Health and
10 Human Services and the existing appeal process at the Office of Administrative
11 Hearings with regard to all appeals filed by Medicaid providers under the Medical
12 Assistance program.