

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 2008
Judiciary I (Civil) Committee Substitute Adopted 7/9/08

Short Title: Medicaid Appeals Change.

(Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

1
2 AN ACT TO IMPROVE THE APPEALS PROCESS FOR MEDICAID APPLICANTS
3 AND RECIPIENTS APPEALING DEPARTMENT OF HEALTH AND HUMAN
4 SERVICES DETERMINATIONS PERTAINING TO SERVICES UNDER THE
5 MEDICAID PROGRAM.

6 Whereas, the State and federal Medicaid costs for Community Support
7 Services were about \$500 million higher than expected in fiscal year 2006-2007, and
8 have remained higher than anticipated despite efforts by the Department of Health and
9 Human Services to control the program's growth and expenses; and

10 Whereas, the service authorization process used by the Department resulted
11 in a number of Medicaid applicants and recipients receiving inappropriate services; and

12 Whereas, efforts to control costs and to provide appropriate services have
13 resulted in the denial, termination, suspension, or reduction of Medicaid services to
14 large numbers of applicants and recipients; and

15 Whereas, federal law requires that applicants and recipients be given a fair
16 hearing before services are denied, terminated, suspended, or reduced and that hearings
17 ordinarily be held within 90 days of the request for appeal made by the applicant or
18 recipient; and

19 Whereas, the Department's current informal hearing process has no time
20 limits and formal contested cases before the Office of Administrative Hearings can take
21 considerably longer than 90 days; and

22 Whereas, there is a backlog of approximately 6,956 cases awaiting informal
23 hearing within the Department of Health and Human Services, and the Department is on
24 track to receive over 10,000 cases this year; and

25 Whereas, the General Assembly finds that the appeals process must be
26 streamlined to address the substantial backlog in appeals pending, and the process
27 should be simplified to address issues of fairness; Now, therefore,

28 The General Assembly of North Carolina enacts:

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

3 "**§ 108A-79. Appeals.**~~Appeals of county level decisions.~~"

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

6 "**§ 108A-79.1. Appeals by Medicaid applicants and recipients of Department**
7 **determinations.**

8 (a) General Rule. – Notwithstanding any provision of State law or rules to the
9 contrary, this section shall govern the process used by a Medicaid applicant or recipient
10 to appeal a determination made by the Department to deny, terminate, suspend, or
11 reduce Medicaid covered services. For purposes of this section, the phrase "adverse
12 determination" means a determination by the Department to deny, terminate, suspend,
13 or reduce Medicaid covered services. For purposes of this section, all references to an
14 applicant or recipient include the applicant or recipient's parent, guardian, or legal
15 representative, however, notice need only be given to a parent, guardian, or legal
16 representative who has requested in writing to receive the notice.

17 (b) Notice. – Except as otherwise provided by federal law or regulation, at least
18 30 days before the effective date of an adverse determination, the Department shall
19 notify the applicant or recipient, and the provider, if applicable, in writing of the
20 determination and of the applicant's or recipient's right to appeal the determination. The
21 notice shall be mailed on the date indicated on the notice as the date of the
22 determination. The notice shall include:

- 23 (1) An identification of the applicant or recipient whose services are being
24 affected by the adverse determination, including full name and
25 Medicaid identification number.
- 26 (2) An explanation of what service is being denied, terminated, suspended,
27 or reduced, and the reason for the determination.
- 28 (3) The specific regulation, statute, or medical policy that supports or
29 requires the adverse determination.
- 30 (4) The effective date of the adverse determination.
- 31 (5) An explanation of the applicant's or recipient's right to appeal the
32 Department's adverse determination in an evidentiary hearing before
33 an administrative law judge.
- 34 (6) An explanation of how the applicant or recipient can request a hearing,
35 and a statement that the applicant or recipient may represent himself,
36 or use legal counsel, a relative, or other spokesperson.
- 37 (7) A statement that the applicant or recipient will continue to receive
38 Medicaid services at the level provided on the day immediately
39 preceding the Department's adverse determination or the amount
40 requested by the applicant or recipient, whichever is less, if the
41 applicant or recipient requests a hearing before the effective date of the
42 adverse determination. The services shall continue until the hearing is
43 completed and a final decision is rendered.

1 (8) The name and telephone number of a contact person at the Department
2 to respond in a timely fashion to the applicant's or recipient's
3 questions.

4 (9) The telephone number by which the applicant or recipient may contact
5 a Legal Aid/Legal Services office.

6 (10) The appeal request form described in subsection (e) of this section that
7 the applicant or recipient may use to request a hearing.

8 (c) Appeals. – Except as provided by this section, a request for a hearing to
9 appeal an adverse determination of the Department under this section is a contested case
10 subject to the provisions of Article 3 of Chapter 150B of the General Statutes, and a fair
11 hearing as required by 42 U.S.C. § 1396(a)(3). The applicant or recipient must request a
12 hearing within 30 days of the mailing of the notice required by subsection (c) of this
13 section by sending an appeal request form to the Office of Administrative Hearings and
14 the Department. The Department shall immediately forward a copy of the notice to the
15 Office of Administrative Hearings electronically. The information contained in the
16 notice is confidential unless the recipient appeals. The Office of Administrative
17 Hearings may dispose of the records after one year. The Department may not influence,
18 limit, or interfere with the applicant's or recipient's decision to request a hearing.

19 (d) Appeal Request Form. – Along with the notice required by subsection (c) of
20 this section, the Department shall also provide the applicant or recipient with an appeal
21 request form which shall be no more than one side of one page. The form shall include
22 the following:

23 (1) A statement that in order to request an appeal, the applicant or
24 recipient must send the form by mail or fax to the address or fax
25 number listed on the form within 30 days of mailing of the notice.

26 (2) The applicant's or recipient's name, address, telephone number, and
27 Medicaid identification number.

28 (3) A preprinted statement that indicates that the applicant or recipient
29 would like to appeal the specific adverse determination of which the
30 applicant or recipient was notified in the notice.

31 (4) A statement informing the applicant or recipient that he or she may
32 choose to be represented by a lawyer, a relative, a friend, or other
33 spokesperson.

34 (5) A space for the applicant's or recipient's signature and date.

35 (e) Final Decision. – After a hearing before an administrative law judge, the
36 Judge shall return the decision and record to the Department in accordance with
37 G.S. 150B-31.2 of the General Statutes. The Department shall make a final decision in
38 the case within 20 days of receipt of the decision and record from the administrative law
39 judge and promptly notify the applicant or recipient of the final decision and of the right
40 to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General
41 Statutes."

42 **SECTION 2.** Article 3 of Chapter 150B of the General Statutes is amended
43 by adding a new section to read:

44 **"§ 150B-31.2. Contested Medicaid cases.**

1 (a) Application. – This section applies only to contested Medicaid cases
2 commenced by Medicaid applicants or recipients under G.S. 108A-79.1.
3 Notwithstanding any other provision of this Chapter, the provisions of G.S. 108A-79.1
4 shall govern time lines and procedural steps in a contested Medicaid case commenced in
5 accordance with G.S. 108A-79.1. To the extent any provision in this section conflicts
6 with another provision in this Article, this section controls.

7 (b) Simple Procedures. – Notwithstanding any other provision of this Article, the
8 chief administrative law judge may limit and simplify the procedures that apply to a
9 contested Medicaid case involving a Medicaid applicant or recipient in order to
10 complete the case as quickly as possible. To the extent possible, the Hearings Division
11 shall schedule and hear contested Medicaid cases within 45 days of submission of a
12 request for appeal. The simplified procedure may include requiring that all prehearing
13 motions be considered and ruled on by the administrative law judge in the course of the
14 hearing of the case on the merits. An administrative law judge assigned to a contested
15 Medicaid case shall make reasonable efforts in a case involving a Medicaid applicant or
16 recipient who is not represented by an attorney to assure a fair hearing and to maintain a
17 complete record of the hearing. The administrative law judge may allow brief
18 extensions of the time limits contained in this section for good cause and to ensure that
19 the record is complete. Good cause includes delays resulting from untimely receipt of
20 documentation needed to render a decision and other unavoidable and unforeseen
21 circumstances.

22 (c) Mediation. – Upon receipt of an appeal request form as provided by
23 G.S. 108A-79.1(e) or other clear request for a hearing by a Medicaid applicant or
24 recipient, The chief administrative law judge shall immediately notify the Mediation
25 Network of North Carolina which shall within five days contact the petitioner to offer
26 mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation
27 must be completed within 25 days of submission of the request for appeal. If mediation
28 is successful, the mediator shall inform the Hearings Division, which shall confirm with
29 the agency that a settlement has been achieved, and the case shall be dismissed. If the
30 petitioner rejects the offer of mediation or the mediation is unsuccessful, the mediator
31 shall notify the Hearings Division that the case will proceed to hearing. Nothing in this
32 subsection shall restrict the right to a contested case hearing.

33 (d) Burden of Proof. – The party proposing that the agency take action or grant a
34 benefit has the burden to show the propriety of the agency action or entitlement to the
35 benefit sought. The party seeking to impose a penalty or reduce, terminate, or suspend a
36 benefit previously granted has the burden of showing the propriety of such action. The
37 party with the burden of proof on any issue has the burden of going forward, and the
38 administrative law judge shall not make any ruling on the preponderance of evidence
39 until the close of all evidence.

40 (e) Decision. – The administrative law judge assigned to a contested Medicaid
41 case shall hear and decide the case without unnecessary delay. The Hearings Division
42 shall send a copy of the audiotape or diskette of the hearing to the agency within five
43 days of completion of the hearing. The judge shall prepare a written decision and send it

1 to the parties. The decision must be sent together with the record to the agency within
2 20 days of the conclusion of the hearing."

3 **SECTION 3.** There is appropriated from the General Fund to the Office of
4 Administrative Hearings the sum of three million dollars (\$3,000,000) for the
5 2008-2009 fiscal year. These funds shall be used as follows: one million five hundred
6 thousand dollars (\$1,500,000) for mediation services; four hundred thousand dollars
7 (\$400,000) for legal services organizations to encourage those organizations to assist
8 Medicaid recipients in connection with appeals of adverse determinations; and one
9 million one hundred thousand dollars (\$1,100,000) to increase the number of
10 administrative law judges and other staff necessary to implement Section 2 of this act.

11 **SECTION 4.** There is appropriated from the General Fund to the
12 Department of Health and Human Services, Division of Medical Assistance, the sum of
13 seven hundred eighty-seven thousand dollars (\$787,000) for the 2008-2009 fiscal year.
14 These funds shall be used by the Department for staffing and other services which will
15 be required to administer the new process under this act.

16 **SECTION 5.** Effective October 1, 2008, the Department of Health and
17 Human Services shall discontinue its current informal appeals process for Medicaid
18 applicants and recipients appealing a determination made by the Department to deny,
19 terminate, suspend, or reduce Medicaid covered services. All such informal appeals by
20 Medicaid applicants or recipients under the current system which are pending on that
21 date and for which a hearing has not been held shall be discontinued and the applicant
22 or recipient offered an opportunity to appeal to the Office of Administrative Hearings in
23 accordance with the provisions of Section 1(b) of this act. The Department shall comply
24 with the provisions of Section 1(b) of this act regarding informal reconsideration review
25 for all adverse determinations made on or after October 1, 2008.

26 **SECTION 6.** Sections 3 and 4 of this act become effective July 1, 2008. The
27 remainder of this act becomes effective October 1, 2008, and applies to determinations
28 to deny, terminate, suspend, or reduce Medicaid services made on or after that date.