

May 19, 2010

H 1886. ESTABLISH MEDICAID APPEALS PROCESS. Filed 5/19/2010. *TO ESTABLISH A PERMANENT APPEALS PROCESS FOR MEDICAID APPLICANTS OR RECIPIENTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES.*

Enacts new GS 108A-70.6A and -70B. Specifies procedures that are to govern appeals commenced by Medicaid applicants or recipients to appeal determinations made by Department of Health and Human Services (Department) to deny, terminate, suspend, or reduce Medicaid covered services, notwithstanding any provision of State law or rules to the contrary.

Specifies in detail the written notice that Department must give to applicant or recipient at least ten days before the effective date of an adverse determination (except as otherwise provided by federal law or regulation), including identification of person whose services are being affected; explanation of what service is being affected and the reason for the determination; the specific statute, regulation, or medical policy that supports or requires the determination; the determination's effective date; explanation of the right to appeal in an evidentiary hearing before an administrative law judge; explanation of how the hearing can be requested and statement about legal or other representation that is allowed; statement that person's benefits will continue at the level provided on the day immediately proceeding the determination or the amount requested by applicant or recipient if applicant or recipient requests a hearing before the effective date of the determination. Services are to continue until the hearing is completed and a final decision is rendered. Department is not required to notify applicant's or recipient's parent guardian, or legal representative of the adverse determination unless that person has requested in writing to be notified.

Notice must also contain name and address of a contact person at Department to respond in a timely fashion to the applicant's or recipient's questions; telephone number of Legal Aid/Legal Services office; and appeal request form that applicant or recipient may use to request a hearing. Specifies contents of form.

Appeals are to be conducted as contested case hearings under GS Chapter 150B before administrative law judge in the Office of Administrative Hearings, following GS Chapter 150B, Article 3, procedures, except as otherwise provided in these new statutes. If there is a conflict, the new statutes control.

Department is to immediately reinstate benefits upon receipt of a timely appeal, and Department is not to influence, limit, or interfere with person's decision to request a hearing. Department must immediately forward a copy of the notice requesting a hearing to Office of Administrative Hearings electronically.

Specifies that GS 108A-70.6A does not prevent Department from engaging in an informal review of the case with applicant or recipient before issuing a notice of adverse determination. Discontinues all informal appeals by applicants or recipients that are still pending under repealed SL 2008-118, Sec. 10.15A(h4), and for which a hearing has not been held. Department must offer these persons an opportunity to appeal to Office of Administrative Hearings under GS 108A-70.6A, and must make every effort to resolve or settle all backlogged cases before act's effective date.

New GS 108A-70.6B provides for expedited hearings and for simplified procedures to insure fairness to applicant or recipient, including persons who are not represented by an attorney. Section also allows for mediation. Specifies that mediation option does not restrict the right to a contested case hearing.

Burden of proof in hearing is on applicant or recipient when benefit is denied or action is not taken. Agency has burden of proof when appeal is from an agency determination to impose a penalty or reduce, terminate, or suspend a previously granted benefit. Burden of going forward is on the party with the burden of proof on any issue. Provides rapid timeline for administrative law judge's decision.

Intro. by Insko.

GS 108A