



CHANGES TITLE
ADOPTED

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 191*

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H191-AST-129 [v.2]

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Comm. Sub. [YES]
Amends Title [YES]
First Edition

Date 87 ,2009

Senator Nesbitt

1 moves to amend the bill on page 1, line 2 by deleting "STATUTES." and substituting
2 "STATUTES AND SESSION LAWS.";

3
4 and on page 1, line 12 by rewriting that line to read:

5
6 **SECTION 2.(a)** Section 10.15A.(h1)(2) and (h1)(3) of S.L. 2008-107, as amended
7 by Section 3.13.(a) of 2008-118, reads as rewritten:

8 '(2) Notice. – Except as otherwise provided by federal law or regulation, at least
9 ~~30~~10 days before the effective date of an adverse determination, the
10 Department shall notify the applicant or recipient, and the provider, if
11 applicable, in writing of the determination and of the applicant's or
12 recipient's right to appeal the determination. The notice shall be mailed on
13 the date indicated on the notice as the date of the determination. The notice
14 shall include:

- 15 a. An identification of the applicant or recipient whose services are
- 16 being affected by the adverse determination, including full name and
- 17 Medicaid identification number.
- 18 b. An explanation of what service is being denied, terminated,
- 19 suspended, or reduced and the reason for the determination.
- 20 c. The specific regulation, statute, or medical policy that supports or
- 21 requires the adverse determination.
- 22 d. The effective date of the adverse determination.
- 23 e. An explanation of the applicant's or recipient's right to appeal the
- 24 Department's adverse determination in an evidentiary hearing before
- 25 an administrative law judge.
- 26 f. An explanation of how the applicant or recipient can request a
- 27 hearing and a statement that the applicant or recipient may represent
- 28 himself or use legal counsel, a relative, or other spokesperson.
- 29 g. A statement that the applicant or recipient will continue to receive
- 30 Medicaid services at the level provided on the day immediately
- 31 preceding the Department's adverse determination or the amount
- 32 requested by the applicant or recipient, whichever is less, if the
- 33 applicant or recipient requests a hearing before the effective date of



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- 1 the adverse determination. The services shall continue until the
2 hearing is completed and a final decision is rendered.
- 3 h. The name and telephone number of a contact person at the
4 Department to respond in a timely fashion to the applicant's or
5 recipient's questions.
- 6 i. The telephone number by which the applicant or recipient may
7 contact a Legal Aid/Legal Services office.
- 8 j. The appeal request form described in subdivision (4) of this
9 subsection that the applicant or recipient may use to request a
10 hearing.

11 (3) Appeals. – Except as provided by this subsection and subsection 10.15A(h2)
12 of this act, a request for a hearing to appeal an adverse determination of the
13 Department under this section is a contested case subject to the provisions of
14 Article 3 of Chapter 150B of the General Statutes. The applicant or recipient
15 must request a hearing within 30 days of the mailing of the notice required
16 by subdivision (2) of this subsection by sending an appeal request form to
17 the Office of Administrative Hearings and the Department. Where a request
18 for hearing concerns the reduction, modification, or termination of Medicaid
19 services, upon the receipt of a timely appeal, the Department shall reinstate
20 the services to the level or manner prior to action by the Department as
21 permitted by federal law or regulation. The Department shall immediately
22 forward a copy of the notice to the Office of Administrative Hearings
23 electronically. The information contained in the notice is confidential unless
24 the recipient appeals. The Office of Administrative Hearings may dispose of
25 the records after one year. The Department may not influence, limit, or
26 interfere with the applicant's or recipient's decision to request a hearing.'

27 **SECTION 2.(b)** Section 10.15A.(h2) of S.L. 2008-107, as amended by Section
28 3.13.(b) of S.L. 2008-118, reads as rewritten:

29 **'SECTION 10.15A.(h2)**

- 30 (1) Application. – This subsection applies only to contested Medicaid cases
31 commenced by Medicaid applicants or recipients under subsection
32 10.15A(h1) of this act. Except as otherwise provided by subsection
33 10.15A(h1) and this subsection governing time lines and procedural steps, a
34 contested Medicaid case commenced by a Medicaid applicant or recipient is
35 subject to the provisions of Article 3 of Chapter 150B. To the extent any
36 provision in this subsection or subsection 10.15A(h1) of this act conflicts
37 with another provision in Article 3 of Chapter 150B, this subsection and
38 subsection 10.15A(h1) controls.
- 39 (2) Simple Procedures. – Notwithstanding any other provision of Article 3 of
40 Chapter 150B of the General Statutes, the chief administrative law judge
41 may limit and simplify the procedures that apply to a contested Medicaid
42 case involving a Medicaid applicant or recipient in order to complete the
43 case as quickly as possible. To the extent possible, the Hearings

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1 DivisionOffice of Administrative Hearings shall schedule and hear all
2 contested Medicaid cases within 45-55 days of submission of a request for
3 appeal. Hearings shall be conducted telephonically or by video technology,
4 however the recipient or applicant, or the recipient's or applicant's
5 representative may request that the hearing be conducted before the
6 administrative law judge in-person. An in-person hearing shall be conducted
7 in Wake County, however for good cause shown, the in-person hearing may
8 be conducted in the county of residence of the recipient or applicant. Good
9 cause shall include but is not limited to the applicant's or recipient's
10 impairments limiting travel or the unavailability of the applicant's or
11 recipient's treating professional witnesses. The Department shall provide
12 written notice to the recipient or applicant of the use of telephonic hearings,
13 hearings by video conference, and in-person hearings before the
14 administrative law judge, and how to request a hearing in the recipient's or
15 applicant's county of residence. The simplified procedure may include
16 requiring that all prehearing motions be considered and ruled on by the
17 administrative law judge in the course of the hearing of the case on the
18 merits. An administrative law judge assigned to a contested Medicaid case
19 shall make reasonable efforts in a case involving a Medicaid applicant or
20 recipient who is not represented by an attorney to assure a fair hearing and to
21 maintain a complete record of the hearing. The administrative law judge may
22 allow brief extensions of the time limits contained in this section for good
23 cause and to ensure that the record is complete. Good cause includes delays
24 resulting from untimely receipt of documentation needed to render a
25 decision and other unavoidable and unforeseen circumstances. Continuances
26 shall only be granted in accordance with rules adopted by the Office of
27 Administrative Hearings, and shall not be granted on the day of the hearing,
28 except for good cause shown. If a petitioner fails to make an appearance at a
29 hearing that has been properly noticed via certified mail by the Office of
30 Administrative Hearings, the Office of Administrative Hearings shall
31 immediately dismiss the contested case provision.

32 (3) Mediation. – Upon receipt of an appeal request form as provided by
33 subdivision 10.15A(h1)(4) of this act or other clear request for a hearing by a
34 Medicaid applicant or recipient, the ~~chief administrative law judge~~ Office of
35 Administrative Hearings shall immediately notify the Mediation Network of
36 North Carolina which shall within five days contact the petitioner to offer
37 mediation in an attempt to resolve the dispute. If mediation is accepted, the
38 mediation must be completed within 25 days of submission of the request for
39 appeal. ~~If mediation is successful, the mediator shall inform the Hearings~~
40 ~~Division, which shall confirm with the agency that a settlement has been~~
41 ~~achieved, and the case shall be dismissed. If the petitioner rejects the offer of~~
42 ~~mediation or the mediation is unsuccessful, the mediator shall notify the~~
43 ~~Hearings Division that the case will proceed to hearing.~~ Upon completion of

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1 the mediation, the mediator shall inform the Office of Administrative
2 Hearings and the Department within 24 hours of the resolution by facsimile
3 or electronic messaging. If the parties have resolved matters in the
4 mediation, the case shall be dismissed by the Office of Administrative
5 Hearings. The Office of Administrative Hearings shall not conduct any
6 contested Medicaid cases hearings until it has received notice from the
7 mediator assigned that either: (i) the mediation was unsuccessful, or (ii) the
8 petitioner has rejected the offer of mediation, or (iii) the petitioner has failed
9 to appear at a scheduled mediation. Nothing in this subdivision shall restrict
10 the right to a contested case hearing.

11 (4) **Burden of Proof.** – The petitioner has the burden of proof to show
12 entitlement to a requested benefit or the propriety of requested agency action
13 when the agency has denied the benefit or refused to take the particular
14 action. The agency has the burden of proof when the appeal is from an
15 agency determination to impose a penalty or reduce, terminate, or suspend a
16 benefit previously granted. The party with the burden of proof on any issue
17 has the burden of going forward, and the administrative law judge shall not
18 make any ruling on the preponderance of evidence until the close of all
19 evidence.

20 (4a) **New Evidence.**– The petitioner shall be permitted to submit evidence
21 regardless of whether obtained prior to or subsequent to the Department's
22 actions and regardless of whether the Department had an opportunity to
23 consider the evidence in making its determination to deny, reduce, terminate
24 or suspend a benefit. When such evidence is received, at the request of the
25 Department, the administrative law judge shall continue the hearing for a
26 minimum of 15 days and a maximum of 30 days to allow for the
27 Department's review of the evidence. Subsequent to review of the evidence,
28 if the Department reverses its original decision, it shall immediately inform
29 the administrative law judge.

30 (4b) **Issue for Hearing.**– For each penalty imposed or benefit reduced, terminated,
31 or suspended, the hearing shall determine whether the Department
32 substantially prejudiced the rights of the petitioner and if the Department,
33 based upon evidence at the hearing:

- 34 a. Exceeded its authority or jurisdiction;
35 b. Acted erroneously;
36 c. Failed to use proper procedure;
37 d. Acted arbitrarily or capriciously; or,
38 e. Failed to act as required by law or rule.

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

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

3 **SECTION 2.(c)** Section 10.15A.(e2) of S.L. 2008-107 reads as rewritten:

4 '**SECTION 10.15A.(e2)** The community support provider appeals process shall be
5 developed and implemented as follows:

6 (1) A hearing under this section shall be commenced by filing a petition with
7 the chief hearings clerk of the Department within 30 days of the mailing of
8 the notice by the Department of the action giving rise to the contested case.
9 The petition shall identify the petitioner, be signed by the party or
10 representative of the party, and shall describe the agency action giving rise
11 to the contested case. As used in this section, "file or filing" means to place
12 the paper or item to be filed into the care and custody of the chief hearings
13 clerk of the Department and acceptance thereof by the chief hearings clerk,
14 except that the hearing officer may permit the papers to be filed with the
15 hearing officer, in which event the hearing officer shall note thereon the
16 filing date. The Department shall supply forms for use in these contested
17 cases.

18 (2) If there is a timely request for an appeal, the Department shall promptly
19 designate a hearing officer who shall hold an evidentiary hearing. The
20 hearing officer shall conduct the hearing according to applicable federal law
21 and regulations and shall ensure that:

22 a. Notice of the hearing is given not less than 15 days before the
23 hearing. The notice shall state the date, hour, and place of the hearing
24 and shall be deemed to have been given on the date that a copy of the
25 notice is mailed, via certified mail, to the address provided by the
26 petitioner in the petition for hearing.

27 b. The hearing is held in Wake County, except that the hearing officer
28 may, ~~after consideration of the numbers, locations, and convenience~~
29 ~~of witnesses and in order to promote the ends of justice, hold the~~
30 ~~hearing~~ take testimony and receive evidence by telephone or other
31 electronic means ~~or hold the hearing in a county in which the~~
32 ~~petitioner resides.~~ means. The petitioner and the petitioner's legal
33 representative may appear before the hearing officer in Wake
34 County.

35 c. Discovery is no more extensive or formal than that required by
36 federal law and regulations applicable to the hearings. Prior to and
37 during the hearing, a provider representative shall have adequate
38 opportunity to examine the provider's own case file. No later than
39 five days before the date of the hearing, each party to a contested
40 case shall ~~provide to each other party a copy of any documentary~~
41 ~~evidence that the party intends to introduce at the hearing and shall~~
42 identify each witness that the party intends to call.

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- (3) The hearing officer shall have the power to administer oaths and affirmations, subpoena the attendance of witnesses, rule on prehearing motions, affirmations and regulate the conduct of the hearing. The following shall apply to hearings held pursuant to this section:
- a. At the hearing, the parties may present such sworn evidence, law, and regulations as are relevant to the issues in the case.
 - b. The petitioner and the respondent agency each have a right to be represented by a person of his choice, including an attorney obtained at the party's own expense.
 - c. The petitioner and the respondent agency shall each have the right to cross-examine witnesses as well as make a closing argument summarizing his view of the case and the law.
 - d. The appeal hearing shall be recorded. If a petition for judicial review is filed pursuant to subsection (f) of this section, a transcript will be prepared and made the Department shall include a copy of the recording of the hearing as part of the official report and shall be prepared at no cost to the appellant. In the absence of the filing of a petition for a judicial review, no transcript will be prepared unless requested by a party, in which case each party shall bear the cost of the transcript or part thereof or copy of the transcript or part thereof requested by the party record. The recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed as provided in G.S. 108A-79(i)(5).
- (4) The hearing officer shall decide the case based upon a preponderance of the evidence, giving deference to the demonstrated knowledge and expertise of the agency as provided in G.S. 150B-34(a). The hearing officer shall prepare a proposal for the decision, citing relevant law, regulations, and evidence, which shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency.
- (5) The petitioner and the respondent agency shall have 15 days from the date of the mailing of the proposal for decision to present written arguments in opposition to or in support of the proposal for decision to the designated official of the Department who will make the final decision. If neither written arguments are presented, nor extension of time granted by the final agency decision maker for good cause, within 15 days of the date of the mailing of the proposal for decision, the proposal for decision becomes final. If written arguments are presented, such arguments shall be considered and the final decision shall be rendered. The final decision shall be rendered not more than ~~90~~ 180 days from the date of the filing of the petition. This time limit may be extended by agreement of the parties or by final agency decision maker, for good cause shown, for an additional period of up to ~~30 days shown~~. The final decision shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the

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1 respondent agency. In the absence of a petition for judicial review filed
2 pursuant to subsection (f) of this section, the final decision shall be binding
3 upon the petitioner and the Department.

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

9 (7) In the event of a conflict between federal law or regulations and State law or
10 regulations, federal law or regulations shall control. This section applies to
11 all petitions that are filed by a Medicaid community support services
12 provider on or after July 1, 2008, and for all Medicaid community support
13 services provider petitions that have been filed at the Office of
14 Administrative Hearings previous to July 1, 2008, but for which a hearing on
15 the merits has not been commenced prior to that date. The requirement that
16 the agency decision must be rendered not more than ~~90~~180 days from the
17 date of the filing of the petition for hearing shall not apply to (i) community
18 support services provider petitions that were filed at the Office of
19 Administrative Hearings or (ii) requests for a hearing under the Department's
20 informal settlement process prior to the effective date of this act. The Office
21 of Administrative Hearings shall transfer all cases affected by this section to
22 the Department of Health and Human Services within 30 days of the
23 effective date of this section. This act preempts the existing informal appeal
24 process and reconsideration review process at the Department of Health and
25 Human Services and the existing appeal process at the Office of
26 Administrative Hearings with regard to all appeals filed by Medicaid
27 community support services providers under the Medical Assistance
28 program."
29

SECTION 3. This act is effective when it becomes law.

SIGNED

Martha Nesbitt
Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED

✓ 360

FAILED

TABLED

8-7-09
Janet Pruitt

ADOPTED