GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S **D**

SENATE DRS85318-MGz-108C* (04/30)

Short Title:	Establish Medicaid Appeals Process.	(Public)
Sponsors:	Senator Nesbitt.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT 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.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 108A of the General Statutes is amended by adding two new sections to read:

"**§ 108A-70.6A. Appeals commenced by Medicaid applicants or recipients.**

(a) Definitions. – The following definitions apply in this section, unless the context clearly requires otherwise:

(1) Adverse determination. – A determination by the Department to deny, terminate, suspend, or reduce Medicaid covered services.

(2) Applicant or recipient. – This term includes an applicant's or recipient's parent, guardian, or legal representative.

(b) General Rule. – Notwithstanding any provision of State law or rules to the contrary, this section shall govern the process used by a Medicaid applicant or recipient to appeal a determination made by the Department to deny, terminate, suspend, or reduce Medicaid covered services.

(c) Notice. – Except as otherwise provided by federal law or regulation, at least 10 days before the effective date of an adverse determination, the Department shall notify the applicant or recipient, and the provider if applicable, in writing of the adverse determination and of the applicant's or recipient's right to appeal the adverse determination. The Department shall not be required to notify an applicant's or recipient's parent, guardian, or legal representative unless the parent, guardian, or legal representative has requested in writing to receive the notice. The notice shall be mailed on the date indicated on the notice as the date of the determination. The notice shall include:

(1) An identification of the applicant or recipient whose services are being affected by the adverse determination, including full name and Medicaid identification number.

(2) An explanation of what service is being denied, terminated, suspended, or reduced and the reason for the determination.

(3) The specific regulation, statute, or medical policy that supports or requires the adverse determination.

(4) The effective date of the adverse determination.

(5) An explanation of the applicant's or recipient's right to appeal the Department's adverse determination in an evidentiary hearing before an administrative law judge.

(6) An explanation of how the applicant or recipient can request a hearing and a statement that the applicant or recipient may represent himself or herself or use legal counsel, a relative, or other spokesperson.

(7) A statement that the applicant or recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's adverse determination or the amount requested by the applicant or recipient, whichever is less, if the applicant or recipient requests a hearing before the effective date of the adverse determination. The services shall continue until the hearing is completed and a final decision is rendered.

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

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

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

(d) Appeals. – Except as provided by this section and G.S. 108A-70.6B, a request for a hearing to appeal an adverse determination of the Department under this section is a contested case subject to the provisions of Article 3 of Chapter 150B of the General Statutes. The applicant or recipient must request a hearing within 30 days of the mailing of the notice required by subsection (c) of this section by sending an appeal request form to the Office of Administrative Hearings and the Department. Where a request for hearing concerns the reduction, modification, or termination of Medicaid services, upon the receipt of a timely appeal, the Department shall reinstate the services to the level or manner prior to action by the Department as permitted by federal law or regulation. The Department shall immediately forward a copy of the notice to the Office of Administrative Hearings electronically. The information contained in the notice is confidential unless the recipient appeals. The Office of Administrative Hearings may dispose of the records after one year. The Department may not influence, limit, or interfere with the applicant's or recipient's decision to request a hearing.

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

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

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

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

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

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

(f) Final Decision. – After a hearing before an administrative law judge, the judge shall return the decision and record to the Department in accordance with G.S. 108A-70.6B. The Department shall make a final decision in the case within 20 days of receipt of the decision and record from the administrative law judge and promptly notify the applicant or recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes.

(g) Nothing in this section shall prevent the Department of Health and Human Services from engaging in an informal review of the case with the applicant or recipient prior to issuing a notice of adverse determination as provided by subsection (c) of this section.

(h) All informal appeals by Medicaid applicants or recipients under the informal appeals process that was discontinued pursuant to Section 10.15A(h4) of S.L. 2008-118 which are still pending and for which a hearing has not been held shall be discontinued, and the applicant or recipient offered an opportunity to appeal to the Office of Administrative Hearings in accordance with the provisions of G.S. 108A-70.6A. The Department shall make every effort to resolve or settle all of the backlogged cases prior to the effective date of this act.

"**§ 108A-70.6B. Contested Medicaid cases.**

(a) Application. – This subsection applies only to contested Medicaid cases commenced by Medicaid applicants or recipients under G.S. 108A-70.6A. Except as otherwise provided by G.S. 108A-70.6A and this section governing time lines and procedural steps, a contested Medicaid case commenced by a Medicaid applicant or recipient is subject to the provisions of Article 3 of Chapter 150B of the General Statutes. To the extent any provision in this section or G.S. 108A-70.6A conflicts with another provision in Article 3 of Chapter 150B of the General Statutes, this section and G.S. 108A-70.6A control.

(b) Simple Procedures. – Notwithstanding any other provision of Article 3 of Chapter 150B of the General Statutes, the chief administrative law judge may limit and simplify the procedures that apply to a contested Medicaid case involving a Medicaid applicant or recipient in order to complete the case as quickly as possible. To the extent possible, the Hearings Division shall schedule and hear contested Medicaid cases within 45 days of submission of a request for appeal. The simplified procedure may include requiring that all prehearing motions be considered and ruled on by the administrative law judge in the course of the hearing of the case on the merits. An administrative law judge assigned to a contested Medicaid case shall make reasonable efforts in a case involving a Medicaid applicant or recipient who is not represented by an attorney to assure a fair hearing and to maintain a complete record of the hearing. The administrative law judge may allow brief extensions of the time limits contained in this section for good cause and to ensure that the record is complete. Good cause includes delays resulting from untimely receipt of documentation needed to render a decision and other unavoidable and unforeseen circumstances.

(c) Mediation. – Upon receipt of an appeal request form as provided by G.S. 108A-70.6A(d) or other clear request for a hearing by a Medicaid applicant or recipient, the chief administrative law judge shall immediately notify the Mediation Network of North Carolina, which shall within five days contact the petitioner to offer mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation must be completed within 25 days of submission of the request for appeal. If mediation is successful, the mediator shall inform the Hearings Division, which shall confirm with the agency that a settlement has been achieved, and the case shall be dismissed. If the petitioner rejects the offer of mediation or the mediation is unsuccessful, the mediator shall notify the Hearings Division that the case will proceed to hearing. Nothing in this subdivision shall restrict the right to a contested case hearing.

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

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

the hearing. The judge shall prepare a written decision and send it to the parties. The decision must be sent together with the record to the agency within 20 days of the conclusion of the hearing."

SECTION 2. This act is effective when it becomes law.