

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE**

**LEGISLATIVE REPORT ON THE  
APPEALS PROCESS FOR MEDICAID APPLICANTS AND  
RECIPIENTS ESTABLISHED UNDER  
NORTH CAROLINA SESSION LAW 2008-118, s. 3.13  
EFFECTIVE JULY 01, 2008**

**TO THE**

**HOUSE OF REPRESENTATIVES APPROPRIATIONS  
SUBCOMMITTEE ON HEALTH AND HUMAN  
SERVICES,**

**SENATE APPROPRIATIONS SUBCOMMITTEE ON  
HEALTH AND HUMAN SERVICES,**

**JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON  
MENTAL HEALTH, DEVELOPMENTAL  
DISABILITIES, AND SUBSTANCE ABUSE  
SERVICES, AND**

**FISCAL RESEARCH DIVISION**

## **INTRODUCTION**

Session Law (S.L.) 2008-118, s. 10.15A.(h6) required that the Department of Health and Human Services (DHHS) and the Office of Administrative Hearings (OAH) report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on the costs, effectiveness, and efficiency of the appeals process for Medicaid applicants and recipients and make recommendations regarding the continuation of the process. This is the final report as required by law, and OAH has elected to file a report independent of the Department. To highlight effectiveness, costs, and efficiency of the Medicaid recipient appeal process, this report covers the period August 01, 2009-January 15, 2010.

## **I. MEDICAID RECIPIENT DUE PROCESS (FORMAL OR FAIR HEARING) REQUIREMENTS**

Whenever an adverse decision is made by Medicaid to deny, reduce, terminate, or suspend a Medicaid applicant's or recipient's medical, dental, or behavioral health services, due process or appeal rights are implicated. Written notice must be provided to the recipient/applicant and, if appropriate, his/her legal representative, as well as the service provider. The notice must include a clear statement of the decision, citation that supports the decision made, and appeal rights for a fair (also known as a formal) hearing.

S.L 2008-118, s. 3.13 eliminated Medicaid informal appeals (also known as reconsideration reviews) with the Department of Health and Human Services (DHHS) Hearing Office as a hearing option for Medicaid recipients and applicants. Only a fair hearing before the Office of Administrative Hearings (OAH) is required for adverse decisions made about a Medicaid recipient's or applicant's medical, dental, or behavioral health service requests. The law specifies deadlines throughout the fair hearing process that must be met by OAH and DHHS/DMA. S.L 2009-526, s. 2.(a) and (b) made various clarifying changes in the previously cited session law. See attached appeal timeline. The fair hearing process, exclusive of a request for judicial review, must be completed within 90 days of the recipient's/applicant's filing with OAH and the DHHS General Counsel.

## **II. ACTIVITIES AND PROGRESS TO DATE TO IMPLEMENT S.L 2008-118, s. 3.13 AND S.L 2009-256, s. 2.(a) AND (b)**

### **• Continuing Implementation of Long-Term Process**

On February 2, 2009, Public Consulting Group (PCG) implemented the first phase of the permanent online document management system or clearinghouse. This clearinghouse is located at <https://web.pcgus.com/ncmdp/>. The clearinghouse continues to provide a stable, central environment to accommodate the core appeal process established by S.L 2008-118, s. 3.13. It utilizes significant efficiencies by automating many of the workflow procedures associated with the appeal process. Additionally, the clearinghouse is an efficient method for managing and storing a large volume of documents. For example, the clearinghouse automatically groups all related documents into a single case record. The clearinghouse tracks all crucial information about each document leading to a much higher level of organization and allows for robust reporting capabilities. The clearinghouse also allows for immediate electronic transmission of documents to and from the OAH, Mediation Network of North Carolina (MNNC), Department of Justice (DOJ), and DHHS/DMA.

- **Developing New Due Process Notices and Recipient Appeal Request Forms**  
With the enactment of S.L 2009-526, s. 2.(a) and (b) and implementation of the proposed mediated settlement between DHHS/DMA and Legal Services of the Southern Piedmont, Medicaid recipient notices and appeal request form are being revised as well as recipient and vendor instructions. The previous implementation date was March 01, 2010; however, the date was contingent upon completion of mediation with Legal Services. Legal Services rejected the settlement. As a result, DHHS/DMA was unable to meet the March 01, 2010, deadline specified in the last report. Although the mediated settlement was rejected by Legal Services of the Southern Piedmont, new notices, recipient appeal request form, vendor instructions, and recipient instructions will be implemented in compliance with the proposed settlement and as agreed upon by DHHS/DMA.
- **Establishing Workflow Procedures**  
There is frequent communication between the Mediation Network and DHHS/DMA in an attempt to resolve any mediation issues that arise and to refine the mediation process as needed. As a result, the workflow processes for DHHS/DMA and MNNC are clearly known and understood.
- **Completing DMA/DHHS Vendor Contracts**  
DHHS/DMA vendor contracts, with the exception of Hewlett-Packard (HP) Enterprise Services (formerly Electronic Data Services, EDS), have been amended to require their participation in the mediation and hearing processes and to reflect the requirements of S.L 2009-526, s. 2.(a) and (b) and the proposed mediated settlement between DHHS/DMA and Legal Services of the Southern Piedmont. The HP contract amendment has been completed and must be reviewed and approved by CMS.
- **Training for DMA and Vendor Staffs, Recipients, and Providers**  
Training was developed and provided in collaboration with the Carolina Dispute Settlement Center in March-April 2009 and February-April 2010 for DMA and vendor staffs and providers relative to the proposed mediated settlement with Legal Services of the Southern Piedmont, S.L 2008-118, s.313, and S.L 2009-526, s. 2.(a) and (b). Recipient training will be confined to information contained in Medicaid publications secondary to travel and budget restrictions. Additionally, a special Medicaid Bulletin on the Medicaid recipient appeal process will be published.

### **III. ANALYSIS**

- **Cost Effectiveness of the Appeal Process**
  - **Maintenance of Services (MOS)**  
If a **continuing** request for services is made in accordance with Medicaid requirements, adverse action taken, and a hearing request submitted within 30 days of the date the notice was mailed, the recipient is entitled to receive services during the pendency of the appeal. The service will be provided in accordance with federal and state requirements as well as the proposed mediated settlement with Legal Services of the Southern Piedmont. With the use of the clearinghouse, there has been more timely communication, and it has been determined that the new process and utilization of the document management system has saved approximately \$6 million in MOS costs for the period August 01, 2009-January

15, 2010, and \$19.6 million for the period October 01, 2008-January 15, 2010. See Tables I and II appended to this report.

o **Other Costs: Effective Date of Adverse Notices**

S.L 2009-526, s. 2.(a) and (b) reduced the effective date for continuing service requests from 30 to 10 days. While it is expected that this will decrease the amount of money spent on MOS, this can only occur if there is adequate infrastructure at every level of the appeal process, including fiscal and human resources to meet the session law requirements.

- **Efficiency** is determined by whether the deadlines set forth in S.L 2008-118, s. 3.13 were met for the period August 01, 2009-January 15, 2010. The data revealed that fair hearings were resolved, on the average, in 126 days (90 days allowed under federal requirements). See Tables III and IV, appended to this report, for full compliance results.

The results found in Tables III and IV were compiled using data retrieved from the online document management system. OAH collects and utilizes data independent of that collected by the DHHS/DMA document management system, and, as a result, their findings may differ from those included in this report.

- One way to determine **effectiveness** of the process is to evaluate the similarity of the decisions made by OAH and DHHS/DMA. Tables V and VI, appended to this report, show the number and percentage of initial decisions that OAH and DHHS/DMA upheld for the period August 01, 2009-January 15, 2010. The data revealed that there is a disparity in the decisions made by the vendors (initial agency decision), OAH (administrative decision), and DHHS/DMA (final agency decision). See Tables V and VI for complete results. The results found in these tables were compiled using data retrieved from the online document management system. As noted above, the OAH data may differ from that included in this report as OAH collects and utilizes data independent of that collected by the DHHS/DMA document management system.

#### **IV. FUTURE CONSIDERATIONS**

- **Implementing S.L 2009-526, s. 2.(a) and (b) and DHHS/DMA Proposed Mediated Settlement with Legal Services of North Carolina**

New due process notices, recipient appeal request forms, recipient instructions, and vendor instructions are under development and will need to be distributed throughout DHHS and to all vendors. Training for staff, recipients, providers, and vendors on the changes precipitated by S.L 2009-526, s. 2.(a) and (b) and the proposed mediated settlement with Legal Services of the Southern Piedmont is an integral part of success for any changes in the hearing process. Comprehensive internal and external training was developed collaboratively with the Carolina Dispute Settlement Center and presented to DHHA/DMA staff, vendors and providers February-April 2010. Due to travel and budget restrictions, full scale training for recipients regarding changes mandated by S.L 2009-526, s. 2.(a) and (b) and the proposed settlement with Legal Services of North Carolina will initially be limited to Medicaid's publications and website. However, DMA will investigate other training possibilities.

- **Notifying DHHS/DMA of Requests for Mediations and Hearings**

Timely processing and transmission is critical since it is directly linked to a series of e-mail alerts sent by the document management system to the appropriate Medicaid staff, vendors, and assistant attorney generals to notify them the case has been dismissed, mediation scheduled or completed, a hearing scheduled, or decision made. Most significant are the behavioral health services and personal care services appeal cases due to the volume of appeals. Documents are sent to DHHS/DMA and/or the document management system within 24 hours.

With the addition of the OAH case number to the forms, it has become easier to identify the recipient and affiliate the correct appeal request form to the correct recipient. However, on occasion, the case number is incorrect or omitted. Therefore, it would be helpful if the various mediation and hearing forms contained the petitioner's name, OAH case number, the recipient's name, Medicaid identification number, date of notice, and service under appeal. Ultimately, including this information on the forms will result in a cost savings to the State and improve efficiency of the appeal process.

- **Availability of Telephone Hearings with Speaker Phone and Videoconferencing Capabilities**

Prior to the ratification of S.L 2009-526, s. 2.(a) and (b), telephonic and videoconferencing capabilities were not available to all recipients who wished to pursue these options. Some of the current OAH hearing sites do not have the availability of telephone or videoconferencing capabilities. With the ratification of this bill and the current state of the economy, DHHS/DMA requests that these capabilities be made available whenever possible.

- **Medicaid Recipient Hearing Request Forms**

DHHS/DMA has developed individual hearing request forms that are pre-populated with the recipient's name, Medicaid identification number, address, and service under appeal. Some providers have created their own forms by "cutting and pasting" information from other recipient forms. As a result, the wrong name, Medicaid identification number, address, service under appeal appears on the form. It makes it very difficult to affiliate the correct form and service under appeal to the correct recipient. Also, additional time is required by OAH, DHHS/DMA, and the Attorney General's staff to determine the nature of the appeal as well as the petitioner. It would be helpful if these forms were not processed by OAH, and the recipient and provider directed to contact DHHS/DMA for a duplicate form.

- **Hearings Requested by Providers Without Knowledge of Recipient or Legal Representative/Guardian**

A few mediations and hearings have been held under this condition, and some have been dismissed. Processing hearing requests when the recipient has no knowledge that a hearing has been requested on their behalf is resulting in confusion among recipients, applicants, providers, and DHHS/DMA/vendor staff. It would be helpful if such requests were dismissed by OAH.

## **V. RECOMMENDATIONS**

- Develop policies regarding how hearings requested by providers on behalf of recipients and applicants without their knowledge are to be handled.

- Do not process altered DHHS/DMA recipient appeal request forms and direct recipients and providers to contact DHHS/DMA for a duplicate request form.
- Allow further discussion between the petitioner and respondent, if so desired by either party, immediately prior to the hearing in an effort to settle the case. Many administrative law judges allow this, and it has proven to be helpful. Many cases have settled without a hearing, which benefits the petitioner and results in a cost savings to the State.
- Continue the appeal process as set forth in S.L 2008-118, s. 3.13 and S.L 2009-526, s. 2.(a) and (b) and the DHHS/DMA-Legal Services of the Southern Piedmont proposed mediation settlement on due process.
- Monitor the hearing process and analyze data to assess progress towards objectives, cost effectiveness, and efficiency of the revised process.

## **APPENDIX I**

### **DATA TABLES I-VI**

TABLE I

**COST EFFECTIVENESS OF THE APPEAL PROCESS  
MAINTENANCE OF SERVICE COSTS: 10/01/08-01/15/2010**

**Cost Savings Resultant from Reduction in Appeal Timeline**

Appeals Process Timeframe	Average Number of Days per Appeal	Cost/Day/Appeal (MOS)	Appeals Resolved	MOS Cost Pre-10/1/08 (151 Days)	MOS Cost Post-10/1/08 (69 Days)	Cost Savings
Before 10/1/08	151					
Since 10/1/08 (through 1/15/09)	69					
Service Type		Cost/Day/Appeal (MOS)	Appeals Resolved	MOS Cost Pre-10/1/08 (151 Days)	MOS Cost Post-10/1/08 (69 Days)	Cost Savings
CSS		\$42.09	2429	\$15,437,728.11	\$7,054,326.09	\$8,383,402.02
Community Support Team		\$31.20	317	\$1,493,471.45	\$682,447.22	\$811,024.23
CAP/MR/DD Services		\$130.14	188	\$3,694,353.90	\$1,688,148.47	\$2,006,205.43
Residential - Level III (<4 beds)		\$252.38	164	\$6,249,938.32	\$2,855,932.08	\$3,394,006.24
Day Treatment		\$75.00	149	\$1,687,425.00	\$771,075.00	\$916,350.00
Residential - Level II		\$95.40	67	\$965,161.80	\$441,034.20	\$524,127.60
Intensive In-Home Services		\$258.20	70	\$2,729,174.00	\$1,247,106.00	\$1,482,068.00
Psychosocial Rehab		\$17.33	25	\$65,426.21	\$29,896.74	\$35,529.46
Private Duty Nursing (12 hrs)		\$467.52	21	\$1,482,505.92	\$677,436.48	\$805,069.44
Skilled Nursing Facilities		\$148.00	13	\$290,524.00	\$132,756.00	\$157,768.00
Residential - Level IV		\$342.15	6	\$309,987.90	\$141,650.10	\$168,337.80
CAP/C Services		\$136.69	7	\$144,484.51	\$66,022.72	\$78,461.79
ICF/MR		\$326.72	4	\$197,339.64	\$90,175.07	\$107,164.57
PRTF		\$437.04	6	\$395,958.24	\$180,934.56	\$215,023.68
Targeted Case Management (MH)		\$6.08	5	\$4,591.20	\$2,097.97	\$2,493.23
ACH-SCU/Alzheimers (31+ beds)		\$51.25	2	\$15,477.50	\$7,072.50	\$8,405.00
Private Duty Nursing (16 hrs)		\$623.36	7	\$658,891.52	\$301,082.88	\$357,808.64
Private Duty Nursing (24 hrs)		\$935.04	2	\$282,382.08	\$129,035.52	\$153,346.56
CAP/DA Services		\$66.92	1	\$10,105.18	\$4,617.60	\$5,487.58
Personal Care Services Plus		\$39.68	1	\$5,991.68	\$2,737.92	\$3,253.76
<b>Totals</b>			3484	\$36,120,918.15	\$6,505,585.12	<b>\$19,615,333.04</b>



TABLE II

**COST EFFECTIVENESS OF THE APPEAL PROCESS  
MAINTENANCE OF SERVICE COSTS: 08/01/09-01/15/10**

**Cost Savings Resultant from Reduction in Appeal Timeline**

Appeals Process Timeframe	Average Number of Days per Appeal	Cost/Day/Appeal (MOS)	Appeals Resolved	MOS Cost Pre-10/1/08 (151 Days)	MOS Cost Post-10/1/08 (69 Days)	Cost Savings
Before 10/1/08	151					
Since 8/1/2009 (through 1/15/09)	46					
Service Type		Cost/Day/Appeal (MOS)	Appeals Resolved	MOS Cost Pre-10/1/08 (151 Days)	MOS Cost Post-10/1/08 (69 Days)	Cost Savings
CSS		\$42.09	302	\$1,919,388.18	\$584,714.28	\$1,334,673.90
Community Support Team		\$31.20	118	\$555,929.44	\$169,355.99	\$386,573.45
CAP/MR/DD Services		\$130.14	16	\$314,413.10	\$95,781.47	\$218,631.62
Residential - Level III (<4 beds)		\$252.38	40	\$1,524,375.20	\$464,379.20	\$1,059,996.00
Day Treatment		\$75.00	66	\$747,450.00	\$227,700.00	\$519,750.00
Residential - Level II		\$95.40	18	\$259,297.20	\$78,991.20	\$180,306.00
Intensive In-Home Services		\$258.20	30	\$1,169,646.00	\$356,316.00	\$813,330.00
Psychosocial Rehab		\$17.33	1	\$2,617.05	\$797.25	\$1,819.80
Private Duty Nursing (12 hrs)		\$467.52	14	\$988,337.28	\$301,082.88	\$687,254.40
Skilled Nursing Facilities		\$148.00	3	\$67,044.00	\$20,424.00	\$46,620.00
Residential - Level IV		\$342.15	1	\$51,664.65	\$15,738.90	\$35,925.75
CAP/C Services		\$136.69	4	\$82,562.58	\$25,151.51	\$57,411.06
ICF/MR		\$326.72	1	\$49,334.91	\$15,029.18	\$34,305.73
PRTF		\$437.04	2	\$131,986.08	\$40,207.68	\$91,778.40
Targeted Case Management (MH)		\$6.08	2	\$1,836.48	\$559.46	\$1,277.02
ACH-SCU/Alzheimers (31+ beds)		\$51.25	0	\$0.00	\$ -	\$0.00
Private Duty Nursing (16 hrs)		\$623.36	7	\$658,891.52	\$200,721.92	\$458,169.60
Private Duty Nursing (24 hrs)		\$935.04	1	\$141,191.04	\$43,011.84	\$98,179.20
CAP/DA Services		\$66.92	0	\$0.00	\$ -	\$0.00
Personal Care Services Plus		\$39.68	0	\$0.00	\$ -	\$0.00
<b>Totals</b>			626	\$8,665,964.70	\$2,639,962.76	<b>\$ 6,026,001.94</b>

**TABLE III**

**EFFICIENCY OF THE APPEAL PROCESS: 10/01/08-01/15/10**

Appeal Request Received	Timeline				Formal Hearing Completed	Formal Hearing Decision Transferred to Medicaid / DHHS	Final Agency Decisions Sent to Recipient	Federal Deadline
	Mediation Process	Formal Hearing Process	Overall Timeline	25 Days				
<b>Days Allowed in Timeline</b>				25	45	20	20	Day 0 - 90
<b>Actual Length of Time to Complete Hearing Requirement</b>				22	91	10	20	120
<b>% In Compliance</b>				72%	5%	92%	88%	25%
<b>% Not In Compliance</b>				28%	95%	8%	12%	75%
<b>Number In Compliance</b>				1591	3	58	78	14
<b>Number Not In Compliance</b>				608	54	5	11	43
<b>Total</b>				2199	57	63	89	57

\* Data available beginning March 2009

**TABLE IV**

**EFFICIENCY OF THE APPEAL PROCESS: 08/01/09-01/15/10**

Appeal Request Received	Mediation Process		Formal Hearing Completed	Formal Hearing Decision Transferred to Medicaid / DHHS	Final Agency Decisions Sent to Recipient	Federal Deadline
	Formal Hearing Process	Overall Timeline				
		<b>25 Days</b>				
<b>Days Allowed in Timeline</b>			Day 0 - 25	Day 45 - 65	Day 65 - 85	Day 0 - 90
<b>Actual Length of Time to Complete Hearing Requirement</b>			25	20	20	90
<b>% In Compliance</b>			21	11	16	126
<b>% Not In Compliance</b>			78%	94%	93%	17%
<b>Number In Compliance</b>			22%	6%	7%	83%
<b>Number Not In Compliance</b>			1047	29	51	9
<b>Total</b>			290	2	4	43
			1337	31	55	52

\* Data available beginning March 2009

\*\*Appeals resolved from August 1st, 2009 through January 15th, 2010

TABLE V

EFFECTIVENESS OF THE APPEAL PROCESS: 10/01/08-01/15/10

Mediations			Formal Hearings			Final Agency Decisions		
Result	Decisions	% of Results	Result	Decisions	% of Results	Result	Decisions	% of Results
Successful	2265	82.5%						
Voluntary Dismissal	2250	82.0%	Upheld Initial Agency Decision	60	55%	Upheld Initial Agency Decision	87	98%
Upheld Initial Decision	6	0.2%	Modified Initial Agency Decision	1	1%	Modified Initial Agency Decision	1	1%
Modified Initial Decision	9	0.3%	Overturned Initial Agency Decision	49	45%	Overturned Initial Agency Decision	1	1%
Unsuccessful	480	17.5%	Total	110	100%	Total	89	100%
Petitioner Did Not Participate	134	4.9%						
Referred to Formal Hearing	277	10.1%						
Petitioner Unavailable	69	2.5%						
Total	2745	100.0%						

TABLE VI

## EFFECTIVENESS OF THE APPEAL PROCESS: 08/01/09-01/15/10

Mediations			Formal Hearings			Final Agency Decisions		
Result	Decisions	% of Results	Result	Decisions	% of Results	Result	Decisions	% of Results
<b>Successful</b>	<b>1132</b>	<b>82.4%</b>						
Voluntary Dismissal	1123	81.7%	Upheld Initial Agency Decision	27	48%	Upheld Initial Agency Decision	50	96%
Upheld Initial Decision	5	0.4%	Modified Initial Agency Decision	0	0%	Modified Initial Agency Decision	1	2%
Modified Initial Decision	4	0.3%	Overtured Initial Agency Decision	29	52%	Overtured Initial Agency Decision	1	2%
<b>Unsuccessful</b>	<b>242</b>	<b>17.6%</b>	<b>Total</b>	<b>56</b>	<b>100%</b>	<b>Total</b>	<b>52</b>	<b>100%</b>
Petitioner Did Not Participate	69	5.0%						
Referred to Formal Hearing	149	10.8%						
Petitioner Unavailable	24	1.7%						
<b>Total</b>	<b>1374</b>	<b>100.0%</b>						

**APPENDIX II**

**APPEAL TIMELINE ESTABLISHED UNDER**

**S.L. 2008-118, s. 3.13**

**and**

**S.L. 2009-526, s. 2.(a) and (b)**

# MEDICAID RECIPIENT FAIR HEARING TIMELINE

