

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
LEGISLATIVE REPORT ON**

**APPEALS PROCESS FOR MEDICAID
COMMUNITY SUPPORT PROVIDERS
*S.L. 2008-107, Section 10.15A(e)***

PRESENTED 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

OCTOBER 1, 2009

Effective July 1, 2008, pursuant to *Session Law 2008-107, Section 10.15A (e1)*, in order to save State and federal funds paid for behavioral health services found to be unnecessary or otherwise ineligible for payment and to expedite the resolution of Community Support Provider appeals, the Department of Health and Human Services was directed to implement a hearing process in accordance with the requirements set forth in *Section 10.15A(e2) of S.L. 2008-107*.

Since July 1, 2008, the DHHS Hearing Office has received a total of 355 Community Support Provider appeals under the new hearings process. This total includes 195 cases which were converted from informal appeals, 74 cases transferred from the Office of Administrative Hearings, and 86 new provider appeal cases filed pursuant to *S.L. 2008-107*. Of the 355 cases received since the enactment of *S.L. 2008-107*, 263 (74%) of these cases have been processed and resolved.

Session Law 2008-107 required that all new cases be heard and the final decision be rendered within 90 days of the filing of the appeal. To date, all but six cases were concluded within the 90 day deadline. Of these six cases that were not concluded within the 90 day deadline, four involved an extension of a deadline which was agreed upon by all of the parties involved and/or good cause found by the final agency decision maker and the other two cases involved injunctions granted by a superior court judge which temporarily enjoined the cases from proceeding.

While effectively managing the Community Support Providers appeals cases, during the same period, July 1, 2008 through June 30, 2009 (SFY 2008-2009), the DHHS Hearing Office also received 834 appeal requests of the other types of cases it conducts. These other types of cases include:

- 564 Non-CSS Provider Reconsideration Reviews:
 - 90 Provider Medical Review Section appeals
 - 24 Provider Home Care Review Section appeals
 - 390 Provider Pharmacy Section appeals
 - 60 Other types of provider appeals including Special Project section, the recently created Behavioral Health Review Section, and Provider Services enrollment termination and enrollment denial appeals
- 273 appeals of Nursing Home and Adult Care Home Transfer/Discharge and PASARR (Preadmission and Annual Resident Review) appeals:
 - 94 Adult Care Home
 - 152 Nursing Home
 - 27 PASARR

The number of Community Support Providers hearings held to date has varied greatly in complexity depending on the issue(s) of the case, the number and/or severity of reason(s) for recoupment or withdrawal of endorsement, the number of parties and witnesses, and the volume of documents submitted for the hearing, etc. The duration of

the hearings, depending upon these and other factors, has ranged from approximately one (1) hour to four (4) full days. In approximately 52% of these cases the provider had an attorney representing it.

Session Law 2009-550, Section 1.1(c), amended the hearing process set forth in Section 10.15A (e2) of S.L. 2008-107. The changes were enacted to facilitate the ongoing timeliness of the DHHS Hearing Office in scheduling cases, conducting hearings and rendering decisions. Funding to support staff for the newly created hearings process for Community Support Providers was not continued this past legislative session; therefore, the Office lost nine (9) positions. As a result of these staff reductions, compliance with the legislative deadline for rendering decisions in these cases was in jeopardy. However, *S.L. 2009-550, Section 1.1(c)* extended the deadline to 180 days which will enable the Office to continue to render decisions that comply with deadlines set forth by the Legislature.

Additionally, the new legislation included changes which will provide further efficiency to the evidentiary hearing process and reduce the administrative burden on the parties to these cases. For example, the removal of the requirement that each party to the case provide to the other party a copy of every document they intend to introduce will greatly reduce the volume of copies needed by a party. Furthermore, removal of this requirement should expedite many hearings by eliminating the need to have sometimes protracted discussion and objections regarding a party's failure to comply with the pre-hearing document submission requirement. This change puts the focus on the appeals, thus more effectively utilizing the time for the hearing. The clarification in the law regarding the ability of the DHHS Hearing Office to receive evidence by telephone or other electronic means will further assist in streamlining the hearing process for all participants.

As a result of *S.L. 2008-107*, the DHHS Hearing Office has expeditiously resolved the bulk of the large backlog of Community Support Provider cases. Of all of the cases handled by this Office, to date, only 15 cases have been appealed to Superior Court. Meanwhile this process has allowed the efficient and timely disposition of numerous cases involving matters such as overpayments of Medicaid dollars, endorsement actions and provider termination actions.