



**North Carolina Department of Health and Human Services**

2001 Mail Service Center • Raleigh, North Carolina 27699-2001  
Tel 919-733-4534 • Fax 919-715-4645

Beverly Eaves Perdue, Governor

October 1, 2011

Lanier M. Cansler, Secretary

The Honorable Stan Bingham, Co-Chair  
Appropriations on Health and  
Human Services  
North Carolina Senate  
Room 2117, Legislative Building  
Raleigh, NC 27601

The Honorable Harris Blake, Co-Chair  
Appropriations on Health and  
Human Services  
North Carolina Senate  
Room 408, Legislative Office Building  
Raleigh, NC 27603

The Honorable Louis Pate, Co-Chair  
Appropriations on Health and  
Human Services  
North Carolina Senate  
Room 406, Legislative Office Building  
Raleigh, NC 27603

Dear Senators Bingham, Blake and Pate:

Section 10.30 of Session Law 2010-031, requires the Department of Health and Human Services to report on the number, status, and outcome of contested Medicaid cases handled by the Office of Administrative Hearings (OAH) pursuant to the appeals process established in Part 6A of Article 2 of Chapter 108A of the General Statutes. The report is due October 1, 2011.

To allow for full review of all contested cases mentioned above, there will be a delay in the submission of the report. The report will be transmitted on or before November 30, 2011.

Please direct all questions concerning this report to Jane Plaskie, Clinical Policy and Programs at the Division of Medical Assistance, at 919-855-4266.

Sincerely,

A handwritten signature in black ink, appearing to read "Lanier", with a large, stylized flourish extending from the end of the signature.

Lanier M. Cansler

LMC:jp

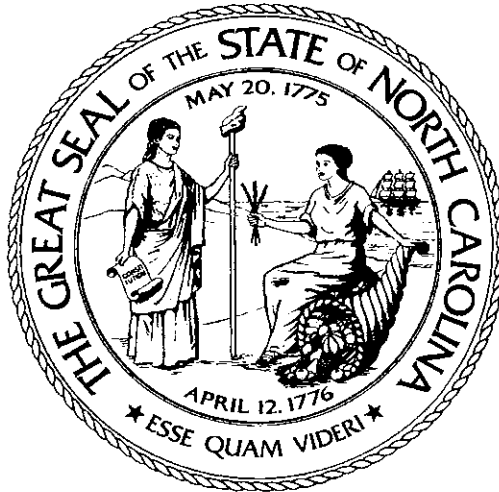
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**LEGISLATIVE REPORT**  
**on**  
**APPEALS PROCESS FOR MEDICAID**  
**APPLICANTS AND RECIPIENTS**

**Session Law 2010-31, Section 10.30(c)**



**NOVEMBER 2011**

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES,  
DIVISION OF MEDICAL ASSISTANCE**

## INTRODUCTION

Session Law 2010-31, Section 10.30(c) requires the Department of Health and Human Services (DHHS) and the Office of Administrative Hearings (OAH) to submit a report on the number, status, and outcome of contested Medicaid cases handled by OAH pursuant to the appeals process established in Part 6A of Article 2 of Chapter 108A of the General Statutes. This report includes information on the number of contested Medicaid cases resolved through mediations and through formal hearings, the outcome of settled and withdrawn cases, and the number of incidences in which the Division of Medical Assistance (DMA) reversed the decision of an administrative law judge along with DMA's rationale for the reversal. This is the final report as required by law, and OAH has elected to file a report independent of the Department. This report covers the period July 01, 2010 through June 30, 2011, unless otherwise specified.

The results stated in this report were compiled using data provided to DMA from a variety of sources (mediators and OAH, vendor, and DMA staff) and entered into the Department's online document management system. It should be noted OAH collects and utilizes data independent of that collected by the Department's document management system, and, as a result, their findings may differ from those included in this report.

### **I. Number of Contested Medicaid Cases Resolved Through Mediation and the Formal (Fair) Hearing Process**

During the period July 01, 2010 through June 30, 2011, DMA received from OAH a total of 12,665 contested case petitions. Approximately, 1,908 (15 percent) of the cases filed during the period were not mediated and/or resolved by a formal hearing decision by the end of the period and were carried forward into the next fiscal year (FY). Therefore, the mediation and hearing resolution rates were calculated based on the 10,757 cases resolved via mediation and/or formal hearing. This is an unusually high rate of resolution via mediation. Quarterly reports indicate that the number of cases resolved in mediation over the last 24 months has held steady at 80-84 percent.

The number of cases resolved through mediation and formal (fair) hearing appear in the table below.

	<b># CASES</b>	<b>% CASES</b>
Mediations	10,688	99.4%
Hearings	69	0.6%
<b>TOTAL RESOLVED</b>	<b>10,757</b>	<b>100.0%</b>
# Cases Carried Into Next FY	<b>1,908</b>	15.0% of all contested case petitions (12,665) filed for the period
<b>TOTAL CASES</b>	<b>12,665</b>	

## **II. Outcome of Settled and Withdrawn Cases**

Mediation outcomes agreed upon by the petitioner and respondent occurred in 99.4% of the contested cases. Only 0.6 % of the contested case petitions proceeded to hearing.

## **III. Number of Incidences that the Division of Medical Assistance (DMA) Reversed the Decision of an Administrative Law Judge for Fiscal Years 2010-11 and 2009-10**

To provide more meaningful data about the number of decisions of an administrative law judge that were overturned by the Medicaid final agency decision, data is reported for two fiscal years, 2010-11 and 2009-10, in the table below. The total number of decisions for fiscal year 2010-11 was 131 and included decisions made for contested cases filed in fiscal years 2010-11 (69 decisions) and 2009-10 (62 decisions).

	<b># OAH DECISIONS</b>	<b># OAH DECISIONS OVERTURNED</b>	<b>% OAH DECISIONS OVERTURNED</b>
FY 2010-11	131	27	21%
FY 2009-10	149	50	34%
<b>TOTAL</b>	<b>280</b>	<b>77</b>	<b>28%</b>

## **IV. Rationale for Final Agency Decision Overturning the Formal (OAH) Decision for the FY 2010-11 and FY 2009-10**

The reasons the administrative law judges' decisions were overturned by the final agency decision are stated below.

- Clinical coverage policy criteria were not met, thus, indicating the service was not medically necessary.
- The service requested was not the accepted community practice standard.
- The service requested was not appropriate for the recipient's diagnoses or did not meet the recipient's needs.
- The decision of the administrative law judge was not based on the preponderance of the admissible evidence.
- The administrative law judge did not give due regard to the agency's knowledge and expert witnesses with respect to fact and inferences within the specialized knowledge of the agency--N.C.G.S. 150B-36(a).
- The recommended decision did not demonstrate that all the evidence was considered.
- Findings or conclusions of law were stated inappropriately, inaccurately, incorrectly, contrary to law and fact or were misleading, irrelevant, or factually erroneous.

## **V. Cost Avoidance**

Pursuant to 42 CFR 431.230 and 431.231, the Medicaid agency may not terminate or reduce services during the appeal process if the recipient requested an appeal within 10 days of the date the adverse notice is mailed. As a result, payment for services under appeal (known as maintenance of service) is made to providers regardless of the administrative law judge's decision. For the 69 cases that came before an administrative law judge in the 2010-11 fiscal year, \$67,366 dollars were paid to providers under the federal maintenance of service requirement.

\$1,541,747 was avoided by implementing the Medicaid final agency decision rather than implementing the administrative law judge's recommended decision. Please note that rationale for overturning these recommended decisions is specified in Section IV of this report. While this report focuses on the Medicaid recipient appeal process, it is expected that the \$1,541,747 indicated above will be even greater pursuant to the mandate that the administrative law judge's decision be implemented as the final binding decision effective January 01, 2012.

## **VI. Fair Hearing Time Line**

Federal and State law requires the fair hearing process to be completed within 90 days of filing the request for hearing. N.C.G.S. §108A-70.9 requires OAH, to the extent possible, to schedule and hear contested Medicaid cases within 55 days of submission of a request for appeal. The 55 days includes 25 days for the Mediation Network of North Carolina to contact the recipient, offer and complete mediation. If a hearing is held, OAH shall send the decision with the record to the agency within 20 days of the conclusion of the hearing.

For FY 2010-11, the average number of days needed to schedule, hear, and decide a contested case before the Office of Administrative Hearings was 114 days, including 25 days for mediation. Upon receipt of the decision and record from the administrative law judge, the Department must make a final decision on the case in 20 days. The average length of time to complete the final agency decision was 11 days. The average length of time to complete the fair hearing process was 125 days (114 + 11). The average monthly cost for the 39 cases that exceeded the 90 day time line by an average of 35 days was \$103,041 per month - or a total of \$1,236,488 for FY 2010-11.