

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 191\*  
Senate Judiciary II Committee Substitute Adopted 8/7/09  
Third Edition Engrossed 8/7/09

Short Title: General Statutes Clarifying Correction.

(Public)

Sponsors:

Referred to:

February 18, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE A CLARIFYING CHANGE TO THE GENERAL STATUTES AND  
3 SESSION LAWS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 20-130.1 is amended by adding a new subsection to read:

6 "(c1) The provisions of subsection (c) of this section do not apply to the possession and  
7 installation of an inoperable blue light on a vehicle that is inspected by and registered with the  
8 Department of Motor Vehicles as a specially constructed vehicle and that is used primarily for  
9 participation in shows, exhibitions, parades, or holiday/weekend activities, and not for general  
10 daily transportation. For purposes of this subsection, 'inoperable blue light' means a  
11 blue-colored lamp housing or cover that does not contain a lamp or other mechanism having  
12 the ability to produce or emit illumination."

13 **SECTION 1.1.** Section 5 of S.L. 2009-374 is amended by adding the following  
14 new subdivision:

15 "(6) Nothing in this act shall adversely affect the Commissioner of Banks' ability  
16 to bring and maintain any action or pursue any remedy that the  
17 Commissioner could have brought under Article 19A of Chapter 53 of the  
18 General Statutes, as repealed by Section 1 of this act, against any person for  
19 any acts or omissions in violations of Article 19A occurring on or before  
20 July 30, 2009."

21 **SECTION 1.2.** If House Bill 908 of the 2009 General Assembly becomes law,  
22 G.S. 163-85(c)(10) as enacted by that bill is rewritten to read:

23 "(10) That the person ~~presenting himself to vote~~ is not who he or she  
24 represents himself or herself to be."

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

27 "(2) Notice. – Except as otherwise provided by federal law or regulation, at least  
28 ~~30~~10 days before the effective date of an adverse determination, the  
29 Department shall notify the applicant or recipient, and the provider, if  
30 applicable, in writing of the determination and of the applicant's or  
31 recipient's right to appeal the determination. The notice shall be mailed on  
32 the date indicated on the notice as the date of the determination. The notice  
33 shall include:



- 1 a. An identification of the applicant or recipient whose services are  
 2 being affected by the adverse determination, including full name and  
 3 Medicaid identification number.
- 4 b. An explanation of what service is being denied, terminated,  
 5 suspended, or reduced and the reason for the determination.
- 6 c. The specific regulation, statute, or medical policy that supports or  
 7 requires the adverse determination.
- 8 d. The effective date of the adverse determination.
- 9 e. An explanation of the applicant's or recipient's right to appeal the  
 10 Department's adverse determination in an evidentiary hearing before  
 11 an administrative law judge.
- 12 f. An explanation of how the applicant or recipient can request a  
 13 hearing and a statement that the applicant or recipient may represent  
 14 himself or use legal counsel, a relative, or other spokesperson.
- 15 g. A statement that the applicant or recipient will continue to receive  
 16 Medicaid services at the level provided on the day immediately  
 17 preceding the Department's adverse determination or the amount  
 18 requested by the applicant or recipient, whichever is less, if the  
 19 applicant or recipient requests a hearing before the effective date of  
 20 the adverse determination. The services shall continue until the  
 21 hearing is completed and a final decision is rendered.
- 22 h. The name and telephone number of a contact person at the  
 23 Department to respond in a timely fashion to the applicant's or  
 24 recipient's questions.
- 25 i. The telephone number by which the applicant or recipient may  
 26 contact a Legal Aid/Legal Services office.
- 27 j. The appeal request form described in subdivision (4) of this  
 28 subsection that the applicant or recipient may use to request a  
 29 hearing.
- 30 (3) Appeals. – Except as provided by this subsection and subsection 10.15A(h2)  
 31 of this act, a request for a hearing to appeal an adverse determination of the  
 32 Department under this section is a contested case subject to the provisions of  
 33 Article 3 of Chapter 150B of the General Statutes. The applicant or recipient  
 34 must request a hearing within 30 days of the mailing of the notice required  
 35 by subdivision (2) of this subsection by sending an appeal request form to  
 36 the Office of Administrative Hearings and the Department. Where a request  
 37 for hearing concerns the reduction, modification, or termination of Medicaid  
 38 services, upon the receipt of a timely appeal, the Department shall reinstate  
 39 the services to the level or manner prior to action by the Department as  
 40 permitted by federal law or regulation. The Department shall immediately  
 41 forward a copy of the notice to the Office of Administrative Hearings  
 42 electronically. The information contained in the notice is confidential unless  
 43 the recipient appeals. The Office of Administrative Hearings may dispose of  
 44 the records after one year. The Department may not influence, limit, or  
 45 interfere with the applicant's or recipient's decision to request a hearing."

46 **SECTION 2.(b)** Section 10.15A.(h2) of S.L. 2008-107, as amended by Section  
 47 3.13.(b) of S.L. 2008-118, reads as rewritten:

48 **"SECTION 10.15A.(h2)**

- 49 (1) Application. – This subsection applies only to contested Medicaid cases  
 50 commenced by Medicaid applicants or recipients under subsection  
 51 10.15A(h1) of this act. Except as otherwise provided by subsection

1 10.15A(h1) and this subsection governing time lines and procedural steps, a  
2 contested Medicaid case commenced by a Medicaid applicant or recipient is  
3 subject to the provisions of Article 3 of Chapter 150B. To the extent any  
4 provision in this subsection or subsection 10.15A(h1) of this act conflicts  
5 with another provision in Article 3 of Chapter 150B, this subsection and  
6 subsection 10.15A(h1) controls.

7 (2) Simple Procedures. – Notwithstanding any other provision of Article 3 of  
8 Chapter 150B of the General Statutes, the chief administrative law judge  
9 may limit and simplify the procedures that apply to a contested Medicaid  
10 case involving a Medicaid applicant or recipient in order to complete the  
11 case as quickly as possible. To the extent possible, the ~~Hearings~~  
12 ~~Division~~Office of Administrative Hearings shall schedule and hear all  
13 contested Medicaid cases within ~~45-55~~ days of submission of a request for  
14 appeal. Hearings shall be conducted telephonically or by video technology,  
15 however the recipient or applicant, or the recipient's or applicant's  
16 representative may request that the hearing be conducted before the  
17 administrative law judge in-person. An in-person hearing shall be conducted  
18 in Wake County, however for good cause shown, the in-person hearing may  
19 be conducted in the county of residence of the recipient or applicant. Good  
20 cause shall include but is not limited to the applicant's or recipient's  
21 impairments limiting travel or the unavailability of the applicant's or  
22 recipient's treating professional witnesses. The Department shall provide  
23 written notice to the recipient or applicant of the use of telephonic hearings,  
24 hearings by video conference, and in-person hearings before the  
25 administrative law judge, and how to request a hearing in the recipient's or  
26 applicant's county of residence. The simplified procedure may include  
27 requiring that all prehearing motions be considered and ruled on by the  
28 administrative law judge in the course of the hearing of the case on the  
29 merits. An administrative law judge assigned to a contested Medicaid case  
30 shall make reasonable efforts in a case involving a Medicaid applicant or  
31 recipient who is not represented by an attorney to assure a fair hearing and to  
32 maintain a complete record of the hearing. The administrative law judge may  
33 allow brief extensions of the time limits contained in this section for good  
34 cause and to ensure that the record is complete. Good cause includes delays  
35 resulting from untimely receipt of documentation needed to render a  
36 decision and other unavoidable and unforeseen circumstances. Continuances  
37 shall only be granted in accordance with rules adopted by the Office of  
38 Administrative Hearings, and shall not be granted on the day of the hearing,  
39 except for good cause shown. If a petitioner fails to make an appearance at a  
40 hearing that has been properly noticed via certified mail by the Office of  
41 Administrative Hearings, the Office of Administrative Hearings shall  
42 immediately dismiss the contested case provision.

43 (3) Mediation. – Upon receipt of an appeal request form as provided by  
44 subdivision 10.15A(h1)(4) of this act or other clear request for a hearing by a  
45 Medicaid applicant or recipient, the ~~chief administrative law judge~~Office of  
46 Administrative Hearings shall immediately notify the Mediation Network of  
47 North Carolina which shall within five days contact the petitioner to offer  
48 mediation in an attempt to resolve the dispute. If mediation is accepted, the  
49 mediation must be completed within 25 days of submission of the request for  
50 appeal. ~~If mediation is successful, the mediator shall inform the Hearings~~  
51 ~~Division, which shall confirm with the agency that a settlement has been~~

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

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

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

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

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

42 (5) Decision. – The administrative law judge assigned to a contested Medicaid  
 43 case shall hear and decide the case without unnecessary delay. The ~~Hearings~~  
 44 ~~Division~~ Office of Administrative Hearings shall send a copy of the  
 45 audiotape or diskette of the hearing to the agency within five days of  
 46 completion of the hearing. The judge shall prepare a written decision and  
 47 send it to the parties. The decision must be sent together with the record to  
 48 the agency within 20 days of the conclusion of the hearing.'

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

50 **"SECTION 10.15A.(e2)** The community support provider appeals process shall be  
 51 developed and implemented as follows:

- 1 (1) A hearing under this section shall be commenced by filing a petition with  
2 the chief hearings clerk of the Department within 30 days of the mailing of  
3 the notice by the Department of the action giving rise to the contested case.  
4 The petition shall identify the petitioner, be signed by the party or  
5 representative of the party, and shall describe the agency action giving rise  
6 to the contested case. As used in this section, "file or filing" means to place  
7 the paper or item to be filed into the care and custody of the chief hearings  
8 clerk of the Department and acceptance thereof by the chief hearings clerk,  
9 except that the hearing officer may permit the papers to be filed with the  
10 hearing officer, in which event the hearing officer shall note thereon the  
11 filing date. The Department shall supply forms for use in these contested  
12 cases.
- 13 (2) If there is a timely request for an appeal, the Department shall promptly  
14 designate a hearing officer who shall hold an evidentiary hearing. The  
15 hearing officer shall conduct the hearing according to applicable federal law  
16 and regulations and shall ensure that:
- 17 a. Notice of the hearing is given not less than 15 days before the  
18 hearing. The notice shall state the date, hour, and place of the hearing  
19 and shall be deemed to have been given on the date that a copy of the  
20 notice is mailed, via certified mail, to the address provided by the  
21 petitioner in the petition for hearing.
- 22 b. The hearing is held in Wake County, except that the hearing officer  
23 may, ~~after consideration of the numbers, locations, and convenience~~  
24 ~~of witnesses and in order to promote the ends of justice, hold the~~  
25 ~~hearing~~ take testimony and receive evidence by telephone or other  
26 ~~electronic means or hold the hearing in a county in which the~~  
27 ~~petitioner resides.~~ means. The petitioner and the petitioner's legal  
28 representative may appear before the hearing officer in Wake  
29 County.
- 30 c. Discovery is no more extensive or formal than that required by  
31 federal law and regulations applicable to the hearings. Prior to and  
32 during the hearing, a provider representative shall have adequate  
33 opportunity to examine the provider's own case file. No later than  
34 five days before the date of the hearing, each party to a contested  
35 case shall ~~provide to each other party a copy of any documentary~~  
36 ~~evidence that the party intends to introduce at the hearing and shall~~  
37 identify each witness that the party intends to call.
- 38 (3) The hearing officer shall have the power to administer oaths and  
39 ~~affirmations, subpoena the attendance of witnesses, rule on prehearing~~  
40 ~~motions, affirmations~~ and regulate the conduct of the hearing. The following  
41 shall apply to hearings held pursuant to this section:
- 42 a. At the hearing, the parties may present such sworn evidence, law,  
43 and regulations as are relevant to the issues in the case.
- 44 b. The petitioner and the respondent agency each have a right to be  
45 represented by a person of his choice, including an attorney obtained  
46 at the party's own expense.
- 47 c. The petitioner and the respondent agency shall each have the right to  
48 cross-examine witnesses as well as make a closing argument  
49 summarizing his view of the case and the law.
- 50 d. The appeal hearing shall be recorded. If a petition for judicial review  
51 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 respondent agency. In the absence of a petition for judicial review filed pursuant to subsection (f) of this section, the final decision shall be binding upon the petitioner and the Department.
- (6) A petitioner who is dissatisfied with the final decision of the Department may file, within 30 days of the service of the decision, a petition for judicial review in the Superior Court of Wake County or of the county from which the case arose. The judicial review shall be conducted according to Article 4 of Chapter 150B of the General Statutes.
- (7) In the event of a conflict between federal law or regulations and State law or regulations, federal law or regulations shall control. This section applies to all petitions that are filed by a Medicaid community support services provider on or after July 1, 2008, and for all Medicaid community support services provider petitions that have been filed at the Office of Administrative Hearings previous to July 1, 2008, but for which a hearing on the merits has not been commenced prior to that date. The requirement that the agency decision must be rendered not more than ~~90-180~~ days from the date of the filing of the petition for hearing shall not apply to (i) community support services provider petitions that were filed at the Office of Administrative Hearings or (ii) requests for a hearing under the Department's informal settlement process prior to the effective date of this act. The Office of Administrative Hearings shall transfer all cases affected by this section to the Department of Health and Human Services within 30 days of the

1                   effective date of this section. This act preempts the existing informal appeal  
2                   process and reconsideration review process at the Department of Health and  
3                   Human Services and the existing appeal process at the Office of  
4                   Administrative Hearings with regard to all appeals filed by Medicaid  
5                   community support services providers under the Medical Assistance  
6                   program."  
7

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