

August 2, 2021

VIA E-MAIL (medicaidrulescomments@dhhs.nc.gov)

Ms. Shazia Keller, Esq.
Rulemaking Coordinator
Division of Health Benefits
N.C. Department of Health & Human Services
2501 Mail Service Center
Raleigh, N.C. 27699

RE: Comments to Proposed Permanent Rule (10A N.C.A.C. 21A.0304)

Dear Ms. Keller:

I write to comment on the above-referenced proposed rule appearing in 35 N.C. Reg. 2518 and circulated via your memorandum of June 1, 2021. My firm assists in connection with the pursuit of Medicaid benefits by many thousands of individuals annually. Through these efforts, we regularly deal with local Departments of Social Services (“DSS”) and the Department’s state hearing officers (“SHOs”) concerning Medicaid eligibility disputes.

As discussed during the public hearing on June 17, 2021, the proposed rule appears to make certain COVID-era flexibilities permanent—but in a way that benefits only the Department. While the rule would allow SHOs to continue to participate remotely in appeal proceedings, it would require the appellants themselves to appear *in person* at DSS. In other words, the state intends to make the appeals process more convenient and less costly for the Department while making it *more burdensome* for those whose rights are actually at stake (the appellants).

This one-sidedness is particularly concerning in light of the fact that indigent communities as well as local DSS staff still face many of the same COVID-19 hazards that justified last year’s changes to 10A N.C.A.C. 21A.0304 (through a temporary rulemaking) allowing for telephone/remote hearings. Despite nearly half of the state’s population being fully vaccinated,¹ there has been a notable upswing in North Carolina’s COVID-19 cases since June of this year.² Communities are also grappling with the threat of “breakthrough infections,” in which individuals who have already been vaccinated still become infected with the virus.³

In light of these developments in the ongoing struggle against COVID-19, mandating the physical presence of appellants at DSS offices for hearings will have the effect of discouraging those individuals from following through with their Medicaid appeals. And if appellants are not deterred from attending their hearings in person, the result will be increased numbers of people congregating at DSS offices.

Fortunately, all of these risks can be safely navigated by continuing the current practice of permitting *all* parties to participate in Medicaid fair hearings via telephone or other remote methods. After all,

the Medicaid fair hearings process does not exist for the benefit or convenience of the Department. Instead, it exists to protect the legal rights of Medicaid applicants and beneficiaries. Therefore, the Department should not insist upon an appeals process that mandates the appellant's physical proximity to DSS staff and other individuals, while only its own personnel are permitted to preside at a safe distance.

For these reasons, I ask that you consider revising the proposed rule to reflect the current language of the existing temporary rule. Thank you.

Sincerely,

OTT CONE & REDPATH, P.A.

Matthew Jordan Cochran

Endnotes:

1. NCDHHS, COVID-19 Dashboard: Vaccinations, <https://covid19.ncdhhs.gov/dashboard/vaccinations> (last visited Aug. 2, 2021).
2. NCDHHS, COVID-19 Dashboard: Cases, <https://covid19.ncdhhs.gov/dashboard/cases> (last visited Aug. 2, 2021).
3. Centers for Disease Control and Prevention, *Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine Breakthrough Infections*, MORBIDITY AND MORTALITY WEEKLY REPORT (Jul. 30, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7031e2-H.pdf>.