

Fiscal Impact Analysis of Proposed Rules on Remote Appeal Hearings

Agency Proposing Rule Change

North Carolina Department of Health and Human Services (DHHS) Division of Health Benefits (DHB)

Contact Persons

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Impact Summary

Participant:	Yes
Federal Government:	No
State Government:	Yes
Local Government:	No
Small Business:	Yes
Substantial Impact:	No

Title of New Rule and Citations

10A NCAC 21A – General Administration

Section .0304 – Conducting Departmental Appeal Hearings by Telephone or Electronic Means

The proposed rule text is attached.

Authorizing Statutes

G.S. 108A-54

G.S. 108A-79

G.S. 108A-80

42 CFR 431.205

42 CFR 431.240

42 CFR 431.242

Summary of Rule

10A NCAC 21A .0304 will establish authority to permit State hearing officers to conduct public assistance and social services appeals in accordance with the appellant’s preference for the hearing to be in person, via telephone or electronic means. This process will make appeals heard under G.S. 108A-79(i) more efficient and more responsive to an appellant’s unique needs.

Background

A version of this rule was adopted via emergency and temporary rulemaking in response to the COVID-19 public health emergency that limited de novo appeals hearings to telephone or electronic means. The rule worked smoothly, enabling the State to maintain case expeditious disposition so that appellants received timely decision on their appeals. There were complaints

related to access to case files or other aspects of the change in how State level appeals were conducted due to the public health emergency.

DHB sought to adopt a similar permanent rule to authorize State hearing officers to attend hearings remotely but with the parties attending at their local DSS office, as they have historically prior to the COVID-19 public health emergency. This hybrid model was proposed to enable the State to realize cost savings and to enable better use of staff time while making no material change to the parties' customary in person attendance.

DHB received comment from various advocates that the permanent rule was one-sided and more burdensome to appellants. The comments cited several issues summarized below:

- ongoing risk of exposure to COVID-19 variants for appellants and DSS staff;
- concerns that the hybrid model would prevent communications with disabled appellants that are as effective as communications with others because appellants (or their advocates and witnesses) with disabilities should choose the method of communication that is effective for their circumstances;
- discrimination against older adults because they “are generally less literate with technology than their younger peers;”
- possible challenges in using remote technology to ensure an appellant with limited English proficiency can attend with both an interpreter and an advocate;
- Potential obstacles for appellants in reviewing files and evidence or submitting additional evidence.

The comments argued that the proposed permanent rule would have a chilling effect on hearings, infringe on due process rights and lead to discriminatory outcomes.

Out of an abundance of caution DHB has elected to revise the rule's language to allow the appellant to choose in person or remote option to ensure a meaningful appeal hearing.

General Impact Discussion

The revised permanent rule will reduce State staff time spent on travel to DSS offices to hear appeals in person and the associated travel expenses. The time saved can be better used to hear more cases or perform tasks associated with the case such as review of the case file, writing decisions, logging and tracking cases, monitoring appeal trends to identify the need for additional training or policy clarification and other work activities.

This rule, if enacted, will have only a positive impact on appellants because they will have a choice of in person appeal hearings at their DSS office or remote attendance based on the format that is most conducive to their full participation. Appellants choosing remote hearings would enjoy a minor but unknown saving of travel time. The savings is difficult to quantify due to varying drive times resulting from distance, local traffic conditions and whether travel occurs during rush hour. Also, local government, that helps fund county department of social services

activities, will have a minor impact in the form of copying and mailing case files or delivering by encrypted e-mail if the DSS office had to close to the public. Additional minor impact includes occasionally scanning then emailing new evidence that an appellant wishes for a hearing officer to consider and/or emailing evidence that the appellant provides on digital media to the hearing officer. DHB estimates additional new evidence is presented in less than 1% of appeals. Often on occasions when there is additional evidence, the appellant emails it directly to the hearing officer at negligible cost.

In terms of appeal outcomes, there is a possibility that appellants may perceive decisions could be made differently and to their detriment without the face to face, human interaction between appellants and hearing officers during in person hearings. The likelihood is small as hearing officers are obligated to make decisions solely on evidence presented and the applicable law and any appellant who is concerned can elect an in person hearing.

Fiscal Impact Analysis

DHB estimates there were 4,417 Medicaid appeals in 2019 for cases that would have been covered by this rule. Savings to the State cannot be pinpointed because it is unknown how many appellants will choose to have in person hearings versus remote.

DHB conducted an analysis of State hearing officer salary 2019 to approximate the money saved for each hour of their travel time. Each hour is valued at \$31.22. This figure is based on a staff of twelve full time hearing officers and four substitute officers who are employed on a part time basis. The time spent travelling in 2019 was about 4720 hours. The aggregate salary of the full-time State hearing officers was \$719,400.

$$\begin{aligned} \$719,400 \div 12 &= \$59,950 \text{ average annual income per State hearing officer} \\ \$59,950 \div 12 \text{ months} &= \$4995.83 \text{ average monthly income per hearing officer} \\ \$4995.83 \div 160 \text{ hours worked per month} &= \$31.22 \text{ value of one hour of travel time.} \\ \$31.22 \times 4720 \text{ hours} &= \$147,358.00 \end{aligned}$$

Based on the data and calculations above, the State can estimate up to \$147,358.00 savings in working time spent on travel each year this rule is effective.

The State hearing officers mostly used State vehicles for travel to hearings in 2019. The mileage for each trip varied based on how far the hearing officer traveled from their home and whether hearings were assigned in more than one county on a given day.

A review of available data on 2019 vehicle costs shows \$43,359.32 was spent on motor fleet costs and gasoline expenditures for State hearing officer travel.¹ Additionally, State hearing officers were reimbursed \$35,328.98 in travel costs by the State. This figure includes expenses for food, lodging and reimbursements for use of personal vehicles. Together, motor fleet and

¹ Due to inconsistencies in the available data, it is estimated that this figure could be between 10-15% higher.

subsistence expenditures were \$78,688 in 2019. If this rule is enacted the State will realize some savings in these expenditures.

Based on the data and calculations above, the State can estimate there will be a maximum of \$226,046.00 in total travel related savings each year this rule is effective.

Businesses in North Carolina that meet the needs of travelers such as restaurants and hotels will be impacted by the reduced State expenditures enumerated above. The impact on the lodging industry is minor because it enjoyed revenues topping \$4.0 billion in 2019 according to Visit North Carolina.² The impact on restaurants is even smaller because the State's restaurant industry had \$21.4 billion in sales in 2018 based on the most recent research performed by the National Restaurant Association.³

Lastly, to provide appellants a choice in hearing formats the State will expend minor staff time to update Request for State Appeal and Notice of Hearing forms. Policy manuals will need to reflect the change and DSS office will need to be notified incurring a cost of nominal staff time. The Hearings and Appeals Tracking System will be updated to capture the hearing format selection and email address and generate a Notice of Hearing that corresponds with the appellant's choice. There was a one-time cost of \$34,544.00 for system updates.

² <https://partners.visitnc.com/contents/sdownload/71793/file/2019-Year-End-Lodging-Report.pdf>. Accessed February 10, 2021.

³ <https://www.restaurant.org/downloads/pdfs/state-statistics/northcarolina.pdf>. Accessed February 10, 2021.

Appendix 1: Proposed Rule

1 10A NCAC 21A .0304 is proposed for adoption as follows:

2
3 **CHAPTER 21 MEDICAL ASSISTANCE ADMINISTRATION**

4
5 **SUBCHAPTER 21A GENERAL PROGRAM ADMINISTRATION**

6
7 **10A NCAC 21A .0304 CONDUCTING DEPARTMENT APPEAL HEARINGS BY TELEPHONE OR**
8 **ELECTRONIC MEANS**

9 For public assistance and social services de novo appeals, including appeals of cases involving disability filed pursuant
10 to G.S. 108A-79(i):

11 ~~(a)(1) The Department shall conduct the appeal hearing by telephone or other electronic means with the~~
12 ~~parties attending at the county department of social services with jurisdiction over the case in~~
13 ~~accordance with the mode of hearing selected by the appellant at the time the appeal is filed.~~

14 ~~(b)(2) The appellant must select the mode of the hearing at the time the appeal is filed.~~

15 (3) The county department of social services case worker shall notify the Department of the appeal by
16 submitting the completed Request for State Appeal form with the following information:

17 (a) the date of appeal request;

18 (b) the appellant's name;

19 (c) the appellant's social security number and date of birth;

20 (d) the appellant's mailing address and telephone number;

21 (e) the date of application;

22 (f) the mode of hearing selected by the appellant;

23 (g) the appellant's email address, if the appellant requests a remote video hearing;

24 (h) selection of representative(s);

25 (i) the representative(s)' name and title;

26 (j) the representative(s)' mailing address and phone number;

27 (k) the representative(s)' email address;

28 (l) statement of reasonable accommodations required for the appellant to participate in the
29 State hearing;

30 (m) indication of the program being appealed;

31 (n) identification of the issue being appealed at the State hearing; and

32 (o) indication of requested continuation of benefits, if applicable.

33 (q) The county department of social services case worker shall attach to the Request for State
34 Appeal the following documents:

35 (i) a copy of the DSS notification letter that prompted the appeal;

36 (ii) local appeal hearing summary and decision, if applicable;

37 (iii) a copy of the D4037 Medicaid Disability Determination Transmittal;

- 1 (iv) a copy of the DMA-5135 and related medical records, if applicable;
2 (v) a copy of relevant documents related to the appeal;
3 (vi) a copy of the DSS-1473A Addendum for Program Integrity, if applicable; and
4 (vii) a copy of the DSS-1473B Addendum & Medical Evidence if the appeal is an
5 Expedited Medicaid Appeal.

6 (5) Based on the mode of hearing the appellant selected at the time the appeal was filed, the hearing
7 officer and the parties shall attend either:

- 8 (a) in person at the county department of social services with jurisdiction over the case; or
9 (b) remotely by telephone or other electronic means.

10 (6) If the appellant does not select a mode of hearing at the time the Request for State Appeal form is
11 filed, the hearing shall be conducted by telephone or other electronic means.

12 (7) In the case of a disaster declaration by the President of the United States or the Governor, a national
13 emergency declaration by the President of the United States, or a state of emergency declaration
14 under G.S. 166A-19.3(19), the mode of hearing shall be by telephone or other electronic means.

15 (8) The Department shall notify the appellant of the hearing by First Class U.S. Mail.

16 ~~(e)(9) In the case of an emergency that causes a county department of social services to be closed to the~~
17 ~~public, the parties shall attend by telephone or other electronic means.~~ The county department of
18 social services shall make available by electronic mail, U.S. Mail or physical pick up the case file
19 materials the appellant is entitled to examine pursuant to G.S. 108A-79(i)(1).

20 ~~(d)(10) The Department shall continue such the appeal hearing as necessary to fulfill procedural rights of~~
21 ~~the appellant as defined by 42 CFR 431.242, which is incorporated by reference including~~
22 ~~subsequent amendments and editions, and available free of charge at <https://www.ecfr.gov>.~~

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24 History note: Authority G.S. 108A-54; 108A-79; 108A-80(d); 42 CFR 431.205; 42 CFR 431.240; 42 CFR
25 431.242;

26 Emergency Adoption Eff. May 4, 2020;

27 Temporary Adoption Eff. June 26, 2020;

28 Temporary Adoption Expired Eff. April 11, 2021;

29 Eff. October 1, 2021 February 1, 2022.