

E2SHB 1738 - H AMD 706

By Representative Cody

ADOPTED 05/02/2011

1 On page 50, beginning on line 22, after "(1)" strike all material
2 through "section" on page 52, line 17 and insert "The following
3 persons have the right to an adjudicative proceeding:

4 (a) Any applicant or recipient who is aggrieved by a decision of
5 the authority or an authorized agency of the authority; or

6 (b) A current or former recipient who is aggrieved by the
7 authority's claim that he or she owes a debt for overpayment of
8 assistance.

9 (2) For purposes of this section:

10 (a) "Applicant" means any person who has made a request, or on
11 behalf of whom a request as been made to the authority for any medical
12 services program established under chapter 74.09 RCW.

13 (b) "Recipient" means a person who is receiving benefits from the
14 authority for any medical services program established in this
15 chapter.

16 (3) An applicant or recipient has no right to an adjudicative
17 proceeding when the sole basis for the authority's decision is a
18 federal or state law requiring an assistance adjustment for a class of
19 applicants or recipients.

20 (4) An applicant or recipient may file an application for an
21 adjudicative proceeding with either the authority or the department
22 and must do so within ninety calendar days after receiving notice of
23 the aggrieving decision. The authority shall determine which agency
24 is responsible for representing the state of Washington in the
25 hearing, in accordance with agreements entered pursuant to RCW
26 41.05.021.

27

1 (5)(a) The adjudicative proceeding is governed by the
2 administrative procedure act, chapter 34.05 RCW, and this subsection.
3 The following requirements shall apply to adjudicative proceedings in
4 which an appellant seeks review of decisions made by more than one
5 agency. When an appellant files a single application for an
6 adjudicative proceeding seeking review of decisions by more than one
7 agency, this review shall be conducted initially in one adjudicative
8 proceeding. The presiding officer may sever the proceeding into
9 multiple proceedings on the motion of any of the parties, when:

10 (i) All parties consent to the severance; or

11 (ii) Either party requests severance without another party's
12 consent, and the presiding officer finds there is good cause for
13 severing the matter and that the proposed severance is not likely to
14 prejudice the rights of an appellant who is a party to any of the
15 severed proceedings.

16 (b) If there are multiple adjudicative proceedings involving
17 common issues or parties where there is one appellant and both the
18 authority and the department are parties, upon motion of any party or
19 upon his or her own motion, the presiding offer may consolidate the
20 proceedings if he or she finds that the consolidation is not likely to
21 prejudice the rights of the appellant who is a party to any of the
22 consolidated proceedings.

23 (c) The adjudicative proceeding shall be conducted at the local
24 community services office or other location in Washington convenient
25 to the applicant or recipient and, upon agreement by the applicant or
26 recipient, may be conducted telephonically.

27 (d) The applicant or recipient, or his or her representative, has
28 the right to inspect his or her file from the authority and, upon
29 request, to receive copies of authority documents relevant to the
30 proceedings free of charge.

31 (e) The applicant or recipient has the right to a copy of the
32 audio recording of the adjudicative proceeding free of charge.

33 (f) If a final adjudicative order is issued in favor of an
34 applicant, medical services benefits must be provided from the date of

1 earliest eligibility, the date of denial of the application for
2 assistance, or forty-five days following the date of application,
3 whichever is soonest. If a final adjudicative order is issued in
4 favor of a recipient, medical services benefits must be provided from
5 the effective date of the authority's decision.

6 (g) The authority is limited to recovering an overpayment arising
7 from assistance being continued pending the adjudicative proceeding to
8 the amount recoverable up to the sixtieth day after the director's
9 receipt of the application for an adjudicative proceeding.

10 (6) If the director requires that a party seek administrative
11 review of an initial order to an adjudicative proceeding governed by
12 this section, in order for the party to exhaust administrative
13 remedies pursuant to RCW 34.05.534, the director shall adopt and
14 implement rules in accordance with this subsection.

15 (a) The director, in consultation with the secretary, shall adopt
16 rules to create a process for parties to seek administrative review of
17 initial orders issued pursuant to RCW 34.05.461 in adjudicative
18 proceedings governed by this subsection when multiple agencies are
19 parties.

20 (b) This process shall seek to minimize any procedural
21 complexities imposed on appellants that result from multiple agencies
22 being parties to the matter, without prejudicing the rights of parties
23 who are public assistance applicants or recipients.

24 (c) Nothing in this subsection shall impose or modify any legal
25 requirement that a party seek administrative review of initial orders
26 in order to exhaust administrative remedies pursuant to RCW 34.05.534.

27 (7) This subsection only applies to an adjudicative proceeding in
28 which the appellant is an applicant for or recipient of medical
29 services programs established under this chapter and the issue is his
30 or her eligibility or ineligibility due to the assignment or transfer
31 of a resource. The burden is on the authority or its authorized
32 agency to prove by a preponderance of the evidence that the person
33 knowingly and willingly assigned or transferred the resource at less
34 than market value for the purpose of qualifying or continuing to

1 qualify for medical services programs established under this chapter.
2 If the prevailing party in the adjudicative proceeding is the
3 applicant or recipient, he or she is entitled to reasonable attorneys'
4 fees.

5 (8) When an applicant or recipient files a petition for judicial
6 review as provided in RCW 34.05.514 of an adjudicative order entered
7 with respect to the medical services program, no filing fee may be
8 collected from the person and no bond may be required on any appeal.
9 In the event that the superior court, the court of appeals, or the
10 supreme court renders a decision in favor of the applicant or
11 recipient, the person is entitled to reasonable attorneys' fees and
12 costs. If a decision of the court is made in favor of an applicant,
13 assistance shall be paid from the date of earliest eligibility, the
14 date of the denial of the application for assistance, or forty-five
15 days following the date of application, whichever is soonest. If a
16 decision of the court is made in favor of a recipient, assistance
17 shall be paid from the effective date of the authority's decision.

18 (9) The provisions of RCW 74.08.080 do not apply to adjudicative
19 proceedings requested or conducted with respect to the medical
20 services program pursuant to this section.

21 (10) The authority shall adopt any rules it deems necessary to
22 implement this section."

23

EFFECT: Eliminates the definition of an "action" as applicable
to adjudicative proceedings for Medicaid applicants or recipients.
Allows applicants and recipients to file for an adjudicative
proceeding with either the Department of Social and Health Services
(DSHS) or the Health Care Authority (HCA) and requires the agencies
to determine the responsible agency.

Establishes procedures for Medicaid applicants and recipients to
receive review of decisions made by multiple agencies (DSHS and HCA)
and standards for when it is appropriate to sever the review into
multiple proceedings.

Requires the HCA to adopt rules, under specific circumstances, to
establish a process for parties to seek administrative review of
initial orders in cases involving multiple agencies. Requires the

rules to minimize procedural complexities that may arise for appellants as a result of having to seek review from multiple agencies.

Limits the authority of the HCA to recover overpayments pending an adjudicative proceeding from Medicaid recipients to the amount recoverable up to the 60th day after the Director receives the application for an adjudicative proceeding.

--- END ---