

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005

# A Bill

HOUSE BILL 2691

4  
5 By: Representative D. Johnson  
6  
7

## For An Act To Be Entitled

9 AN ACT TO REQUIRE THE STATE MEDICAID PROGRAM TO  
10 PROVIDE NOTICE, HEARINGS, ACCESS TO WITNESSES,  
11 AND FINAL REPORTS REGARDING THE DENIAL,  
12 TERMINATION, SUSPENSION, OR REDUCTION OF MEDICAID  
13 ELIGIBILITY OR COVERED SERVICES; AND FOR OTHER  
14 PURPOSES.

## Subtitle

15  
16 AN ACT TO SPECIFY PROCEDURES FOR DUE  
17 PROCESS REGARDING ADVERSE ACTION BY THE  
18 STATE MEDICAID PROGRAM.  
19  
20  
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 SECTION 1. Arkansas Code Title 20, Chapter 77, Subchapter 1 is amended  
25 to add an additional section to read as follows:

26 20-77-121. Adverse decisions -- Notice -- Rights.

27 (a) As used in this section:

28 (1) "Adverse action" means the denial, termination, suspension,  
29 or reduction of Medicaid eligibility or covered services;

30 (2) "Beneficiary" means:

31 (A) A person who has applied for medical assistance under  
32 the state Medicaid program;

33 (B) A person who is a recipient of medical assistance  
34 under the state Medicaid program; or

35 (C) A provider that has requested medical assistance on  
36 behalf of a recipient under the state Medicaid program; and



1           (3) "Department" means the Department of Human Services.

2           (b) If an application or claim for medical assistance is denied in  
 3 whole or in part, or is not acted upon within thirty (30) days, the  
 4 department shall give the beneficiary thirty (30) days' notice in writing:

5           (1) Of the beneficiary's right and opportunity for a fair  
 6 hearing under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

7           (2) Of the method by which the beneficiary may obtain a fair  
 8 hearing; and

9           (3) That the beneficiary may:

10           (A) Represent himself or herself; or

11           (B) Be represented by:

12                   (i) Legal counsel;

13                   (ii) A friend; or

14                   (iii) Any other spokesperson.

15           (c) A notice required under subsection (b) of this section shall  
 16 include, but not be limited to:

17           (1) A statement detailing:

18                   (A) The type and amount of medical assistance that the  
 19 beneficiary has requested; and

20                   (B) The adverse action that the department has taken or  
 21 proposes to take; and

22           (2) A statement of the reasons for the adverse action that shall  
 23 include, but not be limited to:

24                   (A) The specific facts regarding the individual  
 25 beneficiary that support the action; and

26                   (B) The sources from which the facts were derived.

27           (d) If the adverse action that the department has taken or proposes to  
 28 take is based on a determination of medical necessity or other clinical  
 29 decision, the notice required under subsection (b) of this section shall:

30           (1)(A) Include all of the following:

31                   (i) Identification by name of the physician reviewer  
 32 or clinician who made the determination;

33                   (ii) Specification of the medical records upon which  
 34 the physician or clinician relied in making the determination; and

35                   (iii) Specification of any portion of the criteria  
 36 for medical necessity or coverage that is not met by the beneficiary.

1                   (B) Generic rationales or explanations shall not suffice  
2 to meet the requirements of subdivision (d)(1)(A) of this section;

3                   (2)(A) Include a statement detailing:

4                           (i) The specific regulations that support the  
5 adverse action; or

6                           (ii) The change in federal or state law that  
7 requires the adverse action.

8                   (B) The information required under subdivision (d)(2)(A)  
9 of this section shall include:

10                           (i) A plain and concise statement of the applicable  
11 law, rule, or department policy;

12                           (ii) The official citation of the applicable law,  
13 rule, or department policy; and

14                           (iii) A brief statement of the reasons for the  
15 adverse action based on the individual beneficiary's circumstances.

16                   (C) The department and others acting on behalf of the  
17 department may not cite or rely on policies that are inconsistent with  
18 federal or state laws and regulations or that were not properly promulgated;  
19 and

20                   (3) Include an explanation of:

21                           (A) The beneficiary's right to request a fair hearing, if  
22 available; or

23                           (B) In cases of an adverse action based on a change in  
24 law:

25                                   (i) The circumstances under which a fair hearing  
26 will be granted; and

27                                   (ii) An explanation of the circumstances under which  
28 medical assistance is provided or continued if a fair hearing is requested.

29                   (e)(1) The department may not employ and may not permit others acting  
30 on behalf of the department to employ utilization control guidelines or other  
31 quantitative coverage limits, whether explicit or de facto, unless supported  
32 by an individualized determination of medical necessity based on the needs of  
33 the beneficiary and his or her medical history.

34                   (2)(A)(i) All determinations of the medical necessity of any  
35 request for medical assistance shall be made on the basis of standards and  
36 criteria promulgated by the department under the Arkansas Administrative

1 Procedure Act, § 25-15-201 et seq.

2 (ii) The department and any contractor performing  
3 medical necessity determinations on behalf of the department shall be bound  
4 by the department's rules regarding medical necessity decisions.

5 (B) Reliance upon industry guidelines or other utilization  
6 review criteria of general application, without consideration of the  
7 individual beneficiary's medical history, does not satisfy the requirements  
8 of subdivision (2)(A) of this section and may not be relied upon to support  
9 an adverse action affecting medical assistance.

10 (3) The decisions or opinions of the beneficiary's treating  
11 physician or other prescribing clinician shall not be overruled by the  
12 department or its contractors unless there is substantial and material  
13 evidence, documented in the beneficiary's medical records, to justify the  
14 overruling.

15 (4) The department and others acting on behalf of the department  
16 shall be bound by their notices and may not rely upon any reasons or legal  
17 authorities other than those that they include in their written notice to the  
18 beneficiary.

19 (f) If a beneficiary appeals an adverse action to the department, the  
20 reviewing authority shall consider only the factual reasons and legal  
21 authorities cited in the original notice to the beneficiary, except that  
22 additional evidence beneficial to the beneficiary may be considered on  
23 appeal.

24 (g) If the department receives an appeal from a beneficiary regarding  
25 an adverse action, the department shall provide the beneficiary all records  
26 or documents pertaining to the department's, or the department's  
27 contractor's, decision to take the adverse action.

28 (h) If the adverse action is based upon a determination that the  
29 requested medical assistance is, or was, not medically necessary, the records  
30 and documents required to be provided under this section shall include:

31 (1) The name of the physician reviewer or clinician who made the  
32 adverse determination; and

33 (2) All relevant material produced by the department or a  
34 contractor of the department that contains relevant information concerning  
35 the medical necessity determination.

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