

CHAPTER 156
SB 347-FN – FINAL VERSION

03/07/12 0877s

2012 SESSION

12-2887
01/09

SENATE BILL ***347-FN***

AN ACT relative to the department of health and human services administrative appeals.

SPONSORS: Sen. White, Dist 9; Sen. Carson, Dist 14; Rep. Day, Hills 7; Rep. Cebrowski,
 Hills 18

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill clarifies the administrative appeals process for individuals applying for or receiving services from the department of health and human services. This bill also repeals certain administrative rules relative to independent reviews.

This bill is a request of the department of health and human services.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to the department of health and human services administrative appeals.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 156:1 Department of Health and Human Services; Administrative Appeals. Amend RSA 126-
2 A:5, VIII to read as follows:

3 VIII. The commissioner shall establish an appeals process for any individual applying for or
4 receiving services from the department or its contract service providers, any providers, programs,
5 services, or facilities which are licensed or certified by the department, or with regard to actions
6 related to employees of the department or any other matter within the jurisdiction of the
7 department. Notwithstanding any other provision of law, the appeals process shall include:

8 (a) ~~[That the appellant may elect either an administrative hearing or an independent~~
9 ~~review to determine the facts of the matter on appeal.]~~ ***A jurisdictional review by the***
10 ***commissioner, or a hearings examiner designated by the commissioner, to determine***
11 ***whether a denial or change in services, benefits, or a license is automatic due entirely to a***
12 ***change in state or federal law. In the event the department's action is due entirely to such***
13 ***a change in state or federal law, the department shall provide adequate notice and provide***
14 ***the applicant, recipient, or licensee the opportunity to state the reasons he or she believes***
15 ***issues of fact or interpretation of law should be heard, prior to the commissioner or***
16 ***hearings examiner designated by the commissioner conducting a jurisdictional review.***

17 (1) ***If the commissioner, or hearings examiner designated by the***
18 ***commissioner determines that sole issue on appeal is the result of the state or federal law***
19 ***that caused a denial or change in services, benefits, or a license, and the appeal does not***
20 ***require resolution of a factual disagreement or legal issue, then an order dismissing the***
21 ***appeal shall be issued by the commissioner, or a hearings examiner designated by the***
22 ***commissioner, after such jurisdictional review and without an administrative hearing.***

23 (2) ***In all other cases, if the automatic result of the new state or federal law***
24 ***is not the only issue on appeal, then an administrative hearing shall be conducted by the***
25 ***commissioner, or a hearings examiner designated by the commissioner, to address the***
26 ***other issues in accordance with rules established by the commissioner.***

27 (b) ~~[If the appellant elects an independent review the hearing officer shall conduct a~~
28 ~~review in accordance with rules established by the commissioner and shall submit a proposed~~
29 ~~decision to the commissioner. The commissioner shall then review the proposed decision and issue a~~

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1 ~~final order on the appeal, subject to RSA 126 A:5, VIII(e)].~~ *For appeals of all other matters, the*
2 *commissioner, or a hearings examiner designated by the commissioner, shall conduct an*
3 *administrative hearing in accordance with the rules established by the commissioner.*

4 (c) ~~[If the appellant elects an administrative hearing, the hearing officer shall conduct a~~
5 ~~hearing in accordance with the rules established by the commissioner.~~

6 (d) Unless the commissioner has delegated to the ~~[hearing officer]~~ *hearings examiner*
7 authority to issue a decision on behalf of the department, following the hearing, the ~~[hearing officer]~~
8 *hearings examiner* shall submit to the commissioner a proposed decision which shall include:

- 9 (1) A statement of the issues presented in the appeal;
10 (2) A summary of the evidence received;
11 (3) Proposed findings of fact and rulings of law; and
12 (4) A proposed order.

13 ~~(e)]~~ (d) If following a hearing ~~[or review]~~ the proposed decision is adverse to the
14 individual applying for or receiving services, facility or employee who made the appeal, or if the
15 commissioner proposes to make an adverse finding, ruling, or order which the ~~[hearing officer]~~
16 *hearings examiner* has not recommended, the commissioner shall provide the appealing party with
17 a copy of the commissioner's proposed decision and offer an opportunity to submit a brief and make
18 an oral argument regarding the contested findings of fact, rulings of law, or proposed order.

19 ~~(f)]~~ (e) Following a review of a proposed decision after a hearing ~~[or review]~~ and of a
20 brief and argument in a contested case, if any, the commissioner shall issue a final decision on the
21 appeal.

22 156:2 Repeal. Part He-C 208, relative to independent reviews, is repealed.

23 156:3 Effective Date. This act shall take effect upon its passage.

24 Approved: June 7, 2012

26 Effective Date: June 7, 2012