

Recent Developments

Family Resource Management

MEDICAID BLUE RIBBON LEGISLATIVE PANEL

Selected Testimony to the Panel on January 4, 1996, as reported by Pam Silberman, North Carolina Health Access Coalition:

MEDICAID EXPENDITURES have increased in direct relation to the increase in the number of Medicaid eligibles. 96.14% of Medicaid expenditures are spent on provider payments, with 3.86% for administrative costs. The elderly comprise 16.5% of eligibles and use 33.9% of the dollars. The disabled comprise 10.9% of the eligibles and use 33.0% of the payments. Families and children comprise 72.6% of the eligibles and use 33.1% of the service dollars. The elderly and disabled used a larger percentage of the dollars than their numbers because on the whole they have greater medical needs and greater use of long term care services. For example, the average cost per enrollee in FY 1995 was \$1,322 for families and children, \$5,922 for the elderly, and \$8,658 for the disabled. Source: Reported testimony by Dick Perruzzi, N.C. Division of Medical Assistance.

HMO TRENDS in North Carolina. In 1994, there were 585,000 people enrolled in HMOs (Health Maintenance Organizations) in North Carolina. Nine percent of North Carolinians were enrolled in HMOs/EPOs; 35% in PPOs or POS plans, and 45% were enrolled in indemnity plans with utilization review. Less than 10% remained in conventional indemnity plans without any type of utilization management. North Carolina has one of the lowest penetrations of HMO coverage in the county (8.7% compared to 21.1% nationally), although the growth in HMO/EPOs is faster than the national average (26% in NC compared to 12% nationally). Source: Reported testimony by Allen Feezor, Pitt County Memorial Hospital.

MEDICAID FRAUD. The Attorney General's Office has three attorneys who handle Medicaid fraud cases, closing about 50 cases per year. In addition to the criminal and civil cases, the state pursues other overpayments to providers. The Division of Medical Assistance obtains over \$2.8 million /year from its program integrity efforts; \$11.9 million from audit services; \$15.8 million from third party recovery; and \$4.7 million from the Attorney General's fraud unit. The Division of Medical Assistance thinks they could collect more in erroneous payments to providers if they

had enhanced computer capability (to more closely analyze provider claims). DMA estimates that an enhanced computer system would pay for itself in nine months. Source: Reported testimony by Chris Brewer, N.C. Attorney General's Office.

Submitted by Janice Holm Lloyd, Family Resource Management Specialist.

Housing and House Furnishings

Homeowners spend more on remodeling.

The amount of money that American homeowners are spending on remodeling projects has increased dramatically in the 90's. Here are the latest figures available:

Year	Remodeling Expenditures
1991	\$36.6 billion
1992	\$44.9 billion
1993	\$50.7 billion
1994	\$56.6 billion

The top 5 projects that homeowners selected for the home improvement dollars are (in order of most dollars spent): wallpaper and paint (\$6.7 billion), room additions (\$5.6 billion), roof replacements (\$4 billion), bathroom remodeling (\$3.6 billion), and plumbing repairs (\$2.9 billion).

As housing costs continue to increase, many families and individuals are finding it more feasible to remodel than to purchase a new home. *Source: Remodelers Edge, Issue 1, Volume 6, Winter 1996.*

Submitted by: Sarah Kirby, Housing Specialist.

Legal Issues

Increases in Medicaid amounts for Community Spouse.

Beginning January 1, 1996, the following amounts will be effective: The maximum community spouse income allowance is \$1,919 per month. The minimum community resource allowance is \$15,348. The maximum community resource allowance is \$76,740.

Department of Social Services May Be Sued for Negligence in Child Abuse Case.

Plaintiff and her former husband shared custody of Jonathan. Plaintiff repeatedly complained to the Davie Department of Social Services (DSS) that her former husband abused alcohol, causing him to have violent tendencies. Jonathon died in a car accident while riding in a car driven by his father who was drunk at the time. Jonathon's mother sued DSS for its negligence in failing to protect Jonathon. The case was dismissed and summary judgment entered in favor of DSS. On appeal, the court reversed the judgment finding that plaintiff's case should be heard on the merits. *Source: Whitaker v. North Carolina Department of Human Resources, ___ N.C. App. ___ (No. COA95-164, Feb. 20, 1996).*

Natural Father Who Consented to Adoption Has No Right to Bring Custody Suit or Ask for Visitation Rights.

Plaintiff consented to the adoption of his two children by their stepfather. Less than a year later, he filed a lawsuit seeking visitation rights, alleging sexual abuse of the children by their adoptive father. He amended his complaint to include a request for custody, alleging neglect and unfitness on the part of their mother. The court dismissed his complaint, holding that he had given up his rights to custody and visitation when he consented to the adoption. *Source: Kelly v. Blackwell, ___ N.C. App. ___ (COA95-393, Feb. 20, 1996).*

A Child Born During the Marriage Is Presumed to be the Husband's Unless Another Man Has Formally Acknowledged Paternity or Has Been Adjudicated to be the Father.

After plaintiff and defendant separated, defendant informed plaintiff that he was not the biological father of their 2 year old child. The court granted plaintiff visitation rights, in spite of blood tests conclusively showing that plaintiff was not the father. On appeal, the court's award of visitation rights was upheld. The North Carolina Court of Appeals held that to permit the marital presumption (that the child is a product of the marriage) be rebutted without a determination that another man is the father of the child would illegitimate the child in violation of public policy of this State. *Source: Jones v. Patience, ___ N.C. App. ___, (COA95-270, Feb. 6, 1996).*

Holographic Will Found in Deceased's Purse Is Admitted to Probate Court.

Deceased's handwritten and unwitnessed will was found in a purse hanging in her bedroom closet. One of her heirs challenged its admission into probate on the grounds that the will was not found among her valuable papers and effects, as required by law. The court found that a holographic will is admissible if found in one of five different places: (1) among the testator's valuable papers; (2) among the testator's valuable effects; (3) in a safe-deposit box; (4) in a safe place where it was deposited by the testator or under his authority; or (5) in the possession of a

person or firm with whom it was deposited by the testator or under his authority for safekeeping. The court held that the purse was a "safe place" because the deceased stored other valuables in other purses. *Source: In the Matter of the Will of Ora Church, ____ N.C. App. ____, (COA95-401, Feb. 6, 1996).*

Sexual Conduct Between an Attorney and Client.

The North Carolina State Bar brought a disciplinary action against defendant attorney based upon allegations of inappropriate sexual touchings and behavior toward clients. Criminal trials brought against the defendant failed to result in a conviction. The Disciplinary Hearing Commission held that the State Bar had failed to show that the defendant had committed a criminal act. On appeal, the case was sent back to the Commission for further consideration. The North Carolina Court of Appeals found that it is professional misconduct for a lawyer to commit a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or professional fitness. The rule does not require a conviction, only that a criminal act be committed. *Source: North Carolina State Bar v. Rush, ____ N.C. App. ____, (No. 95-40, Feb. 6, 1996).* Note: The North Carolina State Bar has drafted and is considering a rule of Ethics that would prohibit sexual relations between a lawyer and client.

Submitted by: Carol A. Schwab, Family Resource Management Specialist, Legal Issues.