

Regular Session, 2010

SENATE BILL NO. 770

BY SENATOR CHEEK

HEALTH/HOSPITALS DEPT. Requires the Department of Health and Hospitals to delegate certain hearing and adjudication functions to the division of administrative law. (8/15/10)

1 AN ACT
2 To enact R.S. 40:2009.26, relative to adjudications and fair hearings; to provide for the
3 delegation of the fair hearings function; to provide for the adjudication and hearing
4 functions of the Department of Health and Hospitals; to provide for the delegation
5 of certain functions and authority to the division of administrative law, except where
6 prohibited by federal law; to require an agency to prove its exempt status; to provide
7 for the transfer of adjudications and the resources related to handling such
8 adjudications; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 40:2009.26 is hereby enacted to read as follows:

11 **§2009.26. Adjudications and fair hearings**

12 **A. Notwithstanding any law to the contrary, the secretary of the**
13 **Department of Health and Hospitals shall delegate all adjudicatory and fair**
14 **hearing functions of the Department of Health and Hospitals to the division of**
15 **administrative law.**

16 **B.(1) If the Department of Health and Hospitals is prohibited, pursuant**
17 **to a federal mandate or as a condition of federal funding, from delegating by**

1 contract or other means its fair hearings function, then such fair hearings shall
2 be exempt from the provisions of this Section to the extent of the federal
3 mandate; however, if such federally mandated hearings function may be
4 delegated by contract or other means, the department shall delegate such
5 function to the division of administrative law. If the department claims a
6 federal mandate exemption, the department shall have the burden of proving
7 such exemption.

8 (2) If the Department of Health and Hospitals is prohibited, pursuant
9 to a federal mandate or as a condition of federal funding, from delegating by
10 contract or other means both its fair hearings function and its authority to
11 render a final decision or order in an adjudication proceeding, then such fair
12 hearings and adjudication proceedings shall be exempt from the provisions of
13 this Section to the extent of the federal mandate; however, if such federally
14 mandated hearings function and authority to render a final decision or order
15 in an adjudication proceeding may be delegated by contract or other means, the
16 department shall delegate such function and authority to the division. If the
17 department claims a federal mandate exemption, the department shall have the
18 burden of proving such exemption.

19 (3) If the Department of Health and Hospitals may delegate its fair
20 hearings function but is required by federal mandate to render the final
21 decision or order in an adjudication proceeding, then in those cases, the division
22 of administrative law shall conduct the hearing and issue an initial decision.
23 The initial decision shall be mailed or delivered to the secretary of the
24 department, who shall have, upon receipt of the initial decision, thirty days to
25 reject, modify, or approve the decision. If the secretary of the department
26 rejects or modifies the initial decision, such rejection or modification of the
27 initial decision shall be in writing and specify the findings of fact or conclusions
28 of law which are being rejected or modified which shall be considered to be the
29 final decision or order in the adjudication proceeding. If the secretary of the

1 **department does not reject or modify the initial decision within thirty days, or**
2 **if the initial decision is approved, then the initial decision of the division of**
3 **administrative law shall be certified as the final decision or order of the**
4 **department in the adjudication proceeding.**

5 Section 2. The Department of Health and Hospitals shall work with the division of
6 administrative law to complete the transfer to the division of adjudications as provided for
7 in this Act and the personnel, equipment, furniture, and budgets related to handling such
8 adjudications which are not exempt under the provisions of this Act. Such transfers shall
9 be complete by January 1, 2011.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Greg Waddell.

DIGEST

Proposed law provides that the secretary of DHH shall delegate all adjudicatory and fair hearing functions of DHH to the division of administrative law.

Proposed law provides that if DHH is prohibited, pursuant to a federal mandate or as a condition of federal funding, from delegating by contract or other means its fair hearings function, then such fair hearings shall be exempt from the provisions of proposed law to the extent of the federal mandate; however, if such federally mandated hearings function may be delegated by contract or other means, DHH shall delegate such function to the division of administrative law.

Proposed law provides that if DHH claims a federal mandate exemption, DHH shall have the burden of proving such exemption.

Proposed law provides that if DHH may delegate its fair hearings function but is required by federal mandate to render the final decision or order in an adjudication proceeding, then in those cases, the division of administrative law shall conduct the hearing and issue an initial decision. Proposed law further provides that the initial decision shall be mailed or delivered to the secretary of DHH, who shall have, upon receipt of the initial decision, 30 days to reject, modify, or approve the decision.

Proposed law provides that if the secretary of DHH rejects or modifies the initial decision, then he shall specify in writing the findings of fact or conclusions of law which are being rejected or modified which shall be considered to be the final decision or order in the adjudication proceeding. Proposed law further provides that if the secretary of DHH does not reject or modify the initial decision within 30 days, or if the initial decision is approved, then the initial decision of the division of administrative law shall be certified as the final decision or order of DHH in the adjudication proceeding.

Effective August 15, 2010.

(Adds R.S. 40:2009.26)