

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-146

Filed 21 October 2026

New Hanover County, No. 24CVS003301-640

AVE MARIA FAMILY PRACTICE,
PLLC, Petitioner,

v.

N.C. DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
DIVISION OF HEALTH
BENEFITS, Respondent.

Appeal by Petitioner from order entered 23 September 2025 by Judge R. Kent Harrell in New Hanover County Superior Court. Heard in the Court of Appeals 17 September 2026.

Michael Best & Friedrich, LLP, by Michael G. Schietzelt, for Petitioner–Appellant.

Attorney General Jeff Jackson, by Special Deputy Attorney General Katherine M. McGraw and Assistant Attorney General Erin Hukka, for Respondent–Appellee.

MURRY, Judge.

Ave Maria Family Practice, PLLC (Petitioner) appeals the trial court’s order affirming the decision of the N.C. Department of Health and Human Services (“Respondent” or “the Department”) to terminate its participation in the North

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Carolina Medicaid Program (Program). It contests this order on both jurisdictional and substantive grounds. For the reasons below, however, this Court disagrees with Petitioner on both points and instead affirms the trial court's order.

I. Background

Both the State of North Carolina and the Federal government jointly fund and administer Medicaid on behalf of their mutual beneficiaries through a series of interrelated regulations. *See* N.C. Dep't of Health & Hum. Servs., *North Carolina Medicaid* 5, 19 (2026), <https://medicaid.ncdhhs.gov/medicaid-state-fiscal-year-2025-report>. The Program reimburses on a per-billing basis those private practitioners who agree to both treat Medicaid recipients and adhere to certain audit procedures performed by third-party contractors after the fact.¹ *See generally* N.G.G.S. § 108C-3 (2025); N.C. Dep't of Health & Hum. Servs., *N.C. Medicaid Bulletin: November 2017* (2017), <https://medicaid.ncdhhs.gov/documents/files/medicaid-bulletin-2017-11/open>. The audits seek to maintain “the integrity of the Medicaid program” by way of fraud detection and prevention. As a licensed medical practice, Petitioner has “focused on working with . . . Medicare [and] Medicaid beneficiaries and recipients” in North

¹ Constellation Quality Health (CQH), a nonprofit healthcare consultancy, was legally responsible for performing the audit and review at issue here on behalf of Respondent. Because Petitioner does not (nor could it) challenge CQH's nondiscretionary role in this matter, we interchangeably refer to both CQH and the Department as “Respondent” for the sake of simplicity throughout this opinion. *See Halikierra Cmty. Servs. v. N. C. Dep't of Health & Hum. Servs.*, 294 N.C. App. 346, 354 (2024) (upholding CQH's contractual ability to “appl[y] expressly established criteria” in this precise context).

Carolina since approximately 2009. It has done so by participating in the Program in all particulars.

In May 2022, Respondent initiated a “prepayment[-]claims review” by which it sought to “ensure that claims presented” by Petitioner “me[t] the requirements of [F]ederal and State laws and regulations.” N.C.G.S. § 108C-7(a). On 31 May 2022, it mailed Petitioner an “initial notice” of this review that specified both the “grounds” and “explanation” for the 300 randomly selected claims Petitioner must eventually document to the contractor (first notice). (First citing N.C.G.S. § 108C-7; then citing 10A N.C. Admin. Code 22F.0104 (2026); and then citing 42 C.F.R. ch. IV, subch. C, pts. 455–57.) The first notice stated “data analysis” as the “grounds” for initiating the review. *See* N.C.G.S. § 108C-7(a). It went on to explain the underlying rationale for the review as necessary “to determine if” Petitioner’s claim reimbursements “meet federal and state law[s], rules[,] and regulations.” After realizing an overinclusion of certain claim codes within that sample size of 300 it could not properly test, Respondent sent a subsequent notice reducing Petitioner’s documentation requirements to only 96 claims (second notice). The two notices were otherwise identical.

After conducting a hearing of this matter on 11–12 December 2023, an Administrative Law Judge (ALJ) concluded that Respondent “properly terminated . . . Petitioner” from the “Program after the prepayment review period.” Petitioner sought *de novo* review of this decision in the trial court, which conducted the hearing

on 2 September 2025. The trial court affirmed the ALJ in a 23 September 2025 order. Defendant timely appealed on 23 October 2025.

II. Jurisdictional Analysis

At the outset, Petitioner challenges the trial court's subject-matter jurisdiction to adjudicate this prepayment dispute. It argues that Respondent's "conscious and deliberate flouting" of the twenty-day waiting period after the second notice deprived the trial court of the jurisdiction to review the agency revocation. (Brackets omitted.) *See* N.C.G.S. § 108C-7(b) (2021). Because jurisdiction is necessary for us to take any action whatsoever, we must address this allegation. *See Harney v. Harney*, 295 N.C. App. 456, 462–463 (2024). Having interpreted the contested statutory and regulatory framework in question, though, we disagree with Petitioner and instead hold that the trial court had the subject-matter jurisdiction to hear this appeal.

Under then-N.C.G.S. § 108C-7,² the Department must "notify the provider in writing of its decision" to initiate and "the process for submitting claims for a prepayment-claims review." N.C.G.S. § 108C-7(b) (brackets omitted). It cannot commence this review until at least twenty days have passed "from the date of . . . mailing [that] written notification." *Id.* More specifically, the full subsection clarifies

² Respondent initiated this prepayment-claims review against Petitioner in May 2022, at which point a materially different version of subsection (b) governed the procedure under review here. *See, e.g.*, N.C.G.S. § 108C-7(b) (2021), *amended by* Act of April 28, 2026, S.L. 2026-1, § 3C.13.(b), <https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2025-2026/SL2026-1.pdf> (striking "no less than 20 calendar days from" language). Thus, all jurisdictional discussions of this framework implicate the General Statutes as of 31 May 2022 only.

that:

Providers shall not be entitled to payment prior to claims review by the Department. The Department shall notify the provider in writing of the decision and the process for submitting claims for prepayment-claims review. The written notice shall be mailed to the provider's most recent address. The prepayment-claims review shall be instituted no less than twenty calendar days from the date of the mailing of written notification.

Id. (brackets and ellipses omitted). The subsection then specifies certain informational requirements otherwise uncontested here because—as Petitioner admits in its brief—both notices are identical “[i]n every other respect” beyond the number of auditable claims it must eventually submit to the auditor. Thus, the ALJ and trial court’s jurisdictional capacity to hear this case turns on whether the second notice’s lower claim threshold deprived Petitioner of its procedurally due notice.

Construing this text “as a whole,” we see no deprivation of this notice by Respondent that might otherwise rob the court of jurisdiction. Antonin Scalia & Bryan A. Garner, *Reading Law* 167 (2012). The twenty-day clock starts once a provider receives notice of its obligation to compile documentation of a certain number of auditable claims to be randomly selected later. *See* N.C.G.S. § 108C-7(b)(4); *Codification of Stmts. on Auditing Stds.* § 530.A17 (AICPA 2026) [hereinafter *Auditing Codification*] (“With statistical sampling, sample items are selected using random selection techniques.”), *incorporated by* 21 NCAC 8N.0403(b) (2026). The first notice directed Petitioner to expect documentation of at least 300 claims; the second notice reduced this obligation to a notably lower 96 claims.

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Absent additional parameters that might have statistically distinguished the second sample size from the first, *see Auditing Codification* § 530.06 (requiring that any sample size be “reasonably . . . representative of the relevant population” tested), adequate notice of the initially larger threshold amount logically implies notice of any subsequently reduced one drawn from the same population, *cf. Dimick v. Schiedt*, 293 U.S. 474, 482–84 (1935) (recognizing legal doctrine of *remittitur* as mere reaffirmation of original jury verdict for damages); *State v. Davis*, 302 N.C. 370, 485 (1981) (including lesser offense within greater offense with same “legal and factual elements”); *State v. Miller*, 316 N.C. 273, 283–84 (1986) (holding no prejudice where aggregate “sentence given does not exceed the maximum sentence permissible”). Petitioner cannot credibly distinguish its notice to provide documentation of those 96 claims from its acknowledged (and otherwise identical) documentation of the original 300; in the first notice, Respondent notified Petitioner of those 300 claims *and* any lesser-included amount within that initial sample size. Because Respondent complied with the statute in both the first and second notices as a result, we hold that both the ALJ and the trial court had the subject-matter jurisdiction necessary to hear this case and now proceed to the merits of Petitioner’s remaining argument.³

III. Substantive Analysis

³ Because we reach this conclusion on this ground alone, we need not address Petitioner’s simultaneous argument on whether § 108C-7 entails “mandatory or directory” prescriptions.

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Petitioner also argues that the notices' use of " 'data analysis' [a]s an adequate explanation" failed to meet the statutory requirements of "initiat[ing] this rigorous process." To support this argument, it distinguishes subsection (a)'s ground of "data analysis" from subsection (b)'s explanation of "decision." N.C.G.S. § 108C-7(a)–(b) (2025).⁴ Because the relevant statutory framework does not require so detailed an analysis as to "disclose any specific information concerning an ongoing investigation," though, we disagree and instead affirm the trial court's 23 September 2025 order. 42 C.F.R. § 455.23(b)(2)(ii) (2026).

As noted above, the State and Federal governments jointly administer the Program on behalf of North Carolinians. Although the Federal government sources Medicaid as a matter of law, the Department retains the authority to "suspend payments . . . in accordance with the requirements and procedures set forth in 42 C.F.R. § 455.23," N.C.G.S. § 108C-5(a), as part of its front-line regulation of those intra-State "providers who enroll in Medicaid," *id.* § 108C-1 (brackets omitted). The Code of Federal Regulations sets the broad parameters of the Program's administration and leaves the Department to fill the procedural gaps. *See* 42 C.F.R. § 455.13 (specifying bare administrative requirement of "methods," "criteria," and "procedures developed in cooperation with State legal authorities" (brackets

⁴ Unlike the material difference in subsection (b)'s languages discussed above, subsection (a) remained unchanged between May 2022 and now. Thus, all statutory references from this point forward refer to the current edition of the General Statutes.

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omitted)); N.C.G.S. §§ 108C-1 to -14 (filling those gaps). Both governments expressly acknowledge the other's concurrent authority to delineate the procedures by which the Department may "suspend or terminate the participation" of a provider in the Program. N.C.G.S. § 108C-5(b) (citation modified).

Under this regulatory framework, the Department must at least address "the general allegations . . . of the suspension," 42 C.F.R. § 455.23(b)(2)(ii), in its "adequate advance notice of any modification, suspension, or termination," N.C.G.S. § 108C-7(e). Importantly, though, it "need not disclose" in that notice "any specific information concerning an ongoing investigation" of the suspension. 42 C.F.R. § 455.23(b)(2)(ii). Indeed, indiscriminate "communicati[on of] the nature and timing of detailed audit procedures," *Auditing Codification* § 260.A24, would undercut the ultimate results of any "[P]rogram integrity activities conducted by the Department," N.C.G.S. § 10C-11(a). We cannot disturb the auditor's ability to maintain "the effectiveness of those procedures by [render]ing them too predictable" to the auditee, *Auditing Codification* § 260.A24, particularly in light of Petitioner's post hoc ability to "challeng[e] the accuracy, statistical methodology, or credentials" of either the auditor or its results, N.C.G.S. § 108C-5(n)(4)—none of which it does here.

Petitioner's distinction between *grounds* and *explanation* is a simple (and immaterial) question of *what* versus *why* that does not abrogate wholesale the proceedings against Petitioner here. Respondent determined that "data analysis" sufficed as "grounds" on which to "place [Petitioner] on prepayment[-]claims review,"

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N.C.G.S. § 108C-7(a), and thus “relie[d] on [them] for validity” of the foregoing procedures, *Grounds*, *Black’s Law Dictionary* (12th ed. 2024). Respondent concurrently explained its duty to review claims submitted by Petitioner:

[T]o determine if they meet federal and state law, rules and regulations, all Department documentation requirements and criteria set forth in the applicable Clinical Coverage Policy, Basic Medicaid Billing Guide, Medicaid bulletins and implementation updates as required by [Petitioner’s] Medicaid Provider Participation Agreement, that are applicable for the services at issue.

In so doing, it met its statutory duty to “make intelligible the causal conditions of” the review in question, *Explanation*, *Black’s Law Dictionary* (ellipses omitted), *i.e.*, adhering to standard audit obligations in exchange for the privilege of doing business with our State. By illuminating both the “grounds” and “explanation” of the prepayment review in its two valid notices, Respondent adhered to the process due Petitioner by statute. N.C.G.S. § 108C-7(a)–(b)(1).

IV. Conclusion

For the reasons above, this Court affirms the trial court’s 23 September 2025 order that, in turn, affirmed the ALJ’s decision to terminate Petitioner’s participation in North Carolina’s Medicaid Program.

AFFIRMED.

Judge STADING concurs.

Judge COLLINS concurs in the result only.