



**Minutes of Rulemaking Public Hearing  
November 4, 2021 3:00 pm**

**Staff Present**

Shazia Keller, DHB Rulemaking Coordinator  
Jim Flowers, DHB Deputy Director of Provider Audit  
Kim Harron, DHB, Paralegal

**Others Present**

Curtis Venable, Ott Cone & Redpath PA  
Anthony Okunak, North Carolina Health Care Association

**1. Purpose of Hearings**

This purpose of this hearing was to solicit verbal and/or written comments from the public on the North Carolina Department of Health and Human Services, Division of Health Benefits' proposed temporary rule Subchapters 10 NCAC 22Q and 22R posted by the North Carolina Office of Administrative Hearings on October 27, 2021.

**2. Hearing Summary and Transcript of Comments**

The public hearing was conducted telephonically due the to the prohibitions on mass gatherings, mandate to stay at home and social distancing requirements mandated by Executive Order No. 120, 121 and 135. The meeting was opened by Shazia Keller at 2:59 p.m. There were two members of the public present for the hearing. The oral comments from Curtis Venable and Anthony Okunak were recorded. The following is a transcript of the comments received at the public hearing:

**A. Adoption and Amendment of Temporary Subchapters 10A NCAC 22Q and 22R**

**(1) Curtis Venable, Ott Cone & Redpath PA**

Thank you. Thank you very much. And to the DHB staff online, let me say we greatly appreciate the work that the staff have done to produce these Rules.

Let me first note again, my name is Curtis Venable. I'm with the law firm of Ott, Cone & Redpath. I am here today in representation of several health systems. I will identify them as Mission HCA, Atrium Wake Forest Baptist, Cone Health, Wake Med, Duke Health, Levant, New Hanover, (Keifer Valley), Vita Health and Atrium.

As I speak on behalf of these systems to support both the Rules Q and R and the issuance of these Rules as Temporary Rules. The DSH funds support hospitals across North Carolina that carry substantial levels of Medicaid and uninsured care.

North Carolina has long attempted to support a broad array of hospitals - not just a small group, as occurs in some states where, in other states, they're only attempting to support certain public hospitals, children's hospitals and the like with these DSH funds.

In North Carolina, we are unique in that we view almost all hospitals, almost all of general acute-care hospitals as all Safety Net Hospitals. Again, historically, North Carolina's public hospitals have helped all hospitals by contributing the nonfederal share of these DSH funds for both public and nonpublic hospitals through the Certified Public Expenditure process, the CPE process.

But since North Carolina converted most of its Medicaid spending July 1st of this year to managed care, the CPE process and the receipt of CPE-based DSH funds meant North Carolina had to come up with another means of supporting our nonpublic hospitals like Wake Med, Duke and others across the federal (BOT) systems.

Other health systems with DSH funds, we had to construct another method of receiving the DSH funds back from the federal government prior to distribution.

Section Law 2020-88, the Hospital Uncompensated Care Fund, is this new way for the State to receive CPE-backed DSH funds and distribute them to all hospitals across the state - public and nonpublic.

Section Law 2020-88 specifically required the Division to issue Rules to implement this new Hospital Uncompensated Care Fund. But it's important to note in terms of the timing of these rules and the temporary - the issuance of the temporary rules, North Carolina first had to receive permission from the federal government for the new DSH payment methodology - the priorities of focusing on outpatient uncompensated care and the like.

North Carolina first had to receive permission through the State Plan Amendment Process to move forward. North Carolina received authorization and permission directive guidance from CMS effective June 29th of this year.

That, I would state, was the sort of initiation date for when the 210-day window of the Issuance of Temporary Rules started. And we are well within that 210-day window.

In terms of the basic - the basis for the Temporary Rule, as noted in 150b 21.1, we would support the Agency's issuance of these rules as Temporary Rules based on either Subsections 3 and 4, either recent change to federal regulation understanding the State Plan as authorization, the federal government didn't quite fit that or change in federal fiscal policy.

Again, it doesn't exactly fit that, but that's certainly, I believe, would be the intent of the General Assembly, or under Subsection 17, the general generalized maximizing of federal receipts provision that the agency possesses at all times.

So, by any of those pathways, we would certainly support the issuance of these as Temporary Rules within the 210-day window.

I will conclude by saying that these rules, as constructed and put together by the staff, permit North Carolina hospitals to continue to receive these vital DSH funds - all hospitals, public and nonpublic.

These rules provide a framework for many, if not most, hospitals in North Carolina to receive their fair share of very scarce DSH resources and to be able to support the communities in which they serve, continue to assist populations that have oftentimes been underserved by the health care systems across North Carolina.

Finally, these Rules provide a means of accountability for these funds by allowing the Agency to engage in audits to ensure that the funds are calculated and provided only to eligible health systems in hospitals across the state of North Carolina.

In sum, we support the Rules; we support the substance of the Rules; and we certainly support their being issued as Temporary Rules.

On behalf of my clients, thank you very much.

**(2) Anthony Okunak, North Carolina Health Care Association**

I'm doing good. I would just like to echo what Curtis Venable said and put on the record that the North Carolina Health Care Association representing its members, supports the Rule. And I'm very appreciative and wanted to thank Jim Flowers and his team at the Department of Health Benefits for all their work on this Rule with NCHA and Mr. Venable. And just to note that, you know, the hospitals that would be receiving these DSH funds are very appreciative of all their work. So, thank you.

**3. Adjournment**

The hearing was adjourned at approximately 3:15 p.m. The North Carolina Department of Health and Human Services, Division of Health Benefits will fully consider all comments.