



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

DAVE RICHARD
DEPUTY SECRETARY FOR MEDICAL ASSISTANCE

MEMORANDUM

Date: January 2, 2018

To: Rulemaking Interested Persons

From: Virginia Niehaus, DMA Rulemaking Coordinator

Re: Notification of Proposed Readoption, Amendment, or Repeal of 10A NCAC Chapter 21 and Chapter 22 Rules

Pursuant to G.S. 150B-21.2, this memorandum serves as the required notice to interested persons that the North Carolina Department of Human Services (DHHS), Division of Medical Assistance (DMA) intends to readopt, amend, or repeal 90 rules in 10A NCAC Chapters 21 and 22. Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, each agency shall conduct a review of its existing rules at least once every 10 years. These proposed rules are a result of this periodic review process.

DMA submitted notice to the Office of Administrative Hearings of the following proposed actions:

- 10A NCAC 21A .0301 – Notice (Readopt without substantive changes)
- 10A NCAC 21A .0302 – Good Cause for Delayed Hearings (Readopt without substantive changes)
- 10A NCAC 21A .0303 – Appeal Decision (Readopt with substantive changes)
- 10A NCAC 21B .0204 – Effective Date of Assistance (Readopt with substantive changes)
- 10A NCAC 21B .0311 – Transfer of Resources (Readopt with substantive changes)
- 10A NCAC 21D .0101 – Notice of Estate Recovery (Readopt with substantive changes)
- 10A NCAC 21D .0102 – Permanently Institutionalized (Readopt with substantive changes)
- 10A NCAC 21D .0103 – Age 55 and Over (Readopt with substantive changes)
- 10A NCAC 21D .0201 – Reconsideration Review (Readopt with substantive changes)
- 10A NCAC 21D .0301 – Permanently Institutionalized (Readopt with substantive changes)
- 10A NCAC 21D .0302 – Age 55 and Over (Readopt with substantive changes)
- 10A NCAC 21D .0401 – Filing Claim Against State (Readopt with substantive changes)
- 10A NCAC 21D .0402 – Collection of Claims (Readopt with substantive changes)
- 10A NCAC 21D .0501 – Recovery Not Cost Effective (Readopt with substantive changes)

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- 10A NCAC 21D .0502 – Undue Hardship (Readopt with substantive changes)
- 10A NCAC 21D .0503 – Determination of Undue Hardship (Readopt with substantive changes)
- 10A NCAC 22B .0101 – Institutional Health Services (Readopt without substantive changes)
- 10A NCAC 22B .0102 – Coordination with Title XVIII (Readopt without substantive changes)
- 10A NCAC 22B .0103 – Institutional Standards (Readopt with substantive changes)
- 10A NCAC 22B .0104 – Time Limitation (Readopt without substantive changes)
- 10A NCAC 22B .0105 – Overutilizer Identification (Readopt with substantive changes)
- 10A NCAC 22C .0101 – Cost Sharing (Readopt with substantive changes)
- 10A NCAC 22C .0102 – Medically Needy (Readopt with substantive changes)
- 10A NCAC 22C .0103 – Categorically Needy (Readopt with substantive changes)
- 10A NCAC 22D .0101 – Co-Payment (Readopt with substantive changes)
- 10A NCAC 22F .0104 – Prevention (Readopt without substantive changes)
- 10A NCAC 22F .0105 – Detection (Readopt without substantive changes)
- 10A NCAC 22F .0106 – Confidentiality (Readopt without substantive changes)
- 10A NCAC 22F .0107 – Record Retention (Readopt with substantive changes)
- 10A NCAC 22F .0201 – Definition of Provider Fraud (Readopt without substantive changes)
- 10A NCAC 22F .0202 – Investigation (Readopt with substantive changes)
- 10A NCAC 22F .0203 – Referral to Law Enforcement Agency (Readopt without substantive changes)
- 10A NCAC 22F .0301 – Definition of Provider Abuse (Readopt without substantive changes)
- 10A NCAC 22F .0302 – Investigation (Readopt without substantive changes)
- 10A NCAC 22F .0401 – Purpose (Repeal)
- 10A NCAC 22F .0402 – Reconsideration Review for Program Abuse (Readopt with substantive changes)
- 10A NCAC 22F .0601 – Recoupment (Readopt without substantive changes)
- 10A NCAC 22F .0602 – Administrative Sanctions and Remedial Measures (Readopt with substantive changes)
- 10A NCAC 22F .0603 – Provider Lock-Out (Readopt without substantive changes)
- 10A NCAC 22F .0604 – Suspending of Medicaid Payments (Readopt without substantive changes)
- 10A NCAC 22F .0605 – Termination (Readopt with substantive changes)
- 10A NCAC 22F .0606 – Technique for Projecting Medicaid Overpayments (Readopt without substantive changes)
- 10A NCAC 22F .0704 – Recipient Management Lock-In System (Readopt without substantive changes)
- 10A NCAC 22F .0706 – Recoupment of Overpayments (Readopt without substantive changes)
- 10A NCAC 22G .0108 – Reimbursement Methods for State-Operated Facilities (Readopt with substantive changes)
- 10A NCAC 22G .0109 – Nursing Home Provider Assessment (Readopt without substantive changes)
- 10A NCAC 22G .0208 – Administrative Reconsideration Reviews (Readopt with substantive changes)
- 10A NCAC 22G .0502 – Mental Health Clinic Services (Readopt with substantive changes)
- 10A NCAC 22G .0504 – Health Plan Maintenance Organizations and Prepaid Health Plans (Readopt without substantive changes)
- 10A NCAC 22G .0509 – Reimbursement Principles, Hearing Aids/Accessories/Batteries (Readopt with substantive changes)
- 10A NCAC 22H .0101 – Appeals by Medicaid Beneficiaries (Readopt with substantive changes)
- 10A NCAC 22H .0102 – Requests for Formal and Informal Appeals (Readopt with substantive changes)
- 10A NCAC 22H .0103 – Time Limits on Requests for Recipient/Applicant Informal Appeals (Readopt with substantive changes)
- 10A NCAC 22H .0104 – Payment Pending Appeals (Readopt with substantive changes)
- 10A NCAC 22H .0105 – Dismissal of Appeal (Readopt with substantive changes)
- 10A NCAC 22H .0201 – Definitions (Amend)
- 10A NCAC 22H .0202 – Transfer and Discharge Requirements (Readopt with substantive changes)
- 10A NCAC 22H .0203 – Initiating a Hearing (Readopt without substantive changes)

- 10A NCAC 22H .0204 – Hearing Procedures (Readopt with substantive changes)
- 10A NCAC 22H .0205 – Hearing Officer’s Final Decision (Readopt with substantive changes)
- 10A NCAC 22H .0301 – Definitions (Amend)
- 10A NCAC 22H .0302 – PASRR Hearings (Readopt without substantive changes)
- 10A NCAC 22H .0303 – Initiating a Hearing (Readopt without substantive changes)
- 10A NCAC 22H .0304 – Hearing Procedures (Readopt with substantive changes)
- 10A NCAC 22H .0305 – Hearing Officer’s Final Decision (Readopt with substantive changes)
- 10A NCAC 22I .0102 – Audit to be Conducted (Readopt without substantive changes)
- 10A NCAC 22I .0104 – Reconsideration Review (Readopt with substantive changes)
- 10A NCAC 22J .0102 – Petition for Reconsideration Review (Readopt without substantive changes)
- 10A NCAC 22J .0103 – Reconsideration Review Process (Readopt without substantive changes)
- 10A NCAC 22J .0104 – Petition for Contested Case Hearing (Readopt without substantive changes)
- 10A NCAC 22J .0105 – Payment Status (Readopt without substantive changes)
- 10A NCAC 22J .0106 – Provider Billing of Patients who are Medicaid Recipient (Readopt without substantive changes)
- 10A NCAC 22K .0101 – Definition (Readopt without substantive changes)
- 10A NCAC 22K .0102 – Agreement (Readopt with substantive changes)
- 10A NCAC 22K .0103 – Presumptive Determinations (Readopt without substantive changes)
- 10A NCAC 22L .0101 – Program Definition (Amend)
- 10A NCAC 22L .0102 – Coordination Fee (Readopt without substantive changes)
- 10A NCAC 22L .0103 – Access to Care (Readopt with substantive changes)
- 10A NCAC 22L .0104 – Enrollment (Readopt with substantive changes)
- 10A NCAC 22L .0201 – Program Definition (Amend)
- 10A NCAC 22L .0203 – Access to Care (Readopt without substantive changes)
- 10A NCAC 22N .0101 – Definitions (Amend)
- 10A NCAC 22N .0102 – Signed Agreements (Readopt without substantive changes)
- 10A NCAC 22N .0201 – Definitions (Repeal)
- 10A NCAC 22N .0202 – Disclosure of Ownership (Readopt with substantive changes)
- 10A NCAC 22N .0203 – Enrollment Restrictions (Readopt without substantive changes)
- 10A NCAC 22N .0301 – Definitions (Repeal)
- 10A NCAC 22N .0302 – Disclosure of Ownership (Readopt with substantive changes)
- 10A NCAC 22N .0303 – Enrollment Restrictions (Readopt with substantive changes)
- 10A NCAC 22O .0112 – Psychiatric Admission Criteria/Medicaid Beneficiaries Under Age 21 (Readopt with substantive changes)

DMA prepared fiscal notes for proposed rules in subchapters 21A, 21B, 22B, 22F, 22G, 22H, 22K, 22L, and 22N. No fiscal note was required for proposed rules in subchapters 21D, 22C, 22D, 22I, and 22O. Proposed changes to 10A NCAC 22H .0205 and .0305 have a minimal impact on local government and the private sector; all other proposed changes have no fiscal impact. These fiscal notes were approved by the Office of State Budget and Management (OSBM) on October 30, 2017.

The notice of text that was published in today’s edition of the NC Register is attached to this memorandum and can be found on the Office of Administrative Hearings website at <http://www.ncoah.com/rules/register>. A copy of all proposed rules, fiscal analyses, federal law certifications, and other relevant information may be found on the DMA website at <https://dma.ncdhhs.gov/get-involved/rules-actions>.

A public hearing on these rules is scheduled for January 24, 2018 from 1pm-3pm in Room 104, Brown Building, 801 Biggs Drive, Raleigh, NC 27603. The building is located within the Dorothea Dix Park.

DMA is accepting public comments on these rules from January 2, 2018 – March 5, 2018. You may submit comments by email to MedicaidRulesComments@dhhs.nc.gov or by mail to: Virginia Niehaus, DMA Rulemaking Coordinator, NC DHHS Division of Medical Assistance, 2501 Mail Service Center, Raleigh, NC 27699-2501. You may also submit comments in person at the public hearing. The proposed effective date of these rules is May 1, 2018.

Should you have questions related to this memorandum, the proposed rules, or the fiscal notes, please contact Virginia Niehaus, DMA Rulemaking Coordinator by phone at (919) 855-4100 or by email at MedicaidRulesComments@dhhs.nc.gov.

Attachments

cc: Dave Richard, Deputy Secretary, DMA
Sandra Terrell, Director of Clinical and Operations, DMA
Melanie Bush, Deputy Director of Clinical and Operations, DMA
Sarah Pfau, Associate Director of Policy and Regulatory Affairs, DMA
Joel Johnson, Assistant General Counsel, DHHS

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Division of Medical Assistance intends to amend the rules cited as 10A NCAC 22H .0201, .0301; 22L .0101, .0201; 22N .0101, repeal the rules cited as 10A NCAC 22F .0401; 22N .0201, .0301, readopt with substantive changes the rules cited as 10A NCAC 21A .0303; 21B .0204, .0311; 21D .0101-.0103, .0201, .0301, .0302, .0401, .0402, .0501-.0503; 22B .0103, .0105; 22C .0101-.0103; 22D .0101; 22F .0107, .0202, .0402, .0602, .0605; 22G .0108, .0208, .0502, .0509; 22H .0101-.0105, .0202, .0204, .0205, .0304, .0305; 22I .0104; 22K .0102; 22L .0103, .0104; 22N .0202, .0302, .0303; 22O .0112, and readopt without substantive changes the rules cited as 10A NCAC 21A .0301, .0302; 22B .0101, .0102, .0104; 22F .0104-.0106, .0201, .0203, .0301, .0302, .0601, .0603, .0604, .0606, .0704, .0706; 22G .0109, .0504; 22H .0203, .0302, .0303; 22I .0102; 22J .0102, .0103-.0106; 22K .0101, .0103; 22L .0102, .0203; 22N .0102, and .0203.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rule(s) are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rules are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://dma.ncdhhs.gov/get-involved/rules-actions>

Proposed Effective Date: *May 1, 2018*

Public Hearing:

Date: *January 24, 2018*

Time: *1:00 p.m.-3:00 p.m.*

Location: *Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC 27603*

Reason for Proposed Action: *Pursuant to G.S. 150B-21.3A, Periodic review and expiration of existing rules, each agency shall conduct a review of its existing rules at least once every 10 years. As a result of this periodic review process, the North Carolina Department of Health and Human Services, Division of Medical Assistance is readopting, repealing, or amending 90 rules in 10A NCAC Chapters 21 and 22, Subchapters 21A, 21B, 21D, 22B, 22C, 22D 22F, 22G, 22H, 22I, 22J, 22K, 22L, 22N, and 22O to ensure these rules reflect current law and processes.*

Comments may be submitted to: *Virginia Niehaus, DMA Rulemaking Coordinator, NC DHHS, Division of Medical Assistance, 2501 Mail Service Center, Raleigh, NC 27699-2501; email MedicaidRulesComments@dhhs.nc.gov*

Comment period ends: *March 5, 2018*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected**
- Environmental permitting of DOT affected**
- Analysis submitted to Board of Transportation**
- Local funds affected** *10A NCAC 22H .0205 and .0305*
- Substantial economic impact (≥\$1,000,000)**
- Approved by OSBM** *10A NCAC 22H .0205 and .0305*
- No fiscal note required by G.S. 150B-21.4** *10A NCAC 22F .0401; 22H .0201, .0301; 22L .0101, .0201; 22N .0101, .0201, .0301*
- No fiscal note required by G.S. 150B-21.3A(d)(2)** *10A NCAC 21A .0301-.0303; 21B .0204, .0311; 21D .0101-.0103, .0201, .0301, .0302, .0401, .0402, .0501-.0503; 22B .0101-.0105; 22C .0101-.0103; 22D .0101; 22F .0104-.0107, .0201-.0203, .0301, .0302, .0402, .0601-.0606, .0704, .0706; 22G .0108, .0109, .0208, .0502, .0504, .0509; 22H .0101-.0105, .0202-.0204, .0302-.0304; 22I .0102, .0104; 22J .0102-.0106; 22K .0101-.0103; 22L .0102-.0104, .0203; 22N .0102, .0202, .0203, .0302, .0303; 22O .0112*

CHAPTER 21 - MEDICAL ASSISTANCE ADMINISTRATION
SUBCHAPTER 21A - GENERAL PROGRAM ADMINISTRATION
SECTION .0300 - APPEALS

10A NCAC 21A .0303 APPEAL DECISION

- (a) The hearing officer shall make a tentative decision ~~that which~~ shall be served upon the county department and the appellant by mail. Decisions ~~reversing proposing to reverse~~ the county department's action shall be sent by certified mail to the county ~~department.~~ Decisions affirming the county department's actions ~~shall will~~ be sent by certified mail to the appellant.
- (b) The county and the appellant may present oral and written argument, for and against the ~~decision decision.~~ by contacting the Chief Hearing Officer. ~~Written argument may be submitted to or contact made with the Chief Hearing officer to request a hearing for oral argument.~~
- (c) If a written argument or a request for oral argument is not received by the Chief Hearing Officer is not contacted within 10 calendar days of the date the notice of the tentative decision is signed, the tentative decision shall become final.
- (d) If a request for a time extension to submit an argument is received by the Chief Hearing officer within 10 calendar days of the date the notice of the tentative decision is signed, an extension may be granted for good cause or in the interests of justice.
- ~~(e)(d)~~ If the party that requested oral argument fails to appear ~~at the hearing~~ for the scheduled oral argument, the tentative decision shall become ~~becomes~~ final.
- ~~(f)(e)~~ If oral ~~or and~~ written arguments are ~~presented,~~ presented within the timeframes established in Paragraphs (c) and (d) of this Rule, then all such arguments shall be considered and a final decision shall be rendered.
- ~~(g)(f)~~ The final decision shall be served upon mailed to the appellant ~~and any~~ the county department by certified mail.
- ~~(h)(g)~~ A decision upholding the appellant shall be put into effect within two weeks after the county department's receipt of the final ~~decision decision.~~ by certified mail.
- ~~(i)(h)~~ As provided for in 42 C.F.R. 431.245 ~~431.245,~~ and G.S. 108A-79(k), the decision shall contain the appellant's right to ~~request a State agency hearing and seek judicial review.~~ review to the extent that either is available to him.

History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-79; 42 C.F.R. 431.244; 42 C.F.R. 431.245; 42 C.F.R. 431.246; Eff. September 1, 1984; Amended Eff. September 1, 1992; ~~1992~~.
Readopted Eff. May 1, 2018.

SUBCHAPTER 21B – ELIGIBILITY DETERMINATION

SECTION .0200 - APPLICATION PROCESS

10A NCAC 21B .0204 EFFECTIVE DATE OF ASSISTANCE

- (a) The first month of Medicaid coverage shall be:
- (1) ~~the~~ The month of application, or for SSI recipients, the month of application for SSI; ~~or~~
 - (2) as ~~As~~ much as three months prior to the month of application when the client received medical services covered by the program and was eligible during the month or months of medical need; or
 - (3) if ~~If~~ the client applies prior to meeting a non-financial requirement, no earlier than the calendar month in which all non-financial requirements are met.
- (b) Assistance shall be authorized beginning on the first day of the month except when:
- (1) ~~the~~ The client's income exceeds the income level and he or she must spenddown the excess income for medical care. The assistance shall be authorized on the day his or her incurred medical care costs equal the amount of the excess ~~income; or income.~~
 - (2) ~~For groups identified in Rule .0311, Sub-item (3)(a) of this Subchapter, the client shall be authorized on the day the reserves are reduced, or incurred medical care costs equal the amount of the excess income, whichever occurs later.~~ otherwise stated in the Medicaid State Plan.
- (c) Medicaid coverage shall end on the last day of the last month of eligibility except for those individuals eligible for emergency conditions only as described in 10A NCAC 23E .0102. The last month of eligibility shall be the month in which notice of termination expires. ~~be:~~
- (1) ~~The month in which timely notice of termination expires; or~~
 - (2) ~~The month in which adequate notice of termination expires.~~

History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 435.915; ~~435.914;~~ 42 C.F.R. 435.919; Alexander v. Bruton Consent Order dismissed Effective February 1, 2002;
Eff. September 1, 1984;
Amended Eff. January 1, 1995; October 1, 1991; August 1, 1990;

Temporary Amendment Eff. March 1, 2003;
Amended Eff. August 1, ~~2004~~;
Readopted Eff. May 1, 2018.

SECTION .0300 - CONDITIONS FOR ELIGIBILITY

10A NCAC 21B .0311 TRANSFER OF RESOURCES

History Note: Authority G.S. 108A-54; 108A-58; P.L. 100-360; P.L. 100-485; 42 U.S.C. 1396p(c); 42 C.F.R. 435.121; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435.845; S.L. 2002-126;
Eff. September 1, 1984;
Amended Eff. December 1, 1991; August 1, 1990;
Temporary Amendment Eff. April 21, 2003; March 1, 2003;
Amended Eff. August 1, ~~2004~~;
Repealed Eff. May 1, 2018.

SUBCHAPTER 21D - ESTATE RECOVERY

SECTION .0100 - RECIPIENTS SUBJECT TO ESTATE RECOVERY

10A NCAC 21D .0101 NOTICE OF ESTATE RECOVERY

10A NCAC 21D .0102 PERMANENTLY INSTITUTIONALIZED

10A NCAC 21D .0103 AGE 55 AND OVER

History Note: Authority G.S. 108A-70.5; 42 U.S.C. 1396p.;
Temporary Adoption Eff. May 6, 1996 to expire on July 1, 1996, or the last day of the 1996 session of the General Assembly, whichever is later;
Temporary Rule Expired on July 1, 1996;
Eff. July 1, ~~1996~~;
Repealed Eff. May 1, 2018.

SECTION .0200 - RECONSIDERATION REVIEW

10A NCAC 21D .0201 RECONSIDERATION REVIEW

History Note: Authority G.S. 108A-70.5; 42 U.S.C. 1396p.;
Temporary Adoption Eff. May 6, 1996 to expire on July 1, 1996, or the last day of the 1996 session of the General Assembly, whichever is later;
Temporary Rule Expired on July 1, 1996;
Eff. July 1, ~~1996~~;
Repealed Eff. May 1, 2018.

SECTION .0300 - MEDICAID PAYMENTS SUBJECT TO RECOVERY

10A NCAC 21D .0301 PERMANENTLY INSTITUTIONALIZED

10A NCAC 21D .0302 AGE 55 AND OVER

History Note: Authority G.S. 108A-70.5; 42 U.S.C. 1396p.;
Temporary Adoption Eff. May 6, 1996 to expire on July 1, 1996, or the last day of the 1996 session of the General Assembly, whichever is later;
Temporary Rule Expired on July 1, 1996;
Eff. July 1, ~~1996~~;
Repealed Eff. May 1, 2018.

SECTION .0400 - FILING AND COLLECTION OF CLAIMS AGAINST ESTATE

10A NCAC 21D .0401 FILING CLAIM AGAINST ESTATE

10A NCAC 21D .0402 COLLECTION OF CLAIMS

History Note: Authority G.S. 108A-70.5; 42 U.S.C. 1396p.;

Temporary Adoption Eff. May 6, 1996 to expire on July 1, 1996, or the last day of the 1996 session of the General Assembly, whichever is later;
Temporary Rule Expired on July 1, 1996;
Eff. July 1, 1996; ~~1996~~.
Repealed Eff. May 1, 2018.

SECTION .0500 - WAIVER OF RECOVERY

10A NCAC 21D .0501 RECOVERY NOT COST EFFECTIVE
10A NCAC 21D .0502 UNDUE HARDSHIP
10A NCAC 21D .0503 DETERMINATION OF UNDUE HARDSHIP

History Note: Authority G.S. 108A-70.5; 42 U.S.C. 1396p.;
Temporary Adoption Eff. May 6, 1996 to expire on July 1, 1996, or the last day of the 1996 session of the General Assembly, whichever is later;
Temporary Rule Expired on July 1, 1996;
Eff. July 1, 1996; ~~1996~~.
Repealed Eff. May 1, 2018.

CHAPTER 22 - MEDICAL ASSISTANCE ELIGIBILITY

SUBCHAPTER 22B – PROVIDER ISSUES

SECTION .0100 - GENERAL

10A NCAC 22B .0103 INSTITUTIONAL STANDARDS

Institutions ~~shall~~ ~~must~~ meet standards prescribed for participation in Titles ~~XVIII~~ XVIII, XIX, and XXI of the Social Security Act, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <http://uscode.house.gov/>, ~~and XIX~~. These standards are specified by North Carolina state licensing law and by federal statutes and regulations, and are kept on file in the Department of Health and Human Services, Division of Health Services Regulation ~~state agency~~ and available on request.

History Note: Authority G.S. 108A-25(b); 108A-54; 131-E; 42 C.F.R. 440.10; 42 C.F.R. Part 442; 42 C.F.R. 457.990; ~~442~~, ~~Subparts (D)(E)~~;
Eff. February 1, 1976;
Readopted Eff. October 31, 1977; ~~1977~~.
Readopted Eff. May 1, 2018.

10A NCAC 22B .0105 OVERUTILIZER IDENTIFICATION

History Note: Authority G.S. 108A-25(b);
Eff. January 1, 1978;
Amended Eff. May 1, 1990; October 4, 1979; ~~1979~~.
Repealed Eff. May 1, 2018.

SUBCHAPTER 22C – AMOUNT: DURATION: AND SCOPE OF ASSISTANCE

10A NCAC 22C .0101 COST SHARING
10A NCAC 22C .0102 MEDICALLY NEEDY
10A NCAC 22C .0103 CATEGORICALLY NEEDY

History Note: Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 34 C.F.R. 447.50; 42 C.F.R. 440.220; 42 C.F.R. 440.240; 42 C.F.R. 440.210;
Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Amended Eff. May 1, 1990; ~~1990~~.
Repealed Eff. May 1, 2018.

SUBCHAPTER 22D – RECIPIENT ISSUES

10A NCAC 22D .0101 CO-PAYMENT

History Note: Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.230(d); Tax Equity and Fiscal Responsibility Act of 1982, Subtitle B; Section 95 of Chapter 689, 1991 Session Laws; Eff. January 1, 1984; Temporary Amendment Eff. August 15, 1991 For a Period of 180 Days to Expire on February 15, 1992; Amended Eff. February 1, 1992; Temporary Amendment Eff. September 15, 1992 For a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner; Amended Eff. February 1, 1993; Temporary Amendment Eff. January 1, 2002; Amended Eff. April 1, ~~2003~~; ~~2003~~; Repealed Eff. May 1, 2018.

SUBCHAPTER 22F - PROGRAM INTEGRITY

SECTION .0100 - GENERAL

10A NCAC 22F .0107 RECORD RETENTION

All Title XIX and Title XXI providers shall keep and maintain all Medicaid and NC Health Choice financial, medical, or other records necessary to ~~fully~~ disclose the nature and extent of services furnished to Medicaid and NC Health Choice recipients and claimed for reimbursement. These records shall be retained for a period of not less than five full years from the date of service, unless a longer retention period is required by applicable federal or state law, regulations, regulations or data retention agreements. Upon notification of an audit or upon receipt of a request for records, all records related to the audit or records request shall be retained until notification that the investigation has been concluded or five full years from the initial notification, whichever is longer.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-63; 108A-64; 42 C.F.R. Part 455; 42 C.F.R. 455.12– 23; 42 C.F.R. 431.107; Eff. April 1, ~~1988~~; ~~1988~~; Readopted Eff. May 1, 2018.

SECTION .0200 - PROVIDER FRAUD AND PHYSICAL ABUSE OF RECIPIENTS

10A NCAC 22F .0202 INVESTIGATION

~~(a) The Division will publish methods and procedures for the control of provider fraud, abuse, error, and overutilization.~~

~~(a)(b)~~ There shall be a preliminary investigation of all complaints received or fraud, waste, abuse, overutilization, error, or practices not conforming to regulations or policy aberrant practices detected, until it is determined:

- (1) whether there are sufficient findings to warrant a full investigation;
- (2) whether there is sufficient evidence to warrant referring the case for civil and and/or criminal fraud action; or
- (3) whether there is insufficient evidence to support the allegation(s) and the case may be closed.

~~(b)(e)~~ There shall be a full investigation if the preliminary findings support the conclusion of possible fraud until:

- (1) the case is referred to the appropriate law enforcement agency;
- (2) the case is found to be one of program abuse subject to administrative action;
- (3) the case is closed for insufficient evidence of fraud or abuse; or
- (4) the provider is found not to have abused or defrauded the program.

History Note: Authority G.S. 108A-25(b); 108A-63; 42 U.S.C. 1396(b) et seq.; 42 C.F.R. Part ~~455, Subpart A; 455~~; Eff. April 15, 1977; Readopted Eff. October 31, 1977; Amended Eff. May 1, ~~1984~~; ~~1984~~; Readopted Eff. May 1, 2018.

SECTION .0400 – AGENCY RECONSIDERATION REVIEW

10A NCAC 22F .0401 PURPOSE

History Note: Authority G.S. 108A-25(b); 42 C.F.R. 456; Eff. December 1, 1982; Transferred and Recodified from 10 NCAC 26I .0201 Eff. July 1, 1995; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, ~~2015~~; ~~2015~~; Repealed Eff. May 1, 2018.

10A NCAC 22F .0402 RECONSIDERATION REVIEW FOR PROGRAM ABUSE

(a) ~~The Division shall notify the provider in writing by certified mail of the tentative decision made pursuant to Rule .0302 of this subchapter and the opportunity for a reconsideration of the tentative decision. Upon notification of a tentative decision the provider will be offered, in writing, by certified mail, the opportunity for a reconsideration of the tentative decision and the reasons therefor.~~

(b) The provider ~~shall~~ ~~will~~ be instructed to submit to the Division in writing a ~~his~~ request for a Reconsideration Review within 30 business ~~fifteen working~~ days from the date of receipt of the notice. Failure to request a Reconsideration Review in the specified time shall result in the implementation of the tentative decision as the ~~Department's~~ ~~Division's~~ final decision.

(c) ~~If requested, the~~ ~~The~~ Notice of Reconsideration Review shall be sent to the provider ~~scheduled~~ within 30 business ~~twenty calendar~~ days from receipt of the request. The provider ~~shall~~ ~~will~~ be notified in writing to appear at a specified day, ~~time, time~~ and place. The provider may be accompanied by legal counsel if ~~the provider~~ ~~he~~ so desires.

(d) ~~The provider shall provide a written statement to the Hearing Unit prior to the Reconsideration Review identifying any claims that the provider wishes to dispute and setting forth the provider's specific reasons for disputing the determination on those claims.~~

(e)~~(d)~~ The purpose of the Reconsideration Review includes:

- (1) ~~clarification~~ ~~Clarification~~, formulation, and simplification of issues;
- (2) ~~exchange~~ ~~Exchange~~ and full disclosure of information and materials;
- (3) ~~review~~ ~~Review~~ of the investigative findings;
- (4) ~~resolution~~ ~~Resolution~~ of matters in controversy;
- (5) ~~consideration~~ ~~Consideration~~ of mitigating and extenuating circumstances;
- (6) ~~reconsideration~~ ~~Reconsideration~~ of the administrative measures to be imposed; and
- (7) ~~reconsideration~~ ~~Reconsideration~~ of the restitution of overpayments.

(f)~~(e)~~ The Reconsideration Review decision ~~shall~~ ~~will~~ be sent to the ~~provider,~~ ~~provider~~ in writing by certified ~~mail,~~ ~~mail~~ within 30 business ~~five working~~ days following the date ~~the review record is closed.~~ The review record is closed when all arguments and documents for review have been received by the Hearing Unit. ~~of review. It will state the schedule for implementing the administrative measures and/or recoupment plan, if applicable, and it will~~ ~~The decision shall~~ state that if the ~~Ree~~ ~~Reconsideration Review~~ decision is not acceptable to the provider, ~~the provider~~ ~~he~~ may request a contested case hearing in accordance with G.S. 150B, Article 3 and 26 NCAC 03 .0103, ~~the provisions found at 10A NCAC 01.~~ Pursuant to G.S. 150B-23(f), the provider shall have 60 days from receipt of the Reconsideration Review decision to request a contested case ~~hearing in the Office of Administrative Hearings,~~ ~~hearing.~~ Unless the request is received within the time provided, the Reconsideration Review decision shall become the Division's final decision and no further appeal shall be permitted. ~~decision. In processing the contested case request, the Director of the Division of Medical Assistance shall serve as the secretary's designee and shall be responsible for making the final agency decision.~~

History Note: Authority G.S. 108A-25(b); 108A-54; 150B, Article 3; S.L. 2011-375, s. 2; 150B-22; 42 C.F.R. Part 455.512; 455; Eff. April 15, 1977;
Readopted Eff. October 31, 1977;
ARRC Objection October 22, 1987;
Amended Eff. November 1, 1988; March 1, 1988; May 1, 1984; 1984.
Readopted Eff. May 1, 2018.

SECTION .0600 – ADMINISTRATIVE SANCTIONS AND RECOUPMENT

10A NCAC 22F .0602 ADMINISTRATIVE SANCTIONS AND REMEDIAL MEASURES

(a) The following types of sanctions or remedial measures may be imposed ~~imposed, singly or in combination,~~ by the Division ~~Medicaid Agency~~ in instances of program abuse by providers, ~~providers;~~ which do not have to be imposed in any particular order:

- (1) warning ~~Warning~~ letters for ~~those~~ instances of abuse that can be satisfactorily settled by issuing a warning to cease the specific abuse. The letter ~~shall~~ ~~will~~ state that any further violations ~~shall~~ ~~will~~ result in administrative or legal action initiated by the Division; ~~Medicaid Agency.~~
- (2) suspension ~~Suspension~~ of a provider from further participation in the Medicaid Program for a specified period of time, provided that the appropriate findings have been made by the Division and provided that this action ~~shall~~ ~~does~~ not deprive recipients of access to reasonable service of adequate quality as set out in 42 C.F.R. 440.230, 440.260, and 455.23, which are adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>; ~~quality.~~
- (3) termination ~~Termination~~ of a provider from further participation in the Medicaid Program, provided that the appropriate findings have been made by the Division and provided that this action ~~shall~~ ~~does~~ not deprive recipients of access to reasonable services of adequate quality as set out in 42 C.F.R. 440.230, 440.260, and 455.23, which are adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>; ~~quality.~~
- (4) probation ~~Probation~~ whereby a provider's participation is closely monitored for a specified period of time not to exceed one year. At the termination of the probation period the Division ~~Medicaid Agency~~ ~~shall~~ ~~will~~ conduct a follow-up review of the provider's Medicaid practice to ensure compliance with all applicable laws, regulations, and conditions of participation in Medicaid, ~~the Medicaid rules.~~ Notwithstanding his probation, a probationary provider's participation, like that of all providers, is terminable at will.

- (5) Remedial Measures to include:
- (A) placing the provider on prepayment review in accordance with G.S. 108C-7; "flag" status whereby his claims are remanded for manual review; or
- ~~(6)(B)~~ establishing a monitoring program not to exceed one year whereby the provider shall ~~must~~ comply with pre-established conditions of participation to allow review and evaluation of the provider's Medicaid claims. his Medicaid practice, i.e., quality of care.

(b) The following factors are illustrative of those to be considered in determining the kind and extent of administrative sanctions to be imposed:

- (1) seriousness of the offense;
- (2) extent of violations found;
- (3) history of ~~or~~ prior violations;
- (4) prior imposition of sanctions;
- (5) ~~period~~ length of time provider practiced violations;
- (6) provider willingness to obey program rules;
- (7) recommendations by the investigative staff or Peer Review Committees; and
- (8) effect on health care delivery in the area.

When a provider has been administratively sanctioned, the Division shall notify the licensing board or other certifying group governing the sanctioned provider, appropriate professional society, board of licensure, State Attorney General's Office, federal and state agencies, and appropriate county departments of social services of the findings made and the sanctions imposed.

History Note: Authority G.S. 108A-25(b); 108C-7; 42 C.F.R. 440.230; 42 C.F.R. 440.260; 42 C.F.R. Part 431; 42 C.F.R. Part 455; 42 C.F.R. 455.23;
 Eff. May 1, 1984;
 Amended Eff. December 1, 1995; May 1, 1990; 1990.
Readopted Eff. May 1, 2018.

10A NCAC 22F .0605 TERMINATION

History Note: Authority G.S. 108A-25(b); 42 C.F.R. Part 431; 42 C.F.R. Part 455;
 Eff. May 1, 1984; 1984.
Repealed Eff. May 1, 2018.

SUBCHAPTER 22G – REIMBURSEMENT PLANS

SECTION .0100 – REIMBURSEMENT FOR NURSING FACILITY SERVICES

10A NCAC 22G .0108 REIMBURSEMENT METHODS FOR STATE-OPERATED FACILITIES

~~(a) A NC Division of Health Service Regulation certified State operated nursing facility shall be reimbursed for the reasonable costs that are necessary to efficiently meet the needs of its patients and to comply with federal and state laws and regulations. The costs shall be determined in accordance with Rules .0103 and .0104 of this Section, except that annual cost reports shall be required for the fiscal year beginning on July 1 and ending on the following June 30 and must be submitted to the Division of Medical Assistance within 150 days after their fiscal year end. Payments shall be suspended if reports are not filed. The Division of Medical Assistance shall extend the deadline for filing the report if the Division determines good cause. "Good cause" is an action uncontrollable by the provider. The Medicare principles for the reimbursement of skilled nursing facilities shall be utilized for the cost principles that are not specifically addressed in this Section.~~

~~(b) A per diem rate based on the providers estimated annual cost divided by patient days shall be used to make interim payments. A desk audit and a tentative settlement shall be performed on each annual cost report to determine the amount of Medicaid reasonable cost and the amount of interim payments received by the provider.~~

~~(c) The Division's reimbursement methodology is set forth in the Medicaid State Plan. Any payments in excess of costs shall be refunded to the Division. Any costs in excess of payments shall be paid to the provider. An annual field audit shall be performed by a qualified independent auditor to determine the final settlement amounts.~~

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C;
 Eff. January 1, 1992;
 Temporary Amendment Eff. August 3, 2004;
 Amended Eff. January 1, 2005; 2005.
Readopted Eff. May 1, 2018.

SECTION .0200 – HOSPITAL INPATIENT REIMBURSEMENT PLAN

10A NCAC 22G .0208 ADMINISTRATIVE RECONSIDERATION REVIEWS

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C;
Eff. February 1, 1995; ~~1995~~.
Repealed Eff. May 1, 2018.

SECTION .0500 – REIMBURSEMENT FOR SERVICES

10A NCAC 22G .0502 MENTAL HEALTH CLINIC SERVICES

History Note: Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86;
Eff. February 1, 1984; ~~1984~~.
Repealed Eff. May 1, 2018.

10A NCAC 22G .0509 REIMBURSEMENT PRINCIPLES, HEARING AIDS/ACCESSORIES/BATTERIES

History Note: Authority G.S. 108A-25(b); 108A-54;
Eff. January 4, 1993;
Recodified from 10 NCAC 26H .0509 Eff. January 1, 1994; ~~1994~~.
Repealed Eff. May 1, 2018.

SUBCHAPTER 22H - APPEALS PROCEDURES

SECTION .0100 - BENEFICIARY APPEALS RECIPIENT/APPLICANT APPEAL REVIEW PROCEDURES FOR DENIAL, TERMINATION, SUSPENSION, OR REDUCTION OF A MEDICAID SERVICE OR AN AUTHORIZATION FOR A MEDICAID SERVICE ~~PRIOR APPROVAL REQUESTS FOR MEDICAID COVERED MEDICAL SERVICES OR FOR OTHER MEDICAID COVERED MEDICAL SERVICES~~

10A NCAC 22H .0101 APPEALS BY MEDICAID BENEFICIARIES PURPOSE AND SCOPE

Appeals by Medicaid beneficiaries of determinations by the Division to deny, terminate, suspend, or reduce a Medicaid service or an authorization for a Medicaid service are governed by G.S. 108A-70.9A and 108A-70.9B.

~~(a) The purpose of the rules in this Section is to specify the policies and procedures to provide for recipient/applicant or his/her representative requests for an informal appeal of decisions changing a Medicaid recipient/applicant's level of care, denial, termination, suspension, or reduction of prior approval requests for Medicaid covered medical services or for other Medicaid covered medical services. These policies and procedures do not apply to provider requests for Reconsideration Review of DMA provider post payment review decisions set out in 10A NCAC 22F.~~

~~(b) The rules in this Section apply to decisions made by the Division of Medical Assistance "(DMA)", a Medical Review Independent Professional Review Team "(MR/IPR)", a Prior Approval Unit "(PAU)", other Agencies, or other entities acting as agents of this State agency.~~

~~(c) The decision making body as set out in Paragraph (b) of this Rule shall, within two working days, notify the recipient/applicant in writing of the decision and the following:~~

- ~~(1) the effective date of the decision denying, terminating, reducing, or suspending a service;~~
- ~~(2) the reasons for the agency decision;~~
- ~~(3) the specific regulations that support, or the change in Federal or State law that requires the decision;~~
- ~~(4) the date Medicaid payment will cease, if applicable; at least 11 days after the date of the notification letter;~~
- ~~(5) the opportunity for informal and formal appeal of this decision and procedures for requesting such an appeal; and~~
- ~~(6) the fact that, if appealed, payment for the currently certified level of care or approved service will continue for an eligible Medicaid recipient pending appeal.~~

~~Editor's Note: Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26H .0101(codified as 10A NCAC 22H .0101 effective July 1, 2003) void as applied in Linda Allred, Petitioner v. North Carolina Department of Human Resources, Division of Medical Assistance, Respondent (90 DHR 0940).~~

History Note: Authority G.S. 108A-25(b); 108A-70.9A; 108A-70.9B; 42 C.F.R. 431; 42 C.F.R. 456;
Eff. April 13, 1979;
Amended Eff. May 1, 1990; November 1, 1983; October 4, 1979;
RRC objection due to lack of Authority and ambiguity Eff. October 18, 1995;
Amended Eff. December 11, 1995; ~~1995~~.
Readopted Eff. May 1, 2018.

10A NCAC 22H .0102 REQUESTS FOR FORMAL AND INFORMAL APPEALS

10A NCAC 22H .0103 TIME LIMITS ON REQUESTS FOR RECIPIENT/APPLICANT INFORMAL APPEALS

History Note: Authority G.S. 108A-25(b); 42 C.F.R. 431; 42 C.F.R. 456;
Eff. April 13, 1979;
Amended Eff. December 1, 1995; May 1, 1990; November 1, 1983; October 4, 1979;
Amended Eff. May 1, 1990; October 4, 1979;
RRC objection to Rule .0103 due to lack of Authority and ambiguity Eff. October 18, 1995;
Amended Eff. December 11, 1995; ~~1995~~;
Repealed Eff. May 1, 2018.

10A NCAC 22H .0104 PAYMENT PENDING APPEALS

~~(a) If no informal appeal is requested, payment shall continue for the existing level of care or approved service(s) rendered until the required change (action) date stated in the notification or until the recipient moves from that level of care or discontinues approved service(s), whichever comes first.~~
~~(b) If an informal appeal is requested in accordance with Rule .0103 of this Section, Medicaid payment for that level of care or approved service(s) shall continue until the informal appeal process is completed.~~
~~(c) If a formal appeal is requested in accordance with Rule .0102(b) of this Section, Medicaid payment for that level of care or approved service(s) shall continue until the formal appeal process is completed.~~
~~(d) If a final decision rendered in accordance with G.S. 108A-70.9B(g) upholds the adverse determination, as defined in G.S. 108A-70.9A(a), the Division~~ If the formal appeal decision upholds the original decision by DMA, MR/IPR, PAU, other State Agency or entity, DMA may institute recovery procedures against the beneficiary applicant or recipient to recoup the cost of any services furnished resulting from the formal appeal process.

History Note: Authority G.S. 108A-25(b); 108A-70.9A; 108A-70.9B; 42 C.F.R. 431.230(b); ~~431~~;
Eff. April 13, 1979;
Amended Eff. December 1, 1995; October 4, 1979; ~~1979~~;
Readopted Eff. May 1, 2018.

10A NCAC 22H .0105 DISMISSAL OF APPEAL

History Note: Authority G.S. 108A-25(b); 42 C.F.R. Part 431;
Eff. April 13, 1979;
Amended Eff. December 1, 1995; May 1, 1990; ~~1990~~;
Repealed Eff. May 1, 2018

SECTION .0200 - HEARINGS: TRANSFER AND DISCHARGES FROM NURSING FACILITIES

10A NCAC 22H .0201 DEFINITIONS

The following definitions shall apply throughout this Section; ~~Subchapter:~~

- (1) "Division" means the North Carolina Division of Medical Assistance; ~~Assistance of the Department of Health and Human Services.~~
- (2) "Hearing Officer" means the person designated by the Chief Hearing Officer of the Division's Hearing Unit to preside over hearings between a resident and a nursing facility provider regarding transfers and discharges.
- (3) "Hearing Unit" means the Chief Hearing Officer and his or her staff in the Division of Medical Assistance, Department of Health and Human Services.
- (4) "Notice of Transfer or and Discharge form" means the form developed by the Division containing the elements described at 42 C.F.R. 483.15(c)(5), which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>; ~~Division.~~
- (5) "Request for Hearing" means a written request clear expression, in writing by the resident, resident or family member, member or legal representative of the resident ~~resident~~, that the resident wants to appeal the facility's decision to transfer or discharge.
- (6) The "Request Nursing Home Hearing Request for Hearing form" means the form developed by the Division containing: ~~Division.~~
 - (a) the resident's name;
 - (b) the facility's name;
 - (c) the date of the Notice of Transfer or Discharge form;
 - (d) the date of the scheduled transfer or discharge;
 - (e) the requestor's preference for a telephone hearing or in-person hearing in Raleigh, North Carolina;
 - (f) the requestor's name, address, telephone number, and signature; and
 - (g) the telephone number, fax number, mailing address, and email address of the Division's Hearing Unit.

History Note: Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. Part 483; 42 C.F.R. 483.5; 42 C.F.R. 483.12; 42 C.F.R. 483.202; 42 C.F.R. 483.206;
Eff. April 1, 1994;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015; 2015.
Amended Eff. May 1, 2018.

10A NCAC 22H .0202 TRANSFER AND DISCHARGE REQUIREMENTS

- (a) To transfer or discharge a resident, a facility shall comply with all of the requirements of 42 C.F.R. 483.15, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.
- (b)(a) In addition to the requirements in Paragraph (a) of this Rule, a resident and, if contact information is available, known, a family member or legal representative of the resident, shall be notified in writing of a facility's decision to transfer or discharge the resident. The Notice of Transfer or Discharge form shall be used by a facility when giving notice of a transfer or discharge.
- (c)(b) Failure to complete the Notice of Transfer or Discharge form shall result in the notice of the transfer or discharge being invalid, ineffective.
- (d)(e) The resident shall be handed the Notice of Transfer or Discharge form on the same day that it is dated.
- (e)(d) A copy of the notice of Transfer or Discharge form shall be mailed to the family member or legal representative, if contact information is available, representative on the same day that it is dated.
- (f)(e) The facility shall provide a Nursing Home Hearing Request for Hearing Form to the resident and to the family member or legal representative, if contact information is available, representative simultaneously with at the same time as providing the Notice of Transfer or Discharge form.

History Note: Authority G.S. 108A-25(b); 150B-21.6; 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. 483; 42 C.F.R. 483.5; 42 C.F.R. 483.12; 42 C.F.R. 483.202; 42 C.F.R. 483.206;
Eff. April 1, 1994; 1994.
Readopted Eff. May 1, 2018.

10A NCAC 22H .0204 HEARING PROCEDURES

- (a) Upon timely receipt of a request for a hearing, as set out in Rule .0203 of this Section, the Hearing Unit shall promptly notify the parties facility of the request.
- (b) The parties shall be notified by certified mail of the date, time, time and place of the hearing. Hearings shall be conducted by telephone, unless an in-person hearing is requested. If the hearing is to be conducted in person, it shall be held in Raleigh, North Carolina.
- (c) ~~At least five working days prior to the hearing, the~~ The facility administrator shall make available to the resident all documents and records to be used at the hearing, to be received at least five business days prior to the hearing, hearing. The facility administrator shall forward identical information to the Hearing Unit, to be received at least five business working days prior to the hearing.
- (d) The hearing officer may grant continuances for good cause, continuances.
- (e) The hearing officer may dismiss a request for hearing if the resident or family member or legal representative of the resident fails to appear at a scheduled hearing.
- (f) The hearing officer shall may proceed to conduct a scheduled hearing if a facility representative fails to appear at a scheduled hearing.
- (g) The Rules of Civil Procedures as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall not apply in any hearings held by a Division Hearing Officer, Officer unless another specific statute or rule provides otherwise. Division hearings are not contested case hearings within the meaning of G.S. 150B and shall not be governed by the provisions of that Chapter unless otherwise stated in these Rules. Parties may be represented by counsel or other representative at the hearing.

History Note: Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. Part 483, Subpart E; 483.12;
Eff. April 1, 1994; 1994.
Readopted Eff. May 1, 2018.

10A NCAC 22H .0205 HEARING OFFICER'S FINAL DECISION

- (a) The Hearing Officer's final decision shall uphold or reverse the facility's decision. Copies of the final decision shall be mailed via certified mail to the parties.
- (b) A party may appeal the Hearing Officer's final decision by filing a petition for judicial review in Wake County Superior Court or in the superior court of the county where the petitioner resides within 30 days of the date of the decision letter. Service is made by the placing of the decision in an official depository of the United States Postal Service and addressed to the person or entity at the last address provided. The Department as the decision maker in the appeal to the Hearing Unit shall not be a party of record.

History Note: Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. Part 483, Subpart E; 483.12;
Eff. April 1, 1994; 1994.
Readopted Eff. May 1, 2018.

SECTION .0300 - PASRR ~~PASARR~~ HEARINGS

10A NCAC 22H .0301 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1)(~~a~~) "Division" means the North Carolina Division of Medical Assistance, ~~Assistance of the~~ Department of Health and Human Services.
- (2)(~~b~~) "Hearing Officer" means the person designated by the Chief Hearing Officer of the Division's Hearing Unit to preside over hearings regarding Preadmission Screening and ~~Annual~~ Resident Review (PASRR)(~~PASARR~~) determinations.
- (3)(~~c~~) "Hearing Unit" means the Chief Hearing Officer and his or her staff in the Division of Medical Assistance, Department of Health and Human Services.
- (4)(~~d~~) "Preadmission Screening and ~~Annual~~ Resident Review (PASRR)(~~PASARR~~) Notice of Determination" means the form developed by the Division, containing the elements described at 42 C.F.R. 483.130(k), which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>. ~~Division.~~
- (5)(~~e~~) "Request for Hearing" means a written request on a Hearing Request Form ~~clear expression, in writing,~~ by the evaluated individual or family member or legal representative of the evaluated individual, that the evaluated individual wants to appeal the (PASRR) ~~PASARR~~ determination.
- (6)(~~f~~) The "Hearing Request Form" ~~"Request for Hearing"~~ form means the form developed by the Division containing:
 - (a) the individual's name;
 - (b) the facility name, if the individual is residing in a facility;
 - (c) the requestor's preference for a telephone hearing or in-person hearing in Raleigh, North Carolina; and
 - (d) the requestor's name, address, telephone number, and signature.
- (7)(~~g~~) The "North Carolina PASRR ~~PASARR~~ II Screening form" means both the North Carolina PASRR-MI Psychiatric Screening form and the North Carolina Dual Psychiatric and Intellectual Developmental Disabilities/Related Conditions PASRR II Screening Data form developed by the Division, containing the elements described at 42 C.F.R. 483.128(i)-(j), which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>. ~~Psychiatric/Mental Retardation/Dual Psychiatric and MR/RC Evaluation" forms means the forms developed by the Division.~~

History Note: Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), (f)(3); 1396r(e)(3), (e)(7)(F), (f)(3); 42 C.F.R. 483.5; 42 C.F.R. Part 483, Subparts C and E; 42 C.F.R. 483.128; 42 C.F.R. 483.130; 42 C.F.R. 483.12; 42 C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206;
Eff. October 1, 1994;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015; 2015-
Amended Eff. May 1, 2018.

10A NCAC 22H .0304 HEARING PROCEDURES

- (a) Upon ~~timely~~ receipt of a Hearing Request Form, ~~request for a hearing,~~ the Hearing Unit shall notify the Division of MH/DD/SAS of the request.
- (b) The parties shall be notified by certified mail of the date, time, ~~time~~ and place of the hearing. Hearings shall be conducted by telephone, unless an in-person hearing is requested. If the hearing is to be conducted in person, it shall be held in Raleigh, North Carolina.
- (c) The Division of MH/DD/SAS shall mail all documents and records to be used at the hearing to the person requesting the hearing by certified mail and forward identical information to the Hearing Unit, to be received by both the requestor and the Hearing Unit at least five business working days prior to the hearing.
- (d) The hearing officer may grant continuances for good cause, ~~continuances.~~
- (e) The hearing officer may dismiss a request for a hearing if the evaluated individual or legal representative fails to appear at a scheduled hearing.
- (f) The hearing officer shall ~~may~~ proceed to conduct a scheduled hearing if the Division of MH/DD/SAS fails to appear at a scheduled hearing.
- (g) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall not apply in any hearings held by the Division Hearing Officer, ~~Officer unless another specific statute or other rule provides otherwise.~~ Division hearings are not contested case hearings within the meaning of G.S. 150B and shall not be governed by the provisions of that chapter unless otherwise stated in these Rules. The hearing officer may use the North Carolina Rules of Evidence for guidance in conducting hearings. Parties may be represented by counsel or other representative at the hearing.

History Note: Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), ~~(e)(7)(F)~~, (f)(3); 42 U.S.C.S. 1396r(e)(3), ~~(e)(7)(F)~~, (f)(3); 42 C.F.R. 431.200; 42 C.F.R. Part 483, Subpart E; 42 C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206; Eff. October 1, 1994; 1994.
Readopted Eff. May 1, 2018.

10A NCAC 22H .0305 HEARING OFFICER'S FINAL DECISION

(a) The Hearing Officer's final decision shall uphold or reverse the Division of MH/DD/SAS' decision. Copies of the final decision shall be mailed via certified mail to the parties.

(b) A party may appeal the Hearing Officer's final decision by filing a petition for judicial review in Wake County Superior Court or in the superior court of the county where the petitioner resides within 30 days of the date of the decision letter. Service is made by the placing of the decision in an official depository of the United States Postal Service and addressed to the person or entity at the last address provided. The Department as the decision maker in the appeal to the Hearing Unit shall not be a party of record.

History Note: Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), ~~(e)(7)(F)~~, (f)(3); 42 U.S.C.S. 1396r(e)(3), ~~(e)(7)(F)~~, (f)(3); 42 C.F.R. 431.200; 42 C.F.R. Part 483, Subpart E; 42 C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206; Eff. October 1, 1994; 1994.
Readopted Eff. May 1, 2018.

SUBCHAPTER 22I - TITLE XIX REIMBURSEMENT AND ADMINISTRATIVE REVIEW PROCESS

SECTION .0100 - AUDIT REVIEW PROCESS

10A NCAC 22I .0104 RECONSIDERATION REVIEW

History Note: Authority G.S. 108A-25(b); Eff. September 24, 1980; Amended Eff. January 1, 1988; 1988.
Repealed Eff. May 1, 2018.

SUBCHAPTER 22K - QUALIFIED PROVIDERS

10A NCAC 22K .0102 AGREEMENT

(a) The provider ~~must~~ shall agree to participate in training offered by the Division of Medical Assistance (DMA) or its agents and to make presumptive eligibility determinations pursuant to 42 C.F.R. 435.1103, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>, and the Medicaid State Plan, ~~based on the procedures and guidelines issued by the DMA.~~

(b) The ~~Division DMA may~~ shall terminate the provider's Medicaid Participation agreement and authority to make presumptive determinations if the provider fails to make required referrals within five business days or fails to follow procedures set forth in Section MA3245 of the Department of Health and Human Service's Family and Children's Medical Manual, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www2.ncdhhs.gov/info/olm/manuals/dma/fcm/man/ma3245-01.htm>, ~~procedures and guidelines~~ resulting in eligibility denials for a majority of the provider's referrals.

(c) Termination of the agreement ~~will~~ shall occur 30 calendar days following notification when termination is initiated by the Division, DMA.

History Note: Authority G.S. 108A-25(b); 42 U.S.C. 1396r-1; 42 C.F.R. 435.1103; 1987 Session Laws, c. 738; P.L. 99-509; Eff. June 1, 1988; 1988.
Readopted Eff. May 1, 2018.

SUBCHAPTER 22L - MANAGED CARE AND PREPAID PLANS

SECTION .0100 - MANAGED CARE

10A NCAC 22L .0101 PROGRAM DEFINITION

~~Carolina ACCESS~~ The Division's primary care case management contractor will shall contract with primary care physicians in participating counties to deliver and coordinate the health care of certain categories of Medicaid ~~recipients.~~ beneficiaries listed in 10A NCAC 22L .0104.

History Note: Authority G.S. 108A-25(b); ~~Section 93(h) of Chapter 689, 1991 North Carolina Session laws;~~ Eff. August 3, 1992; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015; 2015.

Amended Eff. May 1, 2018.

10A NCAC 22L .0103 ACCESS TO CARE

~~Carolina ACCESS~~ The Division's primary care case management enrollees ~~are~~ shall be eligible to receive all health care services that all Medicaid recipients beneficiaries are eligible for. ~~They~~ Beneficiaries receive their services through their primary care physician who either provides or coordinates their health care. ~~The Division of Medical Assistance has the authority to deny payment for covered services that are not authorized by the primary care physician.~~

History Note: Authority G.S. 108A-25(b); ~~Section 93(h) of Chapter 689, 1991 North Carolina Session laws;~~
Eff. August 3, 1992; ~~1992.~~
Readopted May 1, 2018.

10A NCAC 22L .0104 ENROLLMENT

All Medicaid beneficiaries recipients in participating counties who are eligible for ~~Carolina ACCESS~~ primary care case management shall enroll. ~~enroll in Carolina ACCESS.~~ Eligible Medicaid beneficiaries recipients eligible for ~~Carolina ACCESS~~ include AFDC, AFDC-related, MIC, Aged, Blind and Disabled categories, unless exempt due to institutional placement. Institutional placement includes nursing home, mental institutions, institutions and domiciliary care. The following beneficiaries have the option to enroll in primary care case management: Medicaid for Pregnant Women, benefit diversion beneficiaries, beneficiaries with end stage renal disease, and Native Americans/Alaska Natives. Medicaid recipients who are Medicaid Pregnant Women, foster children or who are also on Medicare, have the option to enroll in Carolina ACCESS.

History Note: Authority G.S. 108A-25(b); ~~Section 93(h) of Chapter 689, 1991 North Carolina Session laws;~~
Eff. August 3, 1992; ~~1992.~~
Readopted May 1, 2018.

SECTION .0200 - PREPAID PLANS

10A NCAC 22L .0201 PROGRAM DEFINITION

~~The Division of Medical Assistance (DMA)~~ may contract with Federally qualified Health Maintenance Organizations (HMOs) and State licensed and certified HMOs to provide and coordinate medical services for Medicaid eligibles. Prior to ~~the Division DMA~~ awarding a contract to an HMO, the HMO shall ~~must submit an application in which it demonstrates~~ demonstrate its ability to meet all ~~contract specifications.~~ qualifications set forth in the Medicaid Provider Administrative Participation Agreement.

History Note: Authority G.S. 108A-25(b);
Eff. August 3, 1992;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015; 2015-
Amended Eff. May 1, 2018.

SUBCHAPTER 22N – PROVIDER ENROLLMENT

SECTION .0100 – GENERAL

10A NCAC 22N .0101 DEFINITIONS

(a) For the purpose of this Subchapter, a "provider" is defined as in G.S. 108C-2(10). ~~any individual, facility or entity that applies to furnish services to authorized Medicaid recipients and bill Medicaid directly for reimbursement. The term "provider" also includes suppliers of medical equipment and supplies.~~

(b) For the purpose of this Subchapter, an "owner" is defined as in G.S. 108C-2(9).

History Note: Authority G.S. 108A-54; 108C-2(9),(10); 143B-139.1; 42 C.F.R. 400.203; 42 C.F.R. 455.101;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015; 2015-
Amended Eff. May 1, 2018.

SECTION .0200 - ENTITIES LICENSED UNDER NCGS 122C OR NCGS 131D

10A NCAC 22N .0201 DEFINITIONS

History Note: Authority G.S. 108A-54; 143B-139.1;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015; 2015-

Repealed Eff. May 1, 2018.

10A NCAC 22N .0202 DISCLOSURE OF OWNERSHIP

Providers ~~who undergo a change in ownership as defined in G.S. 108C-10 licensed under North Carolina G.S. 122C or G.S. 131D~~ shall comply with the following disclosure conditions:

- (1) ~~when~~ ~~When~~ applying to participate in the North Carolina Medicaid program, the provider shall supply the legal name and social security number of each individual who is an ~~owner; owner-~~
- (2) ~~an~~ ~~An~~ enrolled provider shall notify the Division of ~~Medical Assistance~~ in writing of a change in the legal name of any owner. The notification ~~must shall~~ be received within 30 calendar days of the effective date of any change; ~~within 30 business days following the change.~~
- (3) ~~an~~ ~~An~~ enrolled provider shall notify the Division of ~~Medical Assistance~~ in writing if a new owner joins the provider. The notification shall include the new owner's legal name and social security number. The notification ~~must shall~~ be received within 30 calendar days of the effective date of any change; ~~no later than 30 business days following the change. and~~
- (4) ~~an~~ ~~An~~ enrolled provider shall notify the Division of ~~Medical Assistance~~ in writing if an owner withdraws his ownership interest in the provider. The notification shall include the name of the departing owner and ~~must shall~~ be received within 30 calendar days of the effective date of any ~~no later than 30 business days following the change.~~

History Note: Authority G.S. 108A-54; 108C-10; 143B-139.1; 42 C.F.R. 455.104; 42 C.F.R. 455.106;
Eff. July 1, 2004; ~~2004.~~
Readopted Eff. May 1, 2018.

SECTION .0300 – ENTITIES PROVIDING SPECIFIED HABILITATIVE AND REHABILITATIVE SERVICES

10A NCAC 22N .0301 DEFINITIONS

History Note: Authority G.S. 108A-54; 143B-139.1;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015; ~~2015.~~
Repealed Eff. May 1, 2018.

10A NCAC 22N .0302 DISCLOSURE OF OWNERSHIP

10A NCAC 22N .0303 ENROLLMENT RESTRICTIONS

History Note: Authority G.S. 108A-54; 143B-139.1;
Eff. July 1, 2004; ~~2004.~~
Repealed Eff. May 1, 2018.

SUBCHAPTER 220 - MEDICAL ASSISTANCE PROVIDED

SECTION .0100 - GENERAL

10A NCAC 220 .0112 PSYCHIATRIC ADMISSION CRITERIA/MEDICAID BENEFICIARIES UNDER AGE 21

History Note: Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 441, Subpart D; 42 C.F.R. 441.151;
Eff. October 1, 1993;
Amended Eff. February 1, 1996; ~~1996.~~
Repealed Eff. May 1, 2018.