

**Fiscal Impact Analysis of
Permanent Rule Readoption – 10A NCAC 22B**

Agency Proposing Rule Change

North Carolina Department of Health and Human Services, Division of Medical Assistance

Contact Persons

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Impact Summary

Federal Government:	No Impact
State Government:	No Impact
Local Government:	No Impact
Private Individuals/Entities:	No Impact
Substantial Impact:	No

Title of Rules Changes and Statutory Citations

10A NCAC 22B – Provider Issues

Section .0100 - General

- 10A NCAC 22B .0101 – Institutional Health Services (Readopt)
- 10A NCAC 22B .0102 – Coordination with Title XVIII (Readopt)
- 10A NCAC 22B .0103 – Institutional Standards (Readopt)
- 10A NCAC 22B .0104 – Time Limitation (Readopt)
- 10A NCAC 22B .0105 – Overutilizer Identification (Repeal)

**See proposed text of these rules in Appendix 1.*

Statutory Authority

NCGS §§ 108A-25(b), 108A-54, 108A-54.1B

Background

Under authority of NCGS § 150B-21-3A, periodic review and expiration of existing rules, the Division of Medical Assistance, Rules Review Commission, and the Joint Legislative Administrative Procedure Oversight Committee approved the subchapter report with classifications for the rules located at 10A NCAC 22B – Provider Issues. The following five rules were classified as necessary with substantive public interest in this report: 10A NCAC 22B .0101, .0102, .0103, .0104, and .0105.

The agency is presenting 22B .0103 for readoption with one substantive change, 22B .0101, .0102, and .0104 for readoption with minor, non-substantive changes, and 22B .0105 for repeal.

Pursuant to NCGS § 150B-21.3A(d)(2), an agency is not required to prepare a fiscal note if a rule is readopted without substantive change or if the rule is amended to impose a less stringent burden on regulated persons. In addition, pursuant to NCGS § 150B-21.4(d), agencies are not required to prepare a fiscal note when proposing to repeal an existing rule. For that reason, this fiscal note focuses on 22B .0103. The agency has also prepared a brief explanation for the non-substantive changes made to 22B .0101, .0102, and .0104.

Rule Summary and Anticipated Fiscal Impact

Rule 22B .0101 – Institutional Health Services

10A NCAC 22B .0101 concerns institutional health services and certificates of need. The agency is proposing to readopt this rule with minor, non-substantive, technical changes to clarify and update language. None of these changes impact the way the rule is implemented.

Fiscal Impact:

All changes to this rule are minor, non-substantive, technical changes. There is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule 22B .0102 – Coordination with Title XVIII

10A NCAC 22B .0102 concerns coordination with Medicare. The agency is proposing to readopt this rule with minor, non-substantive, technical changes to clarify and update language and formatting, including incorporating the relevant provision of the Social Security Act per N.C.G.S. § 150B-21.6. None of these changes impact the way the rule is implemented.

Fiscal Impact:

All changes to this rule are minor, non-substantive, technical changes. There is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule 22B .0103 – Institutional Standards

10A NCAC 22B .0103 was changed to add Title XXI of the Social Security Act, which governs the Children’s Health Insurance Program (CHIP), also known as NC Health Choice. All other changes to this rule are minor, non-substantive, technical changes to clarify and update language and formatting, including incorporating the relevant provisions of the Social Security Act per N.C.G.S. § 150B-21.6.

Fiscal Impact

Adding CHIP to this rule was precipitated by the federal adoption of Title XXI of the Social Security Act. However, pursuant to 42 CFR 457.990, the same requirements apply to both Medicaid and CHIP. All other changes to this rule are minor, non-substantive, technical changes. For these reasons, there is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule 22B .0104 – Time Limitations

10A NCAC 22B .0104 concerns the time limits to receive payment. The agency is proposing to readopt this rule with minor, non-substantive, technical changes to clarify language and update formatting. None of these changes impact the way the rule is implemented.

Fiscal Impact:

All changes to this rule are minor, non-substantive, technical changes. There is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

1 10A NCAC 22B .0101 is proposed for reoption without substantive change as follows:

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SUBCHAPTER 22B – PROVIDER ISSUES

SECTION .0100 - GENERAL

10A NCAC 22B .0101 INSTITUTIONAL HEALTH SERVICES

No provider ~~shall~~ may be enrolled in the Medicaid Program to provide any new institutional health service for which a Certificate of Need is required under G.S. 131E, Article 9 without first obtaining a Certificate of Need and meeting the conditions imposed by it.

History Note: Authority G.S. 108A-25(b); 108A-54;
Eff. March 1, 1993;
Recodified from 10 NCAC 26B .0124 Eff. October 1, 1993;
Recodified from 10 NCAC 26B .0125 Eff. April 1, 1994;
Recodified from 10 NCAC 26B .0126 Eff. January 1, 1998; ~~1998~~.
Readopted Eff. March 31, 2018.

1 10A NCAC 22B .0102 is proposed for readoption without substantive change as follows:

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3 **10A NCAC 22B .0102 COORDINATION WITH TITLE XVIII**

4 The entire range of benefits under Part B of Title XVIII of the Social Security Act, which is adopted and incorporated
5 by reference with subsequent changes or amendments and available free of charge at <http://uscode.house.gov/>, to
6 Medicare -- eligible persons shall be provided through a buy-in agreement with the Secretary of Health and Human
7 Services. This agreement shall cover all persons eligible under the Medicaid State Plan. ~~state's approved Title XIX~~
8 ~~plan.~~

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10 *History Note: Authority G.S. 108A-25(b); 108A-54;*

11 *Eff. February 1, 1976;*

12 *Readopted Eff. October 31, 1977;*

13 *Amended Eff. June 1, 1998; ~~1988~~.*

14 *Readopted Eff. March 31, 2018.*

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1 10A NCAC 22B .0103 is proposed for reoption with substantive changes as follows:

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3 **10A NCAC 22B .0103 INSTITUTIONAL STANDARDS**

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

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10 *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.
11 457.990; 442, Subparts (D)(E);
12 Eff. February 1, 1976;
13 Readopted Eff. October 31, 1977; 1977.
14 Readopted Eff. March 31, 2018.

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1 10A NCAC 22B .0104 is proposed for readoption without substantive change as follows:

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3 **10A NCAC 22B .0104 TIME LIMITATION**

4 (a) To receive payment, claims ~~shall~~ ~~must~~ be filed either:

- 5 (1) ~~within~~ ~~Within~~ 365 days of the date of service for services other than inpatient hospital, home health
6 or nursing home services; ~~or~~
- 7 (2) ~~within~~ ~~Within~~ 365 days of the date of discharge for inpatient hospital services and the last date of
8 service in the month for home health and nursing home services not to exceed the limitations as
9 specified in 42 C.F.R. 447.45, which is adopted and incorporated by reference with subsequent
10 changes or amendments and available free of charge at <https://www.ecfr.gov/>; 447.45; or
- 11 (3) ~~within~~ ~~Within~~ 180 days of the Medicare or other third party payment, or within 180 days of final
12 denial, when the date of the third party payment or denial exceeds the filing limits in Subparagraphs
13 (1) or (2) of this Paragraph Rule, if it ~~may~~ ~~can~~ be shown that:
- 14 (A) ~~a~~ ~~A~~ claim was filed with a prospective third-party payor within the filing limits in
15 Subparagraph (1) or (2) of this Paragraph Rule; ~~and~~
- 16 (B) ~~there~~ ~~There~~ was a possibility of receiving payment from the third party payor with whom
17 the claim was filed; and
- 18 (C) good faith ~~Bona fide and timely~~ efforts were pursued to achieve either payment or final
19 denial of the third-party claim.

20 (b) Providers ~~shall~~ ~~must~~ file requests for payment adjustments or requests for reconsideration of a denied claim no
21 later than 18 months after the date of payment or denial of a claim.

22 (c) The time limitation specified in Paragraph (a) of this Rule may be waived by the Division of Medical Assistance
23 when a correction of an administrative error in determining eligibility, application of court order or hearing decision
24 grants eligibility with less than 60 days for providers to submit claims for eligible dates of service, provided the claim
25 is received for processing within 180 days after the date the county department of social services approves the
26 eligibility.

27 (d) In cases where claims or adjustments were not filed within the time limitations specified in Paragraphs (a) and (b)
28 of this Rule, and the provider shows good cause for the failure to do so, so was beyond his control, he the provider
29 may request a reconsideration review by the Director of the Division of Medical Assistance. “Good cause” is an action
30 uncontrollable by the provider. The Director of Medical Assistance ~~shall be~~ ~~is~~ the final authority for reconsideration
31 reviews. If the provider wishes to contest this decision, he may do so by filing a petition for a contested case hearing
32 in conformance with G.S. 150B-23.

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34 *History Note:* Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 447.45;
35 Eff. February 1, 1976;
36 Amended Eff. October 1, 1977;
37 Readopted Eff. October 31, 1977;

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Amended Eff. June 1, 1993; June 1, 1988; November 1, 1986; July 1, 1985; ~~1985~~.
Readopted Eff. March 31, 2018.

1 10A NCAC 22B .0105 is proposed for readoption as a repeal as follows:

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3 **10A NCAC 22B .0105 OVERUTILIZER IDENTIFICATION**

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5 *History Note: Authority G.S. 108A-25(b);*

6 *Eff. January 1, 1978;*

7 *Amended Eff. May 1, 1990; October 4, 1979; ~~1979~~.*

8 *Repealed Eff. March 31, 2018.*

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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

TO: Office of State Budget and Management

FROM: Virginia R. Niehaus, DMA Rulemaking Coordinator

DATE: October 25, 2017

RE: Federal Certification for N.C. Department of Health and Human Services,
Division of Medical Assistance (DMA) Rule Readoption
Subchapter 22B – Provider Issues

Rule-making Coordinator's Certificate

As Required by GS 150B-19.1(g)
For Proposed Permanent and Temporary Rules Adopted to
Implement a Federal Law or which upon Receipt of Federal Funds is Conditioned

10A NCAC 22B .0103 is proposed for readoption to be compatible with federal law governing standards for institutional providers participating in Medicaid, Medicare, and the Children's Health Insurance Program. Regulation by the State of North Carolina of institutional standards for participation in these programs is subject to the provisions of Titles XVIII, XIX and XXI of the Social Security Act as well as 42 CFR § 440.10 (Inpatient hospital services, other than services in an institution for mental diseases), 42 CFR Part 442 (Standards for payment to nursing facilities and intermediate care facilities for individuals with intellectual disabilities), and 42 CFR § 457.990 (Provider and supplier screening, oversight, and reporting requirements). The readoption of 10A NCAC 22B .0103 is necessary to comply with this federal statute and regulations.

10A NCAC 22B .0104 is proposed for readoption to be compatible with federal law governing time limitations for providers to file a claim. Regulation by the State of North Carolina of time limitations for provider claim submission to Medicaid is subject to the provisions of 42 CFR § 447.45 (Timely claims payment). The readoption of 10A NCAC 22B .0104 is necessary to comply with this federal regulation.