

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

Agency Proposing Rule Change

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

Contact Persons

John Thompson, Director, Office of Compliance and Program Integrity - (919) 814-0123
Patrick Piggott, Associate Director, Compliance and Office of Program Integrity - (919) 814-0143
Lotta Crabtree, Associate Director of Appeals – (919) 855-4055
Virginia Niehaus, Rulemaking Coordinator - (919) 855-4111

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 22F – Program Integrity

Section .0100 – General

- 10A NCAC 22F .0104 – Prevention (Readopt)
- 10A NCAC 22F .0105 – Detection (Readopt)
- 10A NCAC 22F .0106 – Confidentiality (Readopt)
- 10A NCAC 22F .0107 – Record Retention (Readopt)

Section .0200 – Provider Fraud and Physical Abuse of Recipients

- 10A NCAC 22F .0201 – Definition of Provider Fraud (Readopt)
- 10A NCAC 22F .0202 – Investigation (Readopt)
- 10A NCAC 22F .0203 – Referral to Law Enforcement Agency (Readopt)

Section .0300 – Provider Abuse

- 10A NCAC 22F .0301 – Definition of Provider Abuse (Readopt)
- 10A NCAC 22F .0302 – Investigation (Readopt)

Section .0400 – Agency Reconsideration Review

- 10A NCAC 22F .0401 – Purpose (Repeal)
- 10A NCAC 22F .0402 – Reconsideration Review for Program Abuse (Readopt)

Section .0600 – Administrative Sanctions and Recoupment

- 10A NCAC 22F .0601 – Recoupment (Readopt)
- 10A NCAC 22F .0602 – Administrative Sanctions and Remedial Measures (Readopt)
- 10A NCAC 22F .0603 – Provider Lock-Out (Readopt)

- 10A NCAC 22F .0604 – Suspending of Medicaid Payments (Readopt)
- 10A NCAC 22F .0605 – Termination (Repeal)
- 10A NCAC 22F .0606 – Technique for Projecting Medicaid Overpayments (Readopt)

Section .0700 – Recipient Fraud and Abuse

- 10A NCAC 22F .0704 – Recipient Management Lock-In System (Readopt)
- 10A NCAC 22F .0706 – Recoupment of Overpayments (Readopt)

**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 Department of Health and Human Services, Rule Review Commission, and the Joint Legislative Administrative Procedure Oversight Committee approved the subchapter report with classifications for the rules located at 10A NCAC. 22F – Program Integrity. The following rules were classified as necessary with substantive public interest: 10A NCAC 22F .0104, .0105, .0106, .0107, .0201, .0202, .0203, .0301, .0302, .0402, .0601, .0602, .0603, .0604, .0605, .0606, .0704, and .0706.

The agency is presenting 22F.0107, .0202, .0402, and .0602, for readoption with substantive changes, 22F .0104, .0105, .0201, .0203, .0301, .0302, .0601, .0603, .0604, .0606, .0704 and .0706 for readoption with minor, non-substantive changes, .0106 for readoption without changes (except minor history note clarifications/updates), and .0605 for repeal. In addition, the agency is presenting one rule for repeal that was deemed necessary without substantive public interest, 22F .0401.

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. 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 the following rules: 22F .0107, .0202, .0402, and .0602. The agency has also prepared brief explanations for non-substantive changes made to 22F .0104, .0105, .0201, .0203, .0301, .0302, .0601, .0603, .0604, .0606, .0704, and .0706.

10 NCAC 22F provides operating rules for the Division of Medical Assistance, Office of Compliance and Program Integrity, to guide the mission of detecting, investigating, and remediating fraud, waste, and abuse and assisting in the prosecution of criminal fraud. The rules also outline for providers of Medicaid services their rights and responsibilities in preserving the integrity of the Medicaid program. The proposed changes are largely intended to provide clarity, remove ambiguity, and implement technical and formatting changes for better understanding. Changes also include updates to citations in federal and state law.

Rules Summaries and Anticipated Fiscal Impact

Rule .0104

10A NCAC 22F .0104 concerns prevention of fraud, waste, and abuse. The agency is proposing to readopt this rule with minor, non-substantive changes to update and clarify language and reflect current terminology. Line 6 reflects the fact that provider manuals are electronically accessible to all providers and have been for quite some time, in lieu of physically “furnishing” providers with hard copies. Line 14-15 clarifies that investigation is the other appropriate review method currently referred to in the rule. It does not represent any change in practice. Lines 30-32 were updated to clarify what is meant by policies or guidelines. It is not a change in practice. Line 33 reflects that fact that the various provider agreements used in 1984 have since been merged into a single agreement used by all providers to streamline the process. These changes do not impact the way the rule is implemented. Other changes to this rule are minor, technical changes made to add clarity and update rule formatting and terminology.

Fiscal Impact

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

Rule .0105

10A NCAC 22F .0105 concerns detection of fraud, waste, and abuse. The agency is proposing to readopt this rule with minor, non-substantive changes to update and clarify language. In addition, Lines 7-10 were deleted because these provisions set out internal management information that does not need to be contained within the rule.

Fiscal Impact

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

Rule .0107

10A NCAC 22F .0107 is regarding provider record retention. The agency is proposing to readopt this rule with minor, substantive changes to language. Title XXI of the Social Security Act, which governs the Children’s Health Insurance Program (CHIP), also known as NC Health Choice, was added to the rule. The word “full” was added at line 7 to strengthen the language and clarify that records are to be held for a full 5 years (60 months) from date of service. The words “data retention” were added at line 8 to clarify the type of agreements. Also, it was clarified that, following notification of an audit or request for records, providers must retain related records for a full 5 years from notification or until the investigation is concluded.

Fiscal Impact

Adding CHIP to this rule was precipitated by the federal adoption of Title XXI of the Social Security Act. However, the same requirements apply to both Medicaid and CHIP. For that reason, there is no fiscal impact to this change. In addition, the minor substantive changes to the rule regarding the length of record retention do not substantially change the provider’s current

practice and are not expected to increase cost. For that reason, there is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule .0201

10A NCAC 22F .0201 contains the definition of provider and provider fraud. The changes in paragraph (a) are minor, non-substantive changes to clarify the authority and update the 150B statutory citation. The change in paragraph (b) is a minor, non-substantive change to clarify language.

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 22F .0202

10A NCAC 22F .0202 pertains to investigations of fraud, waste, and abuse. The agency is proposing to readopt this rule with one substantive change. The Division communicates with providers regarding the detection of fraud, waste, and abuse. However, “publish[ing] methods and procedures” could allow providers to devise methods to avoid detection and negatively impact the agency’s ability to detect wrongdoing. For that reason, the agency is repealing paragraph (a) of this rule. In addition, the agency replaced “aberrant practices” with “fraud, waste, abuse, overutilization, error, or practices not conforming to regulations or policy.” This is merely a clarification and not a change in practice.

Fiscal Impact

This substantive change has no fiscal impact because if such methods and procedures were published, they would be published free of cost on the agency’s website. There is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule 22F .0203

10A NCAC 22F .0203 describes the processing for referring cases to a law enforcement agency. The agency is proposing to readopt this rule with minor, non-substantive changes to update language and reflect current terminology. These changes make the language in the rule compatible with the language used in state and federal law. These changes do not 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 .0301

10A NCAC 22F .0301 sets out the definition of provider abuse. The agency is proposing to readopt this rule with minor, non-substantive changes to clarify language and update formatting.

The agency clarified the definition of abuse by referencing and incorporating a federal regulation. These changes do not 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 re adoption of this rule.

Rule 22F .0302

10A NCAC 22F .0302 pertains to investigations of provider abuse. The agency is proposing to re adopt this rule with minor, non-substantive, technical changes to update and clarify language. The change to paragraph (a), line 1 was to clarify what is meant by abusive practices. The change to paragraph (c), lines 9-10 was to reflect existing requirements from rule .0601 of this subchapter, which is independently enforceable. The changes to the subparagraphs within paragraph (c) are merely to reorder and further clarify potential actions. There are no new actions and no existing actions have been substantially changed. The change in paragraph (e), lines 26-28 was to clarify the agency's authority to verify provider licensure. Other changes to this rule are minor, technical changes made to add clarity and update rule formatting and terminology.

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 re adoption of this rule.

Rule 22F .0402

10A NCAC 22F .0402 outlines the process for reconsideration reviews. The agency is making both substantive and non-substantive changes to this rule. This analysis focuses on substantive changes. The change in paragraph (b) is to allow providers 30 business days (rather than 15 working days) to submit requests for reconsideration review. This change is to align the rule with North Carolina Session Law 2011-375, Section 2. The change in paragraph (c) is to clarify that the notice of reconsideration review shall be sent to the provider within 30 business days, rather than the review being scheduled within 20 calendar days. It is sometimes not feasible to schedule the reconsideration review within this tight timeline. The new paragraph (d) adds that providers shall be required to submit a written statement. This allows the hearing officer to be better prepared for the review and gives the provider the opportunity to set out and support arguments in writing. The changes to the new paragraph (f), formerly paragraph (e), include allowing the hearing unit 30 business days from the date the record is closed to complete a decision, updating the statutory citation for contested cases, and clarifying that, if the provider does not timely appeal to the Office of Administrative Hearings, no further appeal is permitted. Other minor, non-substantive changes include clarifying the language in paragraph (a) and reformatting the new paragraph (e), formerly paragraph (d).

Fiscal Impact

The following changes were analyzed for fiscal impacts:

1. The changes in paragraph (b) are to align with existing state law and, therefore, do not have a fiscal impact.
2. The change in paragraph (c) from scheduling the review within 20 calendars days to sending the notice within 30 business days will not have a fiscal impact on the agency and is not enough of a delay to result in a noticeable change in NPV for provider payments.
3. The new paragraph (d) requires providers to submit a written statement. However, such statements are short and not expected to take a significant amount of time. There is no fiscal impact on self-represented providers or to providers with counsel, as this is something routinely produced in the course of representation.
4. The changes in paragraph (f) are also not expected to yield a fiscal impact. The primary substantive change is to the amount of time allowed for a final decision. Such a change will *not* increase the number of cases or result in earlier payments. As such, there is no anticipated fiscal impact.

For the reasons explained above, there is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule 22F .0601

10A NCAC 22F .0601 contains information on recoupment. The only changes to this rule are minor, non-substantive changes to reference and incorporate the definition of improper payments from federal regulation and to streamline and harmonize the language with rule .0402 of this subchapter. Neither of these changes impact the way this 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 22F .0602

10A NCAC 22F .0602 describes administrative sanctions and remedial measures the agency may use to address program abuse by providers. The agency is proposing to readopt this rule with both non-substantive and substantive changes to update and clarify language. In paragraph (a), line 1, “remedial measures” is added to harmonize with the title. The language that sanctions and measures “do not have to be imposed in any particular order” is to clarify that these sanctions/measures are not listed in order of severity and the agency does not have to progress through them. The federal regulations added to (a)(2) and (a)(3) are intended to clarify the requirement for “access to reasonable service of adequate quality.” The change in (a)(5) is intended to clarify requirements for provider compliance. The change in subparagraph (a)(5) references the new prepayment review statute. Finally, in paragraph (b), the removal of notification to the Attorney General’s office harmonizes this rule with rule .0203, which requires notification only upon “credible allegation of fraud”. The language in (b) was also changed to clarify what is meant by “appropriate professional society, board of licensure.” Other changes to

this rule are minor, technical changes made to add clarity and update rule formatting and terminology. None of these changes impact the way this rule is implemented.

Fiscal Impact

There is one primary substantive change to this rule, which is the addition of the prepayment review statute in (a)(5). There is no impact due to this change because it aligns with an existing state statute. All other changes to this rule are minor, non-substantive, technical changes. For that reason, there is no fiscal impact to federal government, state government, local governments, or private industry associated with the re adoption of this rule.

Rule 22F .0603

10A NCAC 22F .0603 concerns provider lock-out from participating in Medicaid. The agency is proposing to re adopt this rule with minor, non-substantive changes. Changes to paragraph (a) are intended to simplify and clarify language. This language change does not impact the way the rule is implemented. In practice, provider lock-out is rarely used, as most providers respond to mediation. Those who do not are usually terminated for overwhelming causes. This rule describes the unusual circumstances in which lock-out is employed and this revised language reflects the range of possible bases for such action. Also, as above, the federal regulations added to (a)(3) are intended to clarify the requirement for “access to reasonable service of adequate quality.”

Fiscal Impact

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

Rule 22F .0604

10A NCAC 22F .0604 concerns the withholding of Medicaid payments. The agency is proposing to re adopt this rule with minor, non-substantive, technical changes to update language and reflect current terminology. The primary change is to replace “withhold” with “suspend.” This is to clarify that payments legitimately earned are not forever “withheld,” but suspended pursuant to 42 CFR 455.23 in order to determine legitimacy. There is no impact to this word change because it does not change the way the rule is implemented. The other main changes were to update the language incorporating the federal regulation citation and add the cross-reference to 10A NCAC 13B .3302 for clarity.

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 re adoption of this rule.

Rule 22F .0606

10A NCAC 22F .0606 concerns the technique for projecting Medicaid overpayments. The agency is proposing to re adopt this rule with minor, non-substantive, technical changes to update language and reflect current terminology.

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 22F .0704

10A NCAC 22F .0704 concerns the recipient management lock-in system. The agency is proposing to readopt this rule with minor, non-substantive, technical changes to update language and formatting and to reflect current terminology. The primary change was to reference and incorporate federal regulations to clarify the lock-in process.

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 22F .0706

10A NCAC 22F .0706 concerns recoupment of overpayments. The agency is proposing to readopt this rule with minor, non-substantive, technical changes to update language and formatting and to reflect current terminology. On line 4, “ensure” was changed to “oversee” for clarity. On lines 11 and 14-15, language was updated to clarify the existing process for how recoupments are apportioned and received.

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 22F .0104 is proposed for readoption without substantive change as follows:

2
3 **10A NCAC 22F .0104 PREVENTION**

4 (a) Provider Education. The Division ~~may, may at its discretion,~~ or shall upon the request of a provider, conduct
5 on-site educational visits to assist a provider in complying with requirements of the Medicaid Program.

6 (b) Provider Manuals. The Division ~~shall will~~ prepare and make available ~~furnish each provider with~~ a provider
7 manual containing at least the following information:

- 8 (1) amount, duration, and scope of assistance;
- 9 (2) participation standards;
- 10 (3) penalties;
- 11 (4) reimbursement rules; and
- 12 (5) claims filing instructions.

13 (c) Prepayment Claims Review. The Division ~~shall will~~ check eligibility, duplicate payments, third party liability,
14 and unauthorized or uncovered services by means of prepayment review, computer edits and audits, and investigation.
15 ~~other appropriate methods of review.~~

16 (d) Prior Approval. The Division shall require prior approval for certain specified covered services as set forth in the
17 Medicaid State Plan.

18 (e) Claim Forms. Claim forms shall contain ~~The Division's provider claim forms shall include~~ the following
19 requirements ~~that for provider participation and payment.~~ ~~These requirements shall be binding on upon~~ the Division
20 and the providers:

- 21 (1) ~~medicaid~~ Medicaid payment constitutes payment in full; ~~full.~~
- 22 (2) ~~charges~~ Charges to Medicaid recipients for the same items and services shall not be higher than for
23 private paying ~~patients;~~ patients.
- 24 (3) ~~the~~ The provider shall keep all records as necessary to support the services claimed for
25 ~~reimbursement;~~ reimbursement.
- 26 (4) ~~the~~ The provider shall fully disclose the contents of his Medicaid financial and medical records to
27 the Division and its ~~agents;~~ agents.
- 28 (5) ~~medicaid~~ Medicaid reimbursement shall only be made for medically necessary care and services as
29 defined in 10A NCAC 25A .0201; and ~~services.~~
- 30 (6) ~~the~~ The Division may suspend or terminate a provider for violations of Medicaid laws, federal
31 regulations, the rules of this Subchapter, the provider administrative participation agreement, the
32 Medicaid State Plan, and Medicaid Clinical Coverage policies. ~~policies, or guidelines.~~

33 (f) ~~Pharmacy and Institutional~~ Provider Administrative Participation Agreements. All ~~institutional and pharmacy~~
34 providers shall ~~be required to~~ execute a written participation agreement as a condition for participating in the N.C.
35 State Medicaid ~~Medical Assistance~~ Program.

36 (g) The Recipient Management LOCK-IN System. The ~~Department of Health and Human Services, Division of~~
37 ~~Medical Assistance,~~ will shall establish a lock-in system to control recipient overutilization of provider services. A

1 lock-in system restricts an overutilizing recipient to the use of one physician and one pharmacy, of the recipient's
2 choice, provided the recipient's physician is able to ~~can~~ refer the recipient to other physicians as medically necessary,
3 as defined in 10A NCAC 25A .0201. ~~necessary.~~

4

5 *History Note:* Authority G.S. 108A-25(b); 108A-63; 108A-64; 42 C.F.R. Part 455; 42 CFR 455.23;
6 Eff. May 1, 1984; 1984.
7 Readopted Eff. March 31, 2018.

8

9

1 10A NCAC 22F .0105 is proposed for re adoption without substantive change as follows:

2

3 **10A NCAC 22F .0105 DETECTION**

4 ~~(a) The Division shall will accept, investigate, investigate and where good reason to do so exists, refer for prosecution~~
5 ~~prosecution,~~ allegations or complaints of provider or recipient fraud, abuse, overutilization, error, ~~error~~ or aberrant
6 practices.

7 ~~(b) The Division will conduct post payment reviews and audits of a statistically significant sampling of provider~~
8 ~~claims.~~

9 ~~(c) The Division will compare provider and recipient practices to establish statistical models of normal provider or~~
10 ~~recipient practices.~~

11

12

13 *History Note: Authority G.S. 108A-25(b); 108A-63; 108A-64; 42 C.F.R. Part 455; 42 C.F.R. 455.12-23;*

14 *Eff. May 1, 1984; ~~1984.~~*

15 *Readopted Eff. March 31, 2018.*

16

17

1 10A NCAC 22F .0106 is proposed for readoption without change as follows:

2

3 **10A NCAC 22F .0106 CONFIDENTIALITY**

4 All investigations by the North Carolina Division of Medical Assistance concerning allegations of provider fraud,
5 abuse, over-utilization, or inadequate quality of care shall be confidential, and the information contained in the files
6 of such investigations shall be confidential, except as permitted by State or Federal law or regulation.

7

8 *History Note: Authority G.S. 108A-25(b); ~~108A-63; 108A-64; 132-1.3~~; 42 C.F.R. Part 455; ~~42 C.F.R. 455.21~~;*

9 *Eff. May 1, 1984;*

10 *Amended Eff. May 1, ~~1990~~; ~~1990~~.*

11 *Readopted Eff. March 31, 2018.*

12

13

1 10A NCAC 22F .0107 is proposed for re adoption with substantive changes as follows:

2

3 **10A NCAC 22F .0107 RECORD RETENTION**

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

11

12 *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–*
13 *23; 42 C.F.R. 431.107;*
14 *Eff. April 1, 1988; ~~1988.~~*
15 *Readopted Eff. March 31, 2018.*

16

17

1 10A NCAC 22F .0201 is proposed for re adoption without substantive change as follows:

2
3 **SECTION .0200 - PROVIDER FRAUD AND PHYSICAL ABUSE OF RECIPIENTS**

4
5 **10A NCAC 22F .0201 DEFINITION OF PROVIDER FRAUD**

6 (a) The parameters of provider ~~Provider~~ fraud are set out in ~~is defined as provided by N.C.G.S. G.S. 108A-63, which~~
7 is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6.
8 ~~N.C.G.S. 150B-14(a)(2)(e).~~

9 (b) "Provider" shall include any person who provides ~~furnishes~~ goods or services under this Rule and any other person
10 acting as an employee, representative or agent of such person.

11
12 *History Note: Authority G.S. 108A-25(b); 108A-63; ~~443B-10~~; 150B-21.6; 42 U.S.C. 1396(b) et seq.; 42 C.F.R.*
13 *Part 455;*
14 *Eff. April 15, 1977;*
15 *Readopted Eff. October 31, 1977;*
16 *Amended Eff. May 1, 1990; May 1, 1984; ~~1984~~.*
17 *Readopted Eff. March 31, 2018.*
18
19

1 10A NCAC 22F .0202 is proposed for re adoption with substantive changes as follows:

2

3 **10A NCAC 22F .0202 INVESTIGATION**

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

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

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

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

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

17

18 *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;*
19 *455;*

20 *Eff. April 15, 1977;*

21 *Readopted Eff. October 31, 1977;*

22 *Amended Eff. May 1, 1984; ~~1984.~~*

23 *Readopted Eff. March 31, 2018.*

24

25

1 10A NCAC 22F .0203 is proposed for reoption without substantive change as follows:

2

3 **10A NCAC 22F .0203 REFERRAL TO LAW ENFORCEMENT AGENCY**

4 The Division shall refer credible allegations of all cases of reasonably suspected-provider fraud, defined as provided
5 by 42 C.F.R. 455.2, which is adopted and incorporated by reference with subsequent changes or amendments and
6 available free of charge at <https://www.ecfr.gov/>, ~~fraud~~ or suspected physical abuse of recipients to the State Medicaid
7 Fraud Control Unit.

8

9 *History Note:* Authority G.S. 108A-25(b); 108A-63; P.L. 95-142; 42 C.F.R. 455.14; 42 C.F.R. 455.15; 42 C.F.R.
10 455.2;

11 *Eff. April 15, 1977;*

12 *Readopted Eff. October 31, 1977;*

13 *Amended Eff. May 1, 1984; ~~1984.~~*

14 *Readopted Eff. March 31, 2018.*

15

16

1 10A NCAC 22F .0301 is proposed for readoption without substantive change as follows:

2
3 **SECTION .0300 - PROVIDER ABUSE**

4
5 **10A NCAC 22F .0301 DEFINITION OF PROVIDER ABUSE**

6 ~~Provider abuse~~ Abuse, defined as provided by 42 C.F.R. 455.2, which is adopted and incorporated by reference with
7 subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>, ~~includes any incidents,~~
8 ~~services, or practices inconsistent with accepted fiscal or medical practices which cause financial loss to the Medicaid~~
9 ~~program or its beneficiaries, or which are not reasonable or which are not necessary including,~~ includes for example,
10 the following:

- 11 (1) ~~overutilization~~ Overutilization of medical and health care and ~~services;~~ services.
- 12 (2) ~~separate~~ Separate billing for care and services that are:
- 13 (a) part of an all-inclusive procedure, or
- 14 (b) included in the daily per-diem ~~rate;~~ rate.
- 15 (3) ~~billing~~ Billing for care and services that are provided by an unauthorized or unlicensed person;
16 ~~person.~~
- 17 (4) ~~failure~~ Failure to provide and maintain within accepted medical standards for the community, as set
18 out in 10A NCAC 25A .0201; ~~community;~~
- 19 (a) proper quality of care,
- 20 (b) appropriate care and services, or
- 21 (c) medically necessary care and services; ~~or services.~~
- 22 (5) ~~breach~~ Breach of the terms and conditions of the Provider Administrative Participation Agreement,
23 ~~participation agreements,~~ or a failure to comply with requirements of certification, ~~or~~ failure to
24 comply with the provisions of the claim form.

25 ~~The foregoing examples do not restrict the meaning of the general definition.~~

26
27 *History Note: Authority G.S. 108A-25(b); 108A-54.2; 108A-63; 42 C.F.R. Part 455; 455, Subpart C;*
28 *Eff. April 15, 1977;*
29 *Readopted Eff. October 31, 1977;*
30 *Amended Eff. May 1, 1984; 1984.*
31 *Readopted Eff. March 31, 2018.*
32
33

1 10A NCAC 22F .0302 is proposed for readoption without substantive change as follows:

2
3 **10A NCAC 22F .0302 INVESTIGATION**

4 (a) ~~Abusive practices~~ Fraud, waste, abuse, overutilization, error, or practices not conforming to regulations or clinical
5 coverage policy shall be investigated according to the provisions of Rule .0202 of this Subchapter.

6 (b) A Provider Summary Report shall be prepared by the investigative unit furnishing the full investigative findings
7 of fact, conclusions, and recommendations.

8 (c) The Division shall review the findings, conclusions, and recommendations and make a tentative decision for
9 disposition of the ~~case.~~ case ~~The Division shall seek full restitution of any improper provider payments as required by~~
10 10A NCAC 22F .0601. In addition, the Division may also take one or more of ~~from among~~ the following
11 administrative actions:

12 (1) ~~to recommend suspension or termination; To place provider on probation with terms and conditions~~
13 ~~for continued participation in the program.~~

14 (2) to place the provider on probation with terms and conditions for continued participation in the
15 program including, placing the provider on prepayment claims review pursuant to G.S. 108C-7; To
16 ~~recover in full any improper provider payments.~~

17 (3) ~~to~~ ~~To~~ negotiate a financial settlement with the provider; provider.

18 (4) ~~to~~ ~~To~~ impose remedial measures to include a monitoring program of the provider's Medicaid practice
19 terminating with a "follow-up" review to ensure corrective measures have been introduced; or
20 ~~introduced.~~

21 (5) ~~to~~ ~~To~~ issue a warning letter notifying the provider that he or she must not continue his or her ~~aberrant~~
22 ~~practices or he or she~~ will be subject to further division actions.

23 (6) ~~—— To recommend suspension or termination.~~

24 (d) The tentative decision shall be subject to the review procedures described in Section .0400 of this Subchapter.

25 (e) If the investigative findings show that the provider is not licensed or certified as required by federal and state law,
26 then the provider shall not ~~cannot~~ participate in the North Carolina State Medical Assistance Program (Medicaid). The
27 Division is required to verify provider licensure pursuant to 42 C.F.R. 455.12, which is adopted and incorporated by
28 reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.

29
30 *History Note: Authority G.S. 108A-25(b); 108A-63; 108C-7; 42 C.F.R. 455, Subpart A; 455 C.F.R. 412; 455.14;*
31 *42 C.F.R. 455.15;*
32 *Eff. April 15, 1977;*
33 *Readopted Eff. October 31, 1977;*
34 *Amended Eff. July 1, 1988; May 1, 1984; 1984.*
35 *Readopted Eff. March 31, 2018.*
36
37

1 10A NCAC 22F .0401 is proposed for repeal as follows:

2

3

SECTION .0400 – AGENCY RECONSIDERATION REVIEW

4

10A NCAC 22F .0401 PURPOSE

6

7 *History Note: Authority G.S. 108A-25(b); 42 C.F.R. 456;*

8 *Eff. December 1, 1982;*

9 *Transferred and Recodified from 10 NCAC 26I .0201 Eff. July 1, 1995;*

10 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22,*

11 *2015; 2015.*

12 *Repealed Eff. March 31, 2018.*

13

14

1 10A NCAC 22F .0402 is proposed for readoption with substantive changes as follows:

2
3 **10A NCAC 22F .0402 RECONSIDERATION REVIEW FOR PROGRAM ABUSE**

4 (a) ~~The Division shall notify the provider in writing by certified mail of the tentative decision made pursuant to Rule~~
5 ~~.0302 of this subchapter and the opportunity for a reconsideration of the tentative decision. Upon notification of a~~
6 ~~tentative decision the provider will be offered, in writing, by certified mail, the opportunity for a reconsideration of~~
7 ~~the tentative decision and the reasons therefor.~~

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

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

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

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

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

26 (f)~~(e)~~ The Reconsideration Review decision ~~shall~~ will be sent to the ~~provider, provider~~ provider in writing by certified mail,
27 mail within ~~30 business five working~~ days following the date ~~the review record is closed. The review record is closed~~
28 when all arguments and documents for review have been received by the Hearing Unit. of review. It will state the
29 schedule for implementing the administrative measures and/or recoupment plan, if applicable, and it will The decision
30 shall state that ~~if the Reconsideration Review decision is not acceptable to the provider, the provider~~ he may request
31 a contested case hearing in accordance with G.S. 150B, Article 3 and 26 NCAC 03.0103. the provisions found at 10A
32 NCAC 01. Pursuant to G.S. 150B-23(f), the provider shall have 60 days from receipt of the Reconsideration Review
33 decision to request a contested case hearing in the Office of Administrative Hearings. hearing. Unless the request is
34 received within the time provided, the Reconsideration Review decision shall become the Division's final decision
35 and no further appeal shall be permitted. decision. ~~In processing the contested case request, the Director of the~~
36 ~~Division of Medical Assistance shall serve as the secretary's designee and shall be responsible for making the final~~
37 ~~agency decision.~~

1
2
3
4
5
6
7
8
9
10

*History Note: Authority G.S. 108A-25(b); 108A-54; Chapter 150B, Article 3; S.L. 2011-375, Section 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. March 31, 2018.**

1 10A NCAC 22F .0601 is proposed for re adoption without substantive change as follows:

2
3 **SECTION .0600 – ADMINISTRATIVE SANCTIONS AND RECOUPMENT**

4
5 **10A NCAC 22F .0601 RECOUPMENT**

6 (a) The Division Medicaid Agency shall ~~will~~ seek full restitution of ~~any and all~~ improper ~~payments~~ payments, as
7 defined by 42 C.F.R. 431.958, which is adopted and incorporated by reference with subsequent changes or
8 amendments and available free of charge at <https://www.ecfr.gov/>, made to providers by the Medicaid Program.
9 Recovery may be by lump sum payment, by a negotiated payment schedule not to exceed one year, ~~year~~ or by
10 withholding from the provider's pending claims the total or a portion of the recoupment amount.

11 (b) A provider may seek reconsideration review of a recoupment imposed by the division under Rule .0402 of this
12 Subchapter. ~~may argue all or a part of a recoupment imposed by the Medicaid Agency by requesting a Reconsideration~~
13 ~~Review of the investigative findings and, thereafter, an Executive Decision.~~

14
15 *History Note: Authority G.S. 108A-25(b); 42 C.F.R. Part 431, Subpart Q; 434; 42 C.F.R. Part 455, Subpart F;*
16 *455; 42 C.F.R. Part 456;*
17 *Eff. February 1, 1982;*
18 *Amended Eff. May 1, 1984; 1984.*
19 *Readopted Eff. March 31, 2018.*
20
21

1 10A NCAC 22F .0602 is proposed for readoption with substantive changes as follows:

2
3 **10A NCAC 22F .0602 ADMINISTRATIVE SANCTIONS AND REMEDIAL MEASURES**

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

7 (1) ~~warning~~ Warning letters for ~~those~~ instances of abuse that can be ~~satisfactorily~~ settled by issuing a
8 warning to cease the specific abuse. The letter ~~shall~~ will state that any further violations ~~shall~~ will
9 result in administrative or legal action initiated by the ~~Division;~~ Medicaid Agency.

10 (2) ~~suspension~~ Suspension of a provider from further participation in the Medicaid Program for a
11 specified period of time, provided ~~that the appropriate~~ findings have been made by the Division and
12 ~~provided~~ that this action ~~shall~~ does not deprive recipients of access to reasonable service of adequate
13 quality as set out in 42 C.F.R. 440.230, 440.260, and 455.23, which are adopted and incorporated
14 by reference with subsequent changes or amendments and available free of charge at
15 <https://www.ecfr.gov/>; quality.

16 (3) ~~termination~~ Termination of a provider from further participation in the Medicaid Program, provided
17 ~~that the appropriate~~ findings have been made by the Division and ~~provided~~ that this action ~~shall~~ does
18 not deprive recipients of access to reasonable services of adequate quality as set out in 42 C.F.R.
19 440.230, 440.260, and 455.23, which are adopted and incorporated by reference with subsequent
20 changes or amendments and available free of charge at <https://www.ecfr.gov/>; quality.

21 (4) ~~probation~~ Probation whereby a provider's participation is ~~closely~~ monitored for a specified period
22 of time not to exceed one year. At the termination of the probation period the ~~Division Medicaid~~
23 ~~Agency~~ shall ~~will~~ conduct a follow-up review of the provider's Medicaid practice to ensure
24 compliance with all applicable laws, regulations, and conditions of participation in Medicaid. ~~the~~
25 ~~Medicaid rules. Notwithstanding his probation, a probationary provider's participation, like that of~~
26 ~~all providers, is terminable at will.~~

27 (5) ~~Remedial Measures to include:~~

28 (A) ~~—placing the provider on prepayment review in accordance with G.S. 108C-7; "flag" status~~
29 ~~whereby his claims are remanded for manual review; or~~

30 (6) ~~(B) —establishing a monitoring program not to exceed one year whereby the provider shall~~ must
31 comply with pre-established conditions of participation to allow review and evaluation of the
32 provider's Medicaid claims. ~~his Medicaid practice, i.e., quality of care.~~

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

- 35 (1) seriousness of the offense;
36 (2) extent of violations found;
37 (3) history of ~~or~~ prior violations;

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

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

10

11 *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*
12 *C.F.R. Part 455;~~42 C.F.R. 455.23;~~*
13 *Eff. May 1, 1984;*
14 *Amended Eff. December 1, 1995; May 1, 1990; ~~1990.~~*
15 *Readopted Eff. March 31, 2018.*

16

17

1 10A NCAC 22F .0603 is proposed for re adoption without substantive change as follows:

2
3 **10A NCAC 22F .0603 PROVIDER LOCK-OUT**

4 (a) The Division may restrict the provider through suspension ~~provider, through suspension or otherwise,~~ from
5 participating in the Medicaid program, provided that:

6 (1) Before imposing any restrictions, the Division shall ~~will~~ give the provider notice and opportunity
7 for review. ~~review in accordance with procedures established by the Division.~~

8 (2) The Division shall demonstrate a relevant and factual basis for imposing the restriction. ~~shows,~~
9 ~~before so restricting a provider, that in a significant number of proportion of cases, the provider has:~~

10 (A) ~~provided care, services, and items at a frequency or amount not medically necessary, as determined~~
11 ~~in accordance with utilization guidelines established by the Division; or~~

12 (B) ~~provided care, service, and items of a quality that does not meet professionally recognized standards~~
13 ~~of health care.~~

14 (3) The Division shall ~~will~~ assure that recipients do not lose reasonable access to services of adequate
15 quality, as set out in 42 C.F.R. 440.230, 440.260, and 431.54, which are adopted and incorporated
16 by reference with subsequent changes or amendments and available free of charge at
17 <https://www.ecfr.gov/>, as a result of such restrictions.

18 (4) The Division shall ~~will~~ give general notice to the public of the restriction, its basis, and its duration.

19 (b) Suspension or termination from participation of any provider shall preclude the ~~such~~ provider from submitting
20 claims for payment to the Division. ~~state agency.~~ No claims may be submitted by or through any clinic, group,
21 corporation, or other association for any services or supplies provided by a person within such organization who has
22 been suspended or terminated from participation in the Medicaid program, except for those services or supplies
23 provided prior to the suspension or termination effective date.

24
25 *History Note: Authority G.S. 108A-25(b); 42 C.F.R. 440.230; 42 C.F.R. 440.260; 42 C.F.R. Part 431; 42*
26 *C.F.R.431.54; 42 C.F.R. Part 455;*
27 *Eff. May 1, 1984;*
28 *Amended Eff. December 1, 1995; ~~1995.~~*
29 *Readopted Eff. March 31, 2018.*
30
31

1 10A NCAC 22F .0604 is proposed for readoption without substantive change as follows:

2

3 **10A NCAC 22F .0604 SUSPENDING~~WITHHOLDING~~ OF MEDICAID PAYMENTS**

4 (a) The ~~Division Medicaid Agency~~ shall ~~suspend~~ withhold Medicaid payments in accordance with the provisions of
5 42 CFR ~~455.23, 455.23~~ which is ~~hereby~~ incorporated by reference ~~with including~~ subsequent changes or amendments,
6 and available free of charge at <https://www.ecfr.gov/>. ~~amendments and editions~~. ~~A copy of 42 CFR 455.23 is available~~
7 ~~for inspection and may be obtained from the Division of Medical Assistance at a cost of twenty cents (\$.20) a page.~~

8 (b) The ~~Division Medicaid Agency~~ shall ~~suspend~~ withhold Medicaid payments in whole or in part to ensure recovery
9 of overpayments, or to implement the penalty provision of the Patient's Bill of Rights described at 10A NCAC 13B
10 .3302, Rights.

11

12 *History Note: Authority G.S. 108A-25(b); 150B-21.6; 42 C.F.R. Part 431; 42 C.F.R. ~~Part 455.23; 455;~~*
13 *Eff. May 1, 1984;*
14 *Amended Eff. December 1, 1995; ~~1995~~.*
15 *Readopted Eff. March 31, 2018.*

16

17

1 10A NCAC 22F .0605 is proposed for readoption as a repeal as follows:

2

3 **10A NCAC 22F .0605 TERMINATION**

4

5 *History Note: Authority G.S. 108A-25(b); 42 C.F.R. Part 431; 42 C.F.R. Part 455;*

6 *Eff. May 1, 1984; ~~1984~~.*

7 *Repealed Eff. March 31, 2018.*

8

9

1 10A NCAC 22F .0606 is proposed for reoption without substantive change as follows:

2

3 **10A NCAC 22F .0606 TECHNIQUE FOR PROJECTING MEDICAID OVERPAYMENTS**

4 (a) The ~~Division Medicaid agency~~ will seek restitution of overpayments made to providers by the Medicaid program.

5 (b) The agency may use a Disproportionate Stratified Random Sampling Technique in establishing provider
6 overpayments. ~~(e)~~—This technique is an extrapolation of a statistical sampling of claims used to determine the total
7 overpayment for recoument.

8 ~~(c)(d)~~ The provider may challenge the validity of the findings in the statistical sampling SAMPLE itself in accordance
9 with the provisions found at 10A NCAC 22F .0402.

10

11 *History Note:* Authority G.S. 108A-25(b); 108A-54; 108A-63; 42 C.F.R. Part 455, Subpart F; 455;

12 Eff. October 1, 1987;

13 Temporary Amendment Eff. November 8, 1996;

14 Amended Eff. August 1, 1998; 1998.

15 Readopted Eff. March 31, 2018.

16

17

1 10A NCAC 22F .0704 is proposed for readoption without substantive change as follows:

2
3 **10A NCAC 22F .0704 RECIPIENT MANAGEMENT LOCK-IN SYSTEM**

4 (a) The Division shall have methods and procedures for the control of recipient overutilization of Medicaid benefits.
5 These methods and procedures shall include Lock-In of a recipient, shown to be an overutilizer, to specified providers
6 of health care and services, as set out in 42 C.F.R. 440.230, 440.260, and 431.54(e), which are adopted and
7 incorporated by reference with subsequent changes or amendments and available free of charge at
8 <https://www.ecfr.gov/>, ~~services.~~

9 (b) Prior to implementing Lock-In, ~~Lock-In~~ the following steps shall be taken:

- 10 (1) Recipient's utilization pattern shall ~~will~~ be documented as inappropriate;
11 (2) Recipient shall ~~will~~ be notified that the State is imposing a Lock-In procedure;
12 (3) Recipient shall ~~will~~ be offered the opportunity to select a provider;
13 (4) In the event the recipient fails to select a provider, a provider shall ~~will~~ be selected for him or her
14 by the Division of Medical Assistance; and
15 (5) Recipient shall ~~will~~ receive an eligibility card indicating the selected providers.

16 (c) Recipient utilization patterns shall ~~will~~ be reviewed ~~periodically~~ to determine if changes have occurred. If the
17 utilization pattern has been corrected, the Lock-In status shall end; ~~will be ended;~~ if the utilization pattern remains
18 inappropriate aberrant; Lock-In status shall continue. ~~will be continued.~~

19 (d) Division may Lock-In a recipient provided:

- 20 (1) ~~the~~The recipient is given notice and an opportunity for a hearing before imposing restriction,
21 pursuant to ~~state statutes governing appeals by public assistance~~ G.S. 150B-23; and recipients.
22 (2) ~~the~~The Division assures that the recipient has reasonable access to Medicaid care and services of
23 adequate quality.

24
25 *History Note:* Authority G.S. 108A-25(b); 108A-64; 108A-79; 42 C.F.R. 440.230; 42 C.F.R. 440.260; 42 C.F.R.
26 Part 431; 42 C.F.R. 431.54; 42 C.F.R. Part 455; 42 C.F.R. Part 456;
27 Eff. May 1, 1984; 1984.
28 Readopted Eff. March 31, 2018.
29
30

1 10A NCAC 22F .0706 is proposed for reoption without substantive change as follows:

2

3 **10A NCAC 22F .0706 RECOUPMENT OF OVERPAYMENTS**

4 The Division shall oversee ~~will ensure~~ that:

- 5 (1) counties recover ~~any and all~~ recipient responsible overpayments as a debt to the participating
- 6 governments;
- 7 (2) counties accept payments from each recipient and give the recipient a receipt for each transaction;
- 8 (3) counties keep a separate accounting for Medicaid repayments on each recipient;
- 9 (4) repayments are forwarded to the Division of Medical Assistance utilizing the DMA 7050 form. This
- 10 shall ~~must~~ be done ~~at least~~ on a monthly basis;
- 11 (5) the recoupment monies are apportioned to the repayment of ~~usual adjustments to federal, State, state,~~
- 12 ~~and county funds shall be~~ ~~are~~ made by the ~~State; state;~~
- 13 (6) Medical Assistance overpayments shall not be ~~are not~~ recouped through check reduction; and
- 14 the Division receives its prorated share of recoupments of recipient overpayments involving
- 15 multiple programs. ~~payments received from recipients with overpayments involving more than one~~
- 16 ~~program will be prorated so that the Medicaid program will receive its fair share of each payment.~~

17

18 *History Note:* Authority G.S. 108A-25(b); 108A-64; 42 C.F.R. Part 431; 42 C.F.R. Part 455; 42 C.F.R. Part 456;

19 *Eff. May 1, 1984; 1984.*

20 *Readopted Eff. March 31, 2018.*

21



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 22F – Program Integrity

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

The following rules within 10A NCAC 22F are proposed for readoption to be compatible with federal law governing Medicaid program integrity:

1. 10A NCAC 22F .0104, .0105, .0106, and .0107 apply to the prevention and detection of provider fraud and abuse, confidentiality of program integrity investigations, and requirements for provider record retention. Regulation by the State of North Carolina of these Medicaid program integrity matters is subject to the provisions of 42 CFR Part 455 (Program Integrity: Medicaid). Regulation of provider records is also subject to the provisions of 42 CFR 431.107 (Required provider agreement). The readoption of 10A NCAC 22F .0104, .0105, .0106, and .0107 is necessary to comply with these federal regulations.

2. 10A NCAC .0201, .0202, and .0203 apply to provider fraud and physical abuse of Medicaid recipients. Regulation by the State of North Carolina of provider fraud and physical abuse of recipients is subject to the provisions of 42 CFR Part 455 (Program Integrity: Medicaid). The readoption of 10A NCAC 22F .0201, .0202, and .0203 is necessary to comply with these federal regulations.
3. 10A NCAC 22F .0301 and .0302 apply to defining and investigating provider abuse. Regulation by the State of North Carolina of provider abuse is subject to the provisions of 42 CFR Part 455 (Program Integrity: Medicaid). The readoption of 10A NCAC 22F .0301 and .0302 is necessary to comply with these federal regulations.
4. 10A NCAC .0402 applies to agency reconsideration reviews for program abuse. Regulation by the State of North Carolina of agency reconsideration reviews for program abuse is subject to the provisions of 42 CFR 455.512 (Medicaid RAC provider appeals). The readoption of 10A NCAC 22F .0402 is necessary to comply with this federal regulation.
5. 10A NCAC 22F .0601, .0602, .0603, .0604, and .0606 apply to recoupment of improper payments, provider administrative sanctions, provider lock-out, suspension of payments, and the technique for projecting overpayments. Regulation by the State of North Carolina of these Medicaid program integrity matters is subject to the provisions of 42 CFR Part 455 (Program Integrity: Medicaid). 10A NCAC 22F .0601, .0602, .0603, and .0604 are also subject to the provisions of 42 CFR Part 431 (State Organization and General Administration). The readoption of 10A NCAC 22F .0601, .0602, .0603, .0604 and .0606 is necessary to comply with these federal regulations.
6. 10A NCAC 22F .0704 and .0706 apply to recipient fraud and abuse, including recipient lock-in and recoupment of overpayments. Regulation by the State of North Carolina of recipient fraud and abuse, specifically the recipient lock-in system and recoupment of overpayments, is subject to the provisions of 42 CFR Part 431 (State Organization and General Administration), Part 455 (Program Integrity: Medicaid), and Part 456 (Utilization Control). The readoption of 10A NCAC 22F .0704 and .0706 is necessary to comply with these federal regulations.