

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

### **Agency Proposing Rule Change**

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

### **Contact Persons**

Sheila Platts, Associate Director of Provider Services - (919) 855-4023  
Darryl Frazier, Provider Services Manager - (919) 855-4790  
Kimberly Carter, Provider Services Team Lead - (919) 855-4056  
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 22K – Qualified Providers**

- 10A NCAC 22K .0101 – Definition (Readopt)
- 10A NCAC 22K .0102 – Agreement (Readopt)
- 10A NCAC 22K .0103 – Presumptive Determinations (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 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 22K – Qualified Providers. The following three rules were classified as necessary with substantive public interest in this report: 10A NCAC 22K .0101, .0102, and .0103.

The agency is presenting 22K .0101 and .0103 for readoption without substantive changes and 22K .0102 for readoption with minor substantive changes.

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 22K .0102, but also describes the non-substantive changes to 22K .0101 and .0103.

## **Rule Summaries and Anticipated Fiscal Impact**

### **Rule .0101 – Definition**

10A NCAC 22K .0101 describes conditions providers must meet to make presumptive eligibility determinations for pregnant women. The agency is proposing to readopt this rule with several minor, non-substantive, technical changes. The outdated public law number is being replaced with the section where the relevant law is codified in the Social Security Act, and the section of the Social Security Act is being incorporated per N.C.G.S. § 150B-21.6. Also, the way the Division of Medical Assistance is referred to throughout this rule is being changed from “DMA” to “Division.”

#### **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 .0102 – Agreement**

10A NCAC 22K .0102 describes the agreement providers must sign to make presumptive eligibility determinations for pregnant women. The agency is proposing to readopt this rule with one substantive change, replacing “five days” with “five working days.” The agency has also added a reference to federal law and a reference to a DHHS manual to clarify the “procedures and guidelines” referenced in the rule. These changes do not reflect a change in practice nor a change in the way the rule is implemented. In addition, the agency revised the way the Division of Medical Assistance is referred to throughout this rule from “DMA” to “Division.” All other changes to this rule are minor, technical changes intended to update and clarify language.

#### **Fiscal Impact**

Although this rule contains a substantive change, it is merely a clarification of the requirement under federal law. Pursuant to 42 USC 1396r-1(c)(2)(A), which predates this rule, the relevant requirement is five working days (rather than five days). 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 .0103 – Presumptive Determinations**

10A NCAC 22K .0103 describes who may qualify for a presumptive determination. The agency is proposing to readopt this rule with several minor, non-substantive, technical changes, including incorporating the federal poverty guidelines in accordance with N.C.G.S. § 150B-21.6.

#### **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 22K .0101 is proposed for re adoption without substantive change as follows:

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**SUBCHAPTER 22K - QUALIFIED PROVIDERS**

4

**10A NCAC 22K .0101 DEFINITION**

6 A provider qualified to make presumptive determinations of Medicaid eligibility for pregnant women shall ~~must~~ meet  
7 the conditions required by Section 1920 of the Social Security Act, which is adopted and incorporated by reference  
8 with subsequent changes or amendments and available free of charge at <http://uscode.house.gov/>, as amended by P.L.  
9 ~~99-509~~ and sign a written agreement with the Division of Medical Assistance (Division). (~~DMA~~).

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11 *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;~~

12 ~~P.L. 99-509;~~

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

14 Readopted Eff. March 31, 2018.

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1 10A NCAC 22K .0102 is proposed for readoption with substantive changes as follows:

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3 **10A NCAC 22K .0102 AGREEMENT**

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

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

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

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17 *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;*  
18 *P.L. 99-509;*  
19 *Eff. June 1, 1988; 1988.*  
20 *Readopted Eff. March 31, 2018.*  
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1 10A NCAC 22K .0103 is proposed for readoption without substantive change as follows:

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3 **10A NCAC 22K .0103 PRESUMPTIVE DETERMINATIONS**

4 (a) Presumptive determinations of eligibility shall apply only to pregnant women whose family income does not  
5 exceed the federal poverty guidelines issued in the Federal Register by the US Department of Health and Human  
6 Services and as revised ~~annually~~ annually, which are adopted and incorporated by reference with subsequent changes  
7 or amendments and available free of charge at <https://aspe.hhs.gov/poverty-guidelines>.

8 (b) Only one presumptive determination of eligibility during a single pregnancy ~~may~~ shall be made by the same  
9 qualified provider.

10 (c) A presumptive determination of eligibility may be made by a different qualified provider if the provider has no  
11 knowledge of a prior determination.

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13 *History Note:* Authority G.S. 108A-25(b); 42 U.S.C. § 1396r-1; 42 CFR § 435.1103; ~~1987 Session Laws, c. 738;~~

14 ~~P.L. 99-509;~~

15 ~~Eff. June 1, 1988; 1988.~~

16 ~~Readopted 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 22K – Qualified Providers

**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

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10A NCAC 22K .0101, .0102 and .0103 are proposed for readoption to be compatible with federal law governing presumptive eligibility for pregnant women, including qualified providers, agreements, and determinations.

Regulation by the State of North Carolina of presumptive eligibility for pregnant women is subject to the provisions of 42 USC 1396r-1 (Presumptive eligibility for pregnant women) and 42 CFR 435.1103 (Presumptive eligibility for other individuals). The readoption of 10A NCAC 22K .0101, .0102 and .0103 is necessary to comply with this federal statute and regulations.