



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**  
Division of Health Benefits

**ROY COOPER** • Governor  
**MANDY COHEN, MD, MPH** • Secretary  
**DAVE RICHARD** • Deputy Secretary, NC Medicaid

## MEMORANDUM

**Date:** January 2, 2019

**To:** Rulemaking Interested Persons

**From:** Ryan Eppenberger, DHB Rulemaking Coordinator

**Re:** Notification of Proposed Readoption of 10A NCAC Chapter 23 and Chapter 25 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 Health Benefits (DHB) intends to readopt, amend, or repeal 47 rules in 10A NCAC Chapters 23 and 25.

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.

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

- 10A NCAC 23A .0103 – Quality Assurance (Readopt with substantive changes)
- 10A NCAC 23C .0201 – Application Processing Standards (Readopt with substantive changes)
- 10A NCAC 23D .0101 – Mandatory Groups (Readopt with substantive changes)
- 10A NCAC 23D .0102 – Optional Groups (Readopt with substantive changes)
- 10A NCAC 23D .0201 – Classification (Readopt with substantive changes)
- 10A NCAC 23E .0101 – Age (Readopt with substantive changes)
- 10A NCAC 23E .0102 – United States Citizen (Readopt with substantive changes)
- 10A NCAC 23E .0103 – Residence (Readopt with substantive changes)
- 10A NCAC 23E .0104 – Deprivation (Readopt with substantive changes)
- 10A NCAC 23E .0105 – Disability (Readopt without substantive changes)
- 10A NCAC 23E .0106 – Blindness (Readopt without substantive changes)
- 10A NCAC 23E .0107 – Caretaker Relative (Readopt with substantive changes)
- 10A NCAC 23E .0108 – Inmate of Public Institution or Private Psychiatric Hospital (Readopt with substantive changes)
- 10A NCAC 23E .0201 – Applying for All Benefits and Annuities (Readopt with substantive changes)

### NC MEDICAID

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH BENEFITS

LOCATION: 333 E. Six Forks Road, Raleigh NC 27609  
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- 10A NCAC 23E .0202 – What Resources are Counted (Readopt with substantive changes)
- 10A NCAC 23E .0203 – Countable Income (Readopt with substantive changes)
- 10A NCAC 23E .0204 – Personal Needs Allowance (Readopt with substantive changes)
- 10A NCAC 23E .0205 – Budget Unit Membership (Readopt with substantive changes)
- 10A NCAC 23E .0206 – Financial Responsibility and Deeming (Readopt with substantive changes)
- 10A NCAC 23E .0207 – Whose Resources are Counted (Readopt with substantive changes)
- 10A NCAC 23E .0208 – Calculating Income (Readopt with substantive changes)
- 10A NCAC 23E .0209 – Deductible (Readopt without substantive changes)
- 10A NCAC 23E .0210 – Patient Liability (Readopt without substantive changes)
- 10A NCAC 23E .0211 – Alien Sponsor Deeming (Readopt without substantive changes)
- 10A NCAC 23G .0101 – Certification and Authorization (Readopt with substantive changes)
- 10A NCAC 23G .0201 – General (Readopt without substantive changes)
- 10A NCAC 23G .0202 – Corrective Actions (Readopt without substantive changes)
- 10A NCAC 23G .0203 – Time Limits for Corrections (Readopt without substantive changes)
- 10A NCAC 23G .0204 – Responsibility for Errors (Readopt with substantive changes)
- 10A NCAC 23G .0303 – Recommendation (Readopt with substantive changes)
- 10A NCAC 23G .0304 – Change in Situation (Readopt without substantive changes)
- 10A NCAC 23H .0106 – Liability of Persons with Access (Readopt without substantive changes)
- 10A NCAC 23H .0107 – Right of Access (Readopt without substantive changes)
- 10A NCAC 23H .0108 – Withholding Information from the Client (Readopt without substantive changes)
- 10A NCAC 23H .0109 – Procedure for Review of Records (Readopt without substantive changes)
- 10A NCAC 23H .0110 – Consent for Release (Readopt without substantive changes)
- 10A NCAC 23H .0111 – Disclosure Without Client Consent (Readopt without substantive changes)
- 10A NCAC 23H .0112 – Documentation of Consent or Disclosure (Readopt without substantive changes)
- 10A NCAC 23H .0113 – Persons Designated to Disclose Information (Readopt without substantive changes)
- 10A NCAC 25A .0201 – Medical Services (Readopt without substantive changes)
- 10A NCAC 25H .0203 – Standards for Participation (Readopt without substantive changes)
- 10A NCAC 25K .0201 – Pharmacy Services (Readopt with substantive changes)
- 10A NCAC 25K .0401 – Patient Counseling (Readopt without substantive changes)
- 10A NCAC 25M .0201 – Inpatient Hospital Services (Readopt with substantive changes)
- 10A NCAC 25P .0201 – Inpatient Hospital Services (Readopt with substantive changes)
- 10A NCAC 25P .0301 – Outpatient Hospital Services (Readopt with substantive changes)
- 10A NCAC 25P .0402 – Clinic Services (Readopt with substantive changes)

DHB prepared fiscal notes for proposed rules in subchapters 23A, 23C, 23E, and 23G. No fiscal note was required for proposed rules in subchapters 23D, 23H, 25A, 25H, 25K, 25M, and 25P. These fiscal notes were approved by the Office of State Budget and Management (OSBM) on December 3, 2018.

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 DHHS website at <https://medicaid.ncdhhs.gov/get-involved/rules-actions>.

A public hearing on these rules is scheduled for January 25, 2019, from 1pm-3pm in Room 104, Brown Building, 801 Biggs Drive, Raleigh, NC 27603. The building is located within the Dorothea Dix Park.

DHB is accepting public comments on these rules from January 2, 2019 – March 4, 2019. You may submit comments by email to [MedicaidRulesComments@dhhs.nc.gov](mailto:MedicaidRulesComments@dhhs.nc.gov) or by mail to: Ryan Eppenberger, DHB Rulemaking Coordinator, NC DHHS Division of Health Benefits, 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, 2019.

Should you have questions related to this memorandum, the proposed rules, or the fiscal notes, please contact Ryan Eppenberger, DHB Rulemaking Coordinator by phone at (919) 814-0078 or by email at [MedicaidRulesComments@dhhs.nc.gov](mailto:MedicaidRulesComments@dhhs.nc.gov).

#### Attachments

cc: Dave Richard, Deputy Secretary, NC Medicaid  
Sandra Terrell, Director, Clinical and Operations, NC Medicaid  
Debra Farrington, Chief of Staff, NC Medicaid  
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 Department of Health and Human Services/Division of Health Benefits intends to readopt with substantive changes the rules cited as 10A NCAC 23A .0103; 23C .0201; 23D .0101, .0102, .0201; 23E .0101-.0104, .0107, .0108, .0201-.0208; 23G .0101, .0204, .0303; 25K .0201; 25M .0201; 25P .0201, .0301, .0402, and readopt without substantive changes the rules cited as 10A NCAC 23E .0105, .0106, .0209-.0211; 23G .0201-.0203, .0304; 23H .0106-.0113; 25A .0201; 25H .0203; 25K .0401.*

*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 rules 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 rule(s) 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://medicaid.ncdhhs.gov/get-involved/rules-actions>

**Proposed Effective Date:** *May 1, 2019*

**Public Hearing:**

**Date:** *Friday, January 25, 2019*

**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 Health Benefits is readopting 47 rules in 10A NCAC Chapters 23 and 25, Subchapters 23A, 23C, 23D, 23E, 23H, 25A, 25G, 25H, 25K, 25M, and 25P to ensure these rules reflect the current law and processes.*

**Comments may be submitted to:** *Ryan Eppenberger, DHB Rulemaking Coordinator, NC DHHS Division of Health Benefits, 2501 Mail Service Center, Raleigh NC 27699-2501; email [MedicaidRulesComments@dhhs.nc.gov](mailto:MedicaidRulesComments@dhhs.nc.gov)*

**Comment period ends:** *March 4, 2019*

**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** (*23E .0101-.0108, .0201-.0211*)
- Environmental permitting of DOT affected**  
**Analysis submitted to Board of Transportation**
- Local funds affected**
- Substantial economic impact (≥\$1,000,000)**
- Approved by OSBM** (*Rules in subchapters 23A, 23C, 23E, and 23G*)
- No fiscal note required by G.S. 150B-21.4** (*Rules in subchapters 23D, 25M, 25P, 23E .0101, .0102, .0104, .0107, .0108, .0204, .0206; 23G .0101, .0303, 25K .0201*)

- No fiscal note required by G.S. 150B-21.3A(d)(2) (23H .0106-.0113, 25A .0201, 25H .0203, 25K .0401)

## CHAPTER 23 - MEDICAL ASSISTANCE ADMINISTRATION

### SUBCHAPTER 23A - GENERAL PROGRAM ADMINISTRATION

#### SECTION .0100 - GENERAL

##### 10A NCAC 23A .0103 QUALITY ASSURANCE

- (a) ~~Active and negative eligibility case actions, as defined by 42 C.F.R. 431.804, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>. Case actions taken by the county department of social services are subject to review under by State state and federal quality control (QC) procedures by the Division's Office of Compliance and Program Integrity (OCPI). procedures. A statistical sample is shall be selected from both active and negative case actions.~~
- (b) The purpose of the QC review is to identify client eligibility errors and erroneous payments resulting from:
- (1) Ineligibility;
  - (2) Recipient liability understated or overstated by the client or county; ~~overstated~~;
  - (3) Third-party liability; and
  - (4) Claims processing errors.
- (c) A report of an error discovered in a QC case shall be sent to the appropriate county agency for corrective action.
- (d) If the county agency has verification, as defined by Rule .0102 of this Subchapter, ~~verification~~ that disputes a QC finding of error, it may submit the verification to OCPI the Recipient Services Section for review. ~~The Recipient Services Section cannot overturn a listed error, but OCPI shall determine whether the error shall be coded client-responsible, county-responsible, agency-responsible, or State-responsible, state-responsible.~~ Upon its review, OCPI the Recipient Services Section shall notify the county agency of its decision regarding responsibility for the error.

*History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 431, Subpart P; 431-800; Eff. September 1, 1984; Amended Eff. August 1, 1990; Transferred from 10A NCAC 21A .0501 Eff. May 1, 2012; 2012-; Readopted Eff. May 1, 2019.*

### SUBCHAPTER 23C – APPLICATION FOR MEDICAID BENEFITS

#### SECTION .0200 – APPLICATION PROCESSING, MONITORING AND CORRECTIVE ACTION

##### 10A NCAC 23C .0201 APPLICATION PROCESSING STANDARDS

- (a) The county department of social services shall comply with the following standards in processing applications:
- (1) A decision shall be made within the timeframes set out in G.S. 108A-70.37. ~~on an individual's eligibility for Medicaid shall be made within 45 calendar days from the date of application for Medicaid except for applications in which a disability determination has already been made or is needed. For those applications, a decision on an individual's eligibility shall be made within 90 days from the date of application.~~ These timeframes shall apply in accordance with 42 CFR 435.912. 435.911.
  - (2) Only require information or verification necessary to establish eligibility for assistance;
  - (3) Make a minimum of at least two requests for all necessary information from the applicant or third party;
  - (4) Allow a minimum of at least 12 calendar days between the initial request and a follow-up request and at least 12 calendar days between the follow-up request and denial of the application;
  - (5) Inform the client in writing ~~writing, and verbally when possible~~, of the right to request help in obtaining information requested from the client. The county department of social services shall not discourage any client from requesting such help;
  - (6) An application may pend up to six months for verification that the deductible, as defined in 10A NCAC 23A .0201, deductible has been met or disability established.
  - (7) When a hearing decision reverses the decision of the county department of social services ~~County Department of Social Services~~ on an application, pursuant to 10A NCAC 21A .0303, the application

shall be reopened within five ~~business working~~ days from the date the final appeal decision is received by the ~~county department of social services~~ County Department of Social Services. If the ~~county department of social services~~ County Department of Social Services has all of the information needed to process the application, ~~no additional information is needed~~, the application ~~shall~~ must be processed within five additional ~~business working~~ days. If additional information is needed pursuant to the final decision, the county shall make such requests in accordance with this Rule. ~~rules for all applications~~. The first request for the additional information shall be made within five ~~business working~~ days of receipt of the final appeal decision. The application shall be processed within five ~~business working~~ days of receipt of the last piece of required information.

(b) The county department of social services shall obtain verification, as defined by 10A NCAC 23A .0102, ~~verification~~ other than the applicant's statement for the following:

- (1) Any element requiring medical verification. This includes verification of disability, ~~pregnancy~~, incapacity, emergency dates for aliens referenced in the Medicaid State Plan, 10A NCAC 23E .0102(e), incompetence, and approval of institutional care;
- (2) Proof a deductible has been met;
- (3) Legal alien status;
- (4) Proof of the rebuttal value for resources and of the rebuttal of intent to transfer resources to become eligible for Medicaid. When a client ~~an applicant or recipient~~ disagrees with the determination of the county department of social services on the value of an asset, then the client ~~applicant/recipient~~ must provide proof of what the value of the asset is;
- (5) Proof of designation of liquid assets for burial;
- (6) Proof of legally binding agreement limiting resource availability;
- (7) Proof of valid social security number or application for a social security number;
- (8) Proof of reserve reduction when resources exceed the allowable reserve limit for Medicaid;
- (9) Proof of earned and unearned income, including deductions, exclusions, and operational expenses when the applicant or caseworker ~~Income Maintenance Caseworker~~ has or can obtain the verification; and
- (10) Any other information for which the applicant does not know or cannot give an estimate.

(c) The county department of social services shall be responsible for verifying or obtaining ~~verify or obtain~~ an item of information when:

- (1) A fee must be paid to obtain the verification;
- (2) It is available within the agency;
- (3) The county department of social services is required by federal law to assist or to use interagency or intra-agency verification aids;
- (4) The applicant requests assistance; or
- (5) A representative does not accept responsibility for obtaining the information and the applicant is:
  - (A) ~~The applicant is physically, mentally, or otherwise physically or mentally incapable of obtaining the information; information;~~ or is
  - (B) unable to speak English or read and write in English; ~~write~~; or is
  - (C) housebound, hospitalized, or institutionalized. ~~institutionalized, and a representative does not accept responsibility for obtaining the information.~~

*History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-70.37; 42 C.F.R. 435.911; 435.912; 435.952; Alexander v. Flaherty, V.S.D.C., W.D.N.C., File No. C-C-74-183, Consent Order Filed 15 December 1989; Alexander v. Flaherty Consent Order filed February 14, 1992; Alexander v. Bruton Consent Order dismissed Effective February 1, 2002; Eff. September 1, 1984; Amended Eff. April 1, 1993; August 1, 1990; Temporary Amendment Eff. March 1, 2003; Amended Eff. August 1, 2004; Transferred from 10A NCAC 21B .0203 Eff. May 1, 2012; 2012-; Readopted Eff. May 2019.*

## SUBCHAPTER 23D – MEDICAID ELIGIBILITY GROUPS AND CLASSIFICATION

### SECTION .0100 – COVERAGE GROUPS

## **10A NCAC 23D .0101 MANDATORY GROUPS**

*History Note:* Authority G.S. 108A-54; 42 U.S.C. 1396a(a)(10); 42 U.S.C. 1396a(e)(4); 42 U.S.C. 1396a(f); 42 C.F.R. 435.110; 42 C.F.R. 435.112; 42 C.F.R. 435.113; 42 C.F.R. 435.114; 42 C.F.R. 435.115; 42 C.F.R. 435.116; 42 C.F.R. 435.117; 42 C.F.R. 435.118; 42 C.F.R. 435.121; 42 C.F.R. 435.131; 42 C.F.R. 435.132; 42 C.F.R. 435.133;  
Eff. September 1, 1984;  
Amended Eff. January 1, 1995; March 1, 1993; January 4, 1993; April 1, 1992;  
Temporary Amendment September 13, 1999;  
Temporary Amendment Expired June 27, 2000;  
Temporary Amendment September 12, 2000;  
Amended Eff. August 1, 2002;  
Transferred from 10A NCAC 21B .0101 Eff. May 1, 2012; ~~2012~~.  
Repealed Eff. May 1, 2019.

## **10A NCAC 23D .0102 OPTIONAL GROUPS**

*History Note:* Authority G.S. 108A-54; 42 C.F.R. 435.210; 42 C.F.R. 435.222; 42 C.F.R. 435.230; 42 C.F.R. 435.301; 42 C.F.R. 435.308; 42 C.F.R. 435.322; 42 C.F.R. 435.330; 42 U.S.C. 1396(a)(10)(A)(ii); 42 U.S.C. 1396a(a)(10)(C); S.L. 1983, c. 1034, s. 62.2; S.L. 1987, c. 738, s. 69 and 70; S.L. 1989, c. 752, s. 133;  
Eff. September 1, 1984;  
Amended Eff. February 1, 1992; July 1, 1991; August 1, 1990;  
Temporary Amendment Eff. September 12, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
Temporary Amendment Eff. October 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
Amended Eff. January 1, 1995;  
Temporary Amendment Eff. February 23, 1999;  
Amended Eff. August 1, 2000;  
Temporary Amendment Eff. January 1, 2002;  
Amended Eff. April 1, 2003;  
Transferred from 10A NCAC 21B .0102 Eff. May 1, 2012; ~~2012~~.  
Repealed Eff. May 1, 2019.

## **SECTION .0200 - CLASSIFICATION**

### **10A NCAC 23D .0201 CLASSIFICATION**

*History Note:* Filed as a Temporary Amendment Eff. October 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
Filed as a Temporary Amendment Eff. September 12, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
Authority G.S. 108A-54; 42 C.F.R. 435.2; 42 C.F.R. 435.4;  
Eff. September 1, 1984;  
Amended Eff. January 1, 1995; August 1, 1990;  
Temporary Amendment Eff. September 13, 1999;  
Temporary Amendment Expired June 27, 2000;  
Temporary Amendment Eff. September 12, 2000;  
Amended Eff. August 1, 2002;  
Transferred from 10A NCAC 21B .0408 Eff. May 1, 2012; ~~2012~~.  
Repealed Eff. May 1, 2019.

## **SUBCHAPTER 23E – MEDICAID ELIGIBILITY REQUIREMENTS**

## SECTION .0100 – NON-FINANCIAL REQUIREMENTS

### 10A NCAC 23E .0101 AGE

*History Note:* Authority G.S. 108A-54; 42 C.F.R. 435.520; Alexander v. Flaherty Consent Order filed February 14, 1992;  
Eff. September 1, 1984;  
Amended Eff. April 1, 1993; August 1, 1990;  
Transferred from 10A NCAC 21B .0301 Eff. May 1, 2012; ~~2012~~.  
Repealed Eff. May 1, 2019.

### 10A NCAC 23E .0102 UNITED STATES CITIZEN

*History Note:* Authority G.S. 108A-54; 42 C.F.R. 435.402; 8 U.S.C. 1161; 8 U.S.C. 1255a; 42 U.S.C. 1396b(v);  
Eff. September 1, 1984;  
Amended Eff. August 1, 2000; December 1, 1991; August 1, 1990;  
Transferred from 10A NCAC 21B .0302 Eff. May 1, 2012; ~~2012~~.  
Repealed Eff. May 1, 2019.

### 10A NCAC 23E .0103 RESIDENCE

(a) The requirements stated in 42 CFR 435.403 shall apply to determine residence in the State ~~state~~ except for provisions in Paragraph (b) of this Rule.

(b) Residents of the state of Georgia who enter a long term care facility in N.C. within 40 miles of the resident state's border shall retain residence in the prior state. Residents of N.C. who enter a long term care facility in Georgia within 40 miles of the N.C. border retain N.C. residency.

(c) An individual visiting ~~in the state~~ without intent to reside ~~remain in the State~~ shall be ineligible for Medicaid.

(d) An individual who moves to another state and intends to reside ~~remain living~~ in that state shall not be eligible for N.C. Medicaid.

(e) County residence:

- (1) Any client who moves from one county to another North Carolina county shall continue to receive assistance so long as eligibility continues, ~~if eligible~~.
- (2) An individual ~~ordinarily~~ has residence in the county in which he or she resides. However, if he or she is in a hospital, mental institution, intermediate care facility, skilled nursing home, boarding home, confinement center, ~~center~~ or similar facility, the county in which the facility is located shall not be his or her legal residence. Except for (e)(3) in this Rule, the county of legal residence shall be the county where ~~in which~~ the individual lived in a private living arrangement prior to entering a facility.
- (3) If an individual who became disabled prior to age 18 has remained in a facility, he or she remains a resident of the county and state where ~~in which~~ his or her parent(s) had residence immediately prior to his or her reaching age 18. If, as an adult, he or she is applying for assistance and it is not possible for the individual to trace his or her county of residence as a minor, he or she shall establish residence based on where he or she intends ~~his intent~~ to reside, ~~remain~~ regardless of his or her parent's current legal residence.

(f) ~~The client's statement shall be accepted as verification unless there is reason to doubt it. If there is doubt, evaluation of the statement shall be substantiated for:~~

- (1) ~~Temporary absence by determination of the reason for absence, expected duration of the absence, and continued maintenance of home in county of residence;~~
- (2) ~~Entering the state for employment purposes by verified employment, contacts with prospective employers, health department records, Employment Security Commission or Rural Manpower office registration, home in another state with lease or other legal agreement for rental or purchase, or documents proving separation from dependents in another state;~~
- (3) ~~Intent to remain by documents proving disposition of home in prior state, auto registration and drivers license changed to N.C. within 30 days, change in address with former post office or other sources from which income is received and change in voter registration, tax listing;~~



- (4) ~~Incapability of stating intent by verification of representative payee for benefit payments, receipt of benefits on basis of mental illness or retardation, care is provided in a mental retardation facility or power of attorney or guardian has been appointed for him.~~

*History Note:* Authority G.S. 108A-54; 108A-54.1B; 108A-55.3; ~~G.S. 150B-14(e)~~; 42 C.F.R. 435.403; Eff. September 1, 1984; Amended Eff. August 1, 1990; Transferred from 10A NCAC 21B .0303 Eff. May 1, 2012; ~~2012~~. Readopted Eff. May 1, 2019.

#### **10A NCAC 23E .0104 DEPRIVATION**

*History Note:* Authority G.S. 108A-28; 108A-54; 42 C.F.R. 435.510; 89 CVS 922; Eff. September 1, 1984; Amended Eff. October 1, 1991; August 1, 1990; Temporary Amendment Eff. August 5, 1999; Amended Eff. March 19, 2001; Transferred from 10A NCAC 21B .0304 Eff. May 1, 2012; ~~2012~~. Repealed Eff. May 1, 2019.

#### **10A NCAC 23E .0105 DISABILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

#### **10A NCAC 23E .0106 BLINDNESS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

#### **10A NCAC 23E .0107 CARETAKER RELATIVE**

*History Note:* Authority G.S. 108A-54; 42 C.F.R. 435.310; Eff. September 1, 1984; Amended Eff. April 1, 1993; August 1, 1990; Transferred from 10A NCAC 21B .0307 Eff. May 1 2012; ~~2012~~. Repealed Eff. May 1, 2019.

#### **10A NCAC 23E .0108 INMATE OF PUBLIC INSTITUTION OR PRIVATE PSYCHIATRIC HOSPITAL**

*History Note:* Authority G.S. 108A-54; 42 C.F.R. 435.1008; 42 C.F.R. 435.1009; S.L. 1987, c. 758, s. 69; Eff. September 1, 1984; Amended Eff. August 1, 1990; Transferred from 10A NCAC 21B .0308 Eff. May 1, 2012; ~~2012~~. Repealed Eff. May 1, 2019.

### **SECTION .0200 – FINANCIAL REQUIREMENTS**

#### **10A NCAC 23E .0201 APPLYING FOR ALL BENEFITS AND ANNUITIES**

(a) Clients shall take all necessary steps to obtain any annuities, pensions, retirement and disability benefits to which they are entitled, pursuant to 42 CFR 435.608, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>, unless they have good cause for not doing so as determined by the county department of social services. ~~so~~

(b) For purposes of this Rule, good ~~Good~~ cause shall be ~~is~~ limited to physical or mental incapability to make such effort.

(c) If a client fails to comply with Paragraph (a) of this Rule and does not show good cause, The amount of any verifiable benefits is counted as income to the client if the amount can be determined. If the amount cannot be determined, but the availability is verified, the client's eligibility benefits ease shall be terminated. ~~denied or terminated for client's failure to cooperate.~~

*History Note:* Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 435.608; ~~435.603~~; Eff. September 1, 1984;

*Amended Eff. August 1, 1990;  
Transferred from 10A NCAC 21B .0309 Eff. May 1, 2012; 2012-  
Readopted Eff. May 1, 2019.*

**10A NCAC 23E .0202 WHAT RESOURCES ARE COUNTED RESERVE**

(a) North Carolina has contracted with the Social Security Administration under Section 1634 of the Social Security Act to provide Medicaid to all SSI recipients. ~~Resource eligibility~~ The resources that are counted for Medicaid eligibility for individuals under any ~~aged, blind, and disabled~~ Aged, Blind, and Disabled coverage group shall be determined based on standards and methodologies in Title XVI 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/>, ~~Act~~ except as specified in Paragraphs (j)(4) and (k)(4) of this Rule. Applicants for and recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent that such resources can be made available.

(b) The value of resources currently available to any ~~budget unit~~ member of a budget unit, as defined in 10A NCAC 23A .0102, shall be considered in determining financial eligibility. A resource shall be considered available when it is actually available and when the budget unit member has a legal interest in the resource and ~~he, he or she~~, he, he or she, or someone acting in his or her behalf, can take any necessary action to make it available.

(c) Resources shall be excluded in determining financial eligibility when the budget unit member with having a legal interest in the resources is declared incompetent, incompetent unless:

- (1) A guardian of the estate, a general ~~guardian, guardian~~ guardian or an interim guardian has been lawfully appointed in accordance with the law and is able to act on behalf of his or her ward in North Carolina and in any state ~~in which where~~ where such resources are located; or
- (2) A durable power of attorney, valid in North Carolina and in any state ~~in which where~~ where such resource is located, has been granted to a person who is authorized and able to exercise such power.

(d) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget unit member, but such person is unable, fails, or refuses to act within a reasonable amount of time promptly to make the resources ~~actually~~ available to meet the needs of the budget unit member, a referral shall be made to the services unit of the county department of social services for a determination of whether the guardian or attorney in fact is acting in the best interests of the member and if not, the county department of social services shall contact the clerk of court for intervention. The resources shall be excluded in determining financial eligibility pending action by the clerk of court.

(e) When a Medicaid application is filed on behalf of an individual who:

- (1) is alleged to be mentally incompetent,
- (2) has or may have a legal interest in a resource that affects the individual's eligibility, and
- (3) does not have a representative with legal authority to use or dispose of the individual's resources, the individual's representative or family member shall be instructed by the county department of social services to file within 30 calendar days a judicial proceeding under G.S. 35A to declare the individual incompetent and appoint a guardian. If the representative or family member either fails to file such a proceeding within 30 calendar days or fails to ~~timely~~ conclude the proceeding within a reasonable amount of time, proceeding, a referral shall be made to the protective services unit of the county department of social services for guardianship services. If the allegation of incompetence that has lasted, or is expected to last 30 consecutive days or more, or until the individual's death, is supported by competent evidence, as specified in Paragraph (h) of this Rule, If an allegation of incompetence is supported by competent evidence as defined in Paragraph (h) of this Rule, and the incompetence has lasted, or is expected to last, at least 30 consecutive days or until the individual's death, the resources shall be excluded beginning with the date that such evidence indicates that he or she became incompetent, except as provided in Paragraphs (f) or (g) of this Rule.

(f) The budget unit member's resources shall be counted in determining his or her eligibility for Medicaid beginning the first day of the month following the month a guardian of the estate, general ~~guardian, guardian~~ guardian or interim guardian is appointed, provided that after the appointment, property that cannot be disposed of or used except by order of the court shall continue to be excluded until completion of the applicable procedures for disposition specified in G.S. 1 or G.S. 35A.

(g) When the court rules that the budget unit member is competent or no ruling is made because of the death or recovery from incompetence of the member, his or her resources shall be counted except for periods of time for which it can be established by ~~competent evidence~~ "competent evidence" ~~specified~~ defined in Paragraph (h) of this Rule, that

the member was in fact incompetent for at least 30 consecutive days, or until his or her death. Any such showing of incompetence is subject to rebuttal by competent evidence as specified in Paragraph (h) of this Rule.

(h) For purposes of this Rule, ~~competent evidence~~ "competent evidence" is ~~limited to~~ defined as the written statement or testimony at a competency hearing of a physician, psychologist, nurse, or social worker with knowledge of the physical and mental condition of the individual, that contains information on the individual's condition, the basis of that information, individual, the basis of that knowledge, the beginning date of incompetence, the reason the individual is incompetent, and, and if no longer incompetent, when the individual recovered competence.

(i) ~~The limitation of resources held for reserve for the budget unit shall be as follows:~~

- (1) ~~for Family and Children's related categorically and medically needy cases, three thousand dollars (\$3,000.00) per budget unit;~~
- (2) ~~for aged, blind, and disabled cases, two thousand dollars (\$2000.00) for a budget unit of one and three thousand dollars (\$3000.00) for a budget unit of two.~~

~~(i)(j)~~ If the value of countable resources of the budget unit exceeds the reserve allowance for the unit as set out in the Medicaid State Plan, unit, the case shall be ~~ineligible;~~ ineligible unless one of the following is met:

- (1) For Family and Children's medically needy related cases and aged, blind, blind or disabled cases protected by grandfathered provisions, and medically needy cases not protected by grandfathered provision, eligibility shall begin on the day countable resources are reduced to allowable limits or excess income is spent down, whichever occurs later;
- (2) For categorically needy aged, blind, blind or disabled cases not protected by grandfathered provisions, eligibility shall begin no earlier than the month countable resources are reduced to allowable limits as of 11:59pm on the first moment of the first last day of the previous month.

~~(j)(k)~~ Resources counted in the determination of financial eligibility for categorically needy aged, blind, blind and disabled cases, and Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, Qualifying Individual and Qualified Disabled Working Individual cases shall be based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:

- (1) The value of personal effects and household goods shall be not counted.
- (2) The value Value of tenancy in common interest in real property shall be not counted.
- (3) The value Value of life estate interest in real property shall be not counted.
- (4) The value Value of burial plots shall be not counted.
- (5) The cash value of life insurance when the total face value of all cash value bearing life insurance policies does not exceed ten thousand dollars (\$10,000.00) shall be not counted.

~~(k)(l)~~ Resources counted in the determination of financial eligibility for medically needy aged, blind, blind and disabled cases ~~is~~ shall be based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:

- (1) The value of personal effects and household goods shall be not counted.
- (2) The value Value of tenancy in common interest in real property shall be not counted.
- (3) The value Value of life estate interest in real property is not counted.
- (4) Individuals with resources in excess of the resource limit at 11:59pm on the last day of the previous month, the first moment of the month may become eligible during the current month at the point that resources are reduced to the allowable limit.
- (5) The value Value of burial plots shall be not counted.
- (6) The cash value of life insurance when the total face value of all cash value bearing life insurance polities does not exceed ten thousand dollars (\$10,000.00) shall be not counted.

~~(m)~~ Resources counted in the determination of financial eligibility for categorically needy Family and Children's related cases shall be:

- (1) Cash on hand;
- (2) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
- (3) The balance of checking accounts less the current monthly income that had been deposited to meet the budget unit's monthly needs when reserve was verified;
- (4) The portion of lump sum payments remaining after the month of receipt;
- (5) Cash value of life insurance policies owned by the budget unit;
- (6) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
- (7) Patient accounts in long term care facilities;
- (8) Equity in non-essential personal property limited to:
  - (A) Mobile homes not used as home;

- (B) ~~Boats, boat trailers and boat motors;~~
- (C) ~~Campers;~~
- (D) ~~Farm and business equipment;~~
- (E) ~~Equity in vehicles in excess of one motor vehicle per adult;~~

~~(l)(n)~~ Resources counted in the determination of financial eligibility for medically needy Family and Children's ~~related~~ cases are:

- (1) Cash on hand;
- (2) The balance of savings accounts, including savings of a student saving his or her earnings for school expenses;
- (3) The balance of checking ~~accounts, accounts~~ less the current monthly income at this time, that had been deposited to meet the budget unit's monthly needs when reserve was verified by the county department of social services or lump sum income from self-employment deposited to pay annual expenses;
- (4) The ~~cash~~ ~~Cash~~ value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500.00);
- (5) Stocks, bonds, mutual fund shares, certificates of ~~deposit, deposit~~ and other liquid assets;
- (6) Assets held in patient ~~Patient~~ accounts in long term care facilities;
- (7) Equity in ~~non-essential~~, non-income producing personal property limited to:
  - (A) Mobile home not used as ~~home, home~~;
  - (B) Boats, boat trailers and boat ~~motors, motors~~;
  - (C) ~~Campers, Campers~~;
  - (D) Farm and business ~~equipment, equipment~~; and
  - (E) Equity in motor vehicles in excess of one vehicle per adult if not income-producing.

(m) Real property shall be excluded from countable resources for Family and Children's medically needy cases.

(n) One motor vehicle per adult shall be excluded for Family and Children's medically needy cases.

(o) For medically needy Family and Children's cases, income-producing vehicles and personal property shall be excluded from countable resources.

(p) For family and children's medically needy cases, the value of non-excluded motor vehicles is the Current Market Value as determined by the assessed county tax value, less encumbrances. If the client disagrees with the assigned value, he or she has the right to rebut the value by producing independent evidence of value.

(q) There is no resource limit for Family and Children's categorically needy cases pursuant to 42 C.F.R. 435.603.

*History Note: Authority G.S. 108A-54; ~~108A-54.1B~~; 108A-55; ~~108A-58~~; 42 U.S.C. 703; 42 U.S.C. 704; ~~703, 704~~ 42 U.S.C. 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.603; ~~42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435.843; 42 C.F.R. 435.845; 435.845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51; S.L. 2002-126;~~  
 Eff. September 1, 1984;  
 Temporary Amendment Eff. September 1, 1985, for a period of 92 days to expire on December 1, 1985;  
 Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; March 1, 1993;  
 Temporary Amendment Eff. September 13, 1999;  
 Temporary Amendment Expired June 27, 2000;  
 Temporary Amendment Eff. September 12, 2000;  
 Amended Eff. March 19, 2001;  
 Temporary Amendment Eff. April 16, 2001;  
 Amended Eff. August 1, 2002;  
 Temporary Amendment Eff. March 1, 2003;  
 Amended Eff. August 1, 2004;  
 Transferred from 10A NCAC 21B .0310 Eff. May 1, ~~2012~~; ~~2012~~.  
 Readopted Eff. May 1, 2019.*

**10A NCAC 23E .0203 COUNTABLE INCOME**

(a) For Family and Children's ~~family and children's~~ medically needy cases, income from the following sources shall be counted in the calculation of financial eligibility:

- (1) Unearned.

- (A) ~~RSDI~~ RSDI, as defined in 10A NCAC 23A .0102;
  - (B) ~~Veteran's Administration,~~ Administration;
  - (C) ~~Railroad Retirement,~~ Retirement;
  - (D) Pensions or retirement ~~benefits,~~ benefits;
  - (E) ~~Workmen's~~ Worker's Compensation, Compensation;
  - (F) ~~Unemployment Compensation,~~ Compensation;
  - (G) All support payments, including child and spousal support; ~~Support Payments,~~
  - (H) ~~Contributions,~~ Contributions;
  - (I) Dividends or interest from stocks, bonds, and other ~~investments,~~ investments;
  - (J) Trust fund ~~income,~~ income;
  - (K) Private disability or employment ~~compensation,~~ compensation;
  - (L) ~~That~~ The portion of educational loans, grants, and scholarships for ~~maintenance,~~ maintenance;
  - (M) ~~Work release,~~ release;
  - (N) Lump sum ~~payments,~~ payments;
  - (O) Military ~~allotments,~~ allotments;
  - (P) Brown Lung ~~Benefits,~~ Benefits;
  - (Q) Black Lung ~~Benefits,~~ Benefits;
  - (R) Trade Adjustment ~~benefits,~~ benefits;
  - (S) SSI when the client is in ~~long-term care,~~ long-term care;
  - (T) VA Aid and Attendance when the client is in ~~long-term care,~~ long-term care;
  - (U) Foster Care Board payments in excess of State ~~state~~ maximum rates for M-AF clients who serve as foster ~~parents,~~ parents;
  - (V) Income allocated from an institutionalized spouse to the client who is the community spouse as stated in 42 U.S.C. ~~1396r-5(d),~~ 1396r-5(d);
  - (W) Income allowed from an institutionalized spouse to the client who is a dependent family member as stated in 42 U.S.C. ~~1396r-5(d),~~ 1396r-5(d);
  - (X) Sheltered Workshop ~~Income,~~ Income;
  - (Y) ~~Loans~~ Loans, if repayment of a loan and not counted in ~~reserve,~~ reserve; and
  - (Z) Income deemed to Family and Children's clients.
- (2) Earned Income.
- (A) Income from wages, salaries, and ~~commissions,~~ commissions;
  - (B) Farm ~~Income,~~ Income;
  - (C) Small business income including ~~self-employment,~~ self-employment;
  - (D) Rental ~~income,~~ income;
  - (E) Income from roomers and ~~boarders,~~ boarders;
  - (F) Earned income of a child client who is a part-time student and a full-time ~~employee,~~ employee;
  - (G) Supplemental payments in excess of state maximum rates for Foster Care Board payments paid by the county to Family and Children's clients who serve as foster ~~parents,~~ parents; and
  - (H) VA Aid and Attendance paid to a budget unit member who provides the aid and attendance.
- (3) Additional sources of income not listed in Subparagraphs (a)(1) or (2) of this Rule shall be considered available unless specifically excluded by Paragraph (b) of this Rule, or by State or federal regulation or statute.
- (b) For family and children's medically needy cases, income from the following sources shall not be counted in the calculation of financial eligibility:
- (1) Earned income of a child who is a part-time student but is not a full-time employee;
  - (2) Earned income of a child who is a full-time student;
  - (3) Incentive payments and training allowances made to Work Incentives Network (WIN) ~~WIN~~ training participants;
  - (4) Payments for supportive services or reimbursement of out-of-pocket expenses made to volunteers serving as VISTA volunteers, foster grandparents, senior health aides, senior companions, Service Corps of Retired Executives, Active Corps of Executives, Retired Senior Volunteer Programs, Action Cooperative Volunteer Program, University Year for Action Program, and other programs under Titles I, II, and III of Public Law 93-113;

- (5) Foster Care Board payments equal to or below the state maximum rates for Family and Children's clients who serve as foster parents;
- (6) Income that is unpredictable, i.e., unplanned and arising only from time to time. Examples include occasional yard work and sporadic babysitting;
- (7) Relocation payments;
- (8) Value of the coupon allotment under the Food and Nutrition Program (FNS); ~~Food Stamp Program;~~
- (9) Food (vegetables, dairy products, and meat) grown by or given to a member of the household. The amount received from the sale of home grown produce is earned income;
- (10) Benefits received from the Nutrition Program for the Elderly;
- (11) Food Assistance under the Child Nutrition Act and National School Lunch Act;
- (12) Assistance provided in cash or in kind under any governmental, civic, or charitable organization whose purpose is to provide social services or vocational rehabilitation. This includes V.R. incentive payments for training, ~~education, education~~ and allowance for dependents, grants for tuition, chore services under Title XX of the Social Security Act, and VA aid and attendance or aid to the home bound if the individual is in a private living arrangement;
- (13) Loans or grants such as the GI Bill, civic, honorary and fraternal club scholarships, loans, or scholarships granted from private donations to the college, ~~ete.~~, except for any portion used or designated for maintenance;
- (14) Loans, grants, or scholarships to undergraduates for educational purposes made or insured under any program administered by the U.S. Department of Education;
- (15) Benefits received under Title VII of the Older Americans Act of 1965;
- (16) Payments received under the Housing Choice Voucher (HCV) Program, formerly known as the Experimental Housing Allowance Program (EHAP);
- (17) In-kind shelter and utility contributions paid directly to the supplier. For Family and Children's cases, shelter, utilities, or household furnishings made available to the client at no cost;
- (18) Food/clothing contributions in Family and Children's cases (except for food allowance for persons temporarily absent in medical facilities up to 12 months);
- (19) Income of a child under 21 in the budget unit who is participating in the Job Training Partnership Act JTPA and is receiving Medicaid as a child;
- (20) Housing Improvement Grants approved by the N.C. Commission of Indian Affairs or funds distributed per capital or held in trust for Indian tribe members under P.L. 92-254, P.L. 93-134 or P.L. 94-540;
- (21) Payments to Indian tribe members as permitted under P.L. 94-114;
- (22) Payments made by Medicare to a home renal dialysis patient as medical benefits;
- (23) ~~SSI SSI~~, except for individuals in ~~long-term~~ long-term care;
- (24) HUD Section 8 benefits when paid directly to the supplier or jointly to the supplier and client;
- (25) Benefits received by a client who is a representative payee for another individual who is incompetent or incapable of handling his or her affairs. Such benefits ~~must~~ shall be accounted for by the county department of social services separate from the payee's own income and resources;
- (26) Special one time payments such as energy, weatherization assistance, or disaster assistance that is not designated as medical;
- (27) The value of the U.S. Department of Agriculture donated foods (surplus commodities);
- (28) Payments under the Alaska Native Claims Settlement Act, Public Law 92-203;
- (29) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (30) HUD Community Development Block Grant funds received to finance the renovation of a privately owned residence;
- (31) Reimbursement for transportation expenses incurred as a result of participation in the Community Work Experience Program or for use of client's own vehicle to obtain medical care or treatment;
- (32) Adoption assistance;
- (33) Incentive payments made to a client participating in a vocational rehabilitation program;
- (34) Title XX funds received to pay for services rendered by another individual or agency;
- (35) Any amount received as a refund of taxes paid;
- (36) The first fifty-dollars (\$50) of each child support/spousal obligation or military allotment paid monthly to the budget unit in a private living ~~arrangement.~~ arrangement; and

(37) Income from an Achieving a Better Life Experience (ABLE) program account, pursuant to Chapter 147, Article 67 of the North Carolina General Statutes.

(c) For aged, blind, and disabled cases, income counted in the determination of financial eligibility is shall be based on standards and methodologies in Title XVI of the Social Security Act.

(d) For aged, blind, and disabled cases, income from the following sources shall not be counted:

(1) Any Cost of Living Allowance (COLA) increase or receipt of RSDI benefit, as defined in 10A NCAC 23A .0102, benefit which that resulted in the loss of SSI for those qualified disabled and working individuals described at 42 U.S.C. 1396d(s); individuals described in 10A NCAC 23D .0101(17).

(2) Earnings for those individuals who have a plan for achieving self-support (PASS) that is approved by the Social Security Administration; and Administration.

(3) Income from an Achieving a Better Life Experience (ABLE) program account, pursuant to Chapter 147, Article 67 of the North Carolina General Statutes.

(e) Income levels for purposes of establishing eligibility are those amounts approved by the N.C. General Assembly and stated in the Appropriations Act for categorically needy and medically needy classifications, except for the following:

(1) The income level shall be reduced by one-third when an aged, ~~blind, blind~~ or disabled individual lives in the household of another person and does not pay his or her proportionate share of household expenses. The one-third reduction shall not apply to children under nineteen years of age who live in the home of their parents;

(2) An individual living in a long term care facility or other medical institution shall be allowed as income level deduction for personal needs described under the Medicaid State Plan; Rule .0204 (Personal Needs Allowance) of this Section; and

~~(3) The categorically needy income level for an aged, blind, and disabled individual or couple is 100% of the Federal Poverty Level;~~

~~(3)(4)~~ The income level to be applied for Qualified Medicare Beneficiaries described in 42 U.S.C. 1396d and individuals described in 42 U.S.C. 1396e is based on the income level for one; or two for a married couple who live together and both receive Medicare.

(f) Income for Family and Children's categorically needy cases is determined pursuant to 42 C.F.R. 435.603.

*History Note:* Filed as a Temporary Rule Effective July 1, 1987, for a period of 120 days to expire on October 31, 1987;

*Authority* G.S. 108A-25(b); 108A-54; 108A-54.1B; ~~108A-61;~~ 42 C.F.R. 435.135; 42 C.F.R. 435.603; 42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.733; 42 C.F.R. 435.811; 42 C.F.R. 435.812; 42 C.F.R. 435.831; 42 C.F.R. 435.832; 42 C.F. R. 435.1007; 45 C.F.R. 233.20; 42 U.S.C 1383c(b); 42 U.S.C 1383c(d); P.L. 99-272, 99-272; Section 12202; Alexander v. Flaherty Consent Order filed February 14, 1992;

*Eff.* September 1, 1984;

*Amended Eff.* January 1, 1996; January 1, 1995; September 1, 1994; September 1, 1993;

*Temporary Amendment Eff.* February 23, 1999;

*Amended Eff.* August 1, 2000;

*Transferred from 10A NCAC 21B .0312 Eff.* May 1, 2012; ~~2012.~~

*Readopted Eff.* May 1, 2019.

#### **10A NCAC 23E .0204 PERSONAL NEEDS ALLOWANCE**

*History Note:* Authority *G.S.* 108A-25(b); 42 C.F.R. 435.135; 42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.733; 42 C.F.R. 435.831; 42 U.S.C. 1383c(b); 42 U.S.C. 1383c(d);

*Eff.* September 1, 1994;

*Transferred from 10A NCAC 21B .0313 Eff.* May 1, 2012; ~~2012.~~

*Repealed Eff.* May 1, 2019.

#### **10A NCAC 23E .0205 BUDGET UNIT MEMBERSHIP**

In aged, blind, and disabled cases and medically needy cases, the budget unit shall include individuals ~~Individuals~~ who are required by federal and state law to be financially responsible for the support of each other or other dependents. ~~dependents shall be included in the budget unit.~~ In all other categorically needy cases, the budget unit is

determined pursuant to 42 C.F.R. 435.603, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.

*History Note:* Authority G.S. 108A-54; 108A-54.1B; ~~108A-80~~; 42 C.F.R. 435.602; 42 C.F.R. 435.603; 45 C.F.R. 233.51;  
Eff. September 1, 1984;  
Amended Eff. August 1, 1990;  
Transferred from 10A NCAC 21B .0401 Eff. May 1, 2012; ~~2012~~.  
Readopted Eff. May 1, 2019.

#### **10A NCAC 23E .0206 FINANCIAL RESPONSIBILITY AND DEEMING**

*History Note:* Authority G.S. 108A-54; 143-127.1; S.L. 1983, c. 761, s. 60(6); S.L. 1983, c. 1034; S.L. 1983, c. 1116; 42 C.F.R. 435.602; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R. 435.823;  
Eff. September 1, 1984;  
Temporary Amendment Eff. April 1, 1990 for a period of 180 days to expire on September 30, 1990;  
Amended Eff. January 1, 1995; September 1, 1992; October 1, 1990; August 1, 1990;  
Temporary Amendment Eff. January 1, 2003;  
Temporary Amendment Expired October 12, 2003;  
Transferred from 10A NCAC 21B .0402 Eff. May 1, 2012; ~~2012~~.  
Repealed Eff. May 1, 2019.

#### **10A NCAC 23E .0207 WHOSE RESOURCES ARE COUNTED RESERVE**

(a) The value of resources held by the client or by a financially responsible person shall be considered by the county department of social services to be available to the client in determining countable reserve for the budget unit.

(b) Jointly owned resources shall be counted as follows:

- (1) The value of resources owned jointly with a person who is not a member of the client's budget unit ~~non-financially responsible person~~ who is a recipient of another public assistance budget unit shall be divided in parts of equal value equally between the budget units;
- (2) The value of liquid assets and personal property owned jointly with a person who is not a member of the client's budget unit ~~non-financially responsible person~~ who is also not a client of another public assistance budget unit shall be available to the client budget unit member if he or she can dispose of the resource without the consent and participation of the joint-owner or the joint-owner ~~other owner or the other owner~~ consents to and, if necessary, participates in the disposal of the resource;
- (3) The client's share of the value of real property owned jointly with a person who is not a member of the client's budget unit ~~non-financially responsible person~~ who is also not a member of another public assistance budget unit shall be available to the client budget unit member if he or she can dispose of his or her share of the resource without the consent and participation of the joint-owner or the joint-owner ~~other owner or the other owner~~ consents to and, if necessary, participates in the disposal of the resource.

(c) The terms of a separation agreement, divorce decree, will, deed or other legally binding agreement or legally binding order shall take precedence over ownership of resources as stated in (a) and (b) of this Rule, except as provided in Paragraph ~~(4)~~(g) of this Rule.

(d) For all aged, blind, and disabled cases, the resource limit, financial responsibility, and countable and non-countable assets ~~are~~ shall be based on standards and methodology in Title XVI of the Social Security Act except as specified in ~~Items (4) and (5)~~ in Rule .0202 of this Section.

(e) Countable resources for Family and Children's medically needy ~~related~~ cases shall be determined as follows:

- (1) The resources of a spouse, who is not a stepparent, shall be counted in the budget unit's reserve allowance if: ~~if~~
  - (A) the spouses live together; ~~together~~ or
  - (B) one spouse is temporarily absent for twelve months or less in long-term ~~long-term~~ care and the spouse is not a member of another public assistance budget unit;
- (2) The resources of a client and a financially responsible parent or parents shall be counted in the budget unit's reserve limit if: ~~if~~



- (A) the parents live ~~together;~~ together or
  - (B) one parent is temporarily absent for twelve months or less in long-term ~~long-term~~ care and the parent is not a member of another public assistance budget unit;
- (3) The resources of the parent or parents shall not be considered if a child under age 21 requires care and treatment in a medical institution and his or her physician certifies that the care and treatment are expected to exceed 12 months.
- ~~(f) Real property shall be excluded from countable resources for Family and Children's related cases.~~
- ~~(g) One motor vehicle per adult shall be excluded for Family and Children's related cases.~~
- ~~(h) For medically needy family and children's related cases, income producing vehicles and personal property shall be excluded from countable resources.~~
- ~~(i) For family and children's related cases the value of non-excluded motor vehicles is the Current Market Value, less encumbrances. If the applicant/recipient disagrees with the assigned value, he has the right to rebut the value.~~
- ~~(f)(j)~~ For a married individual:
- (1) Resources available to the individual are available to his or her spouse who is a noninstitutionalized applicant or recipient and who is either living with the individual or temporarily absent for twelve months or less from the home, irrespective of the terms of any will, deed, contract, antenuptial agreement, or other agreement, and irrespective of whether or not the individual actually contributed the resources to the applicant or recipient. All resources available to an applicant or recipient under the rules of this Section must be considered by the county department of social services when determining his or her countable reserve.
  - (2) For an institutionalized spouse as defined in 42 U.S.C. 1396r-5(h), available resources shall be determined in accordance with 42 U.S.C. 1396r-5(c), except as specified in Paragraph ~~(g)(m)~~ of this Rule.
- ~~(g)(k)~~ For an institutionalized individual, the availability of resources are determined in accordance with 42 U.S.C. 1396r-5. Resources of the community spouse ~~are shall~~ shall not be counted for the institutionalized spouse when:
- (1) Resources of the community spouse cannot be determined or cannot be made available to the institutionalized spouse because the community spouse cannot be located; or
  - (2) The couple has been continuously separated for 12 months at the time the institutionalized spouse enters the institution.

*History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-55; ~~S.L. 1983, c. 1116~~; 42 U.S.C. 1396r-5; 42 U.S.C. 1396a(a)(17); 42 U.S.C. 1396a(a)(51); 42 C.F.R. 435.602; ~~42 C.F.R. 435.711~~; 42 C.F.R. 435.712; 42 C.F.R. 435.723; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R. 435.822; 42 C.F.R. 435.823; 42 C.F.R. 435.724; 42 C.F.R. 435.726; 42 C.F.R. 435.733; 42 C.F.R. 435.735; 42 C.F.R. 435.840; 42 C.F.R. 435.832; 42 C.F.R. 435.845; 45 C.F.R. 233.20; 45 C.F.R. 233.51; ~~Deficit Reduction Act of 1984 (P.L. 98-369), Section 2373; Correll v. DSS/DMA/DHR, 418 S.E.2d 232 (1992); No. 406PA91 (North Carolina Supreme Court); Schweiker v. Gray Panthers, 453 U.S. 34, 101 S.Ct. 2633, 69 L. Ed.2d 460 (1981); Eff. September 1, 1984; Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; April 1, 1993; Temporary Amendment Eff. September 13, 1999; Temporary Amendment Expired June 27, 2000; Temporary Amendment Eff. September 12, 2000; Amended Eff. August 1, 2002; Transferred from 10A NCAC 21B .0403 Eff. May 1, 2012; ~~2012~~. Readopted Eff. May 1, 2019.~~*

**10A NCAC 23E .0208 CALCULATING INCOME**

- (a) Income that is actually available and ~~that which~~ the client or someone acting in his or her behalf has the legal authority to can legally make available for support and maintenance shall be counted as income.
- (b) Only income actually available or predicted by the county department of social services to be available to the budget unit for the certification period, as defined in 10A NCAC 23A .0102, ~~period~~ for which eligibility is being determined shall be counted as income.
- (c) For aged, blind, and disabled cases allowable disregards from income ~~are shall be~~ based on Title XVI of the Social Security Act.
- (d) Deductions subtracted after allowable disregards are:

- (1) Incapacitated adult care not to exceed one hundred and seventy-five dollars (\$175.00) per adult for Family and Children's medically needy cases.
  - (2) Child ~~or incapacitated adult~~ care not to exceed one hundred and seventy-five dollars (\$175.00) per child over two years of age ~~or adult~~ or two hundred dollars (\$200.00) per child under two years of age for Family and Children's medically needy related cases.
  - (3)(2) A standard deduction of ninety dollars (\$90.00) from the total earned income of each budget unit member for Family and Children's medically needy related cases.
  - (4)(3) For aged, blind, and disabled cases allowable deductions from income are based on Title XVI of the Social Security Act.
- (e) Except for M-PW, as defined in 10A NCAC 23A .0102. M-PW the monthly amount of wages, income, and deductions ~~wage deductions and work-related expenses~~ shall be calculated by converting the average amount received by frequency per pay period into a monthly amount as follows: ~~amount:~~
- (1) If ~~received~~ paid weekly, multiply by 4.3.
  - (2) If ~~received~~ paid bi-weekly, multiply by 2.15.
  - (3) If ~~received~~ paid semi-monthly, multiply by 2.
  - (4) If ~~received~~ paid monthly, use the monthly gross.
  - (5) If salaried, and contract renewed annually, divide annual income ~~etc.~~ by 12.
- (f) For M-PW cases, the budget unit's actual income for the calendar month of eligibility shall be verified by the county department of social services. ~~verified.~~

*History Note: Authority G.S. 108A-25(b); 108A-54; 108.54.1B; 42 C.F.R. 435.121; 42 C.F.R. 435.401; 42 C.F.R. 435.603; 42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.734; 42 C.F.R. 435.812; 42 C.F.R. 435.831; 45 C.F.R. 435.845; 45 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51; Eff. September 1, 1984; Amended Eff. January 1, 1995; August 1, 1990; March 1, 1986; Temporary Amendment Eff. August 22, 1996; Amended Eff. August 1, 1998; Transferred from 10A NCAC 21B .0404 Eff. May 1, 2012; 2012. Readopted Eff. May 1, 2019.*

**10A NCAC 23E .0209 DEDUCTIBLE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 23E .0210 PATIENT LIABILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 23E .0211 ALIEN SPONSOR DEEMING (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

## SUBCHAPTER 23G – MEDICAID CERTIFICATION, CORRECTION OF ELIGIBILITY AND REDETERMINATION OF ELIGIBILITY

### SECTION .0100 – MEDICAID CERTIFICATION

**10A NCAC 23G .0101 CERTIFICATION AND AUTHORIZATION**

*History Note: Authority G.S. 108A-54; 42 C.F.R. 435.112; 42 C.F.R. 435.914; Eff. September 1, 1984; Amended Eff. March 1, 1993; August 1, 1990; Transferred from 10A NCAC 21B .0405 Eff. May 1, 2012; 2012. Repealed Eff. May 1, 2019.*

### SECTION .0200 – CORRECTION OF ERRONEOUS ELIGIBILITY

**10A NCAC 23G .0201 GENERAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 23G .0202 CORRECTIVE ACTIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 23G .0203 TIME LIMITS FOR CORRECTIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 23G .0204 RESPONSIBILITY FOR ERRORS**

(a) The Division of ~~Health Benefits (Division) Medical Assistance~~ shall be financially responsible for costs resulting from the erroneous issuance of benefits and Medicaid claims payments when:

- (1) Policy guidance ~~interpretations~~ given by the ~~Division of Medical Assistance~~ or its agents is ~~are~~ erroneous and the Division determines that is the sole cause of any erroneous benefits or payments; ~~or~~
- (2) ~~Information Services operations staff fail to manually remove Medicaid ID cards from outgoing mail subsequent to the county DSS's timely authorization of a termination or reduction in benefits; or~~
- (2)(3) A systems failure at the State state computer center occurs on the last cutoff date of the month preventing the county DSS from data entering case terminations or adverse actions; or
- (3)(4) Any other failure or error the Division determines is attributable solely to the State state occurs.

(b) The county department of social services shall be financially responsible for costs resulting from the erroneous issuance of benefits and Medicaid claims payments when it:

- (1) Authorizes retroactive eligibility outside the dates permitted by regulations or Rule .0203 of this Section; ~~or~~
- (2) Fails to send required notices of patient liability or deductible balance to medical providers; ~~or~~
- (3) Fails to end-date special coverage indicators such as Community Alternatives Program (CAP) CAP; ~~or HMO~~ in the State state eligibility information system; ~~or~~
- (4) Enters an authorization date in the eligibility system that is earlier than the effective determined date of eligibility; ~~or~~
- (5) Fails to determine the availability of or fails to ~~data~~ enter data on third-party resource information in the State state eligibility information system; ~~or~~
- (6) Terminates a case or individual after the Medicaid ID card has been issued; ~~or~~
- (7) ~~Issues a county typed Medicaid ID card that has erroneous dates of eligibility; or~~
- (7)(8) Fails to initiate application for Medicare Part B coverage for recipients who are eligible, but refuse or are unable to apply for themselves; or
- (8)(9) Takes any other action that requires payment of Medicaid claims for an ineligible individual, for ineligible dates, dates or ~~in~~ for an amount that includes a recipient's liability and for which the State state cannot claim federal participation.

(c) The amounts to be charged back to the county department of social services for erroneous payments of claims shall be the State state and federal shares of the erroneous payment, not to exceed the lesser of the amount of actual error or claims payment.

*History Note:* Authority G.S. 108A-25.1A; 108A-54; 108A-54.1B; 42 C.F.R. 433.32; 42 C.F.R. 435.903; 435.904;  
Eff. June 1, 1990;  
Amended Eff. May 1, 1992;  
Transferred from 10A NCAC 21A .0604 Eff. May 1, 2012; 2012-  
Readopted Eff. May 1, 2019.

**SECTION .0300 – REDETERMINATION OF ELIGIBILITY AND CHANGE IN SITUATION**

**10A NCAC 23G .0303 RECOMMENDATION**

*History Note:* Authority G.S. 108A-54; 42 C.F.R. 435.919;  
Eff. September 1, 1984;  
Amended Eff. August 1, 1990;  
Transferred from 10A NCAC 21B .0503 Eff. May 1, 2012; 2012-  
Repealed Eff. May 1, 2019.

**10A NCAC 23G .0304 CHANGE IN SITUATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SUBCHAPTER 23H - CONFIDENTIALITY AND ACCESS TO CLIENT RECORDS**

**SECTION .0100 - GENERAL**

**10A NCAC 23H .0106 LIABILITY OF PERSONS WITH ACCESS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 23H .0107 RIGHT OF ACCESS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 23H .0108 WITHHOLDING INFORMATION FROM THE CLIENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 23H .0109 PROCEDURE FOR REVIEW OF RECORDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 23H .0110 CONSENT FOR RELEASE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 23H .0111 DISCLOSURE WITHOUT CLIENT CONSENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 23H .0112 DOCUMENTATION OF CONSENT OR DISCLOSURE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 23H .0113 PERSONS DESIGNATED TO DISCLOSE INFORMATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**CHAPTER 25 - MEDICAL ASSISTANCE PROVIDED**

**SUBCHAPTER 25A -GENERAL**

**SECTION .0200 - MEDICAL SERVICES**

**10A NCAC 25A .0201 – MEDICAL SERVICES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SUBCHAPTER 25H - DENTAL SERVICES**

**SECTION .0200 - GENERAL**

**10A NCAC 25H .0203 STANDARDS FOR PARTICIPATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SUBCHAPTER 25K - DRUGS/PHARMACY**

**SECTION .0200 – PHARMACY SERVICES**

**10A NCAC 25K .0201 PHARMACY SERVICES**

*History Note: Authority G.S. 90-85.26; 108A-25(b); 108A-54; 42 C.F.R. 440.90; 42 CFR 447.331; S.L. 1985, c. 479, s. 86; 42 U.S.C. 1396r-8(d)(1)(A); S.L 2009-451; Eff. September 30, 1977; Readopted Eff. October 31, 1977; Amended Eff. January 1, 1984;*

*Recodified from 10 NCAC 26B .0116 Eff. October 1, 1993;  
Recodified from 10 NCAC 26B .0117 Eff. January 1, 1998;  
Amended Eff. May 1, 2010;  
Transferred from 10A NCAC 22O .0118 Eff. May 1, 2012; ~~2012~~;  
Repealed Eff. May 1, 2019.*

**10A NCAC 25K .0401 PATIENT COUNSELING (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SUBCHAPTER 25M - FACILITIES**

**SECTION .0200 – INPATIENT HOSPITAL SERVICES**

**10A NCAC 25M .0201 INPATIENT HOSPITAL SERVICES**

*History Note: Authority G.S. 108A-25(b); 108A-54; S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.10; 42 C.F.R. 440.230(d); 42 C.F.R.447.253; 42 C.F.R. 456.1;  
Eff. February 1, 1976;  
Readopted Eff. October 31, 1977;  
Amended Eff. October 1, 1986; August 1, 1986; October 1, 1982;  
Temporary Amendment Eff. October 15, 1999;  
Temporary Amendment Expired July 28, 2000;  
Temporary Amendment Eff. September 25, 2000;  
Temporary Amendment Expired June 29, 2001;  
Paragraphs (a)-(d) transferred from 10A NCAC 22O .0401 Eff. May 1, 2012.  
Paragraph (e) transferred from 10A NCAC 22O .0114 Eff. May 1, 2012 (Previously recodified from 10 NCAC 26B .0112 Eff. October 1, 1993 and recodified from 10 NCAC 26B .0113 Eff. January 1, 1998); ~~1998~~;  
Repealed Eff. May 1, 2019.*

**SUBCHAPTER 25P - MEDICAL-SURGICAL**

**SECTION .0200 – INPATIENT HOSPITAL SERVICES**

**10A NCAC 25P .0201 INPATIENT HOSPITAL SERVICES**

*History Note: Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.230(d); 42 C.F.R.447.253; 42 C.F.R. 456.1;  
Eff. February 1, 1976;  
Readopted Eff. October 31, 1977;  
Amended Eff. October 1, 1986; August 1, 1986; October 1, 1982;  
Temporary Amendment Eff. October 15, 1999;  
Temporary Amendment Expired July 28, 2000;  
Temporary Amendment Eff. September 25, 2000;  
Temporary Amendment Expired June 29, 2001;  
Transferred from 10A NCAC 22O .0401(e) Eff. May 1, 2012; ~~2012~~;  
Repealed Eff. May 1, 2019.*

**SECTION .0300 – OUTPATIENT HOSPITAL SERVICES**

**10A NCAC 25P .0301 OUTPATIENT HOSPITAL SERVICES**

*History Note: Authority G.S. 108A-25(b); 42 C.F.R. 440.20; 42 C.F.R. 440.230(d); 42 C.F.R. 456.1;  
Eff. February 1, 1976;  
Readopted Eff. October 31, 1977;  
Amended Eff. October 1, 1986;  
Transferred from 10A NCAC 22O .0402 Eff. May 1, 2012; ~~2012~~;*

Repealed Eff. May 1, 2019.

**SECTION .0400 – OTHER SERVICES**

**10A NCAC 25P .0402 CLINIC SERVICES**

*History Note: Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 440.20;  
Eff. February 1, 1976;  
Amended Eff. September 30, 1977;  
Readopted Eff. October 31, 1977;  
Amended Eff. January 1, 1984;  
Recodified from 10 NCAC 26B .0113 Eff. October 1, 1993;  
Recodified from 10 NCAC 26B .0114 Eff. January 1, 1998;  
Transferred from 10A NCAC 22O .0115 Eff. May 1, 2012; ~~2012~~;  
Repealed Eff. May 1, 2019.*