



NOTICE OF TEXT

[Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME: 36

ISSUE: 18

CHECK APPROPRIATE BOX:

- Notice with a scheduled hearing
- Notice without a scheduled hearing
- Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 14. If a hearing is scheduled, complete block 5.
Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency: [HHS - Division of Health Benefits](#)

2. Link to agency website pursuant to G.S. 150B-19.1(c): <https://medicaid.ncdhhs.gov/meetings-notices/rules-actions>

3. Proposed Action -- Check the appropriate box(es) and list rule citation(s) beside proposed action:

ADOPTION: [10A NCAC 22Q .0101-.0106](#); [22R .0101-.0105](#)

AMENDMENT:

REPEAL:

READOPTION with substantive changes:

READOPTION without substantive changes:

REPEAL through READOPTION:

4. Proposed effective date: [07/01/2022](#)

5. Is a public hearing planned? [Yes](#)

If yes:

Date	Time	Location
03/31/2022	10:00 a.m.	This remote hearing can be accessed by dialing (877) 336-1839 and entering access code 3956100.

6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

7. Explain Reason For Proposed Rule(s):

The new rules under Subchapters 22Q and 22R will effectuate the directive from the General Assembly for the Department to create rules to implement G.S. 143C-9-9 ("Hospital Uncompensated Care Fund"). The purpose of these rules is to establish the sequence of allocations of federal disproportionate share adjustment receipts arising from certified public expenditures, define the hospitals eligible for participation in the distribution of these funds, and codify formulas for calculating the distributions using outpatient cost metrics. Most supplemental payments are not permitted in managed care, which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds.

8. 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. If the Rules Review Commission receives written and signed objections 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 email. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Rule(s) is automatically subject to legislative review. Cite statutory reference:

9. The person to whom written comments may be submitted on the proposed rule(s):

Name: [Shazia A. Keller](#)
Address: [NC DHHS Division of Health Benefits, 2501 Mail Service Center](#)
[Raleigh, NC 27699-2501](#)
Phone (optional): [919-218-1372](#)
Fax (optional):
EMail (optional) MedicaidRulesComments@dhhs.nc.gov

10. Comment Period Ends: [05/17/2022](#)

11. Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

[State funds affected](#)
[Local funds affected](#)
[Approved by OSBM](#)

12. Rule-making Coordinator:

Name: [Shazia Keller](#)
[919-218-1372](#)
shazia.keller@dhhs.nc.gov

Agency contact, if any:

Name: [Jim Flowers](#)
Phone: [919-527-7172](#)
Email: jim.flowers@dhhs.nc.gov

13. The Agency formally proposed the text of this rule(s) on

Date: [02/17/2022](#)

1 10A NCAC 22Q is proposed for adoption as follows:
2

3 **CHAPTER 22 MEDICAL ASSISTANCE ELIGIBILITY**
4

5 **SUBCHAPTER 22Q DISTRIBUTION OF FEDERAL DISPROPORTIONATE SHARE**
6 **ADJUSTMENT RECEIPTS ARISING FROM CERTIFIED PUBLIC EXPENDITURES**
7

8 **10A NCAC 22Q .0101 SCOPE**

9 This Subchapter establishes the requirements for the distribution of federal disproportionate share
10 adjustment receipts as established by 42 CFR 447.298 arising from certified public expenditures.
11

12 *History Note: Authority G.S. 108A-54; 143C-9-9;*

13 *Eff. July 1, 2022;*

14 *Temporary Adoption Eff. December 29, 2021.*
15

1 10A NCAC 22Q .0102 is proposed for adoption as follows:
2

3 **10A NCAC 22Q .0102 DEFINITIONS**

4 (a) “Certifying Hospitals” means an institution that meets all of the following criteria:

- 5 (1) meets the definition in G.S. 131E-176(13);
6 (2) is licensed by the State of North Carolina; and
7 (3) certifies as a public agency that its expenditures are eligible for Federal Financial
8 Participation in accordance with 42 CFR 433.51(b), which is incorporated by reference,
9 including subsequent amendments and editions. This document may be accessed at
10 <https://www.ecfr.gov> at no charge.

11 (b) “Department” means the North Carolina Department of Health and Human Services.

12 (c) “Outpatient services” means those services as defined by 42 CFR 440.20(a), which is hereby
13 incorporated by reference, including subsequent amendments and editions. This document can be
14 accessed at <https://www.ecfr.gov> at no charge.

15 (d) “Uninsured patient” means medical care recipients who do not have health insurance, Medicaid or
16 Medicare, or other third-party coverage. State or local government payments made to a hospital for
17 services provided to indigent patients shall not be considered a source of third-party coverage.

18 (e) “Hospital Uncompensated Care Fund” means the fund established by G.S. 143C-9-9 and governed by
19 10A NCAC 22R.

20 (f) “Payment period” means the 12-month term ending September 30th of each year.

21

22 *History Note: Authority G.S. 108A-54; 143C-9-9;*

23 *Eff. July 1, 2022;*

24 *Temporary Adoption Eff. December 29, 2021.*

25

1 10A NCAC 22Q .0103 is proposed for adoption as follows:

2

3 **10A NCAC 22Q .0103 DISTRIBUTIONS**

4 After distributions are made pursuant to an act appropriating funds for the operation of the North Carolina
5 Medicaid Program and the "Basic Disproportionate Share Hospital (DSH) Payment" section of the North
6 Carolina Medicaid State Plan, Attachment 4.19-A, which is incorporated by reference, including
7 subsequent amendments and editions, and may be accessed free of charge at
8 <https://medicaid.ncdhhs.gov/media/973/download?attachment>, the Department shall make distributions of
9 the remaining DSH funds in the following order to:

- 10 (1) Certifying hospitals; and
11 (2) The Hospital Uncompensated Care Fund.

12

13 *History Note: Authority G.S. 108A-54; 143C-9-9;*
14 *Eff. July 1, 2022.*
15 *Temporary Adoption Eff. December 29, 2021.*

16

1 10A NCAC 22Q .0104 is proposed for adoption as follows:

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3 **10A NCAC 22Q .0104 CERTIFYING HOSPITAL DISTRIBUTION**

4 The Department shall distribute available funds to certifying hospitals in two parts:

5 (1) An amount equal to 10 percent of expenditures certified by the hospital pursuant to 42 CFR
6 433.51; and

7 (2) An amount equal to the hospital's proportionate share, calculated pursuant to Rule .0106 of
8 this Section, of the available funds based on the hospital's share of outpatient costs for
9 uninsured patients as a percentage of the Statewide aggregate of outpatient costs for
10 uninsured patients. To be eligible for a proportionate share, a hospital shall file with the
11 Department 90 days prior to the date of payment as determined by the Department, a form
12 prescribed by the Department attesting to the hospital's:

13 (a) Qualification for disproportionate share status under the "Disproportionate Share
14 Hospital (DSH) Payment" section of the North Carolina Medicaid State Plan,
15 Attachment 4.19-A;

16 (b) Unreimbursed charges and payments for outpatient services provided to uninsured
17 patients; and

18 (c) Aggregate Medicaid outpatient cost-to-charge ratio.

19
20 *History Note: Authority G.S. 108A-54; 143C-9-9;*
21 *Eff. July 1, 2022;*
22 *Temporary Adoption Eff. December 29, 2021.*
23

1 10A NCAC 22Q .0105 is proposed for adoption as follows:

2

3 **10A NCAC 22Q .0105 CERTIFYING HOSPITALS' OUTPATIENT COSTS**

4 (a) A certifying hospital's outpatient costs for uninsured patients will be determined by multiplying the
5 hospital's outpatient cost-to-charge ratio in Rule .0104(2)(c) of this Section by the hospital's outpatient
6 charges for uninsured patients from Rule .0104(2)(b) of this Section.

7 (b) From the product calculated in Paragraph (a) of this Rule, the Department will then subtract payments
8 that the hospital received from uninsured patients for outpatient services in Rule .0104(2)(b) of this Section.

9 (c) The Department will bring the uncompensated care cost data forward to the end of the payment period
10 by applying the applicable Centers for Medicare and Medicaid Services' Prospective Payment System
11 Hospital Input Price Indices, which are available at [https://www.cms.gov/Research-Statistics-Data-and-](https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketData)
12 [Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketData](https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketData).

13

14 *History Note: Authority G.S. 108A-54; 143C-9-9;*

15 *Eff. July 1, 2022;*

16 *Temporary Adoption Eff. December 29, 2021.*

17

1 10A NCAC 22Q .0106 is proposed for adoption as follows:

2
3 **10A NCAC 22Q .0106 CERTIFYING HOSPITAL'S PROPORTIONATE SHARE**

4 The Department shall calculate the certifying hospital's proportionate share of outpatient costs as follows:

- 5 (1) Adding the certifying hospitals' outpatient costs and each of the eligible hospitals' (as
6 defined in 10A NCAC 22R .0103) eligible outpatient costs under 10A NCAC 22R .0104.
7 The sum represents the total of the outpatient costs.
- 8 (2) The sum of all certifying hospitals' outpatient costs under Rule .0105 of this Section shall
9 be divided by the total outpatient costs in Item (1) of this Rule. The quotient represents the
10 certifying hospitals' proportionate share, expressed as a decimal.
- 11 (3) The amount of available funds shall be multiplied by the certifying hospitals' proportionate
12 share in Item (2) of this Rule. The product represents the funds available for distribution to
13 individual certifying hospitals.
- 14 (4) A certifying hospital shall be eligible for a payment from funds available for distribution in
15 Item (3) of this Rule. In each payment period, a certifying hospital shall receive a
16 proportional payment of the available funds based on the certifying hospital's share of
17 outpatient costs for uninsured patients as a percentage of the aggregate of outpatient costs for
18 uninsured patients for certifying hospitals.
- 19 (5) Hospitals receiving payments pursuant to this Subchapter shall be subject to the audit and
20 reporting requirements of the North Carolina Medicaid State Plan, Attachment 4.19-A.

21
22 History Note: Authority G.S. 108A-54; 108A-55(c); 143C-9-9;

23 Eff. July 1, 2022;

24 Temporary Adoption Eff. December 29, 2021.

1 10A NCAC 22R is proposed for adoption as follows:
2

3 **CHAPTER 22 MEDICAL ASSISTANCE ELIGIBILITY**
4

5 **SUBCHAPTER 22R DISTRIBUTION OF HOSPITAL UNCOMPENSATED CARE FUND**
6

7 **10A NCAC 22R .0101 SCOPE**

8 This Subchapter establishes the requirements for the distribution of funds allocated to the Hospital
9 Uncompensated Care Fund pursuant to G.S. 143C-9-9 after distributions of available funds have been made
10 pursuant to 10A NCAC 22Q.

11
12 *History Note: Authority G.S. 108A-54; 143C-9-9;*
13 *Eff. July 1, 2022;*
14 *Temporary Adoption Eff. December 29, 2021.*
15

1 10A NCAC 22R .0102 is proposed for adoption as follows:

2

3 **10A NCAC 22R .0102 DEFINITIONS**

4 (a) “Department” means the North Carolina Department of Health and Human Services.

5 (b) “Eligible hospital” means an institution that meets the requirements of Rule .0103 of this Section.

6 (c) “Eligible hospital cost” means the values calculated pursuant to Rule .0104 of this Section.

7 (d) “Outpatient services” means the medical care and items as defined by 42 CFR 440.20(a), which is
8 incorporated by reference in 10A NCAC 22Q .0102.

9 (e) “Uninsured patient” means a recipient of medical care who has no health insurance, Medicaid or
10 Medicare, or other third-party coverage. State and local government payments made to a hospital for
11 services provided to indigent patients shall not be considered third-party coverage.

12 (f) “Payment period” means the 12-month term ending September 30th of each year.

13

14 *History Note: Authority G.S. 108A-54; 143C-9-9;*

15 *Eff. July 1, 2022;*

16 *Temporary Adoption Eff. December 29, 2021.*

17

1 10A NCAC 22R .0103 is proposed for adoption as follows:

2

3 **10A NCAC 22R .0103 ELIGIBLE HOSPITAL**

4 An institution licensed by the State of North Carolina that meets the definition in G.S. 131E-176 (13) is
5 eligible for reimbursement from the Hospital Uncompensated Care Fund if it:

6 (1) is not a public agency qualified to certify expenditures in accordance 42 CFR 433.51(b),
7 which is incorporated by reference in 10A NCAC 22Q .0102;

8 (2) received payment for more than 50 percent of their Medicaid inpatient discharges under the
9 North Carolina Medicaid State Plan, Attachment 4.19-A discharge Diagnosis Related Groups
10 methodology for the most recent payment period;

11 (3) files with the Department 90-days prior to the date of payment under this Subchapter forms
12 prescribed by the Department attesting to the hospital's:

13 (a) qualification for disproportionate share status of the "Disproportionate Share
14 Hospital (DSH) Payment" section of the North Carolina Medicaid State Plan,
15 Attachment 4.19-A;

16 (b) unreimbursed charges and payments for outpatient services provided to uninsured
17 patients; and

18 (c) aggregate Medicaid outpatient cost-to-charge.

19

20 *History Note: Authority G.S. 108A-54; 143C-9-9;*

21 *Eff. July 1, 2022;*

22 *Temporary Adoption Eff. December 29, 2021.*

23

1 10A NCAC 22R .0104 is proposed for adoption as follows:

2

3 **10A NCAC 22R .0104 ELIGIBLE OUTPATIENT COSTS**

4 (a) An eligible hospital's eligible outpatient costs for uninsured patients will be determined by multiplying
5 the hospital's outpatient cost-to-charge ratio in Rule .0103(3)(c) of this Section by the hospital's outpatient
6 charges for uninsured patients from Rule .0103(3)(b) of this Section.

7 (b) From the product calculated in Paragraph (a) of this Rule, the Department will then subtract payments
8 that the hospital received from uninsured patients for outpatient services from Rule .0103(3)(b) of this
9 Section.

10 (c) The Department will bring the uncompensated care cost data forward to the end of the payment period
11 by applying the applicable Centers for Medicare and Medicaid Services' Prospective Payment System
12 Hospital Input Price Indices, which are available at [https://www.cms.gov/Research-Statistics-Data-and-](https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketData)
13 Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketData.

14

15 *History Note: Authority G.S. 108A-54; 143C-9-9;*

16 *Eff. July 1, 2022;*

17 *Temporary Adoption Eff. December 29, 2021.*

18

1 10A NCAC 22R .0105 is proposed for adoption as follows:

2
3 **10A NCAC 22R .0105 DISTRIBUTION OF AVAILABLE FUNDS**

4 (a) An eligible hospital satisfying the requirements of Rule .0103 of this Section shall be eligible for a
5 payment from funds available under this Subchapter. In a payment period, an eligible hospital shall receive
6 a proportional payment of the available funds based on the eligible hospital's share of outpatient costs for
7 uninsured patients as a percentage of the aggregate of outpatient costs for uninsured patients for all eligible
8 hospitals.

9 (b) Based on the availability of funds, payments authorized by this Rule shall be made at least annually on
10 a frequency determined by the Department in consultation with certifying hospitals.

11 (c) To confirm the hospital's eligibility to receive payments pursuant to this Subchapter and the accuracy
12 of the hospital's attestation to unreimbursed charges for outpatient services provided to uninsured patients
13 and the hospital's Medicaid outpatient cost-to-charge ratios, the Department may-audit a hospital receiving
14 more than two million dollars (\$2,000,000) for compliance with the requirements of this Subchapter. Upon
15 completion of the audit, the following shall occur when applicable:

- 16 (1) If a hospital received payments pursuant to Paragraph (a) of this Rule in excess of the
17 percentage determined by the audit, the excess payments shall be refunded to the Department.
18 (2) The Department shall distribute any refunded amounts to eligible hospitals within 12 months
19 of receipt using the distribution method set forth Paragraph (a) of this Rule.
20 (3) No additional payment shall be made to eligible hospitals in connection with the audit except
21 for the redistribution of amounts refunded after an audit conducted by the Division of Health
22 Benefits.

23
24 *History Note:* Authority G.S. 108A-54; 143C-9-9;
25 Eff. July 1, 2022;
26 Temporary Adoption Eff. December 29, 2021.
27
28