

Fiscal Impact Analysis of Hospital Uncompensated Care Fund Rules

Agency Proposing Rule Change: North Carolina Department of Health and Human Services (DHHS)
Division of Health Benefits (DHB)

Agency Contact: Shazia Keller, DHB Rulemaking Coordinator –
Phone: 919-218-1372
Email: shazia.keller@dhhs.nc.gov

Agency Contact: Jim Flowers, DHB Deputy Director of Provider Audit
Phone: 919-527-7172
Email: jim.flowers@dhhs.nc.gov

Impact Summary:

Participant:	No
Provider:	Yes
Federal Government:	No
State Government:	Yes
Local Government:	Yes
Small Business:	No
Substantial Impact:	No

Title of Rule Changes and Citations

- 10A NCAC 22Q .0101 Scope
- 10A NCAC 22Q .0102 Definitions
- 10A NCAC 22Q .0103 Distributions
- 10A NCAC 22Q .0104 Certifying Hospital Distribution
- 10A NCAC 22Q .0105 Certifying Hospitals' Outpatient Costs
- 10A NCAC 22Q .0106 Certifying Hospitals' Proportionate Share
- 10A NCAC 22R .0101 Scope
- 10A NCAC 22R .0102 Definitions
- 10A NCAC 22R .0103 Eligible Hospital
- 10A NCAC 22R .0104 Eligible Outpatient Costs
- 10A NCAC 22R .0105 Distribution of Available Funds

Authorizing Statutes

- G.S. 108A-54
- G.S. 143C-9-9
- G.S. 108A-55(c)

Introduction and Purpose

The North Carolina Medicaid Program has historically been a fee-for-service health care delivery system. One characteristic of this system was that various provider types, including hospitals, were eligible to receive supplemental payments in addition to reimbursement for claims for services rendered to

Medicaid beneficiaries. Of the different supplemental payments available to hospitals, one was Medicaid disproportionate share hospital (DSH) payments. To fund Medicaid DSH payments, Congress annually establishes an aggregate Medicaid DSH allotment to each state. In North Carolina, the bulk of its annual Medicaid DSH allotment is drawn down when public hospitals file reports certifying public expenditures for uncompensated care in a federally defined process. In North Carolina, under the historical North Carolina Medicaid State Plan, the Medicaid supplemental and DSH payment program was a complex and integrated payment model designed to maximize the receipt of federal Medicaid and DSH funds and then to use those receipts to make supplemental payments and distributions to support both public *and private* hospitals costs of services to Medicaid and uninsured beneficiaries.

The General Assembly mandated that DHB transition the majority of NC Medicaid beneficiaries to a managed care delivery system on July 1, 2021, pursuant to S.L. 2015-245, as amended by S.L. 2020-88. In managed care, Prepaid Health Plans (PHP) receive capitated payments to provide services to Medicaid beneficiaries that enroll in their plan. In this system, nearly all types of supplemental payments are prohibited by federal regulation. Medicaid DSH payments remain one of the few supplemental payments that are expressly permitted to continue outside of capitation under federal regulations.

As part of the transition to managed care, DHB submitted to the Centers for Medicare and Medicaid Services (CMS) and received approval for a Medicaid State Plan Amendment (SPA) which incorporated substantially all of historical supplemental payments to hospitals into enhanced base payments for services to be used across both the limited remaining fee-for-service and new managed care delivery systems. Additionally, the new SPA, streamlined but maintained the same structure of using certified public expenditures for uncompensated care costs by public hospitals as the mechanism by which North Carolina draws the bulk of the annual North Carolina Medicaid DSH allotment receipts. Ahead of managed care launch, S.L. 2020-88 also enacted the Hospital Uncompensated Care Fund (HUCF) to allow deposit of receipts, and to allow for payment of state funds out of the HUCF to private hospitals for uncompensated care to ensure that private hospitals continue receiving financial support for uncompensated care in the managed care environment.

Description of Rule(s)

The goal of this rules package is to continue the same level of federal receipts to North Carolina for the DSH payments by use of certified public expenditures and to establish a process and calculation by which both public and private hospitals may receive payments to support services to uncompensated care for beneficiaries post transition to a Managed Care delivery system. Without these rules the agency lacks the authority and a mechanism to make payments to private hospitals to defray the costs they incur in treating uninsured patients. The rule package consists of two parts. 10A NCAC 22Q establishes the sequence and priority of distribution for available federal receipts. After distributions pursuant to an act appropriating funds for the operation of the North Carolina Medicaid Program and payments of Basic Disproportionate Share Hospital (DSH) pursuant to the North Carolina State Plan, the balance of available receipts is to be distributed in sequence to certifying hospitals (referred to as public hospitals in this fiscal impact analysis) and the Hospital Uncompensated Care Fund. The first distribution to certifying hospitals represents an amount equal to 10% of the uncompensated care costs certified by each certifying public hospital. The second distribution to certifying hospitals represents their proportionate share of the remaining available balance. After the second distribution, the residual balance of funds is deposited into the Hospital Uncompensated Care Fund.

10 NCAC 22R establishes criteria and calculation for payments to be made out of the Hospital Uncompensated Care Fund to eligible (referred to as private in this fiscal impact analysis) hospitals.

Impact and Cost Analysis

The primary impact of the rule package is to be able to continue to draw federal DSH receipts using certified public expenditures and to be able to use those receipts to support uncompensated care costs for both public and private hospitals. The current use of certified public expenditures for uncompensated care reflects the status quo and the expectations of hospitals for more than ten years; the hospitals are similarly accustomed to the data submissions required and calculations necessary to execute these transactions within the rule package. Without the rule package, the agency lacks the authority and mechanism to make payments to private hospitals to support their uncompensated costs, thereby creating disparity between public and private hospitals.

Absent the authority of the rule package, the agency would need to (a) substantially redesign and gain new CMS approval for the DSH payment methodology already approved by CMS in the North Carolina State Plan and (b) seek substantial additional appropriations or alternatively, legislative authority to increase hospital assessments to support the non-federal share of the DSH allotment currently drawn by certified public expenditures. Redesign of payments in the State Plan would need to consider the net impact on private hospitals of a provider tax to cover the non-federal share of Medicaid DSH funding. Private hospitals would have to pay the tax to receive the same level of funds, resulting in 30% less DSH funding to private hospitals

From an operational perspective, the calculation and payment sequence outlined in the rule package largely follows historical procedural steps for both the agency and the hospitals and would be a simpler version of the historical hospital supplemental payment calculations. Because smaller, rural North Carolina hospitals deliver more care (including to the uninsured) through outpatient services, DSH funds were shifted to reimburse uncompensated outpatient care costs. The proposed rules implement this shift to the cost of uncompensated outpatient care metric. Calculations in the rule package to apportion payments and distributions of receipts are based on hospitals' outpatient uncompensated care costs, the same metric as approved by CMS in the State Plan for Basic DSH.

Appendix 1: 10A NCAC Subchapters 22Q and 22R

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

CHAPTER 22 MEDICAL ASSISTANCE ELIGIBILITY

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

10A NCAC 22Q .0101 SCOPE

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

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

Eff. July 1, 2022;

Temporary Adoption Eff. December 29, 2021.

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

10A NCAC 22Q .0102 DEFINITIONS

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

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

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

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

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

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

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

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

Eff. July 1, 2022;

Temporary Adoption Eff. December 29, 2021.

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

10A NCAC 22Q .0103 DISTRIBUTIONS

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

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

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

Eff. July 1, 2022.

Temporary Adoption Eff. December 29, 2021.

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

10A NCAC 22Q .0104 CERTIFYING HOSPITAL DISTRIBUTION

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

- (1) An amount equal to 10 percent of expenditures certified by the hospital pursuant to 42 CFR 433.51; and
- (2) An amount equal to the hospital's proportionate share, calculated pursuant to Rule .0106 of this Section, of the available funds based on the hospital's share of outpatient costs for uninsured patients as a percentage of the Statewide aggregate of outpatient costs for uninsured patients. To be eligible for a proportionate share, a hospital shall file with the Department 90 days prior to the date of payment as determined by the Department, a form prescribed by the Department attesting to the hospital's:
 - (a) Qualification for disproportionate share status under the "Disproportionate Share Hospital (DSH) Payment" section of the North Carolina Medicaid State Plan, Attachment 4.19-A;
 - (b) Unreimbursed charges and payments for outpatient services provided to uninsured patients; and
 - (c) Aggregate Medicaid outpatient cost-to-charge ratio.

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

Eff. July 1, 2022;

Temporary Adoption Eff. December 29, 2021.

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

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

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

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

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

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

Eff. July 1, 2022;

Temporary Adoption Eff. December 29, 2021.

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

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

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

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

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

Eff. July 1, 2022;

Temporary Adoption Eff. December 29, 2021.

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

CHAPTER 22 MEDICAL ASSISTANCE ELIGIBILITY

SUBCHAPTER 22R DISTRIBUTION OF HOSPITAL UNCOMPENSATED CARE FUND

10A NCAC 22R .0101 SCOPE

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

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

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

10A NCAC 22R .0102 DEFINITIONS

- (a) “Department” means the North Carolina Department of Health and Human Services.
- (b) “Eligible hospital” means an institution that meets the requirements of Rule .0103 of this Section.
- (c) “Eligible hospital cost” means the values calculated pursuant to Rule .0104 of this Section.
- (d) “Outpatient services” means the medical care and items as defined by 42 CFR 440.20(a), which is incorporated by reference in 10A NCAC 22Q .0102.
- (e) “Uninsured patient” means a recipient of medical care who has no health insurance, Medicaid or Medicare, or other third-party coverage. State and local government payments made to a hospital for services provided to indigent patients shall not be considered third-party coverage.
- (f) “Payment period” means the 12-month term ending September 30th of each year.

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

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

10A NCAC 22R .0103 ELIGIBLE HOSPITAL

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

- (1) is not a public agency qualified to certify expenditures in accordance 42 CFR 433.51(b), which is incorporated by reference in 10A NCAC 22Q .0102;
- (2) received payment for more than 50 percent of their Medicaid inpatient discharges under the North Carolina Medicaid State Plan, Attachment 4.19-A discharge Diagnosis Related Groups methodology for the most recent payment period;
- (3) files with the Department 90-days prior to the date of payment under this Subchapter forms prescribed by the Department attesting to the hospital's:
 - (a) qualification for disproportionate share status of the "Disproportionate Share Hospital (DSH) Payment" section of the North Carolina Medicaid State Plan, Attachment 4.19-A;
 - (b) unreimbursed charges and payments for outpatient services provided to uninsured patients; and
 - (c) aggregate Medicaid outpatient cost-to-charge.

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

Eff. July 1, 2022;

Temporary Adoption Eff. December 29, 2021.

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

10A NCAC 22R .0104 ELIGIBLE OUTPATIENT COSTS

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

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

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

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

Eff. July 1, 2022;

Temporary Adoption Eff. December 29, 2021.

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

10A NCAC 22R .0105 DISTRIBUTION OF AVAILABLE FUNDS

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

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

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

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

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