



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Division of Aging & Adult Services
2. Rule citation & name: 10A NCAC 06Q .0201 Maximum Reimbursement Rates
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input type="checkbox"/> Yes Effective date: <input checked="" type="checkbox"/> No
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: 3/10/2022 b. Proposed Temporary Rule published on the OAH website: 3/17/2022 c. Public Hearing date: 3/24/2022 d. Comment Period: 3/18/2022-4/8/2022 e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/10/2022 f. Adoption by agency on: 5/6/2022 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: 7/1/2022 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Session Law 2021-180 Effective date: 11/18/2021 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other: Explain: Session Law 2021-180 removed the authority for rate setting for adult day services (adult day care and adult day health and respective transportation costs to the facilities) from the Secretary of DHHS and granted the authority to local entities and county lead agencies. Section 9A.3B.(c) in Session Law 2021-180 specifically states that DHHS and the Social Services Commission (there are 2 funding sources with 2 different sets of authority) shall promulgate rules to allow reimbursement rates to be set by each county lead agency.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Pursuant to NCGS 150B-21.1, temporary rules are necessary because of a recent act of the General Assembly and adherence to the notice and hearing requirements would be contrary to the public interest because counties need to set rates for adult day services prior to the commencement of the State fiscal year.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Misty L. Piekaar-McWilliams

Phone: 919.855.4890

E-Mail: misty.piekaar@dhhs.nc.gov

Agency contact, if any: Same as above

Phone:

E-Mail:

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Joyce Massey-Smith

Title: Director

E-Mail: joyce.massey-smith@dhhs.nc.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE AGENCIES, DEPARTMENTS, AND INSTITUTIONS AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

PART I. TITLE AND INTRODUCTION

TITLE OF ACT

SECTION 1.1. This act shall be known as the "Current Operations Appropriations Act of 2021."

INTRODUCTION

SECTION 1.2. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget in accordance with the State Budget Act. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes, and the savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by law.

PART II. CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

GENERAL FUND APPROPRIATIONS

SECTION 2.1.(a) Appropriations from the General Fund for the budgets of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for each year of the 2021-2023 fiscal biennium, according to the following schedule:

Current Operations - General Fund	FY 2021-2022	FY 2022-2023
EDUCATION		
Community College System		
Requirements	1,819,143,571	1,685,373,047
Less: Receipts	502,936,159	345,149,910
Net Appropriation	1,316,207,412	1,340,223,137
Public Instruction		
Requirements	13,493,426,049	13,146,477,032
Less: Receipts	2,890,675,279	2,219,558,462
Net Appropriation	10,602,750,770	10,926,918,570

University of North Carolina
UNC at Asheville

SECTION 9A.3B.(c) The Department of Health and Human Services, Division of Aging and Adult Services, Division of Social Services, and the Social Services Commission shall amend or repeal any rules requiring a maximum statewide reimbursement rate for adult day care and adult day health services paid under the Home and Community Care Block Grant and the State Adult Day Care Fund. Rules shall be promulgated to allow the reimbursement rates for adult day care services, adult day health services, and associated transportation services to be set by each county lead agency for planning and coordination. The rates shall reflect geographical differences, the availability of services, the cost to provide services, and other local variables.

SECTION 9A.3B.(d) This section is effective when it becomes law.

RAPID REHOUSING FOR INDIVIDUALS AND FAMILIES AT RISK OF HOMELESSNESS

SECTION 9A.4. Of the funds appropriated in this act from the State Fiscal Recovery Fund to the Department of Health and Human Services, Division of Aging and Adult Services, the sum of fifteen million dollars (\$15,000,000) in nonrecurring funds for the 2021-2022 fiscal year shall be allocated for rapid rehousing services to assist individuals and families at risk of homelessness due to the COVID-19 public health emergency with obtaining safe housing. The funds allocated under this section shall remain available until depleted or on the date federal law requires the funds to be fully expended, whichever is earlier. These funds shall be used to supplement and not supplant existing funds for homelessness prevention activities and may be used to provide financial assistance to eligible individuals and families to cover the cost of acute needs such as the following:

- (1) Security deposits and rental assistance for a period not to exceed 12 months per individual or family.
- (2) Utility deposits and utility assistance for a period not to exceed 12 months per individual or family.
- (3) Temporary hotel stays while awaiting more permanent housing.
- (4) Housing navigation services.
- (5) Case management services related to the rapid attainment of safe housing.
- (6) Activities to increase local capacity for housing services and other related services to prevent homelessness, such as the evidenced-based coordinated entry system.
- (7) Home improvements and home repairs to support vulnerable seniors age 60 and older to remain in in-home living arrangements rather than congregate care settings during the COVID-19 public health emergency.

NUTRITION SERVICES FOR OLDER ADULTS

SECTION 9A.5. Of the funds appropriated in this act from the State Fiscal Recovery Fund to the Department of Health and Human Services, Division of Aging and Adult Services, the sum of three million five hundred eighty-five thousand dollars (\$3,585,000) in nonrecurring funds for the 2021-2022 fiscal year shall be used to address food insecurity among older adults due to the COVID-19 pandemic through the following activities:

- (1) Providing two meals per week or twenty dollars (\$20.00) per week in groceries to eligible older adults who are frail or functionally impaired.
- (2) Providing two weeks of meals to eligible high-risk older adults after a hospital discharge.
- (3) Expanding the North Carolina Senior Farmers' Market Nutrition Program across the State to eligible low-income older adults.

PART IX-B. CENTRAL MANAGEMENT AND SUPPORT

SECTION 43.8. Except as otherwise provided, this act is effective July 1, 2021.
In the General Assembly read three times and ratified this the 18th day of November,
2021.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 2:05 p.m. this 18th day of November, 2021

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: DHHS - Division of Aging & Adult Services

RULE CITATION: 10A NCAC 06Q .0201 (Temporary)

DEADLINE FOR RECEIPT: May 13, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

General to the Rule: What is the difference between “local level”, “local entities” and a county “lead agency for planning and coordination”? If there is not a difference, why is the Rule necessary? If there is a difference, what is the authority of the agency to expand the number of entities authorized to set the reimbursement rate beyond “local level” pursuant to S.L. 2021-180?

In (a) and (b), Page 1, Lines 11, 12, 16, and 18: The term “local entities” is undefined in either G.S. 143B or in Title 10A of the North Carolina Administrative Code. What is a “local entity”? How is the “local entity” determined and by what authority?

In (a) and (b), Page 1, Lines 11, 12, 16, and 19: The term “county lead agency” is undefined in G.S. 143B and Title 10A of the North Carolina Administrative Code. What is a county lead agency? How is the county lead agency determined and by what authority?

In (a) and (b), Page 1, Lines 14 and 20, did you mean to say “amending” instead of “amended”?

In your History Note, please specify which sections of the Session Law to which you’re referring. It appears to me that you’re implementing SL 2021-180, ss. 9A.3B.(a), 9A.3B.(b), and 9A.3B.(c).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel
Date submitted to agency: May 9, 2022

1 10A NCAC 06Q .0201 is amended under temporary procedures as follows:

2
3 CHAPTER 06 - AGING - PROGRAMS OPERATIONS

4
5 SUBCHAPTER 06Q - ADULT DAY CARE

6
7 SECTION .0200 - REQUIREMENTS

8
9 10A NCAC 06Q .0201 ~~MAXIMUM REIMBURSEMENT RATES~~

10 (a) The ~~maximum~~ reimbursement rate for adult day care services shall ~~not exceed thirty three dollars and seven cents~~
11 ~~(\$33.07)~~ be set by the local entities or each county lead agency for planning and coordination per day, per client. The
12 ~~maximum~~ rate for adult day health services shall be set by the local entities or each county lead agency for planning
13 and coordination ~~not exceed forty dollars (\$40.00)~~ per day, per client. The rates shall reflect the factors as set forth in
14 section 9A.3B.(a) in Session Law 2021-180, amended G.S. 143B-181.1(a)(11).

15 (b) The ~~maximum~~ reimbursement rate for transporting an adult day care client to an adult day care center shall be set
16 by local entities or each county lead agency for planning and coordination ~~not exceed one dollar and fifty cents (\$1.50)~~
17 for a one-way trip. The ~~maximum~~ reimbursement rate for round-trip transportation of an adult day care client or adult
18 day health client to an adult day care center or adult day health center shall be set by the local entities or each county
19 lead agency for planning and coordination ~~not exceed three dollars (\$3.00)~~ per day, per client. The rates shall reflect
20 the factors as set forth in section 9A.3B.(a) in Session Law 2021-180, amended G.S. 143B-181.1(a)(11).

21
22 *History Note:* Authority G.S. 143B-181.1(a)(11); ~~143B-181.1(e); 143B-181.1(c); S.L. 2021-180;~~
23 *Eff. July 1, 1992;*
24 *Readopted Eff. July 1, 2019;*
25 *Temporary Amendment Eff. July 1, 2022.*
26