

1 10A NCAC 23E .0105 is readopted **with changes** as published in 33:13 NCR 1381-1392 as follows:

2
3 **10A NCAC 23E .0105 DISABILITY**

4 (a) ~~As set out in the Medicaid State Plan,~~ individuals ~~Individuals~~ eligible for Medicaid in December 1973 as disabled
5 individuals and who meet conditions required by 42 CFR 435.133 shall be permanently and totally disabled based on
6 a physical or mental impairment ~~that which substantially~~ precludes him or her from ~~obtaining~~ engaging in substantial
7 gainful activity, as defined at **20 CFR 416.910, [20 CFR 404.1510,]** which is ~~[adopted and]~~ incorporated by reference
8 with subsequent ~~[changes or]~~ **amendments and editions** and available free of charge at <https://www.ecfr.gov/>,
9 ~~employment,~~ and such impairment ~~can be expected to result in death, or has lasted or can be expected to last [twelve~~
10 ~~] 12 months or longer. appears reasonably certain to continue without substantial improvement throughout his life~~
11 ~~time.~~

12 (b) Any client who has applied for Medicaid since January 1, 1974 on the basis of disability ~~[is required to]~~ **shall** be
13 **found disabled** under the definition of disability and procedures established for evaluation of vocational and medical
14 **factors** under the supplemental security income program.

15 (c) A social history ~~[on a form prescribed by the state]~~ shall be completed by the ~~caseworker~~ **Income Maintenance**
16 ~~Caseworker~~ and submitted to the **Division of Vocational Rehabilitation Services, Disability Determination Services**
17 Section with the request for disability determination. **The social history shall provide information to identify and**
18 **contact the claimant; contact information of anyone assisting the claimant in providing the social history; nature and**
19 **onset of the impairment with the date it became disabling; date claimant stopped work or if still working, provide**
20 **name of employer with contact information, how many hours worked and earnings; claimant's description of**
21 **impairment; work history and educational background; contact information for all medical sources during the last 12**
22 **months with condition treated, dates seen, and whether treatment is still ongoing; Vocational Rehabilitation office,**
23 **counselor's contact information, and last seen date; in cases where mental impairment is alleged or there is evidence**
24 **of drug or alcohol abuse or homelessness, provide name, address, and phone number of a third party contact; signature,**
25 **title, and phone number of caseworker.**

26 (d) ~~Except for [clients] client's receiving social security or supplemental security income on the basis of disability,~~
27 ~~the decision on disability is made by The the~~ Disability Determination **Services** Section shall determine disability for
28 all individuals, except for those receiving social security or supplemental security income on the basis of a disability.
29 ~~Section of the Division of Social Services.~~

30 (e) Social Security Administration (SSA) decisions made for social security disability or supplemental security
31 income shall be **binding adopted** for persons applying for Medicaid.

32 (f) Disability determination shall be verified from the client's award letter, SDX, BENDEX, Disability Determination
33 **Services** Section approval, Administrative Law Judge ~~decision,~~ ~~decision~~ or other documentary evidence. **SDX and**
34 **BENDEX** are defined in 10A NCAC 23A .0102.

35 (g) Disability for purposes of Medicaid eligibility shall cease when the client is determined by the Social Security
36 Administration or the Disability Determination **Services** Section to be capable of engaging in substantial gainful

1 activity. The client may appeal the termination of Medicaid, pursuant to G.S. 108A-70.9A. ~~Medicaid based on his~~
2 ~~disability cessation.~~

3
4 *History Note: Authority G.S. 108A-54; 108A-54.1B; 20 C.F.R. 404.1505; 42 C.F.R. 435.540; 42 C.F.R. 435.541;*
5 *Alexander v. Flaherty Consent Order filed February 14, 1992;*
6 *Eff. September 1, 1984;*
7 *Amended Eff. April 1, 1993; August 1, 1990;*
8 *Transferred from 10A NCAC 21B .0305 Eff. May 1, 2012; ~~2012~~.*
9 *Readopted Eff. June 1, 2019.*

10A NCAC 23E .0202 is readopted with changes as published in 33:13 NCR 1381-1392 as follows:

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 Except as specified in Paragraphs (j) and (k) of this Rule, the [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 including all [with] subsequent [changes or] amendments and editions. This CFR may be accessed [available free of charge] at <http://uscode.house.gov/> at no cost. Act except as specified in Paragraphs (j)(k) and (k)(l) 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 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 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 such resources are located; or
- (2) A durable power of attorney, valid in North Carolina and in any state in which 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 application processing time standards [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, incompetent,
- (2) has or may have a legal interest in a resource that affects the individual's eligibility; and eligibility, [and:] 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 obtain a ruling on the filed proceeding within the deadlines set by the Clerk of Court in the county where the proceeding will be heard or causes it to be dismissed, ~~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 ~~the such~~ evidence shows-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 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 ~~["competent evidence"]~~ specified as 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 defined 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 11:59 pm on the ~~first moment of the first~~ last day of the previous month.
- ~~(j)(4)~~ 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)(4)~~ 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 ~~shall not be~~ is not counted.
 - ~~(4)~~ Individuals with resources in excess of the resource limit at 11:59 pm 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.
 - ~~(4)(5)~~ (5) ~~The value~~ Value of burial plots shall be not counted.
 - ~~(5)(6)~~ (6) 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.
- ~~(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 **medically needy** 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; **and**
- (7) Equity in ~~non-essential~~, non-income producing personal property limited to:
 - (A) Mobile home not used as ~~home~~, home;
 - (B) Boats, boat **trailers**, ~~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 **medically needy** cases, income-producing vehicles and personal property shall be excluded from countable resources.

(p) For **Family** ~~family~~ and **Children's** ~~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 test 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

1 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.
2 233.20; 45 C.F.R. 233.51; S.L. 2002-126;
3 Eff. September 1, 1984;
4 Temporary Amendment Eff. September 1, 1985, for a period of 92 days to expire on December 1,
5 1985;
6 Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; March 1, 1993;
7 Temporary Amendment Eff. September 13, 1999;
8 Temporary Amendment Expired June 27, 2000;
9 Temporary Amendment Eff. September 12, 2000;
10 Amended Eff. March 19, 2001;
11 Temporary Amendment Eff. April 16, 2001;
12 Amended Eff. August 1, 2002;
13 Temporary Amendment Eff. March 1, 2003;
14 Amended Eff. August 1, 2004;
15 Transferred from 10A NCAC 21B .0310 Eff. May 1, 2012; 2012-
16 Readopted Eff. June 1, [May 1], 2019.
17
18
19

1 10A NCAC 23G .0203 is readopted with changes as published in 33:13 NCR 1381-1392 as follows:

2
3 **10A NCAC 23G .0203 TIME LIMITS FOR CORRECTIONS**

4 (a) The county department of social services and Division of ~~[Health Benefits (Division)]~~ Medical Assistance shall
5 make corrections required by Rule .0202 of this Section within 30 days after discovery of the need for action unless
6 good cause exists to extend the time limit. ~~for failure to act timely.~~

7 (b) For the purposes of this Rule, "good cause"~~[good]~~ Good cause is limited to:

- 8 (1) The need ~~of the county department of social services~~ to obtain verification, as defined at 10A NCAC
9 23A .0102, of ~~verify~~ other conditions of eligibility before authorizing eligibility; ~~or~~
10 (2) The county department of social services is unable to locate the applicant or recipient; or
11 (3) The county department of social services disagrees with a decision requiring corrective action and
12 ~~requests~~ ~~has requested~~ administrative review by the ~~Medicaid Eligibility~~ the Division. ~~[the~~
13 ~~Division;]~~ Section In the case of disagreement under 10 NCAC 23G.0202(a)(2), administrative
14 review by the Division shall be limited to decisions issued pursuant to 108A-79(j).

15 (c) To receive ~~State~~ state and federal financial participation in any benefits authorized retroactively by corrective
16 actions, the effective date of the correction must correspond with the date assistance would have been effective but
17 may be no earlier than the following dates:

- 18 (1) Retroactive to the date ordered by the appeal or court decision if all eligibility conditions are met,
19 including any legal retroactive coverage period associated with the adverse action; ~~or~~
20 (2) Retroactive to the date that all requirements of eligibility are met but no earlier than the 12th month
21 immediately preceding the month the change is reported or the administrative error was discovered;
22 or
23 (3) Retroactive to the date required for corrective action due to errors cited from monitoring under
24 application processing standards in 10A NCAC 23C .0202.

25 (d) If the change is adverse to the recipient, it shall be effective ~~with~~ the first calendar month following expiration of
26 the 10 ~~work~~ business day advance notice period, ~~as defined in 10A NCAC 23A .0102.~~ ~~period.~~

27
28 *History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 431.246; 42 C.F.R. 431.250; 42 C.F.R. 435.903;*
29 *435.904; Alexander v. Bruton, U.S.D.C., File No. C C 74 183 M, Consent Order dismissed effective*
30 *February 1, 2002;*
31 *Eff. June 1, 1990;*
32 *Temporary Amendment Eff. March 1, 2003;*
33 *Amended Eff. August 1, 2004;*
34 *Transferred from 10A NCAC 21A .0603 Eff. May 1, 2012; ~~2012~~.*
35 *Readopted Eff. May 1, 2019.*
36

1 10A NCAC 23G .0304 is readopted with changes as published in 33:13 NCR 1381-1392 as follows:

2
3 **10A NCAC 23G .0304 CHANGE IN SITUATION**

4 (a) For Medicaid applications, once the county department of social services learns from any source that there has
5 been a change in the budget unit's situation that impacts eligibility, they shall notify the applicant within five business
6 work days of the need to obtain verification, as defined by 10A NCAC 23A .0102, of verify the change. For the
7 purposes of this Rule, a A "change in situation" includes: change in [of] situation includes but not limited to:

- 8 (1) Change of ~~address,~~ address; ~~or~~
- 9 (2) Change in living ~~arrangement,~~ arrangement; ~~or~~
- 10 (3) Adding or deleting a budget unit ~~member,~~ member; ~~or~~
- 11 (4) Increase or decrease in ~~income,~~ income; ~~or~~
- 12 (5) Change in ~~reserve,~~ reserve; ~~or~~
- 13 (6) Cessation of disability or ~~blindness,~~ blindness; ~~or~~
- 14 (7) Parent or parents are no longer incapacitated or ~~unemployed,~~ unemployed; ~~or~~
- 15 (8) Change in responsible ~~relative,~~ relative; ~~or~~
- 16 (9) Change in Medicaid Aid ~~program category.~~ Program Category.

17 (b) For an ongoing Medicaid case, once the county department of social services learns from any source that there
18 has been a change in the budget unit's situation, situation it they shall review the case ~~promptly~~ and ~~appropriate~~ action
19 shall be completed within 30 calendar days after the agency learns of the change. ~~change in situation.~~

20 (c) The Medicaid client or his or her representative shall report any change in situation that affects ~~might affect~~
21 eligibility ~~within 10 calendar days~~ to the county department of social services within 10 calendar days of knowledge
22 the change. ~~services.~~

23
24 *History Note:* Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 435.916;
25 Eff. September 1, 1984;
26 Amended Eff. August 1, 1990;
27 Temporary Amendment Eff. August 22, 1996;
28 Amended Eff. August 1, 1998;
29 Transferred from 10A NCAC 21B .0409 Eff. May 1, 2012; ~~2012.~~
30 Readopted Eff. June 1, May 1, 2019.

1 10A NCAC 23H .0109 is readopted with changes as published in 33:13 NCR 1381-1392 as follows:

2
3 **10A NCAC 23H .0109 PROCEDURE FOR REVIEW OF RECORDS**

4 (a) The director or his or her delegated representative shall be present when the client reviews the record. The director
5 or his or her delegated representative ~~must~~ shall document in the client record the review of the record by the client.

6 (b) A client may contest the accuracy, completeness, ~~completeness~~ or relevancy of the information in his or her record.

7 Correction of the contested information, but not the deletion of the original information. If if the Division or county
8 department of social services determines if correction is required by federal statute or regulation to support receipt of

9 State state or federal participation, the correction of the contested information shall be accomplished by inserting
10 inserted it in the record when the director or his or her delegated representative concurs that such correction is justified.

11 When the director or his or her delegated representative does not concur, the client shall be allowed to enter a statement
12 in the record. Deletion of the contested information is not permitted. ~~Such corrections and statements shall be made~~

13 ~~a permanent part of the record and shall be disclosed to any recipient of the disputed information. If a delegated~~
14 ~~representative decides not to correct contested information, the decision not to correct shall be reviewed by the~~

15 ~~supervisor of the person making the initial decision. All corrections and statements shall be made a permanent part of~~
16 ~~the record and shall be disclosed to any recipient of the disputed information.~~

17 (c) Upon written request from the client, his or her personal representative, including an attorney, may have access to
18 review or obtain without charge, a copy of the information in his or her record. The client may permit the personal
19 representative to have access to his or her entire record or may restrict access to certain portions of the record. Rules
20 .0107 and .0108 of this Section shall apply.

21
22 *History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-80;*

23 *Eff. September 1, 1984;*

24 *Transferred from 10A NCAC 21A .0409 Eff. May 1, 2012; ~~2012~~.*

25 *Readopted Eff. June 1, [May 1,] 2019.*



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

May 16, 2019

Shazia Keller
Division of Health Benefits
Sent via email only to: Shazia.Keller@dhhs.nc.gov

Re: Extension of the Period of Review for Rules 10A NCAC 23E .0105 and .0202; 23G .0203 and .0304; and 23H .0109.

Dear Ms. Keller:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address public comments.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days. The RRC will review these rules at its July 18, 2019 meeting to allow the public to comment at the meeting.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Amanda J. Reeder
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

REQUEST FOR TECHNICAL CHANGE

AGENCY: DHHS/ Division of Health Benefits

RULE CITATION: All rules submitted

DEADLINE FOR RECEIPT: Friday, May 10, 2019

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 call our office to inquire concerning the staff recommendation.

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

On the Submission for Permanent Rule form, please state "DHHS/ Division of Health Benefits" or "Secretary of DHHS/ Division of Health Benefits" since it is the Secretary who has rulemaking authority through the Division. This will also match how you published these Rules in the Register.

In Box 9A, check "Agency" as the agency decided to readopt the rules through the existing rule review. Please do not check the "Legislation enacted by the General Assembly"

Also, please fix the spacing in Box 2 so that the form can be on one page.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 29, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: DHHS/ Division of Health Benefits

RULE CITATION: 10A NCAC 23E .0105

DEADLINE FOR RECEIPT: Friday, May 10, 2019

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 call our office to inquire concerning the staff recommendation.

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

What is the purpose of Paragraph (a)? Is this to remind individuals of the State Plan, or are you setting an eligibility category? If it is the latter, then the Division has no authority to do so in light of G.S. 108-54(f).

On line 7, delete "adopted and"

On line 8, replace "changes and amendments" with "amendments and editions"

On lines 8-9, who expects this?

On line 9, replace "twelve" with "12" (See Rule 26 NCAC 02C .0108(9)(b))

In (c), line 14, what are the contents of this form? Contents of forms must be set forth in a law or Rule. Is there another law or rule that establishes these contents?

On line 14, capitalize "State" assuming you mean NC.

In (d), consider writing this in active voice: "The Disability Determination Services Section shall determine disability for all individuals, except for those receiving social security or supplemental security income on the basis of a disability."

In (e), line 21, should "adopted" be "followed" or the federal term, "binding"?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 29, 2019

1 10A NCAC 23E .0105 is readopted as published in 33:13 NCR 1381-1392 as follows:

2
3 **10A NCAC 23E .0105 DISABILITY**

4 (a) ~~As set out in the Medicaid State Plan,~~ individuals ~~Individuals~~ eligible for Medicaid in December 1973 as disabled
5 individuals and who meet conditions required by 42 CFR 435.133 shall be permanently and totally disabled based on
6 a physical or mental impairment ~~that which substantially~~ precludes him or her from ~~obtaining~~ engaging in substantial
7 gainful activity, as defined at 20 CFR 404.1510, which is adopted and incorporated by reference with subsequent
8 changes or amendments and available free of charge at <https://www.ecfr.gov/>, employment, and such impairment can
9 be expected to result in death, or has lasted or can be expected to last twelve months or longer. appears reasonably
10 certain to continue without substantial improvement throughout his life time.

11 (b) Any client who has applied for Medicaid since January 1, 1974 on the basis of disability is required to ~~shall~~ be
12 found disabled ~~under the definition of disability and procedures established for evaluation of vocational and medical~~
13 ~~factors~~ under the supplemental security income program.

14 (c) A social history on a form prescribed by the state shall be completed by the caseworker ~~Income Maintenance~~
15 ~~Caseworker~~ and submitted to the Division of Vocational Rehabilitation Services, Disability Determination Services
16 Section with the request for disability determination.

17 (d) Except for clients ~~client's~~ receiving social security or supplemental security income on the basis of disability, the
18 decision on disability is made by the Disability Determination Services Section. ~~Section of the Division of Social~~
19 ~~Services.~~

20 (e) Social Security Administration (SSA) decisions made for social security disability or supplemental security
21 income shall be adopted for persons applying for Medicaid.

22 (f) Disability determination shall be verified from the client's award letter, SDX, BENDEX, Disability Determination
23 Services Section approval, Administrative Law Judge decision, ~~decision~~ or other documentary evidence. SDX and
24 BENDEX are defined in 10A NCAC 23A .0102.

25 (g) Disability for purposes of Medicaid eligibility shall cease when the client is determined by the Social Security
26 Administration or the Disability Determination Services Section to be capable of engaging in substantial gainful
27 activity. The client may appeal the termination of Medicaid, pursuant to G.S. 108A-70.9A. ~~Medicaid based on his~~
28 ~~disability cessation.~~

29
30 *History Note: Authority G.S. 108A-54; 108A-54.1B; 20 C.F.R. 404.1505; 42 C.F.R. 435.540; 42 C.F.R. 435.541;*
31 *Alexander v. Flaherty Consent Order filed February 14, 1992;*
32 *Eff. September 1, 1984;*
33 *Amended Eff. April 1, 1993; August 1, 1990;*
34 *Transferred from 10A NCAC 21B .0305 Eff. May 1, 2012; ~~2012~~.*
35 *Readopted Eff. May 1, 2019.*
36
37

REQUEST FOR TECHNICAL CHANGE

AGENCY: DHHS/ Division of Health Benefits

RULE CITATION: 10A NCAC 23E .0202

DEADLINE FOR RECEIPT: Friday, May 10, 2019

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 call our office to inquire concerning the staff recommendation.

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

In (a), line 5, consider moving "except as specified in Paragraphs (j) and (k)" to line 5 and start the sentence, "Except as specified in Paragraphs (j) and (k) of this Rule, the resources that are counted..."

On line 9, please be sure to insert the underlining under url.

On line 11, what do you mean by "can be made available"? By whom? The applicant?

In (b), line 14, what do you mean by "actually" available? Available for immediate use?

On line 15, what is "necessary" action?

In (d), line 24, what is a "reasonable amount of time"? Reasonable to whom?

In (e), end (e)(1) and (2) with semicolons, not commas.

In (e)(2), line 32, who determines if the individual "may have a legal interest" here?

Bring the language on lines 34 through Page 2, line 8, the left margin, as it appears that this language applies to all of (e), not just (e)(3).

On Page 2, line 1, what is a "reasonable amount of time" here? Who decides this?

On line 7, replace "such" with "the"

Also on line 7, what do you mean by "indicates"? Do you mean "shows" or "states" instead?

In (f), line 12, what is the purpose of the reference to G.S. 1?

In (g), line 16, remove the quotation marks from "competent evidence," as you are not defining the term here. You will leave them in (h).

On line 16, add "as" before "defined"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 29, 2019

On line 17, I suggest deleting “such”

On line 18, I suggest replacing “specified” with “defined” since I think that’s what you mean here.

In (i)(2), line 37, insert a space between “11:59” and “pm” As you published this correctly in the Register, you do not need to show this as a change.

In Paragraphs (j) and (k), what authority are you relying upon to set these resource standards? Is it G.S. 108A-54B(a):

- (a) The Department is expressly authorized to adopt temporary and permanent rules to implement or define the federal laws and regulations, the North Carolina State Plan of Medical Assistance, and the North Carolina State Plan of the Health Insurance Program for Children, the terms and conditions of eligibility for applicants and recipients of the Medical Assistance Program and the Health Insurance Program for Children

In (k)(3), line 16, I suggest replacing “is not” with “shall not be” to be consistent with (k)(3).

Why do you need (k)(4) in light of the language in (i)(2)?

In (l)(4), Page 4, line 12, please underline “The” as it is new language.

In (l)(7)(B), line 18, please insert a comma after “trailers”

In (l), line 3, and (o), line 24, you state “medically needy Family and Children’s cases” but in (m), line 22, and (n), line 23, you state “Family and Children’s medically needy cases” If these are the same thing, shouldn’t the phrase be the same everywhere?

In (p), line 26, should “family” and “children’s” be capitalized as it is elsewhere in the Rule?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 29, 2019

1 10A NCAC 23E .0202 is readopted with changes as published in 33:13 NCR 1381-1392 as follows:

2
3 **10A NCAC 23E .0202 WHAT RESOURCES ARE COUNTED ~~RESERVE~~**

4 (a) North Carolina has contracted with the Social Security Administration under Section 1634 of the Social Security
5 Act to provide Medicaid to all SSI recipients. ~~Resource eligibility~~ The resources that are counted for Medicaid
6 eligibility for individuals under any aged, blind, and disabled ~~Aged, Blind, and Disabled~~ coverage group shall be
7 determined based on standards and methodologies in Title XVI of the Social Security Act, which is adopted and
8 incorporated by reference with subsequent changes or amendments and available free of charge at
9 <http://uscode.house.gov/>, ~~Act~~ except as specified in Paragraphs ~~(j)(4)~~ and ~~(k)(4)~~ of this Rule. Applicants for and
10 recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent
11 that such resources can be made available.

12 (b) The value of resources currently available to any ~~budget unit~~ member of a budget unit, as defined in 10A NCAC
13 23A .0102, shall be considered in determining financial eligibility. A resource shall be considered available when it
14 is actually available and when the budget unit member has a legal interest in the resource and he or she, or someone
15 acting in his or her behalf, can take any necessary action to make it available.

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

18 (1) A guardian of the estate, a general guardian, ~~guardian~~ or an interim guardian has been ~~lawfully~~
19 appointed in accordance with the law and is able to act on behalf of his or her ward in North Carolina
20 and in any state ~~in which~~ where such resources are located; or

21 (2) A durable power of attorney, valid in North Carolina and in any state ~~in which~~ where such resource
22 is located, has been granted to a person who is authorized and able to exercise such power.

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

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

31 (1) is alleged to be mentally incompetent,

32 (2) has or may have a legal interest in a resource that affects the individual's eligibility, and

33 (3) does not have a representative with legal authority to use or dispose of the individual's resources,
34 the individual's representative or family member shall be instructed by the county department of
35 social services to file within 30 calendar days a judicial proceeding under G.S. 35A to declare the
36 individual incompetent and appoint a guardian. If the representative or family member either fails
37 to file such a proceeding within 30 calendar days or fails to ~~timely~~ conclude the proceeding within

1 ~~a reasonable amount of time, proceeding,~~ a referral shall be made to the protective services unit of
2 the county department of social services for guardianship services. ~~If the allegation of incompetence~~
3 ~~that has lasted, or is expected to last 30 consecutive days or more, or until the individual's death, is~~
4 ~~supported by competent evidence, as specified in Paragraph (h) of this Rule, If an allegation of~~
5 ~~incompetence is supported by competent evidence as defined in Paragraph (h) of this Rule, and the~~
6 ~~incompetence has lasted, or is expected to last, at least 30 consecutive days or until the individual's~~
7 ~~death,~~ the resources shall be excluded beginning with the date that such evidence indicates that he
8 ~~or she~~ became incompetent, except as provided in Paragraphs (f) or (g) of this Rule.

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

14 (g) When the court rules that the budget unit member is competent or no ruling is made because of the death or
15 recovery from incompetence of the member, his ~~or her~~ resources shall be counted except for periods of time for which
16 it can be established by ~~competent evidence~~ "competent evidence" ~~specified~~ defined in Paragraph (h) of this Rule,
17 that the member was in fact incompetent for at least 30 consecutive days, or until his ~~or her~~ death. Any such showing
18 of incompetence is subject to rebuttal by competent evidence as specified in Paragraph (h) of this Rule.

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

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

- 25 (1) ~~for Family and Children's related categorically and medically needy cases, three thousand dollars~~
26 ~~(\$3,000.00) per budget unit;~~
27 (2) ~~for aged, blind, and disabled cases, two thousand dollars (\$2000.00) for a budget unit of one and~~
28 ~~three thousand dollars (\$3000.00) for a budget unit of two.~~

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

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

1 ~~(j)(4)~~ Resources counted in the determination of financial eligibility for categorically needy aged, blind, ~~blind~~ and
2 disabled cases, and Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, Qualifying
3 Individual and Qualified Disabled Working Individual cases shall be based on resource standards and methodologies
4 in Title XVI of the Social Security Act except for the following methodologies:

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

11 ~~(k)(4)~~ Resources counted in the determination of financial eligibility for medically needy aged, blind, ~~blind~~ and
12 disabled cases ~~is~~ shall be based on resource standards and methodologies in Title XVI of the Social Security Act
13 except for the following methodologies:

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

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

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

1 *Temporary Amendment Eff. September 1, 1985, for a period of 92 days to expire on December 1,*
2 *1985;*
3 *Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; March 1, 1993;*
4 *Temporary Amendment Eff. September 13, 1999;*
5 *Temporary Amendment Expired June 27, 2000;*
6 *Temporary Amendment Eff. September 12, 2000;*
7 *Amended Eff. March 19, 2001;*
8 *Temporary Amendment Eff. April 16, 2001;*
9 *Amended Eff. August 1, 2002;*
10 *Temporary Amendment Eff. March 1, 2003;*
11 *Amended Eff. August 1, 2004;*
12 *Transferred from 10A NCAC 21B .0310 Eff. May 1, 2012; ~~2012~~.*
13 *Readopted Eff. May 1, 2019.*
14
15

REQUEST FOR TECHNICAL CHANGE

AGENCY: DHHS/ Division of Health Benefits

RULE CITATION: 10A NCAC 23G .0203

DEADLINE FOR RECEIPT: Friday, May 10, 2019

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 call our office to inquire concerning the staff recommendation.

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

In (a), line 4, do you need to spell out "Division of Health Benefits (Division)" when you already did this in Rule .0202? Couldn't you state "Division" instead?

In (b), line 7, put "good cause" in quotation marks.

End (b)(3), line 12, with a period, not a semicolon.

In (c), are there times that (c)(1) through (3) will conflict with each other, such that this Rule spells out which one controls?

So that I'm clear – is (c)(2) saying no more than one year prior the mistake?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 29, 2019

1 10A NCAC 23G .0203 is readopted as published in 33:13 NCR 1381-1392 as follows:

2
3 **10A NCAC 23G .0203 TIME LIMITS FOR CORRECTIONS**

4 (a) The county department of social services and Division of ~~Health Benefits (Division) Medical Assistance~~ shall
5 make corrections required by Rule .0202 of this Section within 30 days after discovery of the need for action unless
6 good cause exists to extend the time limit. ~~for failure to act timely.~~

7 (b) For the purposes of this Rule, good ~~Good~~ cause is limited to:

8 (1) The need ~~of the county department of social services to obtain verification, as defined at 10A NCAC~~
9 ~~23A .0102, of verify~~ other conditions of eligibility before authorizing eligibility; ~~or~~

10 (2) The county department of social services is unable to locate the applicant or recipient; or

11 (3) The county department of social services disagrees with a decision requiring corrective action and
12 ~~requests~~ ~~has requested~~ administrative review by the ~~Medicaid Eligibility the Division; Section;~~

13 (c) To receive ~~State~~ state and federal financial participation in any benefits authorized retroactively by corrective
14 actions, the effective date of the correction must correspond with the date assistance would have been effective but
15 may be no earlier than the following dates:

16 (1) Retroactive to the date ordered by the appeal or court decision if all eligibility conditions are met,
17 including any legal retroactive coverage period associated with the adverse action; ~~or~~

18 (2) Retroactive to the date that all requirements of eligibility are met but no earlier than the 12th month
19 immediately preceding the month the change is reported or the administrative error was discovered;
20 or

21 (3) Retroactive to the date required for corrective action due to errors cited from monitoring under
22 application processing standards in 10A NCAC 23C .0202.

23 (d) If the change is adverse to the recipient, it shall be effective ~~with~~ the first calendar month following expiration of
24 the 10 ~~work~~ business day advance notice period, as defined in 10A NCAC 23A .0102. ~~period.~~

25
26 *History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 431.246; 42 C.F.R. 431.250; 42 C.F.R. 435.903;*
27 *435.904; Alexander v. Bruton, U.S.D.C., File No. C-C 74-183-M, Consent Order dismissed effective*
28 *February 1, 2002;*
29 *Eff. June 1, 1990;*
30 *Temporary Amendment Eff. March 1, 2003;*
31 *Amended Eff. August 1, 2004;*
32 *Transferred from 10A NCAC 21A .0603 Eff. May 1, 2012; ~~2012~~.*
33 *Readopted Eff. May 1, 2019.*
34
35

REQUEST FOR TECHNICAL CHANGE

AGENCY: DHHS/ Division of Health Benefits

RULE CITATION: 10A NCAC 23G .0304

DEADLINE FOR RECEIPT: Friday, May 10, 2019

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 call our office to inquire concerning the staff recommendation.

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

In (a), line 7, put "change of situation" in quotation marks.

Also on line 7, delete "but not limited to" and just state "includes:"

In (a)(5), line 12, remove the underlining from "reserve"

In (a)(9), what is "Program Category" and why is it capitalized?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 29, 2019

1 10A NCAC 23G .0304 is readopted as published in 33:13 NCR 1381-1392 as follows:

2
3 **10A NCAC 23G .0304 CHANGE IN SITUATION**

4 (a) For Medicaid applications, once the county department of social services learns from any source that there has
5 been a change in the budget unit's situation that impacts eligibility, they shall notify the applicant within five business
6 work days of the need to obtain verification, as defined by 10A NCAC 23A .0102, of verify the change. For the
7 purposes of this Rule, a change in of situation includes but not limited to:

- 8 (1) Change of ~~address~~, address; ~~or~~
- 9 (2) Change in living ~~arrangement~~, arrangement; ~~or~~
- 10 (3) Adding or deleting a budget unit ~~member~~, member; ~~or~~
- 11 (4) Increase or decrease in ~~income~~, income; ~~or~~
- 12 (5) Change in ~~reserve~~, reserve; ~~or~~
- 13 (6) Cessation of disability or ~~blindness~~, blindness; ~~or~~
- 14 (7) Parent or parents are no longer incapacitated or ~~unemployed~~, unemployed; ~~or~~
- 15 (8) Change in responsible ~~relative~~, relative; or
- 16 (9) Change in Medicaid Aid-Program Category.

17 (b) For an ongoing Medicaid case, once the county department of social services learns from any source that there
18 has been a change in the budget unit's situation, ~~situation~~ they shall review the case ~~promptly~~ and ~~appropriate~~ action
19 shall be completed within 30 calendar days after the agency learns of the change, ~~change in situation~~.

20 (c) The Medicaid client or his or her representative shall report any change in situation that affects ~~might affect~~
21 eligibility ~~within 10 calendar days~~ to the county department of social services within 10 calendar days of knowledge
22 the change, ~~services~~.

23
24 *History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 435.916;*
25 *Eff. September 1, 1984;*
26 *Amended Eff. August 1, 1990;*
27 *Temporary Amendment Eff. August 22, 1996;*
28 *Amended Eff. August 1, 1998;*
29 *Transferred from 10A NCAC 21B .0409 Eff. May 1, 2012; ~~2012~~.*
30 *Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: DHHS/ Division of Health Benefits

RULE CITATION: 10A NCAC 23P .0109

DEADLINE FOR RECEIPT: Friday, May 10, 2019

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 call our office to inquire concerning the staff recommendation.

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

So that I'm clear – is a client only allowed to review his or her record, and only a representative obtain a copy?

In (b), line 6, what is “completeness” and “relevancy”?

What does the sentence on lines 7- 10 mean? What happens to a deletion? Is there no such thing?

In (c), lines 18-19, why do you need this sentence? Is it not clear that these Rules apply otherwise?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 29, 2019

1 10A NCAC 23H .0109 is readopted as published in 33:13 NCR 1381-1392 as follows:

2
3 **10A NCAC 23H .0109 PROCEDURE FOR REVIEW OF RECORDS**

4 (a) The director or his or her delegated representative shall be present when the client reviews the record. The director
5 or his or her delegated representative ~~must~~ shall document in the client record the review of the record by the client.

6 (b) A client may contest the accuracy, completeness, ~~completeness~~ or relevancy of the information in his or her record.
7 Correction of the contested information, but not the deletion of the original information if the Division or county
8 department of social services determines it is required by federal statute or regulation to support receipt of State state
9 or federal participation, shall be inserted in the record when the director or his or her delegated representative concurs
10 that such correction is justified. When the director or his or her delegated representative does not concur, the client
11 shall be allowed to enter a statement in the record. ~~Such corrections and statements shall be made a permanent part~~
12 ~~of the record and shall be disclosed to any recipient of the disputed information.~~ If a delegated representative decides
13 not to correct contested information, the decision not to correct shall be reviewed by the supervisor of the person
14 making the initial decision. All corrections and statements shall be made a permanent part of the record and shall be
15 disclosed to any recipient of the disputed information.

16 (c) Upon written request from the client, his or her personal representative, including an attorney, may have access to
17 review or obtain without charge, a copy of the information in his or her record. The client may permit the personal
18 representative to have access to his or her entire record or may restrict access to certain portions of the record. Rules
19 .0107 and .0108 of this Section shall apply.

20
21 *History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-80;*
22 *Eff. September 1, 1984;*
23 *Transferred from 10A NCAC 21A .0409 Eff. May 1, 2012; ~~2012~~.*
24 *Readopted Eff. May 1, 2019.*
25
26