



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Health and Human Services, Division of Health Benefits

2. Rule citation & name: 10A NCAC 22Q .0101 SCOPE

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 10/21/2021
- b. Proposed Temporary Rule published on the OAH website: 10/27/2021
- c. Public Hearing date: 11/04/2021
- d. Comment Period: 10/27/2021-11/22/2021
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/26/2021
- f. Adoption by agency on: 12/10/2021
- 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]: 12/29/2021
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: N/A

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☒ Other: 150B-21.1(a)(17) To maximize receipt of federal funds for Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse.

Explain: These rules explain the mechanism for obtaining Disproportionate Share Hospital (DSH) funds for certified public expenditures from CMS and their distribution to replace supplemental payments for NC public and private hospitals providing services to Medicaid members and uninsured patients. Most supplemental payments are not permitted in managed care which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. Given the financial strain placed on hospitals due to the ongoing COVID-19 pandemic and Delta variant infections, financial distribution to the hospitals is vital to their continued operations and to the public health at large. This rule will enable prompt delivery of fiscal support to hospitals throughout the State.

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

Historically, DSH funds are used to support the NC Medicaid budget and make supplemental payments to public and private hospitals for the uncompensated care they provide to low income North Carolinians. Due to federal limitations on supplemental payments in managed care, the DSH distribution framework needed to be reworked as of July 1, 2021. This was a complex undertaking requiring ongoing collaboration with multiple stakeholders in an environment stressed by the breadth and depth of managed care launch readiness work and simultaneous pandemic response.

Immediate adoption of this rule package is required because public hospitals have paused filing certified public expenditure (CPE) with CMS to draw down DSH funds until the rules are approved. Delay in CPE filing is necessary because DHB is required to spend federal funds shortly after they are received. DHB cannot distribute the funds resulting from certified public expenditures without authority or a mechanism establishing the hospitals that can receive a distribution from DSH funds and the methodology for calculating the distribution.

These rules provide the necessary authority and will quickly allow certification and distribution of approximately \$76 million still undrawn from the July 2021 through September 2021 quarter to local hospitals, our health care safety net for those who lack the means to pay for care. It is contrary to public interest to delay this rapid infusion of funds to hospitals stressed by ongoing response to COVID-19, the Delta variant, the unknown additional stress that may be caused by the Omicron variant and a flu season that may be more severe than normal.

DHB notes that this rule package has the support of stakeholders who have been regularly consulted in its development. DHB is already working with OSBM on a fiscal impact analysis necessary for making this rule package permanent with the goal of filing permanent rules in early 2022. Temporary rulemaking is being pursued to provide financial support as the permanent rulemaking process is completed.

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: Shazia A. Keller****Phone: 919-218-1372****E-Mail: shazia.keller@dhhs.nc.gov****Agency contact, if any: Jim Flowers****Phone: 919-527-7172****E-Mail: jim.flowers@dhhs.nc.gov****10. Signature of Agency Head*:**

DocuSigned by:

Dave Richard

11395D232A054A2

*** 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: Dave Richard**Title: Deputy Secretary, NC Medicaid****E-Mail: dave.richard@dhhs.nc.gov****RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Health and Human Services

RULE CITATION: 10A NCAC 22Q .0101

DEADLINE FOR RECEIPT: Tuesday, December 14, 2021

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:

In Box 6 of the Findings of Need Form submitted for these Rules, you have indicated that your reason for temporary action is to “maximize receipt of federal funds for Medicaid or NC Health Choice program State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health fraud and abuse” pursuant to G.S. 150B-21.1(a)(17). Just to be clear, am I correct in understanding that the funds established by 42 CFR 447.298 are “federal funds for the Medicaid or NC Health Choice programs”? If so, please just confirm.

What are “certified public expenditures”? I see that this language is used in G.S. 143C-9-9. I assume that your regulated public is familiar with this term?

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

Amber May
Commission Counsel
Date submitted to agency: December 13, 2021

1 10A NCAC 22Q is proposed as a temporary rule as follows:
2

3 **CHAPTER 22 MEDICAL ASSISTANCE ELIGIBILITY**
4

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

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

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

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

13 Temporary Adoption Eff. December 29, 2021.
14



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Health and Human Services, Division of Health Benefits
2. Rule citation & name: 10A NCAC 22Q .0102 DEFINITIONS
3. Action: <input checked="" type="checkbox"/> Adoption <input 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: 10/21/2021 b. Proposed Temporary Rule published on the OAH website: 10/27/2021 c. Public Hearing date: 11/04/2021 d. Comment Period: 10/27/2021-11/22/2021 e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/26/2021 f. Adoption by agency on: 12/10/2021 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]: 12/29/2021 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: N/A
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <div style="margin-left: 20px;"> <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <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 checked="" type="checkbox"/> Other: 150B-21.1(a)(17) To maximize receipt of federal funds for Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse. </div> <p>Explain: <i>These rules explain the mechanism for obtaining Disproportionate Share Hospital (DSH) funds for certified public expenditures from CMS and their distribution to replace supplemental payments for NC public and private hospitals providing services to Medicaid members and uninsured patients. Most supplemental payments are not permitted in managed care which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. Given the financial strain placed on hospitals due to the ongoing COVID-19 pandemic and Delta variant infections, financial distribution to the hospitals is vital to their continued operations and to the public health at large. This rule will enable prompt delivery of fiscal support to hospitals throughout the State.</i></p>

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

Historically, DSH funds are used to support the NC Medicaid budget and make supplemental payments to public and private hospitals for the uncompensated care they provide to low income North Carolinians. Due to federal limitations on supplemental payments in managed care, the DSH distribution framework needed to be reworked as of July 1, 2021. This was a complex undertaking requiring ongoing collaboration with multiple stakeholders in an environment stressed by the breadth and depth of managed care launch readiness work and simultaneous pandemic response.

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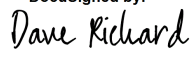
These rules provide the necessary authority and will quickly allow certification and distribution of approximately \$76 million still undrawn from the July 2021 through September 2021 quarter to local hospitals, our health care safety net for those who lack the means to pay for care. It is contrary to public interest to delay this rapid infusion of funds to hospitals stressed by ongoing response to COVID-19, the Delta variant, the unknown additional stress that may be caused by the Omicron variant and a flu season that may be more severe than normal.

DHB notes that this rule package has the support of stakeholders who have been regularly consulted in its development. DHB is already working with OSBM on a fiscal impact analysis necessary for making this rule package permanent with the goal of filing permanent rules in early 2022. Temporary rulemaking is being pursued to provide financial support as the permanent rulemaking process is completed.

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: Shazia A. Keller****Phone: 919-218-1372****E-Mail: shazia.keller@dhhs.nc.gov****Agency contact, if any: Jim Flowers****Phone: 919-527-7172****E-Mail: jim.flowers@dhhs.nc.gov****10. Signature of Agency Head*:**

DocuSigned by:

41395D232A054A2

*** 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: Dave Richard**Title: Deputy Secretary, NC Medicaid****E-Mail: dave.richard@dhhs.nc.gov****RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Health and Human Services

RULE CITATION: 10A NCAC 22Q .0102

DEADLINE FOR RECEIPT: Tuesday, December 14, 2021

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:

Overall, what are these definitions applicable to? This Section? This Subchapter?

In (a)(1), by "is defined in", do you mean "meets the definition set forth in G.S. 131E-176(13)"?

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

Amber May
Commission Counsel
Date submitted to agency: December 13, 2021

1 10A NCAC 22Q .0102 is proposed as a temporary rule as follows:

2
3 **10A NCAC 22Q .0102 DEFINITIONS**

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

5 (1) is defined in G.S. 131E-176(13);

6 (2) is licensed by the State of North Carolina; and

7 (3) certifies as a public agency that its expenditures are eligible for Federal Financial
8 Participation in accordance with 42 CFR 433.51(b), which is incorporated by reference,
9 including subsequent amendments and editions. This document may be accessed at
10 <https://www.ecfr.gov> at no charge.

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

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

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

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

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

21
22 *History Note: Authority G.S. 108A-54; 143C-9-9;*

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



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Health and Human Services, Division of Health Benefits	
2. Rule citation & name: 10A NCAC 22Q .0103 DISTRIBUTIONS	
3. Action: <input checked="" type="checkbox"/> Adoption <input 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: 10/21/2021	
b. Proposed Temporary Rule published on the OAH website: 10/27/2021	
c. Public Hearing date: 11/04/2021	
d. Comment Period: 10/27/2021-11/22/2021	
e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/26/2021	
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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]: 12/29/2021	
h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: N/A	
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 type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <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 checked="" type="checkbox"/> Other: 150B-21.1(a)(17) To maximize receipt of federal funds for Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse.	
Explain: <i>These rules explain the mechanism for obtaining Disproportionate Share Hospital (DSH) funds for certified public expenditures from CMS and their distribution to replace supplemental payments for NC public and private hospitals providing services to Medicaid members and uninsured patients. Most supplemental payments are not permitted in managed care which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. Given the financial strain placed on hospitals due to the ongoing COVID-19 pandemic and Delta variant infections, financial distribution to the hospitals is vital to their continued operations and to the public health at large. This rule will enable prompt delivery of fiscal support to hospitals throughout the State.</i>	

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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: Shazia A. Keller****Phone: 919-218-1372****E-Mail: shazia.keller@dhhs.nc.gov****Agency contact, if any: Jim Flowers****Phone: 919-527-7172****E-Mail: jim.flowers@dhhs.nc.gov****10. Signature of Agency Head*:**

DocuSigned by:

Dave Richard

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*** 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: Dave Richard**Title: Deputy Secretary, NC Medicaid****E-Mail: dave.richard@dhhs.nc.gov****RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

In REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Health and Human Services

RULE CITATION: 10A NCAC 22Q .0103

DEADLINE FOR RECEIPT: Tuesday, December 14, 2021

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:

What is the "enacted State budget"? Is this intended to address this year's budget or each year's budget?

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

Amber May
Commission Counsel
Date submitted to agency: December 13, 2021

1 10A NCAC 22Q .0103 is proposed as a temporary rule as follows:
2

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

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

9 (1) Certifying hospitals; and

10 (2) The Hospital Uncompensated Care Fund.
11

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

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



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Health and Human Services, Division of Health Benefits
2. Rule citation & name: 10A NCAC 22Q .0104 CERTIFYING HOSPITAL DISTRIBUTION
3. Action: <input checked="" type="checkbox"/> Adoption <input 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: 10/21/2021 b. Proposed Temporary Rule published on the OAH website: 10/27/2021 c. Public Hearing date: 11/04/2021 d. Comment Period: 10/27/2021-11/22/2021 e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/26/2021 f. Adoption by agency on: 12/10/2021 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]: 12/29/2021 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: N/A
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <div style="margin-left: 20px;"> <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <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 checked="" type="checkbox"/> Other: 150B-21.1(a)(17) To maximize receipt of federal funds for Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse. </div> <p>Explain: <i>These rules explain the mechanism for obtaining Disproportionate Share Hospital (DSH) funds for certified public expenditures from CMS and their distribution to replace supplemental payments for NC public and private hospitals providing services to Medicaid members and uninsured patients. Most supplemental payments are not permitted in managed care which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. Given the financial strain placed on hospitals due to the ongoing COVID-19 pandemic and Delta variant infections, financial distribution to the hospitals is vital to their continued operations and to the public health at large. This rule will enable prompt delivery of fiscal support to hospitals throughout the State.</i></p>

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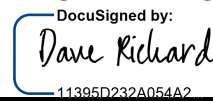
These rules provide the necessary authority and will quickly allow certification and distribution of approximately \$76 million still undrawn from the July 2021 through September 2021 quarter to local hospitals, our health care safety net for those who lack the means to pay for care. It is contrary to public interest to delay this rapid infusion of funds to hospitals stressed by ongoing response to COVID-19, the Delta variant, the unknown additional stress that may be caused by the Omicron variant and a flu season that may be more severe than normal.

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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: Shazia A. Keller****Phone: 919-218-1372****E-Mail: shazia.keller@dhhs.nc.gov****Agency contact, if any: Jim Flowers****Phone: 919-527-7172****E-Mail: jim.flowers@dhhs.nc.gov****10. Signature of Agency Head*:**

DocuSigned by:

11395D232A054A2

*** 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: Dave Richard**Title: Deputy Secretary, NC Medicaid****E-Mail: dave.richard@dhhs.nc.gov****RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Health and Human Services

RULE CITATION: 10A NCAC 22Q .0104

DEADLINE FOR RECEIPT: Tuesday, December 14, 2021

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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 (2), what is the "date of payment as determined by the Department"? Is this provided in Paragraph (f) of Rule .0102? If not, how will this date be determined and how will your regulated public know?

In (2), please add a comma after "by the Department"

In (2), are the contents of the form set forth in (2)(a) through (c)?

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

Amber May
Commission Counsel
Date submitted to agency: December 13, 2021

1 10A NCAC 22Q .0104 is proposed as a temporary rule as follows:

2
3 **10A NCAC 22Q .0104 CERTIFYING HOSPITAL DISTRIBUTION**

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

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

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

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

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

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

19
20 History Note: Authority G.S. 108A-54; 143C-9-9;

21 Temporary Adoption Eff. December 29, 2021.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Health and Human Services, Division of Health Benefits

2. Rule citation & name: 10A NCAC 22Q .0105 CERTIFYING HOSPITALS' OUTPATIENT COSTS

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No **Effective date:**

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 10/21/2021
- b. Proposed Temporary Rule published on the OAH website: 10/27/2021
- c. Public Hearing date: 11/04/2021
- d. Comment Period: 10/27/2021-11/22/2021
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/26/2021
- f. Adoption by agency on: 12/10/2021
- 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]: 12/29/2021
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: N/A

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☒ **Other: 150B-21.1(a)(17)** To maximize receipt of federal funds for Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse.

Explain: These rules explain the mechanism for obtaining Disproportionate Share Hospital (DSH) funds for certified public expenditures from CMS and their distribution to replace supplemental payments for NC public and private hospitals providing services to Medicaid members and uninsured patients. Most supplemental payments are not permitted in managed care which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. Given the financial strain placed on hospitals due to the ongoing COVID-19 pandemic and Delta variant infections, financial distribution to the hospitals is vital to their continued operations and to the public health at large. This rule will enable prompt delivery of fiscal support to hospitals throughout the State.

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

Historically, DSH funds are used to support the NC Medicaid budget and make supplemental payments to public and private hospitals for the uncompensated care they provide to low income North Carolinians. Due to federal limitations on supplemental payments in managed care, the DSH distribution framework needed to be reworked as of July 1, 2021. This was a complex undertaking requiring ongoing collaboration with multiple stakeholders in an environment stressed by the breadth and depth of managed care launch readiness work and simultaneous pandemic response.

Immediate adoption of this rule package is required because public hospitals have paused filing certified public expenditure (CPE) with CMS to draw down DSH funds until the rules are approved. Delay in CPE filing is necessary because DHB is required to spend federal funds shortly after they are received. DHB cannot distribute the funds resulting from certified public expenditures without authority or a mechanism establishing the hospitals that can receive a distribution from DSH funds and the methodology for calculating the distribution.

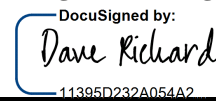
These rules provide the necessary authority and will quickly allow certification and distribution of approximately \$76 million still undrawn from the July 2021 through September 2021 quarter to local hospitals, our health care safety net for those who lack the means to pay for care. It is contrary to public interest to delay this rapid infusion of funds to hospitals stressed by ongoing response to COVID-19, the Delta variant, the unknown additional stress that may be caused by the Omicron variant and a flu season that may be more severe than normal.

DHB notes that this rule package has the support of stakeholders who have been regularly consulted in its development. DHB is already working with OSBM on a fiscal impact analysis necessary for making this rule package permanent with the goal of filing permanent rules in early 2022. Temporary rulemaking is being pursued to provide financial support as the permanent rulemaking process is completed.

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: Shazia A. Keller****Phone: 919-218-1372****E-Mail: shazia.keller@dhhs.nc.gov****Agency contact, if any: Jim Flowers****Phone: 919-527-7172****E-Mail: jim.flowers@dhhs.nc.gov****10. Signature of Agency Head*:**

DocuSigned by:

11395D232A054A2

*** 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: Dave Richard**Title: Deputy Secretary, NC Medicaid****E-Mail: dave.richard@dhhs.nc.gov****RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 10A NCAC 22Q .0105 is proposed as a temporary rule as follows:
2

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

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

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

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

13
14 *History Note: Authority G.S. 108A-54; 143C-9-9;*

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



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Health and Human Services, Division of Health Benefits
2. Rule citation & name: 10A NCAC 22Q .0106 CERTIFYING HOSPITAL'S PROPORTIONATE SHARE
3. Action: <input checked="" type="checkbox"/> Adoption <input 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: 10/21/2021 b. Proposed Temporary Rule published on the OAH website: 10/27/2021 c. Public Hearing date: 11/04/2021 d. Comment Period: 10/27/2021-11/22/2021 e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/26/2021 f. Adoption by agency on: 12/10/2021 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]: 12/29/2021 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: N/A
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <div style="margin-left: 20px;"> <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <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 checked="" type="checkbox"/> Other: 150B-21.1(a)(17) To maximize receipt of federal funds for Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse. </div> <p>Explain: <i>These rules explain the mechanism for obtaining Disproportionate Share Hospital (DSH) funds for certified public expenditures from CMS and their distribution to replace supplemental payments for NC public and private hospitals providing services to Medicaid members and uninsured patients. Most supplemental payments are not permitted in managed care which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. Given the financial strain placed on hospitals due to the ongoing COVID-19 pandemic and Delta variant infections, financial distribution to the hospitals is vital to their continued operations and to the public health at large. This rule will enable prompt delivery of fiscal support to hospitals throughout the State.</i></p>

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

Historically, DSH funds are used to support the NC Medicaid budget and make supplemental payments to public and private hospitals for the uncompensated care they provide to low income North Carolinians. Due to federal limitations on supplemental payments in managed care, the DSH distribution framework needed to be reworked as of July 1, 2021. This was a complex undertaking requiring ongoing collaboration with multiple stakeholders in an environment stressed by the breadth and depth of managed care launch readiness work and simultaneous pandemic response.

Immediate adoption of this rule package is required because public hospitals have paused filing certified public expenditure (CPE) with CMS to draw down DSH funds until the rules are approved. Delay in CPE filing is necessary because DHB is required to spend federal funds shortly after they are received. DHB cannot distribute the funds resulting from certified public expenditures without authority or a mechanism establishing the hospitals that can receive a distribution from DSH funds and the methodology for calculating the distribution.

These rules provide the necessary authority and will quickly allow certification and distribution of approximately \$76 million still undrawn from the July 2021 through September 2021 quarter to local hospitals, our health care safety net for those who lack the means to pay for care. It is contrary to public interest to delay this rapid infusion of funds to hospitals stressed by ongoing response to COVID-19, the Delta variant, the unknown additional stress that may be caused by the Omicron variant and a flu season that may be more severe than normal.

DHB notes that this rule package has the support of stakeholders who have been regularly consulted in its development. DHB is already working with OSBM on a fiscal impact analysis necessary for making this rule package permanent with the goal of filing permanent rules in early 2022. Temporary rulemaking is being pursued to provide financial support as the permanent rulemaking process is completed.

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: Shazia A. Keller

Phone: 919-218-1372

E-Mail: shazia.keller@dhhs.nc.gov

Agency contact, if any: Jim Flowers

Phone: 919-527-7172

E-Mail: jim.flowers@dhhs.nc.gov

10. Signature of Agency Head*:

DocuSigned by:

Dave Richard

11395D232A054A2...

*** 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: Dave Richard

Title: Deputy Secretary, NC Medicaid

E-Mail: dave.richard@dhhs.nc.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 10A NCAC 22Q .0106 is proposed as a temporary rule as follows:

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

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

5 (1) Adding the certifying hospitals' outpatient costs and each of the eligible hospitals' (as
6 defined in 10A NCAC 22R .0103) eligible outpatient costs under 10A NCAC 22R .0104.

7 The sum represents the total of the outpatient costs.

8 (2) The sum of all certifying hospitals' outpatient costs under Rule .0105 of this Section shall
9 be divided by the total outpatient costs in Item (1) of this Rule. The quotient represents the
10 certifying hospitals' proportionate share, expressed as a decimal.

11 (3) The amount of available funds shall be multiplied by the certifying hospitals' proportionate
12 share in Item (2) of this Rule. The product represents the funds available for distribution to
13 individual certifying hospitals.

14 (4) A certifying hospital shall be eligible for a payment from funds available for distribution in
15 Item (3) of this Rule. In each payment period, a certifying hospital shall receive a
16 proportional payment of the available funds based on the certifying hospital's share of
17 outpatient costs for uninsured patients as a percentage of the aggregate of outpatient costs for
18 uninsured patients for certifying hospitals.

19 (5) Hospitals receiving payments pursuant to this Subchapter shall be subject to the audit and
20 reporting requirements of the North Carolina Medicaid State Plan, Attachment 4.19-A.

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

23 Temporary Adoption Eff. December 29, 2021.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Health and Human Services, Division of Health Benefits
2. Rule citation & name: 10A NCAC 22R .0101 SCOPE
3. Action: <input checked="" type="checkbox"/> Adoption <input 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: 10/21/2021 b. Proposed Temporary Rule published on the OAH website: 10/27/2021 c. Public Hearing date: 11/04/2021 d. Comment Period: 10/27/2021-11/22/2021 e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/26/2021 f. Adoption by agency on: 12/10/2021 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]: 12/29/2021 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: N/A
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <div style="margin-left: 20px;"> <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <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 checked="" type="checkbox"/> Other: 150B-21.1(a)(17) To maximize receipt of federal funds for Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse. </div> <p>Explain: <i>These rules explain the mechanism for obtaining Disproportionate Share Hospital (DSH) funds for certified public expenditures from CMS and their distribution to replace supplemental payments for NC public and private hospitals providing services to Medicaid members and uninsured patients. Most supplemental payments are not permitted in managed care which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. Given the financial strain placed on hospitals due to the ongoing COVID-19 pandemic and Delta variant infections, financial distribution to the hospitals is vital to their continued operations and to the public health at large. This rule will enable prompt delivery of fiscal support to hospitals throughout the State.</i></p>

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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: Shazia A. Keller****Phone: 919-218-1372****E-Mail: shazia.keller@dhhs.nc.gov****Agency contact, if any: Jim Flowers****Phone: 919-527-7172****E-Mail: jim.flowers@dhhs.nc.gov****10. Signature of Agency Head*:**

DocuSigned by:

Dave Richard

11395D232A054A2

*** 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: Dave Richard**Title: Deputy Secretary, NC Medicaid****E-Mail: dave.richard@dhhs.nc.gov****RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Health and Human Services

RULE CITATION: 10A NCAC 22R .0101

DEADLINE FOR RECEIPT: Tuesday, December 14, 2021

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:

In Box 6 of the Findings of Need Form submitted for these Rules, you have indicated that your reason for temporary action is to “maximize receipt of federal funds for Medicaid or NC Health Choice program State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health fraud and abuse” pursuant to G.S. 150B-21.1(a)(17). Just to be clear, am I correct in understanding that the funds from the Hospital Uncompensated Care Fund are “federal funds for the Medicaid or NC Health Choice programs”?

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

Amber May
Commission Counsel
Date submitted to agency: December 13, 2021

1 10A NCAC 22R is proposed as a temporary rule as follows:

2
3 **CHAPTER 22 MEDICAL ASSISTANCE ELIGIBILITY**

4
5 **SUBCHAPTER 22R DISTRIBUTION OF HOSPITAL UNCOMPENSATED CARE FUND**

6
7 **10A NCAC 22R .0101 SCOPE**

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

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



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Health and Human Services, Division of Health Benefits

2. Rule citation & name: 10A NCAC 22R .0102 DEFINITIONS

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 10/21/2021
- b. Proposed Temporary Rule published on the OAH website: 10/27/2021
- c. Public Hearing date: 11/04/2021
- d. Comment Period: 10/27/2021-11/22/2021
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/26/2021
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- 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]: 12/29/2021
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: N/A

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☒ Other: 150B-21.1(a)(17) To maximize receipt of federal funds for Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse.

Explain: These rules explain the mechanism for obtaining Disproportionate Share Hospital (DSH) funds for certified public expenditures from CMS and their distribution to replace supplemental payments for NC public and private hospitals providing services to Medicaid members and uninsured patients. Most supplemental payments are not permitted in managed care which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. Given the financial strain placed on hospitals due to the ongoing COVID-19 pandemic and Delta variant infections, financial distribution to the hospitals is vital to their continued operations and to the public health at large. This rule will enable prompt delivery of fiscal support to hospitals throughout the State.

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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: Shazia A. Keller

Phone: 919-218-1372

E-Mail: shazia.keller@dhhs.nc.gov

Agency contact, if any: Jim Flowers

Phone: 919-527-7172

E-Mail: jim.flowers@dhhs.nc.gov

10. Signature of Agency Head*:

DocuSigned by:

Dave Richard

11395D232A054A2...

*** 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: Dave Richard

Title: Deputy Secretary, NC Medicaid

E-Mail: dave.richard@dhhs.nc.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 10A NCAC 22R .0102 is proposed as a temporary rule as follows:
2

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

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

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

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

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

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

12 (f) “Payment period” means the 12-month term ending September 30th of each year.
13

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

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



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Health and Human Services, Division of Health Benefits
2. Rule citation & name: 10A NCAC 22R .0103 ELIGIBLE HOSPITAL
3. Action: <input checked="" type="checkbox"/> Adoption <input 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: 10/21/2021 b. Proposed Temporary Rule published on the OAH website: 10/27/2021 c. Public Hearing date: 11/04/2021 d. Comment Period: 10/27/2021-11/22/2021 e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/26/2021 f. Adoption by agency on: 12/10/2021 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]: 12/29/2021 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: N/A
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <div style="margin-left: 20px;"> <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <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 checked="" type="checkbox"/> Other: 150B-21.1(a)(17) To maximize receipt of federal funds for Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse. </div> <p>Explain: <i>These rules explain the mechanism for obtaining Disproportionate Share Hospital (DSH) funds for certified public expenditures from CMS and their distribution to replace supplemental payments for NC public and private hospitals providing services to Medicaid members and uninsured patients. Most supplemental payments are not permitted in managed care which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. Given the financial strain placed on hospitals due to the ongoing COVID-19 pandemic and Delta variant infections, financial distribution to the hospitals is vital to their continued operations and to the public health at large. This rule will enable prompt delivery of fiscal support to hospitals throughout the State.</i></p>

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

Historically, DSH funds are used to support the NC Medicaid budget and make supplemental payments to public and private hospitals for the uncompensated care they provide to low income North Carolinians. Due to federal limitations on supplemental payments in managed care, the DSH distribution framework needed to be reworked as of July 1, 2021. This was a complex undertaking requiring ongoing collaboration with multiple stakeholders in an environment stressed by the breadth and depth of managed care launch readiness work and simultaneous pandemic response.

Immediate adoption of this rule package is required because public hospitals have paused filing certified public expenditure (CPE) with CMS to draw down DSH funds until the rules are approved. Delay in CPE filing is necessary because DHB is required to spend federal funds shortly after they are received. DHB cannot distribute the funds resulting from certified public expenditures without authority or a mechanism establishing the hospitals that can receive a distribution from DSH funds and the methodology for calculating the distribution.

These rules provide the necessary authority and will quickly allow certification and distribution of approximately \$76 million still undrawn from the July 2021 through September 2021 quarter to local hospitals, our health care safety net for those who lack the means to pay for care. It is contrary to public interest to delay this rapid infusion of funds to hospitals stressed by ongoing response to COVID-19, the Delta variant, the unknown additional stress that may be caused by the Omicron variant and a flu season that may be more severe than normal.

DHB notes that this rule package has the support of stakeholders who have been regularly consulted in its development. DHB is already working with OSBM on a fiscal impact analysis necessary for making this rule package permanent with the goal of filing permanent rules in early 2022. Temporary rulemaking is being pursued to provide financial support as the permanent rulemaking process is completed.

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: Shazia A. Keller****Phone: 919-218-1372****E-Mail: shazia.keller@dhhs.nc.gov****Agency contact, if any: Jim Flowers****Phone: 919-527-7172****E-Mail: jim.flowers@dhhs.nc.gov****10. Signature of Agency Head*:**

DocuSigned by:

Dave Richard

* 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: Dave Richard**Title: Deputy Secretary, NC Medicaid****E-Mail: dave.richard@dhhs.nc.gov****RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Health and Human Services

RULE CITATION: 10A NCAC 22R .0103

DEADLINE FOR RECEIPT: Tuesday, December 14, 2021

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:

In Item (3), what is the "date of payment under this Subchapter"? Are you intending to refer back to the payment period defined in .0102 of this Section?

In (2), are the contents of the form set forth in (2)(a) through (c)?

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

Amber May
Commission Counsel
Date submitted to agency: December 13, 2021

1 10A NCAC 22R .0103 is proposed as a temporary rule as follows:

2
3 **10A NCAC 22R .0103 ELIGIBLE HOSPITAL**

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

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

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

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

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

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

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

19
20 History Note: Authority G.S. 108A-54; 143C-9-9;

21 Temporary Adoption Eff. December 29, 2021.
22



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Health and Human Services, Division of Health Benefits
2. Rule citation & name: 10A NCAC 22R .0104 ELIGIBLE OUTPATIENT COSTS
3. Action: <input checked="" type="checkbox"/> Adoption <input 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: 10/21/2021 b. Proposed Temporary Rule published on the OAH website: 10/27/2021 c. Public Hearing date: 11/04/2021 d. Comment Period: 10/27/2021-11/22/2021 e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/26/2021 f. Adoption by agency on: 12/10/2021 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]: 12/29/2021 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: N/A
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <div style="margin-left: 20px;"> <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <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 checked="" type="checkbox"/> Other: 150B-21.1(a)(17) To maximize receipt of federal funds for Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse. </div> <p>Explain: <i>These rules explain the mechanism for obtaining Disproportionate Share Hospital (DSH) funds for certified public expenditures from CMS and their distribution to replace supplemental payments for NC public and private hospitals providing services to Medicaid members and uninsured patients. Most supplemental payments are not permitted in managed care which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. Given the financial strain placed on hospitals due to the ongoing COVID-19 pandemic and Delta variant infections, financial distribution to the hospitals is vital to their continued operations and to the public health at large. This rule will enable prompt delivery of fiscal support to hospitals throughout the State.</i></p>

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

Historically, DSH funds are used to support the NC Medicaid budget and make supplemental payments to public and private hospitals for the uncompensated care they provide to low income North Carolinians. Due to federal limitations on supplemental payments in managed care, the DSH distribution framework needed to be reworked as of July 1, 2021. This was a complex undertaking requiring ongoing collaboration with multiple stakeholders in an environment stressed by the breadth and depth of managed care launch readiness work and simultaneous pandemic response.

Immediate adoption of this rule package is required because public hospitals have paused filing certified public expenditure (CPE) with CMS to draw down DSH funds until the rules are approved. Delay in CPE filing is necessary because DHB is required to spend federal funds shortly after they are received. DHB cannot distribute the funds resulting from certified public expenditures without authority or a mechanism establishing the hospitals that can receive a distribution from DSH funds and the methodology for calculating the distribution.

These rules provide the necessary authority and will quickly allow certification and distribution of approximately \$76 million still undrawn from the July 2021 through September 2021 quarter to local hospitals, our health care safety net for those who lack the means to pay for care. It is contrary to public interest to delay this rapid infusion of funds to hospitals stressed by ongoing response to COVID-19, the Delta variant, the unknown additional stress that may be caused by the Omicron variant and a flu season that may be more severe than normal.

DHB notes that this rule package has the support of stakeholders who have been regularly consulted in its development. DHB is already working with OSBM on a fiscal impact analysis necessary for making this rule package permanent with the goal of filing permanent rules in early 2022. Temporary rulemaking is being pursued to provide financial support as the permanent rulemaking process is completed.

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: Shazia A. Keller****Phone: 919-218-1372****E-Mail: shazia.keller@dhhs.nc.gov****Agency contact, if any: Jim Flowers****Phone: 919-527-7172****E-Mail: jim.flowers@dhhs.nc.gov****10. Signature of Agency Head*:**

DocuSigned by:

Dave Richard

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* 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: Dave Richard**Title: Deputy Secretary, NC Medicaid****E-Mail: dave.richard@dhhs.nc.gov****RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 10A NCAC 22R .0104 is proposed as a temporary rule as follows:
2

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

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

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

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

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

16 Temporary Adoption Eff. December 29, 2021.
17



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Health and Human Services, Division of Health Benefits

2. Rule citation & name: 10A NCAC 22R .0105 DISTRIBUTION OF AVAILABLE FUNDS

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No **Effective date:**

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 10/21/2021
- b. Proposed Temporary Rule published on the OAH website: 10/27/2021
- c. Public Hearing date: 11/04/2021
- d. Comment Period: 10/27/2021-11/22/2021
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/26/2021
- f. Adoption by agency on: 12/10/2021
- 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]: 12/29/2021
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: N/A

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☒ **Other: 150B-21.1(a)(17)** To maximize receipt of federal funds for Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse.

Explain: These rules explain the mechanism for obtaining Disproportionate Share Hospital (DSH) funds for certified public expenditures from CMS and their distribution to replace supplemental payments for NC public and private hospitals providing services to Medicaid members and uninsured patients. Most supplemental payments are not permitted in managed care which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. Given the financial strain placed on hospitals due to the ongoing COVID-19 pandemic and Delta variant infections, financial distribution to the hospitals is vital to their continued operations and to the public health at large. This rule will enable prompt delivery of fiscal support to hospitals throughout the State.

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DHB notes that this rule package has the support of stakeholders who have been regularly consulted in its development. DHB is already working with OSBM on a fiscal impact analysis necessary for making this rule package permanent with the goal of filing permanent rules in early 2022. Temporary rulemaking is being pursued to provide financial support as the permanent rulemaking process is completed.

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: Shazia A. Keller****Phone: 919-218-1372****E-Mail: shazia.keller@dhhs.nc.gov****Agency contact, if any: Jim Flowers****Phone: 919-527-7172****E-Mail: jim.flowers@dhhs.nc.gov****10. Signature of Agency Head*:**

DocuSigned by:

Dave Richard

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*** 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: Dave Richard**Title: Deputy Secretary, NC Medicaid****E-Mail: dave.richard@dhhs.nc.gov****RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Health and Human Services

RULE CITATION: 10A NCAC 22R .0105

DEADLINE FOR RECEIPT: Tuesday, December 14, 2021

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:

In (c), what is meant by “may cause a hospital receiving... to be audited”? I am finding the “may cause” to be a bit confusing. Will the Department conduct this audit or will a referral be made? How will it be determined whether an audit will be conducted? Is this at random?

Please provide some sort of lead-in language for (c)(1) through (3). Are these what may happen after the audit?

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

Amber May
Commission Counsel
Date submitted to agency: December 13, 2021

1 10A NCAC 22R .0105 is proposed as a temporary rule as follows:

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

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

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

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

16 (1) If a hospital received payments pursuant to Paragraph (a) of this Rule in excess of the
17 percentage determined by the audit, the excess payments shall be refunded to the Department.

18 (2) The Department shall distribute any refunded amounts to eligible hospitals within 12 months
19 of receipt using the distribution method set forth Paragraph (a) of this Rule.

20 (3) No additional payment shall be made to eligible hospitals in connection with the audit except
21 for the redistribution of amounts refunded after an audit conducted by the Division of Health
22 Benefits.

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