

Burgos, Alexander N

Subject: FW: 10A NCAC 22Q and 22R - July 2022 RRC Request for Changes

From: Keller, Shazia A Shazia.Keller@dhhs.nc.gov

Sent: Thursday, July 14, 2022 1:46 PM

To: Liebman, Brian R brian.liebman@oah.nc.gov

Cc: Burgos, Alexander N alexander.burgos@oah.nc.gov

Subject: RE: 10A NCAC 22Q and 22R - July 2022 RRC Request for Changes

Thanks so much for your questions and technical changes. Please do send to Dana.

Shazia A. Keller, JD

Assistant General Counsel Division of Health Benefits

Shazia.Keller@dhhs.nc.gov (**preferred contact method**)

Mobile: 919-218-1372

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Thursday, July 14, 2022 1:14 PM

To: Keller, Shazia A <Shazia.Keller@dhhs.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: 10A NCAC 22Q and 22R - July 2022 RRC Request for Changes

Shazia,

Hope you enjoyed your vacation! Thanks for getting these back to me. Based on these responses, I'll recommend approval of these rules to RRC at next week's meeting.

With your consent, I'll send the final version of each Rule and the forms on to Dana for filing.

Best,

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984)236-1948

brian.liebman@oah.nc.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

Burgos, Alexander N

Subject: FW: 10A NCAC 22Q and 22R - July 2022 RRC Request for Changes
Attachments: 07.2022 - DHB 22Q 22R DHB Tech Change Follow Up Response 7-14-22.docx; 10A NCAC 22Q .0105.docx; 10A NCAC 22R .0102.docx; 10A NCAC 22R .0104.docx

From: Keller, Shazia A <Shazia.Keller@dhhs.nc.gov>
Sent: Thursday, July 14, 2022 12:19 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 10A NCAC 22Q and 22R - July 2022 RRC Request for Changes

Hi Brian:

Please feel free to call me Shazia. I really appreciate you allowing me extra time to respond since I was on vacation when this email was received. Please see the attached responsive documents. Let me know if you need anything else to recommend approval of our rules.

Shazia A. Keller, JD
Assistant General Counsel Division of Health Benefits
Shazia.Keller@dhhs.nc.gov (**preferred contact method**)
Mobile: 919-218-1372

brian.liebman@oah.nc.gov

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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized State official. Unauthorized disclosure of juvenile, health, legally privileged, or otherwise confidential information, including confidential information relating to an ongoing State procurement effort, is prohibited by law. If you have received this email in error, please notify the sender immediately and delete all records of this email.

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22Q .0104

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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

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

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

In (2), what is the “date of payment”?

Agency Response: DHB establishes a date in collaboration with hospitals. The date can vary based on the date that public hospitals certify their expenditures which triggers the when the monies from Medicaid disproportionate share hospital (DSH) allotment are received.

In (2), lines 10-11, it appears like the 90 day period is tied to the date of the payment, which is determined by the Department. How does the hospital know when that will be?

Agency Response: See above.

NEW

RRC Counsel Follow Up Question: I’m not sure I completely understand how this works. So the hospital certifies its expenditures with the federal government pursuant to 42 CFR 433.51, and then this starts the clock? Then DHB and the hospital work out the payment date, which presumably is more than 90 days out, which allows the hospital to submit the form required in (2)? I think I’m probably missing something. Please let me know if I am. It does sound like you’re telling me the regulated public understands the process though, is that correct?

Agency Response: The regulated public understands this process and is heavily involved with DHB in navigating its intricacies; a similar process has been in place for more than 10 years. Hospitals work with DHB to establish the time frame during which (a) they will certify expenditures and (b) the Department draws down and then disburses the federal funds pursuant to 22Q and 22R as there is no federal timeliness requirement. The reference for “90 days prior” establishes a cutoff by which the Department must receive the required forms from certifying hospitals sufficiently in advance to properly calculate the proportionate share and prepare the payment distributions. Certifying the expenditures with CMS does not start the 90 day clock though all parties are interested in prompt disbursement of funds.

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

Brian Liebman
Commission Counsel
Date submitted to agency: July12, 2022

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22Q .0105

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

NEW

RRC Counsel Follow Up Question: With respect to the incorporation by reference, I'd just ask that you specify that these documents are available at no cost.

Agency Response: Done.

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

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22R .0102

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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

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

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

NEW

RRC Counsel Follow Up Question: please show that you deleted the definition of “payment period” from (f).

Agency Response: Done.

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

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22R .0103

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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

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

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

In (3), line 11, it appears like the 90 day period for filing forms is tied to the date of the payment. Yet the date of payment is a future event. How does the hospital know when that will be?

Agency Response: DHB establishes a date in collaboration with hospitals. The date can vary based on the date that public hospitals certify their expenditures which triggers the when the monies from Medicaid disproportionate share hospital (DSH) allotment are received.

NEW

RRC Counsel Follow Up Question: I'm not sure I completely understand how this works. So the hospital certifies its expenditures with the federal government pursuant to 42 CFR 433.51, and then this starts the clock? Then DHB and the hospital work out the payment date, which presumably is more than 90 days out, which allows the hospital to submit the form required in (2)? I think I'm probably missing something. Please let me know if I am. It does sound like you're telling me the regulated public understands the process though, is that correct?

Agency Response: The regulated public understands this process and is heavily involved with DHB in navigating its intricacies; a similar process has been in place for more than 10 years. Hospitals work with DHB to establish the time frame during which (a) they will certify expenditures and (b) the Department draws down and then disburses the federal funds pursuant to 22Q and 22R as there is no federal timeliness requirement. The reference for "90 days prior" establishes a cutoff by which the Department must receive the required forms from eligible hospitals sufficiently in advance to properly calculate the proportionate share and prepare the payment distributions. Certifying the expenditures with CMS does not start the 90 day clock though all parties are interested in prompt disbursement of funds.

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

Brian Liebman
Commission Counsel
Date submitted to agency: July12, 2022

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22R .0104

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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

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

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

NEW

RRC Counsel Follow Up Question: With respect to the incorporation by reference, I'd just ask that you specify that these documents are available at no cost.

Agency Response: Done.

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

1 10A NCAC 22Q .0105 is adopted as published in 36:18 NCR 1496 with changes 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 hospital's
5 outpatient cost-to-charge ratio in Rule .0104(2)(c) of this Section by the hospital's outpatient charges for uninsured
6 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 that the
8 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 by applying
10 the applicable Centers for Medicare and Medicaid Services' Prospective Payment System Hospital Input Price Indices,
11 which are incorporated by reference, including subsequent amendments and editions and available at no cost at
12 [https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-](https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketData)
13 [Reports/MedicareProgramRatesStats/MarketBasketData](https://www.cms.gov/Research-Statistics-Data-and-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 Eff. August 1, 2022.

1 10A NCAC 22R .0102 is adopted as published in 36:18 NCR 1497 with changes 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) "Hospital Uncompensated Care Fund" means the fund established by G.S. 143C-9-9 and governed by 10A NCAC
8 ~~22R. "Outpatient services" means the medical care and items as defined by 42 CFR 440.20(a), which is incorporated~~
9 ~~by reference in 10A NCAC 22Q .0102.~~

10 (e) "Outpatient services" means the medical care and items as defined by 42 CFR 440.20(a), which is incorporated
11 by reference in 10A NCAC 22Q .0102. "Uninsured patient" means a recipient of medical care who has no health
12 insurance, Medicaid or Medicare, or other third party coverage. State and local government payments made to a
13 hospital for services provided to indigent patients shall not be considered third party coverage.

14 (f) "Payment period" means the 12 month term ending September 30th of each year. "Uninsured patient" means a
15 recipient of medical care who has no health insurance, Medicaid or Medicare, or other third-party coverage. State and
16 local government payments made to a hospital for services provided to indigent patients shall not be considered third-
17 party coverage.

18 (g) "Payment period" means the 12-month term ending September 30th of each year.

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

21 *Temporary Adoption Eff. December 29, 2021;*

22 *Eff. August 1, 2022.*

1 10A NCAC 22R .0104 is adopted as published in 36:18 NCR 1497 with changes 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 the
5 hospital's outpatient cost-to-charge ratio in Rule .0103(3)(c) of this Section by the hospital's outpatient charges for
6 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 that the
8 hospital received from uninsured patients for outpatient services from Rule .0103(3)(b) of this Section.

9 (c) The Department will bring the uncompensated care cost data forward to the end of the payment period by applying
10 the applicable Centers for Medicare and Medicaid Services' Prospective Payment System Hospital Input Price Indices,
11 which are incorporated by reference, including subsequent amendments and editions and available at no cost at
12 [https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-](https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketData)
13 [Reports/MedicareProgramRatesStats/MarketBasketData](https://www.cms.gov/Research-Statistics-Data-and-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 *Eff. August 1, 2022.*
18
19

Burgos, Alexander N

Subject: FW: 10A NCAC 22Q and 22R - July 2022 RRC Request for Changes

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Tuesday, July 12, 2022 11:38 AM
To: Keller, Shazia A <Shazia.Keller@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 10A NCAC 22Q and 22R - July 2022 RRC Request for Changes

Hi Ms. Keller,

Thanks for your response, particularly when you're on vacation! I've reviewed and have a few more questions/requests/comments:

22Q .0104/22R .0103

In (2), what is the "date of payment"?

Agency Response: DHB establishes a date in collaboration with hospitals. The date can vary based on the date that public hospitals certify their expenditures which triggers the when the monies from Medicaid disproportionate share hospital (DSH) allotment are received.

In (2), lines 10-11, it appears like the 90 day period is tied to the date of the payment, which is determined by the Department. How does the hospital know when that will be?

Agency Response: See above.

In (3), line 11, it appears like the 90 day period for filing forms is tied to the date of the payment. Yet the date of payment is a future event. How does the hospital know when that will be?

Agency Response: DHB establishes a date in collaboration with hospitals. The date can vary based on the date that public hospitals certify their expenditures which triggers the when the monies from Medicaid disproportionate share hospital (DSH) allotment are received.

I'm not sure I completely understand how this works. So the hospital certifies its expenditures with the federal government pursuant to 42 CFR 433.51, and then this starts the clock? Then DHB and the hospital work out the payment date, which presumably is more than 90 days out, which allows the hospital to submit the form required in (2)? I think I'm probably missing something. Please let me know if I am. It does sound like you're telling me the regulated public understands the process though, is that correct?

22Q .0105/22R .0104

With respect to the incorporation by reference, in both of these rules, I'd just ask that you specify that these documents are available at no cost.

22R .0102

Just for formatting's sake, please show that you deleted the definition of "payment period" from (f).

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948

brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: 10A NCAC 22Q and 22R - July 2022 RRC Request for Changes
Attachments: Form_0400_22R_0105.docx.pdf; Form_0400_22Q_0101.docx.pdf; Form_0400_22Q_0102.docx.pdf; Form_0400_22Q_0103.docx.pdf; Form_0400_22Q_0104.docx.pdf; Form_0400_22Q_0105.docx.pdf; Form_0400_22Q_0106.docx.pdf; Form_0400_22R_0101.docx.pdf; Form_0400_22R_0102.docx.pdf; Form_0400_22R_0103.docx.pdf; Form_0400_22R_0104.docx.pdf; 07.2022 - DHB 22Q 22R DHB Tech Change Response 7-11-22.docx; 10A NCAC 22Q .0101.docx; 10A NCAC 22Q .0102.docx; 10A NCAC 22Q .0105.docx; 10A NCAC 22Q .0106.docx; 10A NCAC 22R .0102.docx; 10A NCAC 22R .0104.docx; 10A NCAC 22R .0105.docx

From: Keller, Shazia A <Shazia.Keller@dhhs.nc.gov>
Sent: Monday, July 11, 2022 11:36 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 10A NCAC 22Q and 22R - July 2022 RRC Request for Changes

Hi Brian:

Please find attached DHB's response to your request for technical changes. Please let me know if I can be of further assistance.

Shazia A. Keller, JD
Assistant General Counsel Division of Health Benefits
Shazia.Keller@dhhs.nc.gov (**preferred contact method**)
Mobile: 919-218-1372

Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day;, and”
 - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:
www.ncoah.com/rules/examples.html

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: All Submission for Permanent Rule Forms

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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

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

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

In Box 6, under “Link to Agency notice” you’ve put the date of notice of text, rather than a link to where the notice was published. Please correct.

Agency Response: Done.

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

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22Q .0101

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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

In general, "Scope" rules are considered unnecessary. Do you need it here? If you feel that you do, that's fine, but I wanted to ask.

Agency Response: DHB considers the scope important because these are new rules that delineate the money that gets distributed before funding the Hospital Uncompensated Care Fund created by G.S. 143C-9-9.

Please center the chapter title, rather than just indenting it.

Agency Response: Done. The reformatted rule is attached but the introductory statement does not include the phrase "with changes" because 26 NCAC 02C .0404 only requires when the text has been changed rather than the formatting.

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

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22Q .0102

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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

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

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

In (a), line 4, please consider making “Certifying Hospitals” singular, as there is a number disagreement with the rest of the sentence.

Agency Response: Done.

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

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22Q .0103

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 4, to whom are these distributions made?

Agency Response: The distribution would be made as directed in the appropriations act. Historically, a portion is retained by the General Assembly to fund the state share of Medicaid expenses.

In (2), line 10, to be clear, you're making distributions from a fund to another fund?

Agency Response: Distributions are made from federal Medicaid disproportionate share hospital (DSH) allotment receipts to the Hospital Uncompensated Care Fund after basic DSH payments occur pursuant to the State Plan, any distribution directed by an appropriation act are made and certifying hospitals receive their distribution.

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

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22Q .0104

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 4, “available funds” refer to funds in the Hospital Uncompensated Care Fund, correct? If so, please consider clarifying.

Agency Response: This phrase refers to federal Medicaid disproportionate share hospital adjusted receipts that remain after the distributions in rule 22Q .0103 and 22Q.0104(1) occur.

In (2), line 8, to what does “available funds” refer? Is this the total amount before any distribution is made, or is this the amount left over after the distribution described in (1) is made?

Agency Response: This phrase refers to the 10% of the funds remaining after basic DSH payments are made pursuant to the State Plan and any amounts that are allocated in an appropriation bill as described in 22Q .0103.

In (2), what is the “date of payment”?

Agency Response: DHB establishes a date in collaboration with hospitals. The date can vary based on the date that public hospitals certify their expenditures which triggers the when the monies from Medicaid disproportionate share hospital (DSH) allotment are received.

In (2), lines 10-11, it appears like the 90 day period is tied to the date of the payment, which is determined by the Department. How does the hospital know when that will be?

Agency Response: See above.

In (2), line 11, are the contents of the form completely described in sub items (a)-(c)? Where is this form available?

Agency Response: DHB, with agreement of stakeholders, has intentionally described the contents of the form in a general manner to allow for frequent updates due to changing CMS guidance or to accommodate stakeholder needs. The forms are made available to hospitals and can also be obtained at <https://medicaid.ncdhhs.gov/providers/cost-reports-and-assessments/hospital-cost-report>.

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

Brian Liebman
Commission Counsel

Date submitted to agency: June 28, 2022

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22Q .0105

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (c), is the title “Prospective Payment System Hospital Input Price Indices” correct? There is nothing with that precise name in the link supplied.

Agency Response: This is the correct name that is well accepted by the regulated public as a term to refer to the information available at the provided link.

Further, it appears these indices are regularly updated. Please incorporate by reference and state whether the incorporation includes subsequent amendments or editions, as required by 150B-21.6.

Agency Response: Done.

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

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22Q .0106

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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

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

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

In (1), line 5, the amount of certifying hospitals' outpatient costs is calculated as in 22Q .0105, correct?

Agency Response: Correct.

In (1), lines 5-6, please delete the parentheses and incorporate the parenthetical material into the body of the Rule.

Agency Response: Done.

In (1), you're adding the costs of all certifying hospitals and all eligible hospitals statewide, correct?

Agency Response: Correct.

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

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22R .0101

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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

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

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

In general, "Scope" rules are considered unnecessary. Do you need it here? If you feel that you do, that's fine, but I wanted to ask.

Agency Response: DHB considers the scope important because these are new rules that delineate what money gets distributed before funding the Hospital Uncompensated Care Fund created by G.S. 143C-9-9 and how hospitals can participate in the distribution of funds.

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

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22R .0102

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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

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

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

Is there a reason the Hospital Uncompensated Care Fund is defined in 22Q .0102, but not here?

Agency Response: This was an oversight and has been corrected.

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

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22R .0103

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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

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

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

In (3), line 11, it appears like the 90 day period for filing forms is tied to the date of the payment. Yet the date of payment is a future event. How does the hospital know when that will be?

Agency Response: DHB establishes a date in collaboration with hospitals. The date can vary based on the date that public hospitals certify their expenditures which triggers the when the monies from Medicaid disproportionate share hospital (DSH) allotment are received.

In (3), line 11, are the contents of the forms completely described in sub items (a)-(c)? Where are these forms available?

Agency Response: DHB, with agreement of stakeholders, has intentionally described the contents of the form in a general manner to allow for frequent updates due to changing CMS guidance or stakeholder needs. The forms are made available to hospitals and can also be obtained at <https://medicaid.ncdhhs.gov/providers/cost-reports-and-assessments/hospital-cost-report>.

Where are (3)(b) and (3)(c) calculated?

Agency Response: These are data inputs on the forms referenced in line 11.

Are the unreimbursed charges and payments for outpatient services referenced in (3)(b) the same as the eligible outpatient costs calculated in 22R .0104?

Agency Response: The data inputs from the hospital in 22R.0103 (3)(b) and (3)(c) are used to calculate the eligible hospital outpatient costs in 22R.0104.

Is the cost-to-charge ratio referenced in (3)(c) the same as what is calculated in 22Q .0104(2)(c)?

Agency Response: As one of their data inputs, each hospital submits a form with its aggregate cost to charge ratio. The calculations in which that data is used are the same but 22Q is for certifying hospitals while 22R is for eligible hospitals.

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

Brian Liebman
Commission Counsel
Date submitted to agency: June 28, 2022

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22R .0104

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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

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

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

In (c), is the title “Prospective Payment System Hospital Input Price Indices” correct? There is nothing with that precise name in the link supplied.

Agency Response: This is the correct name that is well accepted by the regulated public for the information available at the provided link.

Further, it appears these indices are regularly updated. Please incorporate by reference and state whether the incorporation includes subsequent amendments or editions, as required by 150B-21.6.

Agency Response: Done.

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

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

AGENCY: DHHS – Division of Health Benefits

RULE CITATION: 10A NCAC 22R .0105

DEADLINE FOR RECEIPT: Wednesday, July 13, 2022.

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

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

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

In (a), line 5, what does “funds available under this Subchapter” mean? Is this only the Hospital Uncompensated Care Fund? Or are there other sources of funding?

Agency Response: This is only the HUCF which receives the funds remaining after the distributions in 22Q.

In (b), line 8, what does “at least annually” mean? Is the “at least” necessary? Rules already set minimum requirements.

Agency Response: This phrase is used to allow the Department to distribute more than annually as needed. Without this phrase DHB would be limited to annual distributions which could present fiscal issues to hospitals that provide safety net care to the public. .

In (c), line 13, what does “compliance with the requirements of this Subchapter” mean?

Agency Response: This phrase is used to authorize the Department to audit the data inputs of eligible hospitals in the same manner as public hospitals are audited.

In (c)(1), what happens if the audit reveals a hospital received an underpayment?

Agency Response: The sequential steps and calculations outlined in these rules are intended to fully disburse the monies deposited into the HUCF to the eligible hospitals. The audits authorized in 22R.0105 permit the review of high dollar disbursements made to eligible hospitals for potential overpayments based on data the hospitals have attested is true and accurate. If an audit reveals an overpayment, the language requires recovery of the overpayment and redistribution so there remains no undispositioned monies in the fund. If the audit reveals an underpayment, there is no further action as the Department has relied upon the attestation of the audited hospital and fully disbursed the monies in the HUCF to the other eligible hospitals...

In (c)(2), line 17, refunded amounts are to be distributed to eligible hospitals pursuant to the method described in (a). If a hospital is audited and must refund excess payments, which are then distributed, is the audited hospital then entitled to a percentage of the excess? The Rule doesn't appear to exempt the audited hospital from receiving a payment under these circumstances, and under 22R .0103, I don't see anything that would change the eligibility status of an audited hospital.


Brian Liebman
Commission Counsel

Date submitted to agency: June 28, 2022

Agency Response: The text of the rule has been edited to clarify that a hospital receiving excess distributions is not entitled to a percentage of the excess.

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

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: DHHS/Division of Health Benefits	
2. Rule citation & name (name not required for repeal): 10A NCAC 22Q .0101 SCOPE	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 03/15/2022 Link to Agency notice: https://medicaid.ncdhhs.gov/meetings-notices/rules-actions Hearing on: 03/31/2022 Adoption by Agency on: 05/23/2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
<p style="text-align: center;">9. REASON FOR ACTION</p> 9A. What prompted this action? Check all that apply: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: </div> <div style="width: 45%;"> <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2020-88, section 17 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: </div> </div> 9B. Explain: <p>The new rules under Subchapters 22Q and 22R will effectuate the directive from the General Assembly for the Department to create rules to implement G.S. 143C-9-9 ("Hospital Uncompensated Care Fund"). The purpose of these rules is to establish the sequence of allocations of federal disproportionate share adjustment receipts arising from certified public expenditures, define the hospitals eligible for participation in the distribution of these funds, and codify formulas for calculating the distributions using outpatient cost metrics. Most supplemental payments are not permitted in managed care, which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. This package is being submitted ahead of similar temporary rules that will expire in a few months.</p>	
10. Rulemaking Coordinator: Shazia Keller Phone: 919-218-1372 E-Mail: shazia.keller@dhhs.nc.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator: <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <small>DocuSigned by:</small>  <small>5B7A32EB4BD14E2...</small> </div> <p>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</p> Typed Name: Title:
RRC AND OAH USE ONLY	

SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

1 10A NCAC 22Q .0101 is adopted as published in 36:18 NCR 1496 as follows:

2
3 **CHAPTER 22 MEDICAL ASSISTANCE ELIGIBILITY**

4
5 **SUBCHAPTER 22Q DISTRIBUTION OF FEDERAL DISPROPORTIONATE SHARE ADJUSTMENT**

6 **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 adjustment
10 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 Eff. August 1, 2022.

SUBMISSION FOR PERMANENT RULE


1. Rule-Making Agency: DHHS/Division of Health Benefits	
2. Rule citation & name (name not required for repeal): 10A NCAC 22Q .0102 DEFINITIONS	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 03/15/2022 Link to Agency notice: https://medicaid.ncdhhs.gov/meetings-notices/rules-actions Hearing on: 03/31/2022 Adoption by Agency on: 05/23/2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
<p style="text-align: center;">9. REASON FOR ACTION</p> 9A. What prompted this action? Check all that apply: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: </div> <div style="width: 45%;"> <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2020-88, section 17 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: </div> </div> 9B. Explain: <p>The new rules under Subchapters 22Q and 22R will effectuate the directive from the General Assembly for the Department to create rules to implement G.S. 143C-9-9 ("Hospital Uncompensated Care Fund"). The purpose of these rules is to establish the sequence of allocations of federal disproportionate share adjustment receipts arising from certified public expenditures, define the hospitals eligible for participation in the distribution of these funds, and codify formulas for calculating the distributions using outpatient cost metrics. Most supplemental payments are not permitted in managed care, which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. This package is being submitted ahead of similar temporary rules that will expire in a few months.</p>	
10. Rulemaking Coordinator: Shazia Keller Phone: 919-218-1372 E-Mail: shazia.keller@dhhs.nc.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator: <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <small>DocuSigned by:</small>  <small>5B7A32EB4BD14E2...</small> </div> <p>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</p> Typed Name: Title:
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SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: DHHS/Division of Health Benefits	
2. Rule citation & name (name not required for repeal): 10A NCAC 22Q .0103 DISTRIBUTIONS	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 03/15/2022 Link to Agency notice: https://medicaid.ncdhhs.gov/meetings-notices/rules-actions Hearing on: 03/31/2022 Adoption by Agency on: 05/23/2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
<p style="text-align: center;">9. REASON FOR ACTION</p> 9A. What prompted this action? Check all that apply: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: </div> <div style="width: 45%;"> <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2020-88, section 17 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: </div> </div> 9B. Explain: <p>The new rules under Subchapters 22Q and 22R will effectuate the directive from the General Assembly for the Department to create rules to implement G.S. 143C-9-9 ("Hospital Uncompensated Care Fund"). The purpose of these rules is to establish the sequence of allocations of federal disproportionate share adjustment receipts arising from certified public expenditures, define the hospitals eligible for participation in the distribution of these funds, and codify formulas for calculating the distributions using outpatient cost metrics. Most supplemental payments are not permitted in managed care, which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. This package is being submitted ahead of similar temporary rules that will expire in a few months.</p>	
10. Rulemaking Coordinator: Shazia Keller Phone: 919-218-1372 E-Mail: shazia.keller@dhhs.nc.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator: <div style="border: 1px solid black; padding: 5px; margin: 5px 0;">  <small>5B7A32EB4BD14E2...</small> </div> <hr/> <p>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</p> Typed Name: Title:
RRC AND OAH USE ONLY	

SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

1 10A NCAC 22Q .0102 is adopted as published in 36:18 NCR 1496 with changes as follows::

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

4 (a) "Certifying ~~Hospitals~~Hospital" means an institution that meets all of the following criteria:

5 (1) meets the definition in G.S. 131E-176(13);

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

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

10 (b) "Department" means the North Carolina Department of Health and Human Services.

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

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

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


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

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

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

23 *Eff. August 1, 2022.*

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: DHHS/Division of Health Benefits	
2. Rule citation & name (name not required for repeal): 10A NCAC 22Q .0104 CERTIFYING HOSPITAL DISTRIBUTION	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 03/15/2022 Link to Agency notice: https://medicaid.ncdhhs.gov/meetings-notices/rules-actions Hearing on: 03/31/2022 Adoption by Agency on: 05/23/2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION 9A. What prompted this action? Check all that apply: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: </div> <div style="width: 45%;"> <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2020-88, section 17 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: </div> </div> 9B. Explain: <p>The new rules under Subchapters 22Q and 22R will effectuate the directive from the General Assembly for the Department to create rules to implement G.S. 143C-9-9 ("Hospital Uncompensated Care Fund"). The purpose of these rules is to establish the sequence of allocations of federal disproportionate share adjustment receipts arising from certified public expenditures, define the hospitals eligible for participation in the distribution of these funds, and codify formulas for calculating the distributions using outpatient cost metrics. Most supplemental payments are not permitted in managed care, which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. This package is being submitted ahead of similar temporary rules that will expire in a few months.</p>	
10. Rulemaking Coordinator: Shazia Keller Phone: 919-218-1372 E-Mail: shazia.keller@dhhs.nc.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator: <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> DocuSigned by:  *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. </div> Typed Name: Title:
RRC AND OAH USE ONLY	

SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

1 10A NCAC 22Q .0105 is adopted as published in 36:18 NCR 1496 with changes 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 hospital's
5 outpatient cost-to-charge ratio in Rule .0104(2)(c) of this Section by the hospital's outpatient charges for uninsured
6 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 that the
8 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 by applying
10 the applicable Centers for Medicare and Medicaid Services' Prospective Payment System Hospital Input Price Indices,
11 which are incorporated by reference, including subsequent amendments and editions and available at
12 [https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-](https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketData)
13 [Reports/MedicareProgramRatesStats/MarketBasketData](https://www.cms.gov/Research-Statistics-Data-and-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 Eff. August 1, 2022.

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: DHHS/Division of Health Benefits	
2. Rule citation & name (name not required for repeal): 10A NCAC 22Q .0105 CERTIFYING HOSPITALS' OUTPATIENT COSTS	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 03/15/2022 Link to Agency notice: https://medicaid.ncdhhs.gov/meetings-notices/rules-actions Hearing on: 03/31/2022 Adoption by Agency on: 05/23/2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: </div> <div style="width: 45%;"> <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2020-88, section 17 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: </div> </div>	
9B. Explain: The new rules under Subchapters 22Q and 22R will effectuate the directive from the General Assembly for the Department to create rules to implement G.S. 143C-9-9 ("Hospital Uncompensated Care Fund"). The purpose of these rules is to establish the sequence of allocations of federal disproportionate share adjustment receipts arising from certified public expenditures, define the hospitals eligible for participation in the distribution of these funds, and codify formulas for calculating the distributions using outpatient cost metrics. Most supplemental payments are not permitted in managed care, which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. This package is being submitted ahead of similar temporary rules that will expire in a few months.	
10. Rulemaking Coordinator: Shazia Keller Phone: 919-218-1372 E-Mail: shazia.keller@dhhs.nc.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator: <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <small>DocuSigned by:</small>  <small>5B7A32EB4BD14E2...</small> </div> *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: Title:
RRC AND OAH USE ONLY	

SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

1 10A NCAC 22Q .0106 is adopted as published in 36:18 NCR 1497 with changes 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~~-as-defined in
6 10A NCAC 22R-~~0103~~.0103, eligible outpatient costs under 10A NCAC 22R .0104. The sum
7 represents the total of the outpatient costs.

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


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

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

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

20
21 History Note: Authority G.S. 108A-54; 108A-55(c); 143C-9-9;
22 Temporary Adoption Eff. December 29, 2021;
23 Eff. August 1, 2022.

SUBMISSION FOR PERMANENT RULE


1. Rule-Making Agency: DHHS/Division of Health Benefits	
2. Rule citation & name (name not required for repeal): 10A NCAC 22Q .0106 CERTIFYING HOSPITAL'S PROPORTIONATE SHARE	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: https://medicaid.ncdhhs.gov/meetings-notices/rules-actions Link to Agency notice: 03/15/2022 Hearing on: 03/31/2022 Adoption by Agency on: 05/23/2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION 9A. What prompted this action? Check all that apply: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: </div> <div style="width: 45%;"> <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2020-88, section 17 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: </div> </div> 9B. Explain: <p>The new rules under Subchapters 22Q and 22R will effectuate the directive from the General Assembly for the Department to create rules to implement G.S. 143C-9-9 ("Hospital Uncompensated Care Fund"). The purpose of these rules is to establish the sequence of allocations of federal disproportionate share adjustment receipts arising from certified public expenditures, define the hospitals eligible for participation in the distribution of these funds, and codify formulas for calculating the distributions using outpatient cost metrics. Most supplemental payments are not permitted in managed care, which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. This package is being submitted ahead of similar temporary rules that will expire in a few months.</p>	
10. Rulemaking Coordinator: Shazia Keller Phone: 919-218-1372 E-Mail: shazia.keller@dhhs.nc.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator: DocuSigned by:  5B7A32EB4BD14E2... *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: Title:
RRC AND OAH USE ONLY	

SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: DHHS/Division of Health Benefits	
2. Rule citation & name (name not required for repeal): 10A NCAC 22R .0101 SCOPE	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 03/15/2022 Link to Agency notice: https://medicaid.ncdhhs.gov/meetings-notices/rules-actions Hearing on: 03/31/2022 Adoption by Agency on: 05/23/2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: </div> <div style="width: 45%;"> <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2020-88, section 17 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: </div> </div>	
9B. Explain: The new rules under Subchapters 22Q and 22R will effectuate the directive from the General Assembly for the Department to create rules to implement G.S. 143C-9-9 ("Hospital Uncompensated Care Fund"). The purpose of these rules is to establish the sequence of allocations of federal disproportionate share adjustment receipts arising from certified public expenditures, define the hospitals eligible for participation in the distribution of these funds, and codify formulas for calculating the distributions using outpatient cost metrics. Most supplemental payments are not permitted in managed care, which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. This package is being submitted ahead of similar temporary rules that will expire in a few months.	
10. Rulemaking Coordinator: Shazia Keller Phone: 919-218-1372 E-Mail: shazia.keller@dhhs.nc.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator: <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <small>DocuSigned by:</small>  <small>5B7A32EB4BD14E2...</small> </div> *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: Title:
RRC AND OAH USE ONLY	

SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

1 10A NCAC 22R .0102 is adopted as published in 36:18 NCR 1497 with changes 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) "Hospital Uncompensated Care Fund" means the fund established by G.S. 143C-9-9 and governed by 10A NCAC
8 ~~22R. "Outpatient services" means the medical care and items as defined by 42 CFR 440.20(a), which is incorporated~~
9 ~~by reference in 10A NCAC 22Q .0102.~~


10 (e) "Outpatient services" means the medical care and items as defined by 42 CFR 440.20(a), which is incorporated
11 by reference in 10A NCAC 22Q .0102. "Uninsured patient" means a recipient of medical care who has no health
12 insurance, Medicaid or Medicare, or other third party coverage. State and local government payments made to a
13 hospital for services provided to indigent patients shall not be considered third party coverage.

14 (f) "Uninsured patient" means a recipient of medical care who has no health insurance, Medicaid or Medicare, or
15 other third-party coverage. State and local government payments made to a hospital for services provided to indigent
16 patients shall not be considered third-party coverage.

17 (g) "Payment period" means the 12-month term ending September 30th of each year.

18
19 *History Note: Authority G.S. 108A-54; 143C-9-9;*
20 *Temporary Adoption Eff. December 29, 2021;*
21 *Eff. August 1, 2022.*

SUBMISSION FOR PERMANENT RULE


1. Rule-Making Agency: DHHS/Division of Health Benefits	
2. Rule citation & name (name not required for repeal): 10A NCAC 22R .0102 DEFINITIONS	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 03/15/2022 Link to Agency notice: https://medicaid.ncdhhs.gov/meetings-notices/rules-actions Hearing on: 03/31/2022 Adoption by Agency on: 05/23/2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION 9A. What prompted this action? Check all that apply: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: </div> <div style="width: 45%;"> <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2020-88, section 17 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: </div> </div> 9B. Explain: <p>The new rules under Subchapters 22Q and 22R will effectuate the directive from the General Assembly for the Department to create rules to implement G.S. 143C-9-9 ("Hospital Uncompensated Care Fund"). The purpose of these rules is to establish the sequence of allocations of federal disproportionate share adjustment receipts arising from certified public expenditures, define the hospitals eligible for participation in the distribution of these funds, and codify formulas for calculating the distributions using outpatient cost metrics. Most supplemental payments are not permitted in managed care, which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. This package is being submitted ahead of similar temporary rules that will expire in a few months.</p>	
10. Rulemaking Coordinator: Shazia Keller Phone: 919-218-1372 E-Mail: shazia.keller@dhhs.nc.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator: <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> DocuSigned by:  <small>5B7A32EB4BD14E2</small> </div> <p>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</p> Typed Name: Title:
RRC AND OAH USE ONLY	

SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: DHHS/Division of Health Benefits	
2. Rule citation & name (name not required for repeal): 10A NCAC 22R .0103 ELIGIBLE HOSPITAL	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 03/15/2022 Link to Agency notice: https://medicaid.ncdhhs.gov/meetings-notices/rules-actions Hearing on: 03/31/2022 Adoption by Agency on: 05/23/2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION 9A. What prompted this action? Check all that apply: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: </div> <div style="width: 45%;"> <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2020-88, section 17 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: </div> </div> 9B. Explain: <p>The new rules under Subchapters 22Q and 22R will effectuate the directive from the General Assembly for the Department to create rules to implement G.S. 143C-9-9 ("Hospital Uncompensated Care Fund"). The purpose of these rules is to establish the sequence of allocations of federal disproportionate share adjustment receipts arising from certified public expenditures, define the hospitals eligible for participation in the distribution of these funds, and codify formulas for calculating the distributions using outpatient cost metrics. Most supplemental payments are not permitted in managed care, which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. This package is being submitted ahead of similar temporary rules that will expire in a few months.</p>	
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RRC AND OAH USE ONLY	

SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

1 10A NCAC 22R .0104 is adopted as published in 36:18 NCR 1497 with changes 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 the
5 hospital's outpatient cost-to-charge ratio in Rule .0103(3)(c) of this Section by the hospital's outpatient charges for
6 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 that the
8 hospital received from uninsured patients for outpatient services from Rule .0103(3)(b) of this Section.


9 (c) The Department will bring the uncompensated care cost data forward to the end of the payment period by applying
10 the applicable Centers for Medicare and Medicaid Services' Prospective Payment System Hospital Input Price Indices,
11 which are incorporated by reference, including subsequent amendments and editions and available at
12 [https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-](https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketData)
13 [Reports/MedicareProgramRatesStats/MarketBasketData](https://www.cms.gov/Research-Statistics-Data-and-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 *Eff. August 1, 2022.*
18
19

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: DHHS/Division of Health Benefits	
2. Rule citation & name (name not required for repeal): 10A NCAC 22R .0104 ELIGIBLE OUTPATIENT COSTS	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 03/15/2022 Link to Agency notice: https://medicaid.ncdhhs.gov/meetings-notices/rules-actions Hearing on: 03/31/2022 Adoption by Agency on: 05/23/2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION 9A. What prompted this action? Check all that apply: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: </div> <div style="width: 45%;"> <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2020-88, section 17 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: </div> </div> 9B. Explain: <p>The new rules under Subchapters 22Q and 22R will effectuate the directive from the General Assembly for the Department to create rules to implement G.S. 143C-9-9 ("Hospital Uncompensated Care Fund"). The purpose of these rules is to establish the sequence of allocations of federal disproportionate share adjustment receipts arising from certified public expenditures, define the hospitals eligible for participation in the distribution of these funds, and codify formulas for calculating the distributions using outpatient cost metrics. Most supplemental payments are not permitted in managed care, which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. This package is being submitted ahead of similar temporary rules that will expire in a few months.</p>	
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RRC AND OAH USE ONLY

SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

1 10A NCAC 22R .0105 is adopted as published in 36:18 NCR 1498 with changes 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 payment from
5 funds available under this Subchapter. In a payment period, an eligible hospital shall receive a proportional payment
6 of the available funds based on the eligible hospital's share of outpatient costs for uninsured patients as a percentage
7 of the aggregate of outpatient costs for uninsured patients for all eligible hospitals.

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

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


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

17 (2) The Department shall distribute any refunded amounts to eligible hospitals, excluding eligible
18 hospitals from whom excess distributions were recovered pursuant to Paragraph (c)(1) of this rule,
19 within 12 months 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 for the
21 redistribution of amounts refunded after an audit conducted by the Division of Health Benefits.

22
23 History Note: Authority G.S. 108A-54; 143C-9-9;
24 Temporary Adoption Eff. December 29, 2021;
25 Eff. August 1, 2022.
26

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: DHHS/Division of Health Benefits	
2. Rule citation & name (name not required for repeal): 10A NCAC 22R .0105 DISTRIBUTION OF AVAILABLE FUNDS	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 03/15/2022 Link to Agency notice: https://medicaid.ncdhhs.gov/meetings-notices/rules-actions Hearing on: 03/31/2022 Adoption by Agency on: 05/23/2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION 9A. What prompted this action? Check all that apply: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: </div> <div style="width: 45%;"> <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2020-88, section 17 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other: </div> </div> 9B. Explain: <p>The new rules under Subchapters 22Q and 22R will effectuate the directive from the General Assembly for the Department to create rules to implement G.S. 143C-9-9 ("Hospital Uncompensated Care Fund"). The purpose of these rules is to establish the sequence of allocations of federal disproportionate share adjustment receipts arising from certified public expenditures, define the hospitals eligible for participation in the distribution of these funds, and codify formulas for calculating the distributions using outpatient cost metrics. Most supplemental payments are not permitted in managed care, which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. This package is being submitted ahead of similar temporary rules that will expire in a few months.</p>	
10. Rulemaking Coordinator: Shazia Keller Phone: 919-218-1372 E-Mail: shazia.keller@dhhs.nc.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator: <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <small>DocuSigned by:</small>  <small>5B7A32EB4BD14E2...</small> </div> <p>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</p> Typed Name: Title:
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SUBMISSION FOR PERMANENT RULE

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

Burgos, Alexander N

From: Liebman, Brian R
Sent: Tuesday, June 28, 2022 10:56 AM
To: Keller, Shazia A
Cc: Burgos, Alexander N
Subject: RE: 10A NCAC 22Q and 22R - July 2022 RRC Request for Changes

Sounds great, thank you!

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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From: Keller, Shazia A <Shazia.Keller@dhhs.nc.gov>
Sent: Tuesday, June 28, 2022 10:55 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 10A NCAC 22Q and 22R - July 2022 RRC Request for Changes

Hi Brian:

Thank you for your email. I will take a look at this and try to get you responses ASAP as I will be on vacation from July 6 through July 13th.

Shazia A. Keller, JD
Assistant General Counsel Division of Health Benefits
Shazia.Keller@dhhs.nc.gov (**preferred contact method**)
Mobile: 919-218-1372

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Tuesday, June 28, 2022 10:48 AM
To: Keller, Shazia A <Shazia.Keller@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 10A NCAC 22Q and 22R - July 2022 RRC Request for Changes

Good afternoon,

I'm the attorney who reviewed the Rules submitted by DHB for the July 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, July 21, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Wednesday July 13, 2022.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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