



MEMORANDUM

TO: Office of State Budget and Management

FROM: Ryan Eppenberger, Interim DHB Rulemaking Coordinator

DATE: November 6, 2018

RE: Federal Certification for N.C. Department of Health and Human Services, Division of Health Benefits (DHB) Rule Readoption Subchapter 23G - Medicaid Certification, Correction of Eligibility and Redetermination of Eligibility

Rule-making Coordinator's Certificate

As Required by GS 150B-19.1(g)
For Proposed Permanent and Temporary Rules Adopted to
Implement a Federal Law or which upon Receipt of Federal Funds is Conditioned

10A NCAC 23G .0201, .0202, .0203, .0204, and .0304 are proposed for readoption to be compatible with federal regulations governing Medical Assistance Programs. These rules apply to the correction of erroneous eligibility.

Regulation by the State of North Carolina of correction of erroneous eligibility is subject to the provisions of 42 CFR Part 435, Subpart J (Eligibility in the States and District of Columbia), 42 CFR Part 431, Subpart E (Fair Hearings for Applicants and Beneficiaries) and 42 CFR Part 433, Subpart A (Federal Matching and General Administration Provisions). The readoption of the above-named rules is necessary to comply with these federal regulations.

**Fiscal Impact Analysis of Permanent Rule
Readoption and Adoption – 10A NCAC 23G**

Agency Proposing Rule Change

North Carolina Department of Health and Human Services, Division of Health Benefits

Contact Persons

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Impact Summary

Federal Government: No Impact

State Government: No Impact

Local Government: No Impact

Private Individuals/Entities: No Impact

Substantial Impact: No

Title of Rule Changes and Citations

10A NCAC 23G – Medicaid Certification, Correction of Eligibility and Redetermination of Eligibility

Section .0100 – Medicaid Certification

- 10A NCAC 23G .0101 – Certification and Authorization (Repeal)

Section .0200 – Correction of Erroneous Eligibility

- 10A NCAC 23G .0201 – General (Readopt)
- 10A NCAC 23G .0202 – Corrective Actions (Readopt)
- 10A NCAC 23G .0203 – Time Limits for Corrections (Readopt)
- 10A NCAC 23G .0204 – Responsibility for Errors (Readopt)

Section .0300 – Redetermination of Eligibility and Change in Situation

- 10A NCAC 23G .0303 – Recommendation (Repeal)
- 10A NCAC 23G .0304 – Change in Situation (Readopt)

See proposed text of these rules in Appendix 1.

Statutory Authority

G.S. 108A-25.1A, G.S. 108A-54, G.S. 108A-54.1B; 42 C.F.R. 431, 42 C.F.R. 433, 42 C.F.R. 435

Background

Under authority of NCGS § 150B-21.3A, Periodic Review and Expiration of Existing Rules, the Department of Health and Human Services, Rules Review Commission, and the Joint Legislative Administrative Procedure Oversight Committee approved the subchapter report with classifications for the rules located at 10A NCAC 23G – Medicaid Certification, Correction of Eligibility and Redetermination of Eligibility. The following rules were classified as necessary with substantive public interest: 10A NCAC 23G .0101, .0201, .0202, .0203, .0204, .0303, and .0304.

The agency is presenting 23G .0204 for readoption with substantive changes, 23G .0201, .0202, .0203, and .0304 for readoption with minor, non-substantive changes, and 23G .0101 and .0303 for repeal.

Pursuant to NCGS § 150B-21.3A(d)(2), an agency is not required to prepare a fiscal note if a rule is readopted without substantive change or if the rule is amended to impose a less stringent burden on regulated persons. In addition, pursuant to NCGS § 150B-21.4(d), agencies are not required to prepare a fiscal note when proposing to repeal an existing rule. For that reason, this fiscal note focuses on 23G .0204. The agency has also prepared brief explanations for non-substantive changes made to 23G .0201, .0202, .0203, and .0304.

Rule Summaries and Anticipated Fiscal Impact

Rule 23G .0201– General

10A NCAC 23G .0201 governs correction and reporting of eligibility errors. The agency is proposing to readopt this rule with minor, non-substantive, technical changes to update and clarify language.

Fiscal Impact

All changes to this rule are minor, non-substantive changes. There is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule 23G .0202 – Corrective Actions

10A NCAC 23G .0202 governs whether the county Department of Social Services (DSS) office or the state Medicaid agency will correct the eligibility error. All changes to this rule are minor, non-substantive, technical changes to update and clarify language. The reference to *Alexander v. Bruton* in subparagraph (a)(7) is being deleted because the agency has been following an exit plan from this consent order. In subparagraph (b), the word “household” is meant to be more descriptive than “case,” there are currently no HMOs, and the recipient identification number is included within the eligibility history.

Fiscal Impact

All changes to this rule are minor, non-substantive changes. There is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule 23G .0203 – Time Limits For Corrections

10A NCAC 23G .0203 governs the time limits for correcting eligibility errors. The agency is proposing to readopt this rule with minor, non-substantive, technical changes, including correcting the Division’s name (which changed on Aug. 1, 2018).

Fiscal Impact

All changes to this rule are minor, non-substantive changes. There is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule 23G .0204 – Responsibility For Errors

10A NCAC 23G .0204 governs whether the county DSS office or the state Medicaid agency will be financially responsible for the eligibility error. The substantive changes to subparagraphs (a)(2) and (b)(7) reflect a requirement in state law that Medicaid ID cards only be issued annually with quarterly updates. The General Assembly enacted this requirement in S.L. 2009-451, Section 10.68A.(a)(9) as part of Medicaid cost containment measures. With the implementation of this new requirement, providers became responsible for checking patient eligibility in NCTracks, rather than relying on monthly-issued cards. All other changes to this rule are minor, non-substantive, technical changes to update and clarify language, including updating the Division name and updating subparagraph (b)(3) to reflect that there are not currently any HMOs.

Fiscal Impact

The change to the Medicaid ID card is substantive, but there is no impact because the change aligns the rule with an existing state law. All other changes to this rule are minor, non-substantive changes. For these reasons, there is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule 23G .0304 – Change in Situation

10A NCAC 23G .0304 governs when there is a change in situation impacting an applicant or beneficiary. The agency is proposing to readopt this rule with minor, non-substantive, technical changes to update and clarify language.

Fiscal Impact

All changes to this rule are minor, non-substantive changes. There is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

1 10A NCAC 23G .0101 is proposed for readoption as a repeal as follows:
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3 **SUBCHAPTER 23G – MEDICAID CERTIFICATION, CORRECTION OF ELIGIBILITY AND**
4 **REDETERMINATION OF ELIGIBILITY**

5
6 **SECTION .0100 – MEDICAID CERTIFICATION**

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8 **10A NCAC 23G .0101 CERTIFICATION AND AUTHORIZATION**

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10 *History Note: Authority G.S. 108A-54; 42 C.F.R. 435.112; 42 C.F.R. 435.914;*
11 *Eff. September 1, 1984;*
12 *Amended Eff. March 1, 1993; August 1, 1990;*
13 *Transferred from 10A NCAC 21B .0405 Eff. May 1, 2012; ~~2012~~.*
14 *Repealed Eff. May 1, 2019.*
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1 10A NCAC 23G .0201 is proposed for readoption without substantive changes as follows:

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3 **SECTION .0200 – CORRECTION OF ERRONEOUS ELIGIBILITY**

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5 **10A NCAC 23G .0201 GENERAL**

6 (a) The county department of social services shall correct prior actions according to Rules .0202 and .0203 in this
7 Section when the county department of social services discovers ~~it is discovered~~ that prior actions were eligibility
8 errors, as defined by 42 CFR 431.804, which is adopted and incorporated by reference with subsequent changes or
9 amendments and available free of charge at <https://www.ecfr.gov/>, ~~in error~~, or the recipient's circumstances have
10 changed from the last eligibility determination. ~~changed.~~

11 (b) Information leading to corrections may be reported by the recipient, medical providers, State ~~state~~ agencies, or
12 any other source with knowledge about the recipient's circumstances that impact eligibility. ~~circumstances.~~

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14 *History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 431.246; 42 C.F.R. 435.916;*
15 *Eff. September 1, 1984;*
16 *Amended Eff. June 1, 1990;*
17 *Transferred from 10A NCAC 21A .0601 Eff. May 1, 2012; ~~2012~~.*
18 *Readopted Eff. May 1, 2019.*
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1 10A NCAC 23G .0202 is proposed for reoption without substantive changes as follows:

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3 **10A NCAC 23G .0202 CORRECTIVE ACTIONS**

- 4 (a) Corrections in an applicant's or recipient's case shall be made by the county department of social services when:
- 5 (1) An individual was discouraged from filing an application, as described in 10A NCAC 23C .0101;
6 ~~application; or~~
 - 7 (2) An appeal or court decision overturns an earlier adverse decision; ~~or~~
 - 8 (3) The certification periods of financially responsible persons need to be adjusted to coincide with the
9 ~~individual's certification period; coincide; or~~
 - 10 (4) Information received from any source ~~is verified~~ undergoes verification, as defined in 10A NCAC
11 23A .0102, by the county department of social services and is found to change the amount of the
12 recipient's deductible, patient liability, authorized ~~period, period~~ or otherwise affect the recipient's
13 eligibility status; ~~or~~
 - 14 (5) Additional medical bills or ~~verified~~ medical expenses that are verified by the county department of
15 social services establish an earlier Medicaid effective date; ~~or~~
 - 16 (6) The agency made an administrative error including: ~~due to:~~
 - 17 (A) An eligibility error, as defined by 42 CFR 431.804, which is adopted and incorporated by
18 reference with subsequent changes or amendments and available free of charge at
19 <https://www.ecfr.gov/>, that resulted in assistance being incorrectly ~~Assistance~~ was
20 terminated or ~~denied; denied in error; or~~
 - 21 (B) Failure to act ~~properly~~ on information received; or
 - 22 (C) Incorrect determination of the authorization period, Medicaid effective date, or erroneous
23 data entry; ~~or~~
 - 24 (7) Monitoring ~~of under~~ application processing ~~processing by the Division of Health Benefits~~
25 (Division), as required by 42 C.F.R. 431, Subpart P, requirements determines ~~shows~~ an application
26 was denied, withdrawn, withdrawn or a person was discouraged from applying for assistance; or
27 ~~assistance without following the requirements in Alexander v. Burton U.S.D.C., File No. C C 74-~~
28 ~~183 M, Consent Order dismissed effective February 1, 2002.~~
 - 29 (8) The ~~Division Medicaid Eligibility Section~~ determines the county failed to follow federal or state
30 regulations to authorize eligibility or follow requirements in this Chapter.
- 31 (b) Corrections in an applicant's or recipient's case shall be made by the Division ~~of Medical Assistance~~ when:
- 32 (1) Information is received from county departments of social services, medical providers, the public,
33 clients, or Division ~~of Medical Assistance~~ staff showing that a terminated case has errors in the
34 Medicaid eligibility segments, Medicare Buy-In effective date, eligible household ~~case~~ members,
35 Community Alternatives Program (CAP) ~~CAP~~ ~~or HMO~~ indicators and effective ~~dates, dates~~ or other
36 data that is causing valid claims to be denied; ~~or~~
 - 37 (2) The county department of social services fails ~~refuses~~ to take required corrective actions; or

1 (3) An audit report from State auditors or the Division ~~hired by the county departments of social services~~
2 shows verified errors in the Medicaid eligibility history. ~~history or recipient identification number.~~

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4 *History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 431.246; 42 C.F.R. 431, Subpart P; 42 C.F.R.*
5 *435.903; 435.904; ~~Alexander v. Bruton, U.S.D.C., File No. C C 74 183 M, Consent Order~~*
6 *~~dismissed effective February 1, 2002;~~*
7 *Eff. June 1, 1990;*
8 *Temporary Amendment Eff. March 1, 2003;*
9 *Amended Eff. August 1, 2004;*
10 *Transferred from 10A NCAC 21A .0602 Eff. May 1, 2012; ~~2012~~.*
11 *Readopted Eff. May 1, 2019.*
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1 10A NCAC 23G .0203 is proposed for readoption without substantive changes as follows:

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

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

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

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

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

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

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

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

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

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

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

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26 *History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 431.246; 42 C.F.R. 431.250; 42 C.F.R. 435.903;*
27 *435.904; Alexander v. Bruton, U.S.D.C., File No. C-C 74-183-M, Consent Order dismissed effective*
28 *February 1, 2002;*
29 *Eff. June 1, 1990;*
30 *Temporary Amendment Eff. March 1, 2003;*
31 *Amended Eff. August 1, 2004;*
32 *Transferred from 10A NCAC 21A .0603 Eff. May 1, 2012; ~~2012~~.*
33 *Readopted Eff. May 1, 2019.*
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1 10A NCAC 23G .0204 is proposed for readoption with substantive changes as follows:

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3 **10A NCAC 23G .0204 RESPONSIBILITY FOR ERRORS**

4 (a) The Division of ~~Health Benefits (Division) Medical Assistance~~ shall be financially responsible for costs resulting
5 from the erroneous issuance of benefits and Medicaid claims payments when:

6 (1) Policy guidance ~~interpretations~~ given by the ~~Division of Medical Assistance~~ or its agents is ~~are~~
7 erroneous and the Division determines that is the sole cause of any erroneous benefits or payments;

8 ~~or~~

9 ~~(2) Information Services operations staff fail to manually remove Medicaid ID cards from outgoing~~
10 ~~mail subsequent to the county DSS's timely authorization of a termination or reduction in benefits;~~

11 ~~or~~

12 ~~(2)(3)~~ A systems failure at the State state computer center occurs on the last cutoff date of the month
13 preventing the county DSS from data entering case terminations or adverse actions; or

14 ~~(3)(4)~~ Any other failure or error the Division determines is attributable solely to the State state occurs.

15 (b) The county department of social services shall be financially responsible for costs resulting from the erroneous
16 issuance of benefits and Medicaid claims payments when it:

17 (1) Authorizes retroactive eligibility outside the dates permitted by regulations or Rule .0203 of this
18 Section; ~~or~~

19 (2) Fails to send required notices of patient liability or deductible balance to medical providers; ~~or~~

20 (3) Fails to end-date special coverage indicators such as Community Alternatives Program (CAP) ~~CAP~~;
21 ~~or HMO~~ in the State state eligibility information system; ~~or~~

22 (4) Enters an authorization date in the eligibility system that is earlier than the effective ~~determined~~ date
23 of eligibility; ~~or~~

24 (5) Fails to determine the availability of or fails to ~~data~~ enter data on third-party resource information
25 in the State state eligibility information system; ~~or~~

26 (6) Terminates a case or individual after the Medicaid ID card has been issued; ~~or~~

27 ~~(7) Issues a county typed Medicaid ID card that has erroneous dates of eligibility; or~~

28 ~~(7)(8)~~ Fails to initiate application for Medicare Part B coverage for recipients who are eligible, but refuse
29 or are unable to apply for themselves; or

30 ~~(8)(9)~~ Takes any other action that requires payment of Medicaid claims for an ineligible individual, for
31 ineligible dates, dates or in for an amount that includes a recipient's liability and for which the State
32 ~~state~~ cannot claim federal participation.

33 (c) The amounts to be charged back to the county department of social services for erroneous payments of claims
34 shall be the State state and federal shares of the erroneous payment, not to exceed the lesser of the amount of actual
35 error or claims payment.

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37 *History Note: Authority G.S. 108A-25.1A; 108A-54; 108A-54.1B; 42 C.F.R. 433.32; 42 C.F.R. 435.903; 435.904;*

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Eff. June 1, 1990;
Amended Eff. May 1, 1992;
Transferred from 10A NCAC 21A .0604 Eff. May 1, 2012; ~~2012~~.
Readopted Eff. May 1, 2019.

1 10A NCAC 23G .0303 is proposed for readoption as a repeal as follows:

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3 **10A NCAC 23G .0303 RECOMMENDATION**

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5 *History Note: Authority G.S. 108A-54; 42 C.F.R. 435.919;*

6 *Eff. September 1, 1984;*

7 *Amended Eff. August 1, 1990;*

8 *Transferred from 10A NCAC 21B .0503 Eff. May 1, 2012; ~~2012~~.*

9 *Repealed Eff. May 1, 2019.*

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1 10A NCAC 23G .0304 is proposed for readoption without substantive changes as follows:

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

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

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

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

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

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