

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days.
For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.1 that the Department of Health and Human Services intends to adopt the rules cited as 10A NCAC 22Q .0101-.0106; 22R .0101-.0105.

Codifier of Rules received for publication the following notice and proposed temporary rule on: October 21, 2021.

Public Hearing:

Date: November 4, 2021

Time: 3:00 p.m.

Location: This Remote Hearing can be accessed by dialing (877)336-1839 and entering access code 3956100.

Reason for Proposed Temporary Action: G.S. 150B-21.1(a)(17) - To maximize receipt of federal funds for Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse.

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

Comment Procedures: Comments from the public shall be directed to: Shazia A. Keller, DHB Rulemaking Coordinator, NC DHHS Division of Health Benefits, 2501 Mail Service Center, Raleigh, NC 27699-2501; phone (919) 855-4019; email medicaidrulescomments@dhhs.nc.gov. The comment period begins October 27, 2021 and ends November 22, 2021.

CHAPTER 22 - MEDICAL ASSISTANCE ELIGIBILITY

SUBCHAPTER 22Q - DISTRIBUTION OF FEDERAL DISPROPORTIONATE SHARE ADJUSTMENT RECEIPTS ARISING FROM CERTIFIED PUBLIC EXPENDITURES

10A NCAC 22Q .0101 SCOPE

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

Authority G.S. 108A-54; 143C-9-9.

10A NCAC 22Q .0102 DEFINITIONS

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

- (1) is defined in G.S. 131E-176(13);
- (2) is licensed by the State of North Carolina; and
- (3) certifies as a public agency that its expenditures are eligible for Federal Financial Participation in accordance with 42 CFR 433.51(b), which is incorporated by reference, including subsequent amendments and editions. This document may be accessed at <https://www.ecfr.gov> at no charge.

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

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

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

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

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

Authority G.S. 108A-54; 143C-9-9.

10A NCAC 22Q .0103 DISTRIBUTIONS

After distributions are made pursuant to the enacted State budget and the "Basic Disproportionate Share Hospital (DSH) Payment" section of the North Carolina Medicaid State Plan, Attachment 4.19-A, which is incorporated by reference, including subsequent

amendments and editions, and may be accessed free of charge at <https://medicaid.ncdhhs.gov/media/973/download?attachment>, the Department shall make distributions of the remaining DSH funds in the following order to:

- (1) Certifying hospitals; and
- (2) The Hospital Uncompensated Care Fund.

Authority G.S. 108A-54; 143C-9-9.

10A NCAC 22Q .0104 CERTIFYING HOSPITAL DISTRIBUTION

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

- (1) An amount equal to 10 percent of expenditures certified by the hospital pursuant to 42 CFR 433.51; and
- (2) An amount equal to the hospital's proportionate share, calculated pursuant to Rule .0106 of this Section, of the available funds based on the hospital's share of outpatient costs for uninsured patients as a percentage of the Statewide aggregate of outpatient costs for uninsured patients. To be eligible for a proportionate share, a hospital shall file with the Department 90 days prior to the date of payment as determined by the Department a form prescribed by the Department attesting to the hospital's:
 - (a) Qualification for disproportionate share status under the "Disproportionate Share Hospital (DSH) Payment" section of the North Carolina Medicaid State Plan, Attachment 4.19-A;
 - (b) Unreimbursed charges and payments for outpatient services provided to uninsured patients; and
 - (c) Aggregate Medicaid outpatient cost-to-charge ratio.

Authority G.S. 108A-54; 143C-9-9.

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

- (a) A certifying hospital's outpatient costs for uninsured patients will be determined by multiplying the hospital's outpatient cost-to-charge ratio in Rule .0104(2)(c) of this Section by the hospital's outpatient charges for uninsured patients from Rule .0104(2)(b) of this Section.
- (b) From the product calculated in Paragraph (a) of this Rule, the Department will then subtract payments that the hospital received from uninsured patients for outpatient services in Rule .0104(2)(b) of this Section.
- (c) The Department will bring the uncompensated care cost data forward to the end of the payment period by applying the applicable Centers for Medicare and Medicaid Services' Prospective Payment System Hospital Input Price Indices, which are available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketData>.

Authority G.S. 108A-54; 143C-9-9.

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

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

- (1) Adding the certifying hospitals' outpatient costs and each of the eligible hospitals' (as defined in 10A NCAC 22R .0103) eligible outpatient costs under 10A NCAC 22R .0104. The sum represents the total of the outpatient costs.
- (2) The sum of all certifying hospitals' outpatient costs under Rule .0105 of this Section shall be divided by the total outpatient costs in Item (1) of this Rule. The quotient represents the certifying hospitals' proportionate share, expressed as a decimal.
- (3) The amount of available funds shall be multiplied by the certifying hospitals' proportionate share in Item (2) of this Rule. The product represents the funds available for distribution to individual certifying hospitals.
- (4) A certifying hospital shall be eligible for a payment from funds available for distribution in Item (3) of this Rule. In each payment period, a certifying hospital shall receive a proportional payment of the available funds based on the certifying hospital's share of outpatient costs for uninsured patients as a percentage of the aggregate of outpatient costs for uninsured patients for certifying hospitals.
- (5) Hospitals receiving payments pursuant to this Subchapter shall be subject to the audit and reporting requirements of the North Carolina Medicaid State Plan, Attachment 4.19-A.

Authority G.S. 108A-54; 108A-55(c); 143C-9-9.

SUBCHAPTER 22R - DISTRIBUTION OF HOSPITAL UNCOMPENSATED CARE FUND

10A NCAC 22R .0101 SCOPE

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

Authority G.S. 108A-54; 143C-9-9.

10A NCAC 22R .0102 DEFINITIONS

- (a) "Department" means the North Carolina Department of Health and Human Services.
- (b) "Eligible hospital" means an institution that meets the requirements of Rule .0103 of this Section.
- (c) "Eligible hospital cost" means the values calculated pursuant to Rule .0104 of this Section.

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

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

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

Authority G.S. 108A-54; 143C-9-9.

10A NCAC 22R .0103 ELIGIBLE HOSPITAL

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

- (1) is not a public agency qualified to certify expenditures in accordance 42 CFR 433.51(b), which is incorporated by reference in 10A NCAC 22Q .0102;
- (2) received payment for more than 50 percent of their Medicaid inpatient discharges under the North Carolina Medicaid State Plan, Attachment 4.19-A discharge Diagnosis Related Groups methodology for the most recent payment period;
- (3) files with the Department 90-days prior to the date of payment under this Subchapter forms prescribed by the Department attesting to the hospital's:
 - (a) qualification for disproportionate share status of the "Disproportionate Share Hospital (DSH) Payment" section of the North Carolina Medicaid State Plan, Attachment 4.19-A;
 - (b) unreimbursed charges and payments for outpatient services provided to uninsured patients; and
 - (c) aggregate Medicaid outpatient cost-to-charge.

Authority G.S. 108A-54; 143C-9-9.

10A NCAC 22R .0104 ELIGIBLE OUTPATIENT COSTS

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

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

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

Authority G.S. 108A-54; 143C-9-9.

10A NCAC 22R .0105 DISTRIBUTION OF AVAILABLE FUNDS

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

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

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

- (1) If a hospital received payments pursuant to Paragraph (a) of this Rule in excess of the percentage determined by the audit, the excess payments shall be refunded to the Department.
- (2) The Department shall distribute any refunded amounts to eligible hospitals within 12 months of receipt using the distribution method set forth Paragraph (a) of this Rule.
- (3) No additional payment shall be made to eligible hospitals in connection with the audit except for the redistribution of amounts refunded after an audit conducted by the Division of Health Benefits.

Authority G.S. 108A-54; 143C-9-9.