

**Fiscal Impact Analysis of Permanent Rule
Readoption and Adoption – 10A NCAC 22H**

Agency Proposing Rule Change

North Carolina Department of Health and Human Services, Division of Medical Assistance

Contact Persons

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Impact Summary

Federal Government:	No
State Government:	No
Local Government:	Minimal Impact
Private Individuals/Entities:	Minimal Impact
Substantial Impact:	No

Title of Rule Changes and Citations

10A NCAC 22H – Appeals Procedures

Section .0100 – Beneficiary Appeals for Denial, Termination, Suspension, or Reduction of a Medicaid Service or an Authorization for Medicaid Service

- 10A NCAC 22H .0101 – Appeals by Medicaid Beneficiaries (Readopt)
- 10A NCAC 22H .0102 – Requests for Formal and Informal Appeals (Repeal)
- 10A NCAC 22H .0103 – Time Limits on Requests for Recipient/Applicant Informal Appeals (Repeal)
- 10A NCAC 22H .0104 – Payment Pending Appeals (Readopt)
- 10A NCAC 22H .0105 – Dismissal of Appeal (Repeal)

Section .0200 – Hearings: Transfers and Discharges from Nursing Facilities

- 10A NCAC 22H .0201 – Definitions (Amend)
- 10A NCAC 22H .0202 – Transfer and Discharge Requirements (Readopt)
- 10A NCAC 22H .0203 – Initiating a Hearing (Readopt)
- 10A NCAC 22H .0204 – Hearing Procedures (Readopt)
- 10A NCAC 22H .0205 – Hearing Officer’s Final Decision (Readopt)

Section .0300 – PASRR Hearings

- 10A NCAC 22H .0301 – Definitions (Amend)
- 10A NCAC 22H .0302 – PASRR Hearings (Readopt)
- 10A NCAC 22H .0303 – Initiating a Hearing (Readopt)
- 10A NCAC 22H .0304 – Hearing Procedures (Readopt)
- 10A NCAC 22H .0305 – Hearing Officer’s Final Decision (Readopt)

See proposed text of these rules in Appendix I.

Authorizing Statutes

NCGS §§ 108A-25(b), 108A-54, 108A-54.1B, 108A-70.9A, 108A-70.9B

Background

Under authority of NCGS § 150B-21.3A, periodic Review and Expiration of Existing Rules, the Department of Health and Human Services, Rule Review Commission, and the Joint Legislative Administrative Procedure Oversight Committee approved the subchapter report with classifications for the rules located at 10A NCAC 22H – Appeals Procedures. The following rules were classified as necessary with substantive public interest: 10A NCAC 22H .0101, .0102, .0103, .0104, .0105, .0202, .0203, .0204, .0205, .0302, .0303, .0304, and .0305.

The agency is presenting 22H .0101, .0104, .0202, .0204, .0205, .0304, and .0305 for readoption with substantive changes, 22H .0203, .0302, and .0303 for readoption with minor, non-substantive changes, and 22H .0102, .0103, and .0105 for repeal. In addition, the agency is presenting two rules for amendment that were deemed necessary without substantive public interest, 22H .0201 and .0301.

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 the following rules: 22H .0101, .0104, .0201, .0202, .0204, .0205, .0301, .0304, and .0305. The agency has also prepared brief explanations for non-substantive changes made to 22H .0203, .0302, and .0303.

Overview of Anticipated Fiscal Impact

Quantified Annual Impacts	Total Impact
Total Benefits:	
State Government	\$0
Local Government	~\$400
Private Entities	~\$600
Total Costs:	
State Government	~\$0,
Local Government	\$0
Private Entities	~\$1,000
Net Impact	~0

The annual estimated impact on local governments and private industry is minimal, with an anticipated net annual impact of \$0.

Rule Summaries and Anticipated Fiscal Impact

Rule .0101- Appeals by Medicaid Beneficiaries

Rule 10A NCAC 22H.0101(a) specifies the policies and procedures for appeals by Medicaid beneficiaries of determinations to deny, terminate, suspend, or reduce a service or authorization for a service. The existing language in this rule (and most of the rules in Section .0100) is superseded by statutes enacted by the North Carolina General Assembly to govern this appeals process (at NCGS §§ 108A-70.9A and 108A-70.9B). The proposed changes to this rule align the rule with the statutory framework. This rule also updates the terminology used to refer to individuals receiving Medicaid from “recipient” to “beneficiary.”

Fiscal Impact

As this rule is being updated to align exactly with existing state statutes, there is no fiscal impact to federal government, state government, local governments, or private industry associated with the reoption of this rule.

Rule .0104 - Payment Pending Appeals

Rule 10A NCAC 22H.0104 governs the recoupment of the cost of services furnished as a result of the appeal, if the adverse determination is upheld. As above, changes to this rule are to align the process with the new statutory framework at NCGS §§ 108A-70.9A and 108A-70.9B as well as update the terminology from “recipient” to “beneficiary.” Paragraphs (a)-(c) are now fully covered in 108A-70.9A. The changes to existing paragraph (d) do not materially impact the way in which costs are recouped.

Fiscal Impact

As above, this rule is being updated to align with existing state statutes. There is no fiscal impact to federal government, state government, local governments, or private industry associated with the reoption of this rule.

Rule .0201 - Definitions

10A NCAC 22H .0201 defines terms that will be used throughout the section. Changes to the definitions are not substantive and are meant to make the meaning of the terms defined more clear and clarify the contents of referenced forms.

Fiscal Impact

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

Rule .0202 - Transfer and Discharge Requirements

10A NCAC 22H .0202 mandates the process by which nursing facilities can facilitate the transfer or discharge of a resident. The addition of paragraph (a) is reflective of the promulgation of 42 CFR 483.15 on November 28, 2016. Paragraph (b) was also amended to acknowledge this new federal requirement. The change in paragraph (c) from “ineffective” to “invalid” does not change the rule’s implementation and is intended only to clarify existing

language. Other changes to this rule are minor, technical changes made to add clarity and update rule formatting and terminology.

Fiscal Impact

The agency has added the reference to 42 CFR 483.15 for the convenience of regulated persons. The agency is not responsible for implementing or enforcing this federal regulation. Regulated persons are responsible for complying with this federal regulation independent of this rule. All other changes to this rule are minor, non-substantive changes. For that reason, there is no fiscal impact to state government, local governments, or private industry associated with the readoption of this rule.

Rule .0203 – Initiating a Hearing

10A NCAC 22H .0203 sets out the process for initiating a hearing. 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, technical changes. There is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule .0204 – Hearing Procedures

10A NCAC 22H .0204 sets out hearing procedures. The wording change in paragraph (a) from “facility” to “parties” merely clarifies a process that is already in effect that the hearing officer will notify both the facility and the resident or his representative as to the day and time of hearing. The wording change in paragraph (f) from “may” to “shall” also clarifies a procedure that is already in effect and does not alter the current process. All other changes to this rule are minor, technical changes intended to update and clarify language. None of these changes reflect a change in practice or a change the way the rule is implemented.

Fiscal Impact

Although the change in paragraph (f) from “may” to “shall” is substantive, there is no fiscal impact because it has been the Hearing Office’s long standing process to proceed with hearings in these circumstances. It is not expected to change the number of hearings that proceed or are dismissed. All other changes to this rule are minor, non-substantive, technical changes. For that reason, there is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule .0205 - Hearing Officer’s Final Decision

10A NCAC 22H .0205 describes the process for the issuance of the hearing officer’s final decision. The new paragraph (b) adds direction for how a party may seek judicial review. These decisions are already appealable to superior court and have been for many years, but this new language clarifies the process in rule.

Fiscal Impact

This change will result in a fiscal impact for both private industry and local governments. To appeal to superior court, appellants will need to hire counsel and pay superior court fees. This analysis displays that potential impact:

Fiscal Impact (Cost) for Private Level - (Beneficiary):	
Number of Appeals to Receive Final Decision Each Year:	2
Fees - Superior Court¹ (Per Appeal Review)	\$200
Attorney Fees (Avg. 1.5 Hours @ \$200/Hr)²	\$300
Total Estimated Annual Cost for Two Judicial Review Appeals:	\$1,000
Adjusting Annual Cost Change to NPV @ 7% (Assuming Ongoing Cost):	\$15,285.71

1. <http://www.nccourts.org/Courts/Trial/Costs/Default.asp>
2. <http://www.virtualparalegalservices.com/blog-entries/trends-in-hourly-rates-for-attorneys-across-the-united-states/>

This will result in a fiscal gain to private attorneys/law firms. This analysis displays that potential impact:

Fiscal Impact (Benefit) for Private Level - (Counsel):	
Number of Appeals to Receive Final Decision Each Year:	2
Attorney Fees (Avg. 1.5 Hours @ \$200/Hr)²	\$300
Total Estimated Annual Cost for Judicial Review Appeals:	\$600
Adjusting Annual Cost Change to NPV @ 7% (Assuming Ongoing Cost):	\$9,171.43

At the local level, county superior courts will receive fees to hear these cases (but are not expected to incur additional cost in staffing or resources to handle these cases). This analysis displays that potential impact:

Fiscal Impact (Benefit) for Local Level - (County Courts):	
Number of Appeals to Receive Final Decision Each Year:	2
Fees - Superior Court¹ (Per Appeal Review)	\$200
Total Estimated Annual Cost for Judicial Review Appeals:	\$400
Adjusting Annual Cost Change to NPV @ 7% (Assuming Ongoing Cost):	\$6,114.29

It is anticipated that the number of appeals will be minimal, therefore the impact on private industry and local government is also estimated to be minimal. There is no impact on state or federal government.

Rule .0301 - Definitions

10A NCAC 22H .0301 defines terms that will be used throughout the section. Changes to the definitions are not substantive and are meant to make the meaning of the terms defined more clear and clarify the contents of referenced forms. Changes were also made to update rule formatting and terminology. The change to the Preadmission Screening and Resident Review (PASRR) in paragraph (d) and in subsequent rules throughout the section was made to reflect that this review is no longer required to be annual.

Fiscal Impact

Most of the changes to this rule are minor, non-substantive, technical changes. The one substantial change (to the frequency of PASRR reviews) does not yield any fiscal impact because it was changed under federal law at 42 USC 1396r(e)(7)(B)(iii) (Section 1919(e)(7)(B)(iii) of the Social Security Act). The annual requirement was repealed by Public Law 104-315, which was enacted on October 19, 1996. North Carolina discontinued the annual reviews on November 1, 2009. Regardless, it does not substantially impact the number of PASRR related appeals the agency receives. Therefore, there is no fiscal impact to federal government, state government, local governments, or private industry associated with the amendment of this rule.

Rule .0302 – PASRR Requirements

10A NCAC 22H .0302 describes the process by which the Division of MH/DD/SAS notifies evaluated individuals and their representatives of PASRR determinations. The change to PASRR (from PASARR) is discussed under Rule .0301 above. The elimination in all three paragraphs of the statement that a copy of the relevant sections of 42 CFR 483 can be obtained at a cost is reflective of the fact that the Code of Federal Regulations is now freely available online. All other changes were to clarify existing language and do not have an impact on how the rule is implemented.

Fiscal Impact

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

Rule .0303 – Initiating a Hearing

10A NCAC 22H .0303 describes the process for an individual or their representative to initiate an appeal of a PASRR determination. The PASRR name change (from PASARR) is discussed under Rule .0301 above. All other changes to this rule are minor, technical changes made to add clarity and update rule formatting and terminology.

Fiscal Impact

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

Rule .0304 – Hearing Procedures

10A NCAC 22H .0304 sets out hearing procedures. The wording change in paragraph (f) from “may” to “shall” clarifies a procedure that is already in effect and does not alter the current process. Other changes to this rule are minor, technical changes intended to update and clarify language. None of these changes reflect a change in practice or change the way the rule is implemented.

Fiscal Impact

Although the change in paragraph (f) from “may” to “shall” is substantive, there is no fiscal impact because it has been the Hearing Office’s long standing process to proceed with hearings in these circumstances. It is not expected to change the number of hearings that proceed or are dismissed. All changes to this rule are a minor, non-substantive, technical changes. For that reason, there is no fiscal impact to federal government, state government, local governments, or private industry associated with the readoption of this rule.

Rule .0305 – Hearing Officer’s Final Decision

10A NCAC 22H .0305 describes the process for the issuance of the hearing officer’s final decision. The new paragraph (b) adds direction for how a party may seek judicial review. These decisions are already appealable to superior court and have been for many years, but this new language clarifies the process in rule.

Fiscal Impact

The fiscal analysis is the same as the analysis under Rule .0205. It is anticipated that the number of appeals will be minimal, therefore the impact on private industry and local government is also estimated to be minimal. There is no impact on state or federal government.

1 10A NCAC 22H .0101 is proposed for readoption with substantive changes as follows:

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SUBCHAPTER 22H - APPEALS PROCEDURES

**SECTION .0100 - BENEFICIARY APPEALS ~~RECIPIENT/APPLICANT APPEAL REVIEW~~
PROCEDURES FOR DENIAL, TERMINATION, SUSPENSION, OR REDUCTION OF A MEDICAID
SERVICE OR AN AUTHORIZATION FOR A MEDICAID SERVICE ~~PRIOR APPROVAL REQUESTS~~
~~FOR MEDICAID COVERED MEDICAL SERVICES OR FOR OTHER MEDICAID COVERED~~
~~MEDICAL SERVICES~~**

10A NCAC 22H .0101 APPEALS BY MEDICAID BENEFICIARIES ~~PURPOSE AND SCOPE~~

Appeals by Medicaid beneficiaries of determinations by the Division to deny, terminate, suspend, or reduce a Medicaid service or an authorization for a Medicaid service are governed by G.S. 108A-70.9A and 108A-70.9B.

~~(a) The purpose of the rules in this Section is to specify the policies and procedures to provide for recipient/applicant or his/her representative requests for an informal appeal of decisions changing a Medicaid recipient/applicant's level of care, denial, termination, suspension, or reduction of prior approval requests for Medicaid covered medical services or for other Medicaid covered medical services. These policies and procedures do not apply to provider requests for Reconsideration Review of DMA provider post payment review decisions set out in 10A NCAC 22F.~~

~~(b) The rules in this Section apply to decisions made by the Division of Medical Assistance "(DMA)", a Medical Review Independent Professional Review Team "(MR/IPR)", a Prior Approval Unit "(PAU)", other Agencies, or other entities acting as agents of this State agency.~~

~~(c) The decision making body as set out in Paragraph (b) of this Rule shall, within two working days, notify the recipient/applicant in writing of the decision and the following:~~

- ~~(1) — the effective date of the decision denying, terminating, reducing, or suspending a service;~~
- ~~(2) — the reasons for the agency decision;~~
- ~~(3) — the specific regulations that support, or the change in Federal or State law that requires the decision;~~
- ~~(4) — the date Medicaid payment will cease, if applicable; at least 11 days after the date of the notification letter;~~
- ~~(5) — the opportunity for informal and formal appeal of this decision and procedures for requesting such an appeal; and~~
- ~~(6) — the fact that, if appealed, payment for the currently certified level of care or approved service will continue for an eligible Medicaid recipient pending appeal.~~

~~Editor's Note: Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0101(codified as 10A NCAC 22H .0101 effective July 1, 2003) void as applied in Linda Allred, Petitioner v. North Carolina Department of Human Resources, Division of Medical Assistance, Respondent (90 DHR 0940).~~

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*History Note: Authority G.S. 108A-25(b); 108A-70.9A; 108A-70.9B; 42 C.F.R. 431; 42 C.F.R. 456;
Eff. April 13, 1979;
Amended Eff. May 1, 1990; November 1, 1983; October 4, 1979;
RRC objection due to lack of Authority and ambiguity Eff. October 18, 1995;
Amended Eff. December 11, 1995; ~~1995~~.
Readopted Eff. March 31, 2018.*

1 10A NCAC 22H .0102 is proposed for readoption as a repeal as follows:

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3 **10A NCAC 22H .0102 REQUESTS FOR FORMAL AND INFORMAL APPEALS**

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5 *History Note: Authority G.S. 108A-25(b); 42 C.F.R. 431; 42 C.F.R. 456;*

6 *Eff. April 13, 1979;*

7 *Amended Eff. December 1, 1995; May 1, 1990; November 1, 1983; October 4, 1979; ~~1979~~.*

8 *Repealed Eff. March 31, 2018.*

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1 10A NCAC 22H .0103 is proposed for readoption as a repeal as follows:

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3 **10A NCAC 22H .0103 TIME LIMITS ON REQUESTS FOR RECIPIENT/APPLICANT INFORMAL**
4 **APPEALS**

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6 *History Note: Authority G.S. 108A-25(b); 42 C.F.R. 456;*

7 *Eff. April 13, 1979;*

8 *Amended Eff. May 1, 1990; October 4, 1979;*

9 *RRC objection due to lack of Authority and ambiguity Eff. October 18, 1995;*

10 *Amended Eff. December 11, 1995; ~~1995~~.*

11 *Repealed Eff. March 31, 2018.*

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1 10A NCAC 22H .0104 is proposed for readoption with substantive changes as follows:

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3 **10A NCAC 22H .0104 PAYMENT PENDING APPEALS**

4 ~~(a) If no informal appeal is requested, payment shall continue for the existing level of care or approved service(s)~~
5 ~~rendered until the required change (action) date stated in the notification or until the recipient moves from that level~~
6 ~~of care or discontinues approved service(s), whichever comes first.~~

7 ~~(b) If an informal appeal is requested in accordance with Rule .0103 of this Section, Medicaid payment for that level~~
8 ~~of care or approved service(s) shall continue until the informal appeal process is completed.~~

9 ~~(c) If a formal appeal is requested in accordance with Rule .0102(b) of this Section, Medicaid payment for that level~~
10 ~~of care or approved service(s) shall continue until the formal appeal process is completed.~~

11 ~~(d) If a final decision rendered in accordance with G.S. 108A-70.9B(g) upholds the adverse determination, as defined~~
12 ~~in G.S. 108A-70.9A(a), the Division~~ ~~If the formal appeal decision upholds the original decision by DMA, MR/IPR,~~
13 ~~PAU, other State Agency or entity, DMA~~ may institute recovery procedures against the beneficiary applicant or
14 ~~recipient~~ to recoup the cost of any services furnished resulting from the ~~formal~~ appeal process.

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16 *History Note: Authority G.S. 108A-25(b); 108A-70.9A; 108A-70.9B; 42 C.F.R. 431.230(b); ~~431~~;*

17 *Eff. April 13, 1979;*

18 *Amended Eff. December 1, 1995; October 4, 1979; ~~1979~~.*

19 *Readopted Eff. March 31, 2018.*

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1 10A NCAC 22H .0105 is proposed for readoption as a repeal as follows:

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3 **10A NCAC 22H .0105 DISMISSAL OF APPEAL**

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5 *History Note: Authority G.S. 108A-25(b); 42 C.F.R. Part 431;*

6 *Eff. April 13, 1979;*

7 *Amended Eff. December 1, 1995; May 1, 1990; ~~1990~~.*

8 *Repealed Eff. March 31, 2018*

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1 10A NCAC 22H .0201 is proposed for amendment as follows:
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3 **SECTION .0200 - HEARINGS: TRANSFER AND DISCHARGES FROM NURSING FACILITIES**
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5 **10A NCAC 22H .0201 DEFINITIONS**

6 The following definitions shall apply throughout this ~~Section~~ ~~Subchapter~~:

- 7 (1) "Division" means the North Carolina Division of Medical ~~Assistance~~, ~~Assistance of the~~ Department
8 of Health and Human Services.
- 9 (2) "Hearing Officer" means the person designated by the Chief Hearing Officer of the Division's
10 Hearing Unit to preside over hearings between a resident and a nursing facility provider regarding
11 transfers and discharges.
- 12 (3) "Hearing Unit" means the Chief Hearing Officer and his or her staff in the Division of Medical
13 Assistance, Department of Health and Human Services.
- 14 (4) "Notice of Transfer ~~and~~ Discharge form" means the form developed by the Division containing
15 the elements described at 42 C.F.R. 483.15(c)(5), which is adopted and incorporated by reference
16 with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.
17 ~~Division.~~
- 18 (5) "Request for Hearing" means a written request ~~clear expression, in writing~~ by the resident, ~~resident~~
19 ~~or family member, member~~ or legal representative of the resident ~~resident~~, that the resident wants
20 to appeal the facility's decision to transfer or discharge.
- 21 (6) The ~~"Request"~~ "Nursing Home Hearing Request for Hearing form" means the form developed by the
22 ~~Division containing:~~ ~~Division.~~
23 (a) the resident's name;
24 (b) the facility's name;
25 (c) the date of the Notice of Transfer or Discharge form;
26 (d) the date of the scheduled transfer or discharge;
27 (e) the requestor's preference for a telephone hearing or in-person hearing in Raleigh, North
28 Carolina;
29 (f) the requestor's name, address, telephone number, and signature; and (g) the telephone
30 number, fax number, mailing address, and email address of the Division's Hearing Unit.
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32 *History Note:* Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. Part 483; 42 C.F.R. 483.5; 42
33 C.F.R. 483.12; 42 C.F.R. 483.202; 42 C.F.R. 483.206;
34 Eff. April 1, 1994;
35 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22,
36 2015; 2015.
37 Amended Eff. March 31, 2018.

1 10A NCAC 22H .0202 is proposed for readoption with substantive changes as follows:

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3 **10A NCAC 22H .0202 TRANSFER AND DISCHARGE REQUIREMENTS**

4 (a) To transfer or discharge a resident, a facility shall comply with all of the requirements of 42 C.F.R. 483.15, which
5 is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at
6 <https://www.ecfr.gov/>.

7 ~~(b)(a)~~ In addition to the requirements in Paragraph (a) of this rule, a resident and, if contact information is available,
8 ~~known,~~ a family member or legal representative of the resident, shall be notified in writing of a facility's decision to
9 transfer or discharge the resident. The Notice of Transfer or Discharge form shall be used by a facility when giving
10 notice of a transfer or discharge.

11 ~~(c)(b)~~ Failure to complete the Notice of Transfer or Discharge form shall result in the notice of the transfer or discharge
12 being invalid, ineffective.

13 ~~(d)(e)~~ The resident shall be handed the Notice of Transfer or Discharge form on the same day that it is dated.

14 ~~(e)(d)~~ A copy of the notice of Transfer or Discharge form shall be mailed to the family member or legal representative,
15 if contact information is available, representative on the same day that it is dated.

16 ~~(f)(e)~~ The facility shall provide a Nursing Home Hearing Request ~~for Hearing Form~~ to the resident and to the family
17 member or legal representative, if contact information is available, representative simultaneously with at the same
18 time as providing the Notice of Transfer or Discharge form.

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20 *History Note: Authority G.S. 108A-25(b); 150B-21.6; 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. 483; ~~42 C.F.R.~~*
21 *~~483.5; 42 C.F.R. 483.12; 42 C.F.R. 483.202; 42 C.F.R. 483.206;~~*
22 *Eff. April 1, 1994; ~~1994.~~*
23 *Readopted Eff. March 31, 2018.*

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1 10A NCAC 22H .0203 is proposed for readoption without substantive change as follows:

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3 **10A NCAC 22H .0203 INITIATING A HEARING**

4 (a) In order to initiate an appeal of a facility's intent to transfer or discharge, a resident, ~~resident or family member,~~
5 ~~member~~ or legal representative shall submit a written request for a hearing to the Hearing Unit. The request for hearing
6 shall must be received by the Hearing Unit within 11 calendar days from the date of the facility's notice of transfer or
7 discharge. If the eleventh day falls on a Saturday, Sunday or legal holiday, then the period during which an appeal
8 may be requested shall run until the end of the next business day which is not a Saturday, Sunday or legal holiday.

9 (b) The request for hearing shall be submitted to the Hearing Unit by mail, or facsimile, or hand delivery.

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11 *History Note: Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. Part 483, Subpart E; 483.12;*

12 *Eff. April 1, 1994; ~~1994.~~*

13 *Readopted Eff. March 31, 2018.*

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1 10A NCAC 22H .0204 is proposed for readoption with substantive changes as follows:

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3 **10A NCAC 22H .0204 HEARING PROCEDURES**

4 (a) Upon timely receipt of a request for a hearing, as set out in Rule .0203 of this Section, the Hearing Unit shall
5 ~~promptly~~ notify the parties ~~facility~~ of the request.

6 (b) The parties shall be notified by certified mail of the date, time, ~~time~~ and place of the hearing. Hearings shall be
7 conducted by telephone, unless an in-person hearing is requested. If the hearing is to be conducted in person, it shall
8 be held in Raleigh, North Carolina.

9 (c) ~~At least five working days prior to the hearing, the~~ The facility administrator shall make available to the resident
10 all documents and records to be used at the hearing, to be received at least five business days prior to the hearing.
11 ~~hearing~~. The facility administrator shall forward identical information to the Hearing Unit, to be received at least five
12 business ~~working~~ days prior to the hearing.

13 (d) The hearing officer may grant continuances for good cause. ~~continuances~~.

14 (e) The hearing officer may dismiss a request for hearing if the resident or family member or legal representative of
15 the resident fails to appear at a scheduled hearing.

16 (f) The hearing officer shall ~~may~~ proceed to conduct a scheduled hearing if a facility representative fails to appear at
17 a scheduled hearing.

18 (g) The Rules of Civil Procedures as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and
19 District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes
20 shall not apply in any hearings held by a Division Hearing Officer. ~~Officer unless another specific statute or rule~~
21 ~~provides otherwise~~. Division hearings are not contested case hearings within the meaning of G.S. 150B and shall not
22 be governed by the provisions of that Chapter unless otherwise stated in these Rules. Parties may be represented by
23 counsel or other representative at the hearing.

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25 *History Note: Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. Part 483, Subpart E; 483.12;*

26 *Eff April 1, 1994; 1994.*

27 *Readopted Eff. March 31, 2018.*

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1 10A NCAC 22H .0205 is proposed for readoption with substantive changes as follows:

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3 **10A NCAC 22H .0205 HEARING OFFICER'S FINAL DECISION**

4 (a) The Hearing Officer's final decision shall uphold or reverse the facility's decision. Copies of the final decision
5 shall be mailed via certified mail to the parties.

6 (b) A party may appeal the Hearing Officer's final decision by filing a petition for judicial review in Wake County
7 Superior Court or in the superior court of the county where the petitioner resides within 30 days of the date of the
8 decision letter. Service is made by the placing of the decision in an official depository of the United States Postal
9 Service and addressed to the person or entity at the last address provided. The Department as the decision maker in
10 the appeal to the Hearing Unit shall not be a party of record.

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12 *History Note: Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. Part 483, Subpart E; 483.12;*

13 *Eff. April 1, 1994; ~~1994.~~*

14 *Readopted Eff. March 31, 2018.*

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1 10A NCAC 22H .0301 is proposed for amendment as follows:

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3 **SECTION .0300 - PASRR ~~PASARR~~ HEARINGS**

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5 **10A NCAC 22H .0301 DEFINITIONS**

6 The following definitions shall apply throughout this Section:

7 ~~(1)(a)~~-"Division" means the North Carolina Division of Medical Assistance, ~~Assistance of the~~ Department
8 of Health and Human Services.

9 ~~(2)(b)~~-"Hearing Officer" means the person designated by the Chief Hearing Officer of the Division's Hearing
10 Unit to preside over hearings regarding Preadmission Screening and ~~Annual-Resident Review~~
11 ~~(PASRR) (PASARR)~~ determinations.

12 ~~(3)(c)~~-"Hearing Unit" means the Chief Hearing Officer and his or her staff in the Division of Medical
13 Assistance, Department of Health and Human Services.

14 ~~(4)(d)~~—"Preadmission Screening and ~~Annual-Resident Review~~ ~~(PASRR) (PASARR)~~—Notice of
15 Determination" means the form developed by the Division, containing the elements described at 42
16 C.F.R. 483.130(k), which is adopted and incorporated by reference with subsequent changes or
17 amendments and available free of charge at <https://www.ecfr.gov/>. ~~Division.~~

18 ~~(5)(e)~~—"Request for Hearing" means a written request on a Hearing Request Form ~~clear expression, in~~
19 ~~writing~~, by the evaluated individual or family member or legal representative of the evaluated
20 individual, that the evaluated individual wants to appeal the ~~(PASRR) PASARR~~ determination.

21 ~~(6)(f)~~—"Hearing Request Form" ~~"Request for Hearing"~~ form means the form developed by the Division
22 containing: ~~Division.~~

23 (a) the individual's name

24 (b) the facility name, if the individual is residing in a facility;

25 (c) the requestor's preference for a telephone hearing or in-person hearing in Raleigh, North
26 Carolina; and

27 (d) the requestor's name, address, telephone number, and signature.

28 ~~(7)(g)~~—"North Carolina ~~PASRR PASARR-II~~ Screening form" means both the North Carolina PASRR-
29 MI Psychiatric Screening form and the North Carolina Dual Psychiatric and Intellectual
30 Developmental Disabilities/Related Conditions PASRR II Screening Data form developed by the
31 Division, containing the elements described at 42 C.F.R. 483.128(i)-(j), which is adopted and
32 incorporated by reference with subsequent changes or amendments and available free of charge at
33 <https://www.ecfr.gov/>. ~~Psychiatric/Mental Retardation/Dual Psychiatric and MR/RC Evaluation"~~
34 ~~forms means the forms developed by the Division.~~

1 *History Note:* Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), (f)(3); 1396r(e)(3), (e)(7)(F), (f)(3); 42
2 C.F.R. 483.5; 42 C.F.R. Part 483, Subparts C and E; 42 C.F.R. 483.128; 42 C.F.R. 483.130 ~~42~~
3 ~~C.F.R. 483.12; 42 C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206;~~
4 *Eff. October 1, 1994;*
5 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22,*
6 *2015; 2015.*
7 *Amended Eff. March 31, 2018.*

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1 10A NCAC 22H .0302 is proposed for reoption without substantive change as follows:

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10A NCAC 22H .0302 PASRR PASARR REQUIREMENTS

(a) The evaluated individual and family member or legal representative shall be notified in writing of the Division of MH/DD/SAS' PASRR PASARR determination under the provisions of 42 CFR 483.130(k) which is incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>. ~~amendments. A copy of 42 CFR 483.130(k) can be obtained from the Division of Medical Assistance at a cost of twenty cents (\$0.20) per copy.~~

(b) The PASRR PASARR Notice of Determination form shall be used by Division of MH/DD/SAS when giving notice of a PASRR PASARR determination under the provisions of 42 CFR 483.130(l)(1-4) which is incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>. ~~amendments. A copy of 42 CFR 483.130(l)(1-4) can be obtained from the Division of Medical Assistance at a cost of twenty cents (\$0.20) per copy.~~

(c) The Division of MH/DD/SAS shall provide a Hearing Request Request for Hearing form, pertinent PASRR II Screening Evaluation form, and PASRR PASARR Notice of Determination form to the evaluated individual and legal representative under the provisions of 42 CFR 483.128(1) which is incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>. ~~amendments. A copy of 42 CFR 483.128(1) can be obtained from the Division of Medical Assistance at a cost of twenty cents (\$0.20) per copy.~~

History Note: Authority G.S. 108A-25(b); 150B-21.6; 42 U.S.C.S. 1395i-3(e)(3), (f)(3); 1396r(e)(3), (e)(7)(F), (f)(3); 42 C.F.R. 483.5; 42 C.F.R. Part 483, Subparts C and E; 42 C.F.R. 483.12; 42 C.F.R. 483.128; 42 C.F.R. 483.130; 42 C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206; Eff. October 1, 1994; 1994. Readopted March 31, 2018.

1 10A NCAC 22H .0303 is proposed for readoption without substantive change as follows:

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3 **10A NCAC 22H .0303 INITIATING A HEARING**

4 (a) In order to initiate an appeal of a ~~PASRR~~ ~~PASARR~~ determination, the evaluated ~~individual, individual or family~~
5 ~~member, member~~ or legal representative shall submit a Hearing Request Form ~~written request for a hearing~~ to the
6 Hearing Unit. The ~~form request for hearing~~ shall ~~must~~ be received by the Hearing Unit within 11 calendar days from
7 the date of the ~~PASRR~~ ~~PASARR~~ Notice of Determination. If the 11th day falls on a Saturday, Sunday, or legal
8 holiday, then the period during which an appeal may be requested shall run until the end of the next business day
9 which is not a Saturday, Sunday, or legal holiday.

10 (b) The Hearing Request Form ~~request for hearing~~ shall be submitted to the Hearing Unit by mail, facsimile, or hand
11 delivery.

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13 *History Note: Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i - 3(e)(3) and - (f)(3); 1396r(e)(3), (e)(7)(F), and*
14 *(f)(3); 42 C.F.R. 431.200; 42 C.F.R. 483.5; 42 C.F.R. Part 483, Subpart E; ~~42 C.F.R. 483.12; 42~~*
15 *~~C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206;~~*
16 *Eff. October 1, 1994; ~~1994~~.*
17 *Readopted Eff. March 31, 2018.*

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1 10A NCAC 22H .0304 is proposed for readoption with substantive changes as follows:

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10A NCAC 22H .0304 HEARING PROCEDURES

- (a) Upon ~~timely~~ receipt of a Hearing Request Form, ~~request for a hearing~~, the Hearing Unit shall notify the Division of MH/DD/SAS of the request.
- (b) The parties shall be notified by certified mail of the date, time, ~~time~~ and place of the hearing. Hearings shall be conducted by telephone, unless an in-person hearing is requested. If the hearing is to be conducted in person, it shall be held in Raleigh, North Carolina.
- (c) The Division of MH/DD/SAS shall mail all documents and records to be used at the hearing to the person requesting the hearing by certified mail and forward identical information to the Hearing Unit, to be received by both the requestor and the Hearing Unit at least five business working days prior to the hearing.
- (d) The hearing officer may grant continuances for good cause. ~~continuances.~~
- (e) The hearing officer may dismiss a request for a hearing if the evaluated individual or legal representative fails to appear at a scheduled hearing.
- (f) The hearing officer shall ~~may~~ proceed to conduct a scheduled hearing if the Division of MH/DD/SAS fails to appear at a scheduled hearing.
- (g) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall not apply in any hearings held by the Division Hearing Officer. ~~Officer unless another specific statute or other rule provides otherwise.~~ Division hearings are not contested case hearings within the meaning of G.S. 150B and shall not be governed by the provisions of that chapter unless otherwise stated in these Rules. The hearing officer may use the North Carolina Rules of Evidence for guidance in conducting hearings. Parties may be represented by counsel or other representative at the hearing.

*History Note: Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), ~~(e)(7)(F), (f)(3)~~; 42 U.S.C.S. 1396r(e)(3), ~~(e)(7)(F), (f)(3)~~; 42 C.F.R. 431.200; 42 C.F.R. Part 483, Subpart E; 42 C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206;
Eff. October 1, 1994; 1994.
Readopted Eff. March 31, 2018.*

1 10A NCAC 22H .0305 is proposed for readoption with substantive changes as follows:

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3 **10A NCAC 22H .0305 HEARING OFFICER'S FINAL DECISION**

4 (a) The Hearing Officer's final decision shall uphold or reverse the Division of MH/DD/SAS' decision. Copies of the
5 final decision shall be mailed via certified mail to the parties.

6 (b) A party may appeal the Hearing Officer's final decision by filing a petition for judicial review in Wake County
7 Superior Court or in the superior court of the county where the petitioner resides within 30 days of the date of the
8 decision letter. Service is made by the placing of the decision in an official depository of the United States Postal
9 Service and addressed to the person or entity at the last address provided. The Department as the decision maker in
10 the appeal to the Hearing Unit shall not be a party of record.

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12 *History Note: Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), ~~(e)(7)(F), (f)(3)~~; 42 U.S.C.S. 1396r(e)(3),*
13 *~~(e)(7)(F), (f)(3)~~; 42 C.F.R. 431.200; 42 C.F.R. Part 483, Subpart E; 42 C.F.R. 483.200; 42 C.F.R.*
14 *~~483.204; 42 C.F.R. 483.206;~~*
15 *Eff. October 1, 1994; ~~1994.~~*
16 *Readopted Eff. March 31, 2018.*

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

DAVE RICHARD
DEPUTY SECRETARY FOR MEDICAL ASSISTANCE

MEMORANDUM

TO: Office of State Budget and Management

FROM: Virginia R. Niehaus, DMA Rulemaking Coordinator

DATE: October 25, 2017

RE: Federal Certification for N.C. Department of Health and Human Services, Division of Medical Assistance (DMA) Rule Readoption and Amendment Subchapter 22H – Appeals Procedures

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

The following rules within 10A NCAC 22H are proposed for readoption to be compatible with federal law governing appeals procedures:

1. 10A NCAC 22H .0101 and .0104 apply to Medicaid beneficiary appeals of determinations to deny, terminate, suspend, or reduce a service or authorization for a service. Regulation by the State of North Carolina of appeals by Medicaid beneficiaries is subject to the provisions of 42 CFR Part 431, Subpart E (Fair Hearings for Applicants and Beneficiaries). The readoption of 10A NCAC 22H .0101 and .0104 is necessary to comply with these federal regulations
2. 10A NCAC 22H .0201, .0202, .0203, .0204 and .0205 apply to hearings for transfers and discharges from nursing facilities. Regulation by the State of North Carolina of hearings of transfer and discharges from nursing facilities is subject to the provisions of 42 CFR Part 483

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(Requirements for States and Long Term Care Facilities). The readoption of 10A NCAC 22H .0201, .0202, .0203, .0204 and .0205 is necessary to comply with these federal regulations.

3. 10A NCAC 22H .0301, .0302, 0303, .0304 and .0305 apply to Preadmission Screening and Resident Review (PASRR) hearings. Regulation by the State of North Carolina of PASRR hearings is subject to the provisions of 42 CFR 483 (Requirements for States and Long Term Care Facilities). The readoption of 10A NCAC 22H .0301, .0302, 0303, .0304 and .0305 is necessary to comply with these federal laws.