

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

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: Yes

State Government: Yes

Local Government: Yes

Private Individuals/Entities: Yes

Substantial Impact: No

Title of Rule Changes and Citations

10A NCAC 23E – Medicaid Eligibility Requirements

Section .0100 – Non-Financial Requirements

- 10A NCAC 23E .0101 – Age (Repeal)
- 10ANCAC 23E .0102 – United States Citizen (Repeal)
- 10A NCAC 23E .0103 – Residence (Readopt)
- 10A NCAC 23E .0104 – Deprivation (Repeal)
- 10A NCAC 23E .0105 – Disability (Readopt)
- 10A NCAC 23E .0106 – Blindness (Readopt)
- 10A NCAC 23E .0107 – Caretaker Relative (Repeal)
- 10A NCAC 23E .0108 – Inmate of Public Institution or Private Psychiatric Hospital (Repeal)

Section .0200 – Financial Requirements

- 10A NCAC 23E .0201 – Applying for All Benefits and Annuities (Readopt)
- 10A NCAC 23E .0202 – What Resources Are Counted ~~Reserve~~ (Readopt)
- 10A NCAC 23E .0203 – Countable Income (Readopt)
- 10A NCAC 23E .0204 – Personal Needs Allowance (Repeal)
- 10A NCAC 23E .0205 – Budget Unit Membership (Readopt)
- 10A NCAC 23E .0206 – Financial Responsibility and Deeming (Repeal)
- 10A NCAC 23E .0207 – Whose Resources are Counted ~~Reserve~~ (Readopt)
- 10A NCAC 23E .0208 – Calculating Income (Readopt)
- 10A NCAC 23E .0209 – Deductible (Readopt)

- 10A NCAC 23E .0210 – Patient Liability (Readopt)
- 10A NCAC 23E .0211 – Alien Sponsor (Readopt)

See proposed text of these rules in Appendix I.

Statutory Authority

G.S. 108A-25(b), G.S. 108A-54, G.S. 108A-54.1B, G.S. 108A-55, G.S. 108A-55.3, G.S. 108A-80; 42 U.S.C. 1383c, 42 U.S.C. 1396r-5, 42 U.S.C. 1396a, 42 U.S.C. 703, 42 U.S.C. 704, 42 U.S.C. 1396, 20 C.F.R. 404, 42 C.F.R. 435, 45 C.F.R. 233, S.L. 1983, c. 1116, S.L. 2002-126, P.L. 98-369, P.L. 99-272 Sec. 12202, P.L. 104-208, P.L. 105-33

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 23E – Medicaid Eligibility Requirements. The following rules were classified as necessary with substantive public interest: 10A NCAC 23E .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, and .0211.

The agency is presenting 23E .0103, .0201, .0202, .0203, .0205, .0207, and .0208 for readoption with substantive changes, 23E .0105, .0106, .0209, .0210, and .0211 for readoption with minor, non-substantive changes, and 23E .0101, .0102, .0104, .0107, .0108, .0204, and .0206 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 the following rules: 23E .0103, .0201, .0202, .0203, .0205, .0207, and .0208. The agency has also prepared brief explanations for non-substantive changes made to 23E .0105, .0106, .0209, .0210, and .0211.

Rule Summaries and Anticipated Fiscal Impact

The proposed amendments will align the rules with federal Affordable Care Act requirements and recently enacted statutes. Changes to the rule to update resource requirements to align with the ACA are substantive, but the agency had no flexibility in implementing these changes and they impose a less stringent burden on applicants and beneficiaries in these groups. This change impacts a small number of applicants and beneficiaries. It is a less stringent burden for applicants and local agencies because it streamlines and simplifies the enrollment process, requiring applicants to provide less documentation. The proposed rules also specify that income from ABLE (Achieving a Better Life Experience) accounts shall not be counted against income limits for state benefits, as required by state law enacted in 2015. This change will generate a benefit to enrollees and additional costs to the state. All other changes to this rule are non-substantive technical changes to improve rule clarity.

The agency is not required to analyze and quantify the impact of the rules because these amendments impose a less stringent burden on the regulated community. However, the changes are summarized below.

Rule 23E .0103 – Residence

10A NCAC 23E .0103 sets out residency requirements for Medicaid eligibility in North Carolina. The existing language in subparagraph (f) is being deleted because this language has been superseded by a statute enacted by the North Carolina General Assembly, G.S. 108A-55.3, governing verification of State residency required for Medicaid. All other changes to this rule are minor, non-substantive changes that do not impact how the rule is implemented and are intended only to clarify existing language.

Rule 23E .0105 – Disability

10A NCAC 23E .0105 sets out what constitutes disability for purposes of Medicaid eligibility. The agency is proposing to readopt this rule with minor, non-substantive, technical changes to update and clarify language. The primary technical change is to clarify that the Disability Determination Services Section is within the Division of Vocational Rehabilitation Services, not the Division of Social Services.

Rule 23E .0106 – Blindness

10A NCAC 23E .0106 sets out what constitutes blindness for purposes of Medicaid eligibility. The agency is proposing to readopt this rule with minor, non-substantive, technical changes to update and clarify language.

Rule 23E .0201 – Applying for All Benefits and Annuities

10A NCAC 23E .0102 sets out that applicants and beneficiaries are required to take all steps necessary to obtain benefits and annuities to which they are entitled. However, per guidance from the Centers for Medicare & Medicaid Services, only benefits that are actually received may be counted in determining financial eligibility for Medicaid. If a benefit is verifiable, but not received, it may not be counted. However, failing to take necessary steps to obtain benefits may lead to termination of eligibility.

Previously, an individual could have been determined ineligible on the basis of a potential financial benefit, regardless of whether the individual was actually receiving the benefit. The rule now clarifies that benefits, such as annuities and pensions, will not count for financial eligibility unless actually received. It has always been possible under the rule for a beneficiary to have his or her eligibility terminated for failure to take the necessary steps under this rule. All other changes to this rule are minor, non-substantive changes that have no fiscal impact on federal government, state government, local governments, or private industry.

Rule 23E .0202 – What Resources Are Counted Reserve

10A NCAC 23E .0202 governs the resources that are counted in determining eligibility for Medicaid. The majority of changes to this rule reflect new requirements under the Patient

Protection and Affordable Care Act (ACA). Under the ACA, there is no resource limit for certain categorically needy eligibility groups. This change is reflected in subparagraphs (i), (j), (k), (l), and (m)-(q). It should be noted that the text of subparagraphs (m)-(q) is not new, but was moved from 23E .0207 to this rule for clarity. All other changes to this rule are minor, non-substantive, technical changes to update and clarify language.

Rule 23E .0203 – Countable Income

10A NCAC 23E .0203 governs the income that is counted in determining eligibility for Medicaid. As with 23E .0202, the majority of changes to this rule reflect new ACA requirements. Under the ACA, the income limits of certain categorically needy eligibility categories are now governed by the federal Modified Adjusted Gross Income (MAGI) methodology under 42 C.F.R. 435.603. For that reason, parts of this rule have been limited to medically needy eligibility categories. The implementation of MAGI was intended to standardize income requirements. Under the MAGI methodology, state net income standards were converted to equivalent federal MAGI standards.

Another substantive change is the inclusion of ABLE (Achieving a Better Life Experience) accounts under subparagraphs (b)(37) and (d)(3). This language is being added in compliance with a state law enacted in 2015, G.S. Ch. 147, Art. 6F – Achieving a Better Life Experience Program Trust. Specifically, under G.S. 147-86.75.(d), ABLE accounts shall not be counted toward resource and income limits for state benefits. Income from these accounts is not counted against applicants

All other changes to this rule are minor, non-substantive, technical changes to update and clarify language. This includes removing references to rules recently repealed or proposed for repeal in subparagraphs (d)(1) and (e)(2) to point to where the content is currently located. It also includes deleting subparagraph (e)(3) because this information is included in the biennial Appropriations Act (*see e.g.*, S.L. 2017-57, Section 11H.1).

Rule 23E .0205 – Budget Unit Membership

10A NCAC 23E .0205 defines who is included in a budget unit for purposes of financial eligibility for Medicaid. As with 23E .0202 and 23E .0203, the changes to this rule reflect new ACA requirements. Under the ACA, income and resource requirements for certain categorically needy eligibility categories are now governed by 42 C.F.R. 435.603. All other changes to this rule are minor, non-substantive, technical changes to update and clarify language.

Rule 23E .0207 – Whose Resources Are Counted Reserve

10A NCAC 23E .0207 governs whose resources are counted in determining eligibility for Medicaid. As with 23E .0202, .0203, and .0205, the majority of changes to this rule reflect new ACA requirements. Under the ACA, there is no resource limit for certain categorically needy eligibility groups. This change is reflected in subparagraphs (e). Subparagraphs (f)-(i) were updated to reflect the new federal requirements and moved to 23E .0202. All other changes to this rule are minor, non-substantive, technical changes to update and clarify language.

Rule 23E .0208 – Calculating Income

10A NCAC 23E .0208 governs how income is calculated in determining eligibility for Medicaid. As with 23E 0202, .0203, .0205, and .0207, the majority of changes to this rule reflect new ACA requirements. Under the ACA, the income limits of certain categorically needy eligibility categories are now governed by the federal Modified Adjusted Gross Income (MAGI) methodology under 42 C.F.R. 435 .603. For that reason, parts of this rule have been limited to medically needy eligibility categories. All other changes to this rule are minor, non-substantive, technical changes to update and clarify language.

Rule 23E .0209 – Deductible

10A NCAC 23E .0209 governs the deductible that applies to certain Medicaid eligibility categories. The agency is proposing to readopt this rule with minor, non-substantive, technical changes to update and clarify language, including replacing the reference to a recently repealed rule in subparagraph (a)(3)(B) with a reference to the Medicaid State Plan, where the content now resides.

Rule 23E .0210 – Patient Liability

10A NCAC 23E .0210 governs when patient liability will apply. The agency is proposing to readopt this rule with minor, non-substantive, technical changes to update and clarify language, including replacing the references to recently repealed rules in subparagraphs (b)(1) and (e)(2) with references to the Medicaid State Plan, where the content now resides.

Rule 23E .0211 – Alien Sponsor Deeming

10A NCAC 23E .0211 governs sponsorship of aliens lawfully admitted for permanent residence. The agency is proposing to readopt this rule with minor, non-substantive, technical changes to update and clarify language, including replacing the references to recently repealed rules in subparagraphs (d) and (e) with references to where the content now resides.

1 10A NCAC 23E .0101 is proposed for readoption as a repeal as follows:
2

3 **SUBCHAPTER 23E – MEDICAID ELIGIBILITY REQUIREMENTS**
4

5 **SECTION .0100 – NON-FINANCIAL REQUIREMENTS**
6

7 **10A NCAC 23E .0101 AGE**
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9 *History Note: Authority G.S. 108A-54; 42 C.F.R. 435.520; Alexander v. Flaherty Consent Order filed*
10 *February 14, 1992;*
11 *Eff. September 1, 1984;*
12 *Amended Eff. April 1, 1993; August 1, 1990;*
13 *Transferred from 10A NCAC 21B .0301 Eff. May 1, 2012; ~~2012~~.*
14 *Repealed Eff. May 1, 2019.*

1 10A NCAC 23E .0102 is proposed for readoption as a repeal as follows:

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3 **10A NCAC 23E .0102 UNITED STATES CITIZEN**

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5 *History Note: Authority G.S. 108A-54; 42 C.F.R. 435.402; 8 U.S.C. 1161; 8 U.S.C. 1255a; 42 U.S.C. 1396b(v);*
6 *Eff. September 1, 1984;*
7 *Amended Eff. August 1, 2000; December 1, 1991; August 1, 1990;*
8 *Transferred from 10A NCAC 21B .0302 Eff. May 1, 2012; ~~2012~~.*
9 *Repealed Eff. May 1, 2019.*

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1 10A NCAC 23E .0103 is proposed for re adoption with substantive changes as follows:

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3 **10A NCAC 23E .0103 RESIDENCE**

4 (a) The requirements stated in 42 CFR 435.403 shall apply to determine residence in the ~~State~~ state except for
5 provisions in Paragraph (b) of this Rule.

6 (b) Residents of the state of Georgia who enter a long term care facility in N.C. within 40 miles of the resident state's
7 border shall retain residence in the prior state. Residents of N.C. who enter a long term care facility in Georgia within
8 40 miles of the N.C. border retain N.C. residency.

9 (c) An individual visiting ~~in the state~~ without intent to reside ~~remain in the State~~ shall be ineligible for Medicaid.

10 (d) An individual who moves to another state and intends to reside ~~remain living~~ in that state shall not be eligible for
11 N.C. Medicaid.

12 (e) County residence:

13 (1) Any client who moves from one county to another North Carolina county shall continue to receive
14 assistance so long as eligibility continues. ~~if eligible.~~

15 (2) An individual ~~ordinarily~~ has residence in the county in which he or she resides. However, if he or
16 she is in a hospital, mental institution, intermediate care facility, skilled nursing home, boarding
17 home, confinement center, ~~center~~ or similar facility, the county in which the facility is located shall
18 not be his or her legal residence. Except for (e)(3) in this Rule, the county of legal residence shall
19 be the county where ~~in which~~ the individual lived in a private living arrangement prior to entering
20 a facility.

21 (3) If an individual who became disabled prior to age 18 has remained in a facility, he or she remains a
22 resident of the county and state where ~~in which~~ his or her parent(s) had residence immediately prior
23 to his or her reaching age 18. If, as an adult, he or she is applying for assistance and it is not possible
24 for the individual to trace his or her county of residence as a minor, he or she shall establish residence
25 based on where he or she intends ~~his intent~~ to reside, ~~remain~~ regardless of his or her parent's current
26 legal residence.

27 (f) ~~The client's statement shall be accepted as verification unless there is reason to doubt it. If there is doubt, evaluation~~
28 ~~of the statement shall be substantiated for:~~

29 (1) ~~Temporary absence by determination of the reason for absence, expected duration of the absence,~~
30 ~~and continued maintenance of home in county of residence;~~

31 (2) ~~Entering the state for employment purposes by verified employment, contacts with prospective~~
32 ~~employers, health department records, Employment Security Commission or Rural Manpower~~
33 ~~office registration, home in another state with lease or other legal agreement for rental or purchase,~~
34 ~~or documents proving separation from dependents in another state;~~

35 (3) ~~Intent to remain by documents proving disposition of home in prior state, auto registration and~~
36 ~~drivers license changed to N.C. within 30 days, change in address with former post office or other~~
37 ~~sources from which income is received and change in voter registration, tax listing;~~

1 ~~(4) — Incapability of stating intent by verification of representative payee for benefit payments, receipt of~~
2 ~~benefits on basis of mental illness or retardation, care is provided in a mental retardation facility or~~
3 ~~power of attorney or guardian has been appointed for him.~~

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5 *History Note:* *Authority G.S. 108A-54; 108A-54.1B; 108A-55.3; ~~G.S. 150B-14(e)~~; 42 C.F.R. 435.403;*
6 *Eff. September 1, 1984;*
7 *Amended Eff. August 1, 1990;*
8 *Transferred from 10A NCAC 21B .0303 Eff. May 1, 2012; ~~2012~~.*
9 *Readopted Eff. May 1, 2019.*

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1 10A NCAC 23E .0104 is proposed for readoption as a repeal as follows:

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3 **10A NCAC 23E .0104 DEPRIVATION**

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5 *History Note: Authority G.S. 108A-28; 108A-54; 42 C.F.R. 435.510; 89 CVS 922;*

6 *Eff. September 1, 1984;*

7 *Amended Eff. October 1, 1991; August 1, 1990;*

8 *Temporary Amendment Eff. August 5, 1999;*

9 *Amended Eff. March 19, 2001;*

10 *Transferred from 10A NCAC 21B .0304 Eff. May 1, 2012; ~~2012~~.*

11 *Repealed Eff. May 1, 2019.*

12

1 10A NCAC 23E .0105 is proposed for re adoption without substantive changes as follows:

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3 **10A NCAC 23E .0105 DISABILITY**

4 (a) ~~As set out in the Medicaid State Plan,~~ individuals ~~Individuals~~ eligible for Medicaid in December 1973 as disabled
5 individuals and who meet conditions required by 42 CFR 435.133 shall be permanently and totally disabled based on
6 a physical or mental impairment ~~that which substantially~~ precludes him or her from ~~obtaining~~ engaging in substantial
7 gainful activity, as defined at 20 CFR 404.1510, which is adopted and incorporated by reference with subsequent
8 changes or amendments and available free of charge at <https://www.ecfr.gov/>, employment, and such impairment can
9 be expected to result in death, or has lasted or can be expected to last twelve months or longer. ~~appears reasonably~~
10 ~~certain to continue without substantial improvement throughout his life time.~~

11 (b) Any client who has applied for Medicaid since January 1, 1974 on the basis of disability ~~is required to~~ shall be
12 found disabled ~~under the definition of disability and procedures established for evaluation of vocational and medical~~
13 ~~factors~~ under the supplemental security income program.

14 (c) A social history on a form prescribed by the state shall be completed by the caseworker ~~Income Maintenance~~
15 ~~Caseworker~~ and submitted to the Division of Vocational Rehabilitation Services, Disability Determination Services
16 Section with the request for disability determination.

17 (d) Except for clients ~~client's~~ receiving social security or supplemental security income on the basis of disability, the
18 decision on disability is made by the Disability Determination Services Section. ~~Section of the Division of Social~~
19 ~~Services.~~

20 (e) Social Security Administration (SSA) decisions made for social security disability or supplemental security
21 income shall be adopted for persons applying for Medicaid.

22 (f) Disability determination shall be verified from the client's award letter, SDX, BENDEX, Disability Determination
23 Services Section approval, Administrative Law Judge decision, decision or other documentary evidence. SDX and
24 BENDEX are defined in 10A NCAC 23A .0102.

25 (g) Disability for purposes of Medicaid eligibility shall cease when the client is determined by the Social Security
26 Administration or the Disability Determination Services Section to be capable of engaging in substantial gainful
27 activity. The client may appeal the termination of Medicaid, pursuant to G.S. 108A-70.9A. ~~Medicaid based on his~~
28 ~~disability cessation.~~

29
30 *History Note: Authority G.S. 108A-54; 108A-54.1B; 20 C.F.R. 404.1505; 42 C.F.R. 435.540; 42 C.F.R. 435.541;*
31 *Alexander v. Flaherty Consent Order filed February 14, 1992;*
32 *Eff. September 1, 1984;*
33 *Amended Eff. April 1, 1993; August 1, 1990;*
34 *Transferred from 10A NCAC 21B .0305 Eff. May 1, 2012; ~~2012~~.*
35 *Readopted Eff. May 1, 2019.*
36

1 10A NCAC 23E .0106 is proposed for readoption without substantive changes as follows:

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3 **10A NCAC 23E .0106 BLINDNESS**

4 (a) To qualify for Medicaid under the category of Aid to the Blind, the client shall meet one of the following
5 conditions:

6 (1) ~~Was~~ receiving Medicaid on the basis of blindness in December 1973, ~~has been~~ continuously eligible
7 for Medicaid with no gaps since that ~~date, date~~ and ~~has been~~ determined by the Disability
8 Determination Services Section ~~State disability determination unit~~ to have visual acuity of 20/100
9 in the better eye with correction or visual field limitation in the better eye of 30 percent or less; or

10 (2) ~~Has~~ applied for Medicaid since January 1, 1974 and meets the definition of blindness, vocational,
11 ~~vocational~~ and medical factors applied under the Supplemental Security Income program, pursuant
12 to 20 CFR 404, Subpart P. Program.

13 (b) For clients applying for Medicaid since January 1, 1974, ~~1974~~ blindness shall be determined by one of the
14 following methods:

15 (1) Documentary evidence including SDX, BENDEX, or an award letter that social security benefits,
16 supplemental security ~~income~~ income, or veterans benefits have been awarded on the basis of
17 blindness; or

18 (2) A written decision from the physician consultant of the Division of Services for the Blind based on
19 review of a medical eye examination report.

20 (c) Blindness shall be reverified for clients determined eligible under Paragraph (b) of this Rule at each review of the
21 client's eligibility or when reexamination is recommended by the physician consultant in his or her professional
22 opinion. ~~consultant.~~

23 (d) The client shall cease to qualify for Medicaid as a blind individual when evidence is received from any of the
24 sources described in Paragraphs (a)(1) or (b) of this Rule that the client no longer meets the conditions of blindness
25 set out in this rule and the Medicaid State Plan. ~~definition of blindness.~~

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27 *History Note:* Authority *G.S. 108A-54; 108A-54.1B; 20 C.F.R. 404, Subpart P; 42 C.F.R. 435.530; 42 C.F.R.*
28 *435.531;*
29 *Eff. September 1, 1984;*
30 *Amended Eff. August 1, 1990;*
31 *Transferred from 10A NCAC 21B .0306 Eff. May 1, 2012; 2012.*
32 *Readopted Eff. May 1, 2019.*
33

1 10A NCAC 23E .0107 is proposed for readoption as a repeal as follows:

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3 **10A NCAC 23E .0107 CARETAKER RELATIVE**

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5 *History Note: Authority G.S. 108A-54; 42 C.F.R. 435.310;*

6 *Eff. September 1, 1984;*

7 *Amended Eff. April 1, 1993; August 1, 1990;*

8 *Transferred from 10A NCAC 21B .0307 Eff. May 1 ~~2012; 2012.~~*

9 *Repealed Eff. May 1, 2019.*

10

1 10A NCAC 23E .0108 is proposed for readoption as a repeal as follows:

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3 **10A NCAC 23E .0108 INMATE OF PUBLIC INSTITUTION OR PRIVATE PSYCHIATRIC HOSPITAL**

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5 *History Note: Authority G.S. 108A-54; 42 C.F.R. 435.1008; 42 C.F.R. 435.1009; S.L. 1987, c. 758, s. 69;*

6 *Eff. September 1, 1984;*

7 *Amended Eff. August 1, 1990;*

8 *Transferred from 10A NCAC 21B .0308 Eff. May 1, 2012; ~~2012~~.*

9 *Repealed Eff. May 1, 2019.*

10

1 10A NCAC 23E .0201 is proposed for re adoption with substantive changes as follows:

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3 **SECTION .0200 – FINANCIAL REQUIREMENTS**
4

5 **10A NCAC 23E .0201 APPLYING FOR ALL BENEFITS AND ANNUITIES**

6 (a) Clients shall take all necessary steps to obtain any annuities, pensions, retirement and disability benefits to which
7 they are entitled, pursuant to 42 CFR 435.608, which is adopted and incorporated by reference with subsequent
8 changes or amendments and available free of charge at <https://www.ecfr.gov/>, unless they have good cause for not
9 doing so as determined by the county department of social services. ~~so.~~

10 (b) For purposes of this rule, good ~~Good~~ cause shall be ~~is~~ limited to physical or mental incapability to make such
11 effort.

12 (c) If a client fails to comply with Paragraph (a) and does not show good cause, ~~The amount of any verifiable benefits~~
13 ~~is counted as income to the client if the amount can be determined. If the amount cannot be determined, but the~~
14 ~~availability is verified, the client's eligibility benefits~~ ease shall be terminated. ~~denied or terminated for client's failure~~
15 ~~to cooperate.~~

16
17 *History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 435.608; ~~435.603~~;*
18 *Eff. September 1, 1984;*
19 *Amended Eff. August 1, 1990;*
20 *Transferred from 10A NCAC 21B .0309 Eff. May 1, 2012; ~~2012~~.*
21 *Readopted Eff. May 1, 2019.*
22

1 10A NCAC 23E .0202 is proposed for readoption with substantive changes as follows:

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3 **10A NCAC 23E .0202 WHAT RESOURCES ARE COUNTED RESERVE**

4 (a) North Carolina has contracted with the Social Security Administration under Section 1634 of the Social Security
5 Act to provide Medicaid to all SSI recipients. ~~Resource eligibility~~ The resources that are counted for Medicaid
6 eligibility for individuals under any aged, blind, and disabled Aged, Blind, and Disabled coverage group shall be
7 determined based on standards and methodologies in Title XVI of the Social Security Act, which is adopted and
8 incorporated by reference with subsequent changes or amendments and available free of charge at
9 http://uscode.house.gov/, ~~Act~~ except as specified in Paragraphs ~~(j)(4)~~ and ~~(k)(4)~~ of this Rule. Applicants for and
10 recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent
11 that such resources can be made available.

12 (b) The value of resources currently available to any ~~budget unit~~ member of a budget unit, as defined in 10A NCAC
13 23A .0102, shall be considered in determining financial eligibility. A resource shall be considered available when it
14 is actually available and when the budget unit member has a legal interest in the resource and he or she, or someone
15 acting in his or her behalf, can take any necessary action to make it available.

16 (c) Resources shall be excluded in determining financial eligibility when the budget unit member with having a legal
17 interest in the resources is declared incompetent, incompetent unless:

- 18 (1) A guardian of the estate, a general guardian, guardian or an interim guardian has been ~~lawfully~~
19 appointed in accordance with the law and is able to act on behalf of his or her ward in North Carolina
20 and in any state ~~in which~~ where such resources are located; or
21 (2) A durable power of attorney, valid in North Carolina and in any state ~~in which~~ where such resource
22 is located, has been granted to a person who is authorized and able to exercise such power.

23 (d) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget
24 unit member, but such person is unable, fails, or refuses to act within a reasonable amount of time promptly to make
25 the resources ~~actually~~ available to meet the needs of the budget unit member, a referral shall be made to the services
26 unit of the county department of social services for a determination of whether the guardian or attorney in fact is acting
27 in the best interests of the member and if not, the county department of social services shall contact the clerk of court
28 for intervention. The resources shall be excluded in determining financial eligibility pending action by the clerk of
29 court.

30 (e) When a Medicaid application is filed on behalf of an individual who:

- 31 (1) is alleged to be mentally incompetent,
32 (2) has or may have a legal interest in a resource that affects the individual's eligibility, and
33 (3) does not have a representative with legal authority to use or dispose of the individual's resources,
34 the individual's representative or family member shall be instructed by the county department of
35 social services to file within 30 calendar days a judicial proceeding under G.S. 35A to declare the
36 individual incompetent and appoint a guardian. If the representative or family member either fails
37 to file such a proceeding within 30 calendar days or fails to ~~timely~~ conclude the proceeding within

1 a reasonable amount of time, proceeding, a referral shall be made to the protective services unit of
2 the county department of social services for guardianship services. ~~If the allegation of incompetence~~
3 ~~that has lasted, or is expected to last 30 consecutive days or more, or until the individual's death, is~~
4 ~~supported by competent evidence, as specified in Paragraph (h) of this Rule,~~ If an allegation of
5 incompetence is supported by competent evidence as defined in Paragraph (h) of this Rule, and the
6 incompetence has lasted, or is expected to last, at least 30 consecutive days or until the individual's
7 death, the resources shall be excluded beginning with the date that such evidence indicates that he
8 or she became incompetent, except as provided in Paragraphs (f) or (g) of this Rule.

9 (f) The budget unit member's resources shall be counted in determining his or her eligibility for Medicaid beginning
10 the first day of the month following the month a guardian of the estate, general guardian, ~~guardian~~ or interim guardian
11 is appointed, provided that after the appointment, property that cannot be disposed of or used except by order of the
12 court shall continue to be excluded until completion of the applicable procedures for disposition specified in G.S. 1 or
13 G.S. 35A.

14 (g) When the court rules that the budget unit member is competent or no ruling is made because of the death or
15 recovery from incompetence of the member, his or her resources shall be counted except for periods of time for which
16 it can be established by ~~competent evidence~~ "competent evidence" ~~specified~~ defined in Paragraph (h) of this Rule,
17 that the member was in fact incompetent for at least 30 consecutive days, or until his or her death. Any such showing
18 of incompetence is subject to rebuttal by competent evidence as specified in Paragraph (h) of this Rule.

19 (h) For purposes of this Rule, ~~competent evidence~~ "competent evidence" is ~~limited to~~ defined as the written statement
20 or testimony at a competency hearing of a physician, psychologist, nurse, or social worker with knowledge of the
21 physical and mental condition of the individual, that contains information on the individual's condition, the basis of
22 that information, individual, the basis of that knowledge, the beginning date of incompetence, the reason the individual
23 is incompetent, and, and if no longer incompetent, when the individual recovered competence.

24 (i) ~~The limitation of resources held for reserve for the budget unit shall be as follows:~~

25 (1) ~~for Family and Children's related categorically and medically needy cases, three thousand dollars~~
26 ~~(\$3,000.00) per budget unit;~~

27 (2) ~~for aged, blind, and disabled cases, two thousand dollars (\$2000.00) for a budget unit of one and~~
28 ~~three thousand dollars (\$3000.00) for a budget unit of two.~~

29 (i)(j) If the value of countable resources of the budget unit exceeds the reserve allowance for the unit as set out in the
30 Medicaid State Plan, unit, the case shall be ~~ineligible;~~ ineligible unless one of the following is met:

31 (1) For Family and Children's medically needy related cases and aged, blind, ~~blind~~ or disabled cases
32 protected by grandfathered provisions, and medically needy cases not protected by grandfathered
33 provision, eligibility shall begin on the day countable resources are reduced to allowable limits or
34 excess income is spent down, whichever occurs later;

35 (2) For categorically needy aged, blind, ~~blind~~ or disabled cases not protected by grandfathered
36 provisions, eligibility shall begin no earlier than the month countable resources are reduced to
37 allowable limits as of 11:59pm on the first moment of the first last day of the previous month.

1 ~~(j)(4)~~ Resources counted in the determination of financial eligibility for categorically needy aged, blind, ~~blind~~ and
2 disabled cases, and Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, Qualifying
3 Individual and Qualified Disabled Working Individual cases shall be based on resource standards and methodologies
4 in Title XVI of the Social Security Act except for the following methodologies:

- 5 (1) The value of personal effects and household goods shall be not counted.
- 6 (2) The value ~~Value~~ of tenancy in common interest in real property shall be not counted.
- 7 (3) The value ~~Value~~ of life estate interest in real property shall be not counted.
- 8 (4) The value ~~Value~~ of burial plots shall be not counted.
- 9 (5) The cash value of life insurance when the total face value of all cash value bearing life insurance
10 policies does not exceed ten thousand dollars (\$10,000.00) shall be not counted.

11 ~~(k)(4)~~ Resources counted in the determination of financial eligibility for medically needy aged, blind, ~~blind~~ and
12 disabled cases ~~is~~ shall be based on resource standards and methodologies in Title XVI of the Social Security Act
13 except for the following methodologies:

- 14 (1) The value of personal effects and household goods shall be not counted.
- 15 (2) The value ~~Value~~ of tenancy in common interest in real property shall be not counted.
- 16 (3) The value ~~Value~~ of life estate interest in real property is not counted.
- 17 (4) Individuals with resources in excess of the resource limit at 11:59pm on the last day of the previous
18 month, ~~the first moment of the month~~ may become eligible during the current month at the point
19 that resources are reduced to the allowable limit.
- 20 (5) The value ~~Value~~ of burial plots shall be not counted.
- 21 (6) The cash value of life insurance when the total face value of all cash value bearing life insurance
22 polities does not exceed ten thousand dollars (\$10,000.00) shall be not counted.

23 ~~(m) Resources counted in the determination of financial eligibility for categorically needy Family and Children's~~
24 ~~related cases shall be:~~

- 25 ~~(1) Cash on hand;~~
- 26 ~~(2) The balance of savings accounts, including savings of a student saving his earnings for school~~
27 ~~expenses;~~
- 28 ~~(3) The balance of checking accounts less the current monthly income that had been deposited to meet~~
29 ~~the budget unit's monthly needs when reserve was verified;~~
- 30 ~~(4) The portion of lump sum payments remaining after the month of receipt;~~
- 31 ~~(5) Cash value of life insurance policies owned by the budget unit;~~
- 32 ~~(6) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;~~
- 33 ~~(7) Patient accounts in long term care facilities;~~
- 34 ~~(8) Equity in non-essential personal property limited to:~~
 - 35 ~~(A) Mobile homes not used as home;~~
 - 36 ~~(B) Boats, boat trailers and boat motors;~~
 - 37 ~~(C) Campers;~~

1 (D) ~~— Farm and business equipment;~~

2 (E) ~~— Equity in vehicles in excess of one motor vehicle per adult;~~

3 ~~(l)(n)~~ Resources counted in the determination of financial eligibility for medically needy Family and Children's ~~related~~
4 cases are:

5 (1) Cash on hand;

6 (2) The balance of savings accounts, including savings of a student saving his or her earnings for school
7 expenses;

8 (3) The balance of checking accounts, ~~accounts~~ less the current monthly income at this time, ~~that had~~
9 ~~been~~ deposited to meet the budget unit's monthly needs when reserve was verified by the county
10 department of social services or lump sum income from self-employment deposited to pay annual
11 expenses;

12 (4) The cash ~~Cash~~ value of life insurance policies when the total face value of all policies that accrue
13 cash value exceeds one thousand five hundred dollars (\$1,500.00);

14 (5) Stocks, bonds, mutual fund shares, certificates of deposit, ~~deposit~~ and other liquid assets;

15 (6) Assets held in patient ~~Patient~~ accounts in long term care facilities;

16 (7) Equity in ~~non-essential~~, non-income producing personal property limited to:

17 (A) Mobile home not used as ~~home~~, home;

18 (B) Boats, boat trailers and boat ~~motors~~, motors;

19 (C) ~~Campers~~, Campers;

20 (D) Farm and business ~~equipment~~, equipment; and

21 (E) Equity in motor vehicles in excess of one vehicle per adult if not income-producing.

22 (m) Real property shall be excluded from countable resources for Family and Children's medically needy cases.

23 (n) One motor vehicle per adult shall be excluded for Family and Children's medically needy cases.

24 (o) For medically needy Family and Children's cases, income-producing vehicles and personal property shall be
25 excluded from countable resources.

26 (p) For family and children's medically needy cases, the value of non-excluded motor vehicles is the Current Market
27 Value as determined by the assessed county tax value, less encumbrances. If the client disagrees with the assigned
28 value, he or she has the right to rebut the value by producing independent evidence of value.

29 (q) There is no resource limit for Family and Children's categorically needy cases pursuant to 42 C.F.R. 435.603.

30
31 *History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-55; 108A-58; 42 U.S.C. 703; 42 U.S.C. 704; 703, 704*
32 *42 U.S.C. 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.603; 42 C.F.R. 435.711; 42*
33 *C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42*
34 *C.F.R. 435.843; 42 C.F.R. 435.845; 435-845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R.*
35 *233.20; 45 C.F.R. 233.51; S.L. 2002-126;*
36 *Eff. September 1, 1984;*

1 *Temporary Amendment Eff. September 1, 1985, for a period of 92 days to expire on December 1,*
2 *1985;*
3 *Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; March 1, 1993;*
4 *Temporary Amendment Eff. September 13, 1999;*
5 *Temporary Amendment Expired June 27, 2000;*
6 *Temporary Amendment Eff. September 12, 2000;*
7 *Amended Eff. March 19, 2001;*
8 *Temporary Amendment Eff. April 16, 2001;*
9 *Amended Eff. August 1, 2002;*
10 *Temporary Amendment Eff. March 1, 2003;*
11 *Amended Eff. August 1, 2004;*
12 *Transferred from 10A NCAC 21B .0310 Eff. May 1, 2012; ~~2012~~.*
13 *Readopted Eff. May 1, 2019.*
14

1 10A NCAC 23E .0203 is proposed for readoption with substantive changes as follows:

2
3 **10A NCAC 23E .0203 COUNTABLE INCOME**

4 (a) For ~~Family and Children's~~ family and children's medically needy cases, income from the following sources shall
5 be counted in the calculation of financial eligibility:

6 (1) Unearned.

7 (A) ~~RSDI~~ RSDI, as defined in 10A NCAC 23A .0102;

8 (B) Veteran's ~~Administration,~~ Administration;

9 (C) Railroad ~~Retirement,~~ Retirement;

10 (D) Pensions or retirement ~~benefits,~~ benefits;

11 (E) ~~Workmen's-Worker's Compensation,~~ Compensation;

12 (F) Unemployment ~~Compensation,~~ Compensation;

13 (G) All support payments, including child and spousal support; Support Payments,

14 (H) ~~Contributions,~~ Contributions;

15 (I) Dividends or interest from stocks, bonds, and other ~~investments,~~ investments;

16 (J) Trust fund ~~income,~~ income;

17 (K) Private disability or employment ~~compensation,~~ compensation;

18 (L) ~~That~~ The portion of educational loans, grants, and scholarships for ~~maintenance,~~
19 maintenance;

20 (M) Work ~~release,~~ release;

21 (N) Lump sum ~~payments,~~ payments;

22 (O) Military ~~allotments,~~ allotments;

23 (P) Brown Lung ~~Benefits,~~ Benefits;

24 (Q) Black Lung ~~Benefits,~~ Benefits;

25 (R) Trade Adjustment ~~benefits,~~ benefits;

26 (S) SSI when the client is in ~~long-term care,~~ long-term care;

27 (T) VA Aid and Attendance when the client is in ~~long-term care,~~ long-term care;

28 (U) Foster Care Board payments in excess of State ~~state~~ maximum rates for M-AF clients who
29 serve as foster ~~parents,~~ parents;

30 (V) Income allocated from an institutionalized spouse to the client who is the community
31 spouse as stated in 42 U.S.C. ~~1396r-5(d),~~ 1396r-5(d);

32 (W) Income allowed from an institutionalized spouse to the client who is a dependent family
33 member as stated in 42 U.S.C. ~~1396r-5(d),~~ 1396r-5(d);

34 (X) Sheltered Workshop ~~Income,~~ Income;

35 (Y) ~~Loans~~ Loans, if repayment of a loan and not counted in ~~reserve,~~ reserve; and

36 (Z) Income deemed to Family and Children's clients.

37 (2) Earned Income.

- 1 (A) Income from wages, salaries, and ~~commissions~~, commissions;
- 2 (B) Farm ~~income~~, Income;
- 3 (C) Small business income including ~~self-employment~~, self-employment;
- 4 (D) Rental ~~income~~, income;
- 5 (E) Income from roomers and ~~boarders~~, boarders;
- 6 (F) Earned income of a child client who is a part-time student and a full-time ~~employee~~,
- 7 employee;
- 8 (G) Supplemental payments in excess of state maximum rates for Foster Care Board payments
- 9 paid by the county to Family and Children's clients who serve as foster ~~parents~~, parents;
- 10 and
- 11 (H) VA Aid and Attendance paid to a budget unit member who provides the aid and attendance.

- 12 (3) Additional sources of income not listed in Subparagraphs (a)(1) or (2) of this Rule shall be
- 13 considered available unless specifically excluded by Paragraph (b) of this Rule, or by State or federal
- 14 regulation or statute.

15 (b) For family and children's medically needy cases, income from the following sources shall not be counted in the

16 calculation of financial eligibility:

- 17 (1) Earned income of a child who is a part-time student but is not a full-time employee;
- 18 (2) Earned income of a child who is a full-time student;
- 19 (3) Incentive payments and training allowances made to Work Incentives Network (WIN) ~~WIN~~ training
- 20 participants;
- 21 (4) Payments for supportive services or reimbursement of out-of-pocket expenses made to volunteers
- 22 serving as VISTA volunteers, foster grandparents, senior health aides, senior companions, Service
- 23 Corps of Retired Executives, Active Corps of Executives, Retired Senior Volunteer Programs,
- 24 Action Cooperative Volunteer Program, University Year for Action Program, and other programs
- 25 under Titles I, II, and III of Public Law 93-113;
- 26 (5) Foster Care Board payments equal to or below the state maximum rates for Family and Children's
- 27 clients who serve as foster parents;
- 28 (6) Income that is unpredictable, i.e., unplanned and arising only from time to time. Examples include
- 29 occasional yard work and sporadic babysitting;
- 30 (7) Relocation payments;
- 31 (8) Value of the coupon allotment under the Food and Nutrition Program (FNS); ~~Food Stamp Program~~;
- 32 (9) Food (vegetables, dairy products, and meat) grown by or given to a member of the household. The
- 33 amount received from the sale of home grown produce is earned income;
- 34 (10) Benefits received from the Nutrition Program for the Elderly;
- 35 (11) Food Assistance under the Child Nutrition Act and National School Lunch Act;
- 36 (12) Assistance provided in cash or in kind under any governmental, civic, or charitable organization
- 37 whose purpose is to provide social services or vocational rehabilitation. This includes V.R.

1 incentive payments for training, education, ~~education~~ and allowance for dependents, grants for
2 tuition, chore services under Title XX of the Social Security Act, and VA aid and attendance or aid
3 to the home bound if the individual is in a private living arrangement;

4 (13) Loans or grants such as the GI Bill, civic, honorary and fraternal club scholarships, loans, or
5 scholarships granted from private donations to the college, ~~ete.~~, except for any portion used or
6 designated for maintenance;

7 (14) Loans, grants, or scholarships to undergraduates for educational purposes made or insured under
8 any program administered by the U.S. Department of Education;

9 (15) Benefits received under Title VII of the Older Americans Act of 1965;

10 (16) Payments received under the Housing Choice Voucher (HCV) Program, formerly known as the
11 Experimental Housing Allowance Program (EHAP);

12 (17) In-kind shelter and utility contributions paid directly to the supplier. For Family and Children's
13 cases, shelter, utilities, or household furnishings made available to the client at no cost;

14 (18) Food/clothing contributions in Family and Children's cases (except for food allowance for persons
15 temporarily absent in medical facilities up to 12 months);

16 (19) Income of a child under 21 in the budget unit who is participating in the Job Training Partnership
17 Act JTPA and is receiving Medicaid as a child;

18 (20) Housing Improvement Grants approved by the N.C. Commission of Indian Affairs or funds
19 distributed per capital or held in trust for Indian tribe members under P.L. 92-254, P.L. 93-134 or
20 P.L. 94-540;

21 (21) Payments to Indian tribe members as permitted under P.L. 94-114;

22 (22) Payments made by Medicare to a home renal dialysis patient as medical benefits;

23 (23) ~~SSI SSI~~, except for individuals in ~~long-term~~ long-term care;

24 (24) HUD Section 8 benefits when paid directly to the supplier or jointly to the supplier and client;

25 (25) Benefits received by a client who is a representative payee for another individual who is incompetent
26 or incapable of handling his or her affairs. Such benefits ~~must~~ shall be accounted for by the county
27 department of social services separate from the payee's own income and resources;

28 (26) Special one time payments such as energy, weatherization assistance, or disaster assistance that is
29 not designated as medical;

30 (27) The value of the U.S. Department of Agriculture donated foods (surplus commodities);

31 (28) Payments under the Alaska Native Claims Settlement Act, Public Law 92-203;

32 (29) Any payment received under Title II of the Uniform Relocation Assistance and Real Property
33 Acquisition Policies Act of 1970;

34 (30) HUD Community Development Block Grant funds received to finance the renovation of a privately
35 owned residence;

36 (31) Reimbursement for transportation expenses incurred as a result of participation in the Community
37 Work Experience Program or for use of client's own vehicle to obtain medical care or treatment;

- 1 (32) Adoption assistance;
- 2 (33) Incentive payments made to a client participating in a vocational rehabilitation program;
- 3 (34) Title XX funds received to pay for services rendered by another individual or agency;
- 4 (35) Any amount received as a refund of taxes paid;
- 5 (36) The first fifty-dollars (\$50) of each child support/spousal obligation or military allotment paid
- 6 monthly to the budget unit in a private living ~~arrangement.~~ arrangement; and
- 7 ~~(37) Income from an Achieving a Better Life Experience (ABLE) program account, pursuant to Chapter~~
- 8 147, Article 67 of the North Carolina General Statutes.

9 (c) For aged, blind, and disabled cases, income counted in the determination of financial eligibility is shall be based

10 on standards and methodologies in Title XVI of the Social Security Act.

11 (d) For aged, blind, and disabled cases, income from the following sources shall not be counted:

- 12 (1) Any Cost of Living Allowance (COLA) increase or receipt of RSDI benefit, as defined in 10A
- 13 NCAC 23A .0102, benefit which that resulted in the loss of SSI for those qualified disabled and
- 14 working individuals described at 42 U.S.C. 1396d(s); ~~individuals described in 10A NCAC 23D~~
- 15 ~~.0101(17).~~
- 16 (2) Earnings for those individuals who have a plan for achieving self-support (PASS) that is approved
- 17 by the Social Security Administration; and Administration.
- 18 ~~(3) Income from an Achieving a Better Life Experience (ABLE) program account, pursuant to Chapter~~
- 19 147, Article 67 of the North Carolina General Statutes.

20 (e) Income levels for purposes of establishing eligibility are those amounts approved by the N.C. General Assembly

21 and stated in the Appropriations Act for categorically needy and medically needy classifications, except for the

22 following:

- 23 (1) The income level shall be reduced by one-third when an aged, blind, blind or disabled individual
- 24 lives in the household of another person and does not pay his or her proportionate share of household
- 25 expenses. The one-third reduction shall not apply to children under nineteen years of age who live
- 26 in the home of their parents;
- 27 (2) An individual living in a long term care facility or other medical institution shall be allowed as
- 28 income level deduction for personal needs described under the Medicaid State Plan; Rule .0204
- 29 (Personal Needs Allowance) of this Section; and
- 30 ~~(3) The categorically needy income level for an aged, blind, and disabled individual or couple is 100%~~
- 31 ~~of the Federal Poverty Level;~~
- 32 ~~(3)(4)~~ (3)(4) The income level to be applied for Qualified Medicare Beneficiaries described in 42 U.S.C. 1396d
- 33 and individuals described in 42 U.S.C. 1396e is based on the income level for one; or two for a
- 34 married couple who live together and both receive Medicare.

35 (f) Income for Family and Children's categorically needy cases is determined pursuant to 42 C.F.R. 435.603.

36

1 *History Note:* *Filed as a Temporary Rule Effective July 1, 1987, for a period of 120 days to expire on October 31,*
2 *1987;*
3 *Authority G.S. 108A-25(b); 108A-54; 108A-54.1B; ~~108A-61~~; 42 C.F.R. 435.135; 42 C.F.R. 435.603;*
4 *~~42 C.F.R. 435.731~~; ~~42 C.F.R. 435.732~~; 42 C.F.R. 435.733; 42 C.F.R. 435.811; ~~42 C.F.R. 435-812~~;*
5 *42 C.F.R. 435.831; 42 C.F.R. 435.832; 42 C.F.R. 435.1007; 45 C.F.R. 233.20; 42 U.S.C 1383c(b);*
6 *42 U.S.C 1383c(d); P.L. 99-272, ~~99-272~~; Section 12202; Alexander v. Flaherty Consent Order filed*
7 *February 14, 1992;*
8 *Eff. September 1, 1984;*
9 *Amended Eff. January 1, 1996; January 1, 1995; September 1, 1994; September 1, 1993;*
10 *Temporary Amendment Eff. February 23, 1999;*
11 *Amended Eff. August 1, 2000;*
12 *Transferred from 10A NCAC 21B .0312 Eff. May 1, 2012; ~~2012~~.*
13 *Readopted Eff. May 1, 2019.*
14

1 10A NCAC 23E .0204 is proposed for readoption as a repeal as follows:

2

3 **10A NCAC 23E .0204 PERSONAL NEEDS ALLOWANCE**

4

5 *History Note: Authority G.S. 108A-25(b); 42 C.F.R. 435.135; 42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R.*
6 *435.733; 42 C.F.R. 435.831; 42 U.S.C. 1383c(b); 42 U.S.C. 1383c(d);*
7 *Eff. September 1, 1994;*
8 *Transferred from 10A NCAC 21B .0313 Eff. May 1, 2012; ~~2012~~.*
9 *Repealed Eff. May 1, 2019.*

10

1 10A NCAC 23E .0205 is proposed for re adoption with substantive changes as follows:

2

3 **10A NCAC 23E .0205 BUDGET UNIT MEMBERSHIP**

4

5 In aged, blind, and disabled cases and medically needy cases, the budget unit shall include individuals ~~Individuals~~
6 who are required by federal and state law to be financially responsible for the support of each other or other
7 dependents. dependents shall be included in the budget unit. In all other categorically needy cases, the budget unit is
8 determined pursuant to 42 C.F.R. 435.603, which is adopted and incorporated by reference with subsequent changes
9 or amendments and available free of charge at <https://www.ecfr.gov/>.

10

11 *History Note: Authority G.S. 108A-54; 108A-54.1B; ~~108A-80~~; 42 C.F.R. 435.602; 42 C.F.R. 435.603; 45 C.F.R.*
12 *233.51;*
13 *Eff. September 1, 1984;*
14 *Amended Eff. August 1, 1990;*
15 *Transferred from 10A NCAC 21B .0401 Eff. May 1, 2012; ~~2012~~.*
16 *Readopted Eff. May 1, 2019.*

17

1 10A NCAC 23E .0206 is proposed for re-adoption as a repeal as follows:

2

3 **10A NCAC 23E .0206 FINANCIAL RESPONSIBILITY AND DEEMING**

4

5 *History Note: Authority G.S. 108A-54; 143-127.1; S.L. 1983, c. 761, s. 60(6); S.L. 1983, c. 1034; S.L. 1983, c.*
6 *1116; 42 C.F.R. 435.602; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R.*
7 *435.823;*

8 *Eff. September 1, 1984;*

9 *Temporary Amendment Eff. April 1, 1990 for a period of 180 days to expire on September 30, 1990;*

10 *Amended Eff. January 1, 1995; September 1, 1992; October 1, 1990; August 1, 1990;*

11 *Temporary Amendment Eff. January 1, 2003;*

12 *Temporary Amendment Expired October 12, 2003;*

13 *Transferred from 10A NCAC 21B .0402 Eff. May 1, 2012; ~~2012~~.*

14 *Repealed Eff. May 1, 2019.*

15

1 10A NCAC 23E .0207 is proposed for readoption with substantive changes as follows:

2
3 **10A NCAC 23E .0207 WHOSE RESOURCES ARE COUNTED RESERVE**

4 (a) The value of resources held by the client or by a financially responsible person shall be considered by the county
5 department of social services to be available to the client in determining countable reserve for the budget unit.

6 (b) Jointly owned resources shall be counted as follows:

7 (1) The value of resources owned jointly with a person who is not a member of the client's budget unit
8 ~~non-financially responsible person~~ who is a recipient of another public assistance budget unit shall
9 be divided in parts of equal value equally between the budget units;

10 (2) The value of liquid assets and personal property owned jointly with a person who is not a member
11 of the client's budget unit ~~non-financially responsible person~~ who is also not a client of another
12 public assistance budget unit shall be available to the client budget-unit member if he or she can
13 dispose of the resource without the consent and participation of the joint-owner or the joint-owner
14 ~~other owner or the other owner~~ consents to and, if necessary, participates in the disposal of the
15 resource;

16 (3) The client's share of the value of real property owned jointly with a person who is not a member of
17 the client's budget unit ~~non-financially responsible person~~ who is also not a member of another
18 public assistance budget unit shall be available to the client budget-unit member if he or she can
19 dispose of his or her share of the resource without the consent and participation of the joint-owner
20 or the joint-owner ~~other owner or the other owner~~ consents to and, if necessary, participates in the
21 disposal of the resource.

22 (c) The terms of a separation agreement, divorce decree, will, deed or other legally binding agreement or legally
23 binding order shall take precedence over ownership of resources as stated in (a) and (b) of this Rule, except as provided
24 in Paragraph ~~(k)~~ (g) of this Rule.

25 (d) For all aged, blind, and disabled cases, the resource limit, financial responsibility, and countable and non-countable
26 assets ~~are shall be~~ based on standards and methodology in Title XVI of the Social Security Act except as specified in
27 ~~Items (4) and (5) in~~ Rule .0202 of this Section.

28 (e) Countable resources for Family and Children's medically needy ~~related~~ cases shall be determined as follows:

29 (1) The resources of a spouse, who is not a stepparent, shall be counted in the budget unit's reserve
30 allowance if: #

31 (A) the spouses live together; ~~together~~ or

32 (B) one spouse is temporarily absent for twelve months or less in long-term ~~long-term~~ care and
33 the spouse is not a member of another public assistance budget unit;

34 (2) The resources of a client and a financially responsible parent or parents shall be counted in the
35 budget unit's reserve limit if: #

36 (A) the parents live together; ~~together~~ or

1 (B) one parent is temporarily absent for twelve months or less in long-term ~~long-term~~ care and
2 the parent is not a member of another public assistance budget unit;

3 (3) The resources of the parent or parents shall not be considered if a child under age 21 requires care
4 and treatment in a medical institution and his or her physician certifies that the care and treatment
5 are expected to exceed 12 months.

6 ~~(f) Real property shall be excluded from countable resources for Family and Children's related cases.~~

7 ~~(g) One motor vehicle per adult shall be excluded for Family and Children's related cases.~~

8 ~~(h) For medically needy family and children's related cases, income producing vehicles and personal property shall
9 be excluded from countable resources.~~

10 ~~(i) For family and children's related cases the value of non-excluded motor vehicles is the Current Market Value, less
11 encumbrances. If the applicant/recipient disagrees with the assigned value, he has the right to rebut the value.~~

12 ~~(f)(j)~~ For a married individual:

13 (1) Resources available to the individual are available to his or her spouse who is a noninstitutionalized
14 applicant or recipient and who is either living with the individual or temporarily absent for twelve
15 months or less from the home, irrespective of the terms of any will, deed, contract, antenuptial
16 agreement, or other agreement, and irrespective of whether or not the individual actually contributed
17 the resources to the applicant or recipient. All resources available to an applicant or recipient under
18 the rules of this Section must be considered by the county department of social services when
19 determining his or her countable reserve.

20 (2) For an institutionalized spouse as defined in 42 U.S.C. 1396r-5(h), available resources shall be
21 determined in accordance with 42 U.S.C. 1396r-5(c), except as specified in Paragraph ~~(g)~~ ~~(m)~~ of
22 this Rule.

23 ~~(g)(k)~~ For an institutionalized individual, the availability of resources are determined in accordance with 42 U.S.C.
24 1396r-5. Resources of the community spouse ~~are~~ shall not be counted for the institutionalized spouse when:

25 (1) Resources of the community spouse cannot be determined or cannot be made available to the
26 institutionalized spouse because the community spouse cannot be located; or

27 (2) The couple has been continuously separated for 12 months at the time the institutionalized spouse
28 enters the institution.

29
30 *History Note:* *Authority G.S. 108A-54; 108A-54.1B; 108A-55; S.L. 1983, c. 1116; 42 U.S.C. 1396r-5; 42 U.S.C.*
31 *1396a(a)(17); 42 U.S.C. 1396a(a)(51); 42 C.F.R. 435.602; 42 C.F.R. 435.711; 42 C.F.R. 435.712;*
32 *42 C.F.R. 435.723; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R. 435.822; 42 C.F.R. 435.823;*
33 *42 C.F.R. 435.724; 42 C.F.R. 435.726; 42 C.F.R. 435.733; 42 C.F.R. 435.735; 42 C.F.R. 435.840;*
34 *42 C.F.R. 435.832; 42 C.F.R. 435.845; 45 C.F.R. 233.20; 45 C.F.R. 233.51; Deficit Reduction Act*
35 *of 1984 (P.L. 98-369), Section 2373; Correll v. DSS/DMA/DHR, 418 S.E.2d 232 (1992); No.*
36 *406PA91 (North Carolina Supreme Court); Schweiker v. Gray Panthers, 453 U.S. 34, 101 S.Ct.*
37 *2633, 69 L. Ed.2d 460 (1981);*

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Eff. September 1, 1984;
Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; April 1, 1993;
Temporary Amendment Eff. September 13, 1999;
Temporary Amendment Expired June 27, 2000;
Temporary Amendment Eff. September 12, 2000;
Amended Eff. August 1, 2002;
Transferred from 10A NCAC 21B .0403 Eff. May 1, 2012; ~~2012~~.
Readopted Eff. May 1, 2019.

1 10A NCAC 23E .0208 is proposed for readoption with substantive changes as follows:

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3 **10A NCAC 23E .0208 CALCULATING INCOME**

4 (a) Income that is actually available and ~~that which~~ the client or someone acting in his or her behalf has the legal
5 authority to ~~can legally~~ make available for support and maintenance shall be counted as income.

6 (b) Only income actually available or predicted by the county department of social services to be available to the
7 budget unit for the certification period, as defined in 10A NCAC 23A .0102, ~~period~~ for which eligibility is being
8 determined shall be counted as income.

9 (c) For aged, blind, and disabled cases allowable disregards from income ~~are~~ shall be based on Title XVI of the Social
10 Security Act.

11 (d) Deductions subtracted after allowable disregards are:

12 (1) Incapacitated adult care not to exceed one hundred and seventy-five dollars (\$175.00) per adult for
13 Family and Children's medically needy cases.

14 (2) Child ~~or incapacitated adult~~ care not to exceed one hundred and seventy-five dollars (\$175.00) per
15 child over two years of age ~~or adult~~ or two hundred dollars (\$200.00) per child under two years of
16 age for Family and Children's medically needy ~~related~~ cases.

17 (3)(2) A standard deduction of ninety dollars (\$90.00) from the total earned income of each budget unit
18 member for Family and Children's medically needy ~~related~~ cases.

19 (4)(3) For aged, blind, and disabled cases allowable deductions from income are based on Title XVI of the
20 Social Security Act.

21 (e) Except for M-PW, as defined in 10A NCAC 23A .0102, ~~M-PW~~ the monthly amount of wages, income, and
22 deductions ~~wage deductions and work related expenses~~ shall be calculated by converting the average amount received
23 by frequency ~~per pay period~~ into a monthly amount as follows: ~~amount:~~

24 (1) If ~~received paid~~ weekly, multiply by 4.3.

25 (2) If ~~received paid~~ bi-weekly, multiply by 2.15.

26 (3) If ~~received paid~~ semi-monthly, multiply by 2.

27 (4) If ~~received paid~~ monthly, use the monthly gross.

28 (5) If salaried, and contract renewed annually, divide annual income ~~etc.~~ by 12.

29 (f) For M-PW cases, the budget unit's actual income for the calendar month of eligibility shall be verified by the
30 county department of social services, ~~verified.~~

31
32 *History Note: Authority G.S. 108A-25(b); 108A-54; 108.54.1B; 42 C.F.R. 435.121; 42 C.F.R. 435.401; 42 C.F.R.*
33 *435.603; ~~42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.734; 42 C.F.R. 435.812; 42 C.F.R.~~*
34 *435.831; 45 C.F.R. 435.845; ~~45 C.F.R. 435.851~~; 45 C.F.R. 233.20; 45 C.F.R. 233.51;*

35 *Eff. September 1, 1984;*

36 *Amended Eff. January 1, 1995; August 1, 1990; March 1, 1986;*

37 *Temporary Amendment Eff. August 22, 1996;*

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Amended Eff. August 1, 1998;

Transferred from 10A NCAC 21B .0404 Eff. May 1, 2012; ~~2012~~.

Readopted Eff. May 1, 2019.

1 10A NCAC 23E .0209 is proposed for readoption without substantive changes as follows:

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3 **10A NCAC 23E .0209 DEDUCTIBLE**

4 (a) ~~A Deductible~~ deductible shall apply to a client in the following arrangements:

- 5 (1) In ~~the community, in~~ private living quarters in the community; ~~quarters;~~ ~~or~~
- 6 (2) In a residential group facility; or
- 7 (3) In a long-term ~~long-term~~ care living arrangement when the client:
- 8 (A) Has enough income monthly to pay the Medicaid reimbursement rate for 31 days, but does
- 9 not have enough income to pay the private rate plus all other anticipated medical costs; ~~or~~
- 10 (B) Is under a sanction due to a transfer of resources as specified in the Medicaid State Plan;
- 11 ~~10A NCAC 21B .0311;~~ ~~or~~
- 12 (C) Does not yet have documented prior approval for Medicaid payment of nursing home care;
- 13 ~~or~~
- 14 (D) Resided in a newly-certified ~~newly-certified~~ facility in the facility's month of certification;
- 15 ~~or~~
- 16 (E) Chooses to remain in a decertified facility beyond the last date of Medicaid payment; or
- 17 (F) Is under a Veterans Administration (VA) contract for payment of cost of care in the nursing
- 18 home.

19 (b) The client or his or her representative shall be responsible for providing bills, receipts, insurance benefit

20 statements, ~~statements~~ or Medicare EOBs ~~EOB~~ to establish incurred medical expenses and his or her responsibility

21 for payment. If the client has no representative and he or she is physically or mentally incapable of accepting this

22 responsibility, the county shall assist him or her in obtaining verification. ~~him.~~

23 (c) Expenses shall be applied to the deductible when they meet the following criteria:

- 24 (1) They ~~The expenses~~ are for medical care or service recognized under State ~~state~~ or federal tax law;
- 25 (2) They ~~The~~ are incurred by a budget unit member; and
- 26 (3) They are incurred:
- 27 (A) During the certification period for which eligibility is being determined and the
- 28 requirements of Paragraph (d) of this Rule are met; or
- 29 (B) Prior to the certification period and the requirements of Paragraph (e) of this Rule are met.

30 (d) Medical expenses incurred during the certification period shall be applied to the deductible if the requirements in

31 Paragraph (c) of this Rule are met and:

- 32 (1) The expenses are not subject to payment by any third party including insurance, government agency
- 33 or program, ~~program~~ except when such the program is entirely funded by state or local government
- 34 funds, or private source; ~~or~~
- 35 (2) The private insurance has not paid such expenses by the end of the application time standard; ~~or~~
- 36 (3) For certified cases, the insurance has not paid by the time that incurred expenses equal the deductible
- 37 amount; or

- 1 (4) The third party has paid and the client is responsible for a portion of the charges.
- 2 (e) The unpaid balance of a Medical expense incurred prior to the certification period shall be applied to the deductible
3 if the requirements in Paragraph (c) of this Rule are met and:
- 4 (1) The medical expense was:
- 5 (A) Incurred within 24 months immediately prior to:
- 6 (i) The month of application for prospective or retroactive certification period or
7 both; or
- 8 (ii) The first month of any subsequent certification period; or
- 9 (B) Incurred prior to the period described in Subparagraph (e)(1)(A) of this ~~Rule, Rule~~; and a
10 payment was made on the bill during that period; and
- 11 (2) The medical expense:
- 12 (A) Is a current liability;
- 13 (B) Has not been applied to a previously met deductible; and
- 14 (C) Insurance has paid any amount of the expense covered by the insurance.
- 15 (f) The county department of social services shall apply incurred ~~Incurred~~ medical expenses ~~shall be applied~~ to the
16 deductible in chronological order of charges except that:
- 17 (1) If medical expenses for Medicaid covered services and non-covered services occur on the same date,
18 apply charges for non-covered services first; and
- 19 (2) If both hospital and other covered medical services are incurred on the same date, apply hospital
20 charges first; and
- 21 (3) If a portion of charges is still owed after insurance payment has been made for lump sum charges,
22 compute incurred daily expense to be applied to the deductible as follows:
- 23 (A) Determine the average daily charge, calculated by adding the charges and dividing by the
24 number of days, charge excluding discharge date from hospitals; ~~and~~
- 25 (B) Determine the average daily insurance payment, calculated by adding the insurance
26 payments and dividing by the number of days, payment for the same number of days; and
- 27 (C) Subtract average daily insurance payment from the average daily charge to establish client's
28 daily responsibility.
- 29 (g) Eligibility shall begin on the day that incurred medical expenses reduce the deductible to \$0, except that the client
30 is financially liable for the portion of medical expenses incurred on the first day of eligibility that were applied to
31 reduce the deductible to \$0. If hospital charges were incurred on the first day of eligibility, notice of the amount of
32 those charges applied to meet the deductible shall be sent to the hospital for deduction on the hospital's bill to Medicaid.
- 33 (h) The receipt of proof of medical expenses and other verification shall be documented by the county department of
34 social services in the case record.
- 35

1 *History Note: Authority G.S. 108A-54; 108A-54.1B; ~~42 C.F.R. 435.732~~; 42 C.F.R. 435.831; Alexander v.*
2 *Flaherty, U.S.D.C., W.D.N.C., File Number C-C-74-483; Alexander v. Flaherty Consent Order filed*
3 *February 14, 1992;*
4 *Eff. September 1, 1984;*
5 *Amended Eff. June 1, 1994; September 1, 1993; April 1, 1993; August 1, 1990;*
6 *Transferred from 10A NCAC 21B .0406 Eff. May 1, 2012; ~~2012~~.*
7 *Readopted Eff. May 1, 2019.*

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1 10A NCAC 23E .0210 is proposed for readoption without substantive changes as follows:

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3 **10A NCAC 23E .0210 PATIENT LIABILITY**

4 (a) Patient liability shall apply to clients who live in facilities for skilled nursing, intermediate nursing, intermediate
5 ~~care facility for individuals with an intellectual disability, nursing for mental retardation~~ or other medical institutions.

6 (b) The client's patient liability for cost of care shall be computed as a monthly amount after deducting the following
7 from his or her total income:

8 (1) An amount for his or her personal needs as established under the Medicaid State Plan; Rule .0204
9 ~~of this Section;~~

10 (2) Income given to the community spouse to provide him or her a total monthly income from all
11 sources, equal to the "minimum monthly maintenance needs allowance" as defined in 42 U.S.C.
12 1396r-5(d)(3)(A); 1396r-5(d)(3)(A)(i);

13 (3) Income given to family members described in 42 U.S.C. 1396r-5(d)(1), to provide each, from all
14 sources of income, a total monthly income equal to:

15 (A) One-third of the amount established under 42 U.S.C. 1396r-5(d)(3)(A)(i); or

16 (B) Where there is no community spouse, an amount for the number of dependents, based on
17 the income level for the corresponding budget unit number, as approved by the NC General
18 Assembly and stated in the Appropriations Act for categorically and medically needy
19 classifications;

20 (4) The income maintenance level provided by 42 U.S.C. 1396r-5(d)(3)(A)(i) or State statute for a
21 single individual in a private living arrangement with no spouse or dependents at home, for whom
22 the physician of record has provided a written statement that the required treatment is such that the
23 patient is expected to return home within six months, shall be allowed by the county department of
24 social services; allowed; and

25 (5) An amount for unmet medical needs as determined under Paragraph (f) of this Rule.

26 (c) Patient liability shall apply to institutional charges incurred from the date of admission or the first day of the month
27 ~~as appropriate~~ and shall not be prorated by days if the client lives in more than one institution during the month.

28 (d) The county department of social services shall notify the client, the institution, the institution and the State state
29 of the amount of the monthly liability and any changes or adjustments.

30 (e) When the patient liability as calculated in Paragraph (b) of this Rule exceeds the Medicaid reimbursement rate for
31 the institution for a 31-day 31-day month:

32 (1) The patient liability shall be the institution's Medicaid reimbursement rate for a 31-day 31-day month
33 and; month;

34 (2) The client shall be placed on a deductible determined in accordance with Federal regulations,
35 regulations and Rules .0208 and .0209 of this Section Section, and the Medicaid State Plan, 10A
36 NCAC 23G .0101.

37 (f) The amount deducted from income for unmet medical needs shall be determined as follows:

- 1 (1) Unmet medical needs shall be the costs of:
- 2 (A) Medical care covered by the program ~~but~~ that exceeds limits on coverage of that care and
- 3 ~~that~~ is not subject to payment by a third party;
- 4 (B) Medical care recognized under State and Federal tax law that is not covered by the program
- 5 and that is not subject to payment by a third party; and
- 6 (C) Medicare and other health insurance premiums, deductibles, or coinsurance charges that
- 7 are not subject to payment by a third party.
- 8 (2) The amount of unmet medical needs deducted from the patient's monthly income shall be limited to
- 9 monthly charges for Medicare and other health insurance premiums.
- 10 (3) The actual amount of incurred costs ~~which~~ that are the patient's responsibility shall be deducted
- 11 when reported from the patient's liability for one or more months.
- 12 (4) Incurred costs shall be reported by the end of the six-month ~~six-month~~ Medicaid certification period
- 13 following the certification period in which they were incurred.
- 14

15 *History Note: Authority G.S. 108A-54; 108A-54.1B; ~~42 C.F.R. 435.732~~; 42 C.F.R. 435.733; 42 C.F.R. 435.831;*

16 *42 C.F.R. 435.832; 42 U.S.C. 1396r-5;*

17 *Eff. September 1, 1984;*

18 *Amended Eff. September 1, 1994; March 1, 1991; August 1, 1990; March 1, 1990;*

19 *Transferred from 10A NCAC 21B .0407 Eff. May 1, 2012; ~~2012~~.*

20 *Readopted Eff. May 1, 2019.*

21

1 10A NCAC 23E .0211 is proposed for readoption without substantive changes as follows:

2
3 **10A NCAC 23E .0211 ALIEN SPONSOR DEEMING**

4 (a) For purposes of this Rule, a “sponsored alien” ~~sponsored alien is~~ means an alien who is lawfully admitted for
5 permanent residence sponsored by an individual who has signed an Affidavit of Support required by U.S. Citizenship
6 and Immigration Services. ~~the Bureau of Citizenship and Immigration Services.~~

7 (b) For purposes of this Rule, a “sponsor” ~~sponsor is~~ means a person who signed an Affidavit of Support on behalf
8 of an alien as a condition of the alien's entry or admission to the United States. The sponsor is financially responsible
9 for the ~~alien~~ alien, ~~so~~ and the sponsor's income ~~shall~~ must be counted by the county department of social services in
10 determining an alien's eligibility for medical assistance.

11 (c) An indigent alien ~~is~~ shall be exempt from Paragraph (b) of this Rule if the sum of Subparagraphs (1), (2), and (3)
12 of this Paragraph does not exceed 130 percent of the poverty income guidelines, which are adopted and incorporated
13 by reference with subsequent changes or amendments and available free of charge at <https://aspe.hhs.gov/poverty->
14 guidelines. ~~guidelines.~~

- 15 (1) The sum of the sponsored alien's own income;
16 (2) The cash contributions of the sponsor and others; and
17 (3) The value of any in-kind assistance the sponsor and others provide the alien.

18 (d) The countable income of a sponsor is determined in accordance with Rules .0203 and .0208 of this Section and
19 the Medicaid State Plan. ~~Section. Rule .0206 of this Section applies for situations in which the sponsor is the spouse~~
20 ~~or a parent.~~

21 (e) The countable resources of a sponsor ~~are~~ shall be determined in accordance with Rules .0202 ~~10A NCAC 21B~~
22 ~~.0311 and Rule .0207 of this Section.~~

23 (f) Third party verification, as defined by 10A NCAC 23A .0102, ~~verification~~ of the following is required for:

- 24 (1) sponsorship;
25 (2) a sponsor's income; and
26 (3) a sponsor's resources.

27 The application shall be denied if verification is not received by the processing deadline set out in 42 C.F.R. 435.912.
28 ~~deadline.~~

29
30 *History Note: Authority G.S. 108A-25(b); 108A-54; 108A-54.1B; 108A-55; P.L. 104-208, Title II; ~~104-208~~; P.L.*
31 *105-33, Title IV; ~~105-33~~;*
32 *Temporary Adoption Eff. July 3, 2003;*
33 *Eff. March 1, 2004;*
34 *Transferred from 10A NCAC 21B .0410 Eff. May 1, 2012; ~~2012~~.*
35 *Readopted Eff. May 1, 2019.*
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