

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.12(c) that the Department of Health and Human Services, Division of Health Benefits intends to readopt with substantive changes the rule cited as 10A NCAC 22F .0301.

Public Hearing:

Date: January 25, 2019

Time: 1:00-3:00 p.m.

Location: Dix Campus, Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC 27603

Reason for Agency Action: *This Rule was objected to by the RRC at the June 14, 2018, August 16, 2018, and September 20, 2018 meetings. At its November 15, 2018 meeting, this Rule was approved by the RRC, but the RRC found that the rewritten rule submitted in response to their objection resulted in substantial changes to the Rule as referenced in 150B-21.12(c). As such, this Rule must be "published and reviewed in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b)."*

Comment Procedures: *Comments from the public shall be directed to: Ryan Eppenberger, DHB Rulemaking Coordinator, NC DHHS Division of Health Benefits, 2501 Mail Service Center, Raleigh, NC 27699-2501; email MedicaidRulesComments@dhhs.nc.gov. The comment period begins January 9, 2019 and ends January 31, 2019.*

CHAPTER 22 - MEDICAL ASSISTANCE ELIGIBILITY

SUBCHAPTER 22F - PROGRAM INTEGRITY

SECTION .0300 - PROVIDER ABUSE

10A NCAC 22F .0301 DEFINITION OF PROVIDER PROGRAM ABUSE BY PROVIDERS

Provider abuse [Abuse, defined as provided by 42 C.F.R. 455.2, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>,] includes any Program abuse by providers as used in this Chapter consists of incidents, services, or practices inconsistent with accepted fiscal or medical practices which cause financial loss to the Medicaid program or its beneficiaries, or which are not reasonable or which are not necessary, including: ~~necessary including,~~ [includes] for example, the following:

- (1) billing for care or services at a frequency or amount that is not medically necessary, as defined by 10A NCAC 25A .0201; [~~overutilization~~] ~~Overutilization of medical and health care and [services;] services.~~
- (2) separate Separate billing for care and services that are:
 - (a) part of an all-inclusive procedure; procedure, or
 - (b) included in the daily per-diem rate; rate.
- (3) billing Billing for care and services that are provided by an [~~unauthorized or~~] unlicensed person or person who does not meet the requirements set out in the Medicaid State Plan or Clinical Coverage Policies for the care or services, as allowed by law; [~~person;~~] ~~person.~~
- (4) failure to provide and maintain, within accepted medical standards for the community, quality of care;
- (5)(4) failure Failure to provide and maintain within accepted medical standards for the community, as set out in 10A NCAC 25A .0201, medically necessary care and services; [.0201;] ~~community;~~
 - (a) proper quality of care,
 - (b) appropriate care and services, or
 - (c) medically necessary care and [services; or] services.
- (6)(5) [~~breach~~] Breach of the terms and conditions of [~~the Provider Administrative Participation Agreement,~~] participation agreements, or a failure to comply with requirements of certification certification, or failure to comply with the terms and conditions for the submission of claims set out in Rule .0104(e) of this Subchapter; ~~provisions of the claim form.~~
- (7) abuse as defined by 42 C.F.R. 455.2, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>;
- (8) cause for termination as described in 42 C.F.R. 455.101, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>;
- (9) violations of State and federal Medicaid statutes, federal Medicaid regulations, the rules of this Subchapter, the State Medicaid Plan, and Medicaid Clinical Coverage policies;
- (10) failure to notify the Division of Health Benefits (Division) within 30 calendar days of learning of any adverse action initiated against any required license, certification, registration, accreditation, or endorsement of the provider or any of its officers, agents, or employees;
- (11) billing the Medicaid beneficiary or any other person for items and services reimbursed by the Division;
- (12) discounting client accounts to a third party agent or paying a third party agent a percentage of the amount collected;
- (13) failure to refund any monies received in error to the Division within 30 calendar days of discovery;

- (14) failure to file mandatory reports or required disclosures with the Division within the time-frames established in federal or state statute, rule, or regulation;
- (15) billing for claims that are inaccurate, incomplete, or not personally provided by the provider, its employees, or persons with whom the provider has contracted to render services, under its direction;
- (16) billing for services provided at or from a site location not associated with the approved provider number, except for hospital services as set forth in 42 C.F.R. 413.65;
- (17) failure to notify the Division in writing of any change in information contained in the Medicaid provider enrollment application within 30 calendar days of the event triggering the reporting obligation;
- (18) failure to retain or submit to the Division upon request documentation for services billed to the Division;
- (19) failure to grant the Division access to provider facilities upon the Division's request; or
- (20) failure to perform services or supply goods in accordance with all requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the 1973 Rehabilitation Act, the 1975 Age Discrimination Act, the 1990 Americans With Disabilities Act, Section 1557 of the Affordable Care Act, and all applicable federal and state statutes, rules, and regulations relating to the protection of human subjects of research.

~~The foregoing examples do not restrict the meaning of the general definition.~~

Authority G.S. 108A-25(b); 108A-54; 108A-54.1B; 108A-54.2; 108A-63; 42 C.F.R. Part 455; 455, Subpart C.