

CHAPTER 75-03-23
PROVISION OF HOME AND COMMUNITY-BASED SERVICES UNDER THE
SERVICE PAYMENTS FOR ELDERLY AND DISABLED PROGRAM AND THE
MEDICAID WAIVER FOR THE AGED AND DISABLED PROGRAM

Section	
75-03-23-01	Definitions
75-03-23-02	Eligibility Criteria
75-03-23-03	Eligibility Determination - Authorization of Services
75-03-23-04	Eligibility Criteria for Medicaid Waiver Program
75-03-23-05	Services Covered Under the SPED Program - Programmatic Criteria
75-03-23-06	Services Covered Under the Medicaid Waiver Program - Programmatic Criteria
75-03-23-07	Qualified Service Provider Standards and Agreements
75-03-23-08	Denial of Application to Become a Qualified Service Provider
75-03-23-08.1	Sanctions and Termination of Qualified Service Providers
75-03-23-09	Payment Under the SPED Program and the Medicaid Waiver Program
75-03-23-10	Department to Recover Funds Upon Establishment of Noncompliance
75-03-23-11	Denial, Reduction, and Termination of Services - Appeal
75-03-23-12	Provider - Request for Review
75-03-23-13	Provider - Appeals
75-03-23-14	Disqualifying Transfers
75-03-23-15	Application - Applicant Required to Provide Proof of Eligibility
75-03-23-16	Reapplication After Denial or Termination
75-03-23-17	Functional Assessment

SECTION 1: Section 75-03-23-01 is amended as follows:

75-03-23-01. Definitions.

The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-06.2. In addition, as used in this chapter:

1. "Activities of daily living" means the daily self-care personal activities that include bathing, dressing or undressing, eating or feeding, toileting, continence, transferring in and out of bed or chair or on and off the toilet, and mobility inside the home.
2. "Adaptive assessment" means an evaluation to identify adaptive devices, equipment, or modifications that enhance the independence and functional capabilities of an individual who may otherwise be unable to remain in the individual's home.
3. "Aged" means sixty-five years of age or older.

4. ~~"Client" means an individual who meets the eligibility requirements and is receiving services reimbursed under North Dakota Century Code chapter 50-06.2 or this chapter.~~
5. "Congenital disability" means a disability that exists at birth or shortly thereafter, and is not attributable to a diagnosis of either mental retardation or a closely related condition of mental retardation.
- 6.5. "Department" means the North Dakota department of health and human services.
- 7.6. "Designee" means a person that enrolls as a qualified service provider to provide case management services for the Medicaid waiver program.
- 8.7. "Disability due to trauma" means a disability that results from an injury or assault to the body by an external force.
- 9.8. "Disability that is acquired" means a disability that results from an assault that occurs internally within the body.
- 10.9. "Disabled" means under age sixty-five with a congenital disability, a disability due to trauma, or a disability that is acquired.
10. "Eligible individual" means an individual who meets the eligibility requirements and is receiving services reimbursed under North Dakota Century Code chapter 50-06.2 or this chapter.
11. "Functional assessment" means an instrument used to record basic demographic and medical information about an individual, including age, date of birth, spoken language, marital status, individuals residing with, emergency contacts, medical resources, health care coverage, and source and reason for referral; and to secure measurable information regarding:
 - a. Physical health;
 - b. Cognitive and emotional functioning;
 - c. Activities of daily living;
 - d. Instrumental activities of daily living;
 - e. Informal supports;
 - f. Need for twenty-four-hour supervision;
 - g. Social participation;

- h. Physical environment;
 - i. Financial resources;
 - j. Adaptive equipment;
 - k. Environmental modification; and
 - l. Other information about the individual's condition not recorded elsewhere.
12. "Functional impairment" means the inability to perform, either by oneself or with adaptive aids or with human help, specific activities of daily living or instrumental activities of daily living.
 13. "Home and community-based services" means the array of services under the SPED program and Medicaid waiver defined in the comprehensive human service plan and the other services the department determines to be essential and appropriate to sustain individuals in their homes and in their communities, and to delay or prevent institutional care.
 14. "Institution" means a hospital, swing bed facility, nursing facility, or other provider-operated living arrangement receiving prior approval from the department.
 15. "Instrumental activities of daily living" means activities requiring cognitive ability or physical ability, or both. Instrumental activities of daily living include preparing meals, shopping, managing money, housework, laundry, taking medicine, transportation, using the telephone, and mobility outside the home.
 16. "Medicaid waiver program" means the federal Medicaid waiver for the aged and disabled program, as defined in subpart G of 42 CFR 441, under which the department is authorized to provide specific home and community-based services to aged individuals sixty-five years and older, and individuals who are disabled persons who are at risk of being institutionalized.
 17. "Natural supports" means an informal, unpaid caregiver that provides care to an applicant or client eligible individual.
 18. "Sanction" means an action taken by the department against a qualified service provider for noncompliance with a federal or state law, rule, or policy, or with the provisions of the Medicaid provider agreement.

19. "Service fee" means the amount a SPED ~~client~~eligible individual is required to pay toward the cost of the ~~client's~~eligible individual's SPED services.
20. "Service payment" means the payment issued by the department to a qualified service provider for the provision of authorized home and community-based services to eligible ~~aged~~individuals sixty-five years and older, and individuals who are disabled~~persons~~.
21. "SPED program" means the service payments for elderly and disabled program, a state program which authorizes the department to reimburse qualified service providers for the provision of covered home and community-based services to eligible ~~aged~~individuals sixty-five years and older, and individuals who are disabled~~individuals~~.
22. "SPED program pool" means the list maintained by the department which contains the names of ~~clients~~eligible individuals for whom SPED program funding is available when the ~~clients'~~eligible individuals' names are transferred from the SPED program pool to SPED program active status.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; January 1, 2018; January 1, 2020; July 1, 2020; January 1, 2022; January 1, 2024.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5)

SECTION 2: Section 75-03-23-03 is amended as follows:

75-03-23-03. Eligibility determination - Authorization of services.

1. ~~A person~~An individual transferred to SPED program active status from the SPED program pool shall continue to meet the eligibility criteria of section 75-03-23-02 in order to remain eligible for services funded under the SPED program.
2. The department is responsible for:
 - a. Verifying that the ~~person~~individual transferred to active status continues to meet the eligibility criteria for placement into the SPED program pool;
 - b. Developing a care plan;
 - c. Authorizing covered services in accordance with department policies and procedures;
 - d. Verifying the financial eligibility criteria in relation to income, assets, and deductions; and

- e. Assuring that other potential federal and third-party funding sources for similar services are sought first.
3. A recipient of services under the Medicaid waiver program, who becomes ineligible for the Medicaid waiver program because evaluation shows that the recipient no longer requires a nursing facility level of care, does not have to go through the SPED program pool to receive services through the SPED program provided the ~~recipient~~individual meets all eligibility criteria in section 75-03-23-02.
4. A recipient of services under the Medicaid personal care service option, who becomes ineligible for services under the Medicaid personal care service option, does not have to go through the SPED program pool to receive services through the SPED program provided the ~~recipient~~individual meets all eligibility criteria in section 75-03-23-02.
5. A recipient of services under the expanded service payments for elderly and disabled program, who becomes ineligible for services under the expanded service payments for elderly and disabled program, does not have to go through the SPED program pool to receive services through the SPED program provided the ~~recipient~~individual meets all eligibility criteria in section 75-03-23-02.
6. An individual who is discharged from an inpatient hospital stay, skilled nursing facility, swing-bed facility, long-term care facility, or basic care facility or who has been off of the SPED program for fewer than ninety days, does not have to go through the SPED program pool to receive services through the SPED program provided the individual meets all eligibility criteria in section 75-03-23-02.

History: Effective June 1, 1995; amended effective January 1, 2009; July 1, 2020; January 1, 2022; January 1, 2024.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5)

SECTION 3: Section 75-03-23-04 is amended as follows:

75-03-23-04. Eligibility criteria for Medicaid waiver program.

An applicant is eligible to receive services funded by the Medicaid waiver program if:

1. The applicant is ~~either aged sixty-five years and older; or disabled,~~
2. The applicant is under age sixty-five with a congenital disability, a disability due to trauma, or a disability that is acquired and, if disabled:

- a. The disability must not be the result of mental illness as the primary diagnosis or the result of mental retardation, or a closely related condition; and
 - b. The disability must meet the social security administration's definition of disability or the individual must be determined physically disabled by the state review team under section 75-02-02.1-14.
- ~~2.3.~~ The applicant is receiving Medicaid;
 - ~~3.4.~~ The applicant is evaluated to be in need of a nursing facility level of care;
 - ~~4.5.~~ The applicant's needs may be met by one or more of the covered services, as determined by an assessment conducted in accordance with department policies and procedures;
 - ~~5.6.~~ The applicant's service provider is not the applicant's spouse, except when allowed by an approved waiver, or, if the applicant is less than eighteen years old, the applicant's service provider is not the applicant's parent, stepparent, or a person legally responsible for the care of the individual unless allowed by an approved waiver;
 - ~~6.7.~~ The applicant agrees to accept services provided under the Medicaid waiver program instead of nursing home care; and
 - ~~7.8.~~ The applicant agrees to the plan of care developed for the provision of home and community-based services.

History: Effective June 1, 1995; amended effective January 1, 2009; January 1, 2024.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5), 50-06.2-03(6)

SECTION 4: Section 75-03-23-05 is amended as follows:

75-03-23-05. Services covered under the SPED program - Programmatic criteria.

Room and board costs may not be paid in the SPED service payment. The following categories of services are covered under the SPED program and may be provided to ~~a client~~ an eligible individual:

- 1. The department may provide adult day care services to ~~a client~~ an eligible individual:
 - a. Who requires assistance in activities of daily living or instrumental activities of daily living;

- b. Who is able to participate in group activities; and
 - c. Who, if the ~~client~~eligible individual does not live alone, has a primary caregiver who will benefit from the temporary relief of care giving.
2. The department may provide adult foster care using a licensed adult foster care provider to a ~~client~~an eligible individual eighteen years of age or older:
- a. Who resides in a licensed adult foster care home;
 - b. Who requires care or supervision;
 - c. Who would benefit from a family or shared living environment; and
 - d. Whose required care does not exceed the capability of the foster care provider.
3. The department may provide chore services to a ~~client~~an eligible individual for one-time, intermittent, or occasional activities which would enable the ~~client~~eligible individual to remain in the home. Activities such as heavy housework and periodic cleaning, professional extermination, snow removal, and emergency response systems may be provided. ~~Clients~~Eligible individuals receiving emergency response services must be cognitively and physically capable of activating the emergency response system. The activity must be the responsibility of the ~~client~~eligible individual and not the responsibility of the landlord.
4. The department may provide environmental modification to a ~~client~~an eligible individual:
- a. Who owns or rents the home to be modified. If the home is rented the property owner shall approve the modification consistent with the property owner's obligations pursuant to section 804(f)(3)(A) of the Fair Housing Act [42 U.S.C. 3604(f)(3)(A)] before the installation of the environmental modification; and
 - b. When the modification will enable the ~~client~~eligible individual to complete the ~~client's~~eligible individual's own personal care or to receive care and allow the ~~client~~eligible individual to safely stay in the home.
5. a. The department may provide extended personal care services to a ~~client~~an eligible individual who:

- (1) Requires skilled or nursing care that requires training by a nurse licensed under North Dakota Century Code chapter 43-12.1; and
 - (2) Has a cognitive or physical impairment that prevents the client/eligible individual from completing the required activity.
- b. Extended personal care services do not include assistance with activities of daily living or instrumental activities of daily living.
- 6. The department may provide family home care services to a ~~client~~ an eligible individual who:
 - a. Lives in the same residence as the care provider on a twenty-four-hour basis;
 - b. Agrees to the provision of services by the care provider; and
 - c. Is the spouse of the care provider or the current or former spouse of one of the following relatives of the ~~client~~ eligible individual: parent, grandparent, adult child, adult sibling, adult grandchild, adult niece, or adult nephew.
- 7. The department may provide home and community-based services case management services to a ~~client~~ an eligible individual who needs a functional assessment and the coordination of cost-effective delivery issues. The case management services must be provided by a social worker licensed under North Dakota Century Code section 43-41-04.
- 8. The department may provide home-delivered meals to a ~~client~~ an eligible individual who lives alone and is unable to prepare an adequate meal for ~~himself or herself~~ themselves, or who lives with an individual who is unable or not available to prepare an adequate meal for the ~~client~~ eligible individual.
- 9. The department may provide homemaker services to a ~~client~~ an eligible individual who needs assistance with environmental maintenance activities including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis. The department may pay a provider for laundry, shopping, meal preparation, money management, or communication, if the activity benefits the ~~client~~ eligible individual. The department may pay a provider for housekeeping activities involving the ~~client's~~ eligible individual's personal private space and if the ~~client~~ eligible individual is living with an adult, the ~~client's~~ eligible individual's share of common living space. The homemaker services funding cap applies to a household and may not be exceeded regardless of the number of ~~clients~~ eligible individuals residing in that household.

10. Nonmedical transportation services may be provided to ~~clients~~eligible individuals who are unable to provide their own transportation and need transportation to access essential community services such as grocery stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.
11. The department may provide personal care services to a ~~client~~an eligible individual who needs help or supervision with personal care activities if:
 - a. The ~~client~~eligible individual is at least eighteen years of age; and
 - b. The services are provided in the ~~client's~~eligible individual's home or in a provider's home if the provider meets the definition of a relative as defined in subdivision c of subsection 6 of section 75-03-23-05.
12. a. The department may provide respite care services to a ~~client~~an eligible individual in the ~~client's~~eligible individual's home, in the provider's home, in a nursing home, in a swing-bed facility, in a basic care facility, or in a hospital, if:
 - (1) The ~~client~~eligible individual has a full-time primary caregiver;
 - (2) The ~~client~~eligible individual needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;
 - (3) The primary caregiver's need for the relief is intermittent or occasional; and
 - (4) The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.
- b. ~~A client~~An eligible individual who is a resident of an adult foster care may choose a respite provider and is not required to use a relative of the adult foster care provider as the ~~client's~~eligible individual's respite provider.
13. The department may provide companionship services up to ten hours per month to eligible individuals who live alone and could benefit from services to help reduce social isolation.
14. The department may provide other services as the department determines appropriate.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2020; January 1, 2022; January 1, 2024.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5)

SECTION 5: Section 75-03-23-06 is amended as follows:

75-03-23-06. Services covered under the Medicaid waiver program - Programmatic criteria.

Room and board costs may not be included in the Medicaid waiver service payment. The following services are covered under the Medicaid waiver program and may be provided to ~~a client~~ an eligible individual:

1. The department may provide adult day care services to ~~a client~~ an eligible individual:
 - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
 - b. Who is able to participate in group activities; and
 - c. If the ~~client~~ eligible individual does not live alone, the ~~client's~~ eligible individual's primary caregiver will benefit from the temporary relief of care giving.
2. The department may provide adult foster care, using a licensed adult foster care provider, to ~~a client~~ an eligible individual who resides in a licensed adult foster care home who:
 - a. Is eighteen years of age or older;
 - b. Requires care or supervision;
 - c. Would benefit from a family or shared living environment; and
 - d. Requires care that does not exceed the capability of the foster care provider.
3. The department may provide residential care to ~~a client~~ an eligible individual who:
 - a. Has chronic moderate to severe memory loss; or
 - b. Has a significant emotional, behavioral, or cognitive impairment.
4. ~~The department may provide attendant care to a client who:~~

- a. ~~Is ventilator dependent a minimum of twenty hours per day;~~
 - b. ~~Is medically stable as documented at least annually by the client's primary care physician;~~
 - c. ~~Has identified an informal caregiver support system for contingency planning; and~~
 - d. ~~Is competent to participate in the development and monitoring of the care plan as documented at least annually by the client's primary care physician.~~
5. ~~The department may provide chore services to a client~~ an eligible individual for one-time, intermittent, or occasional activities that would enable the client eligible individual to remain in the home, such as heavy housework and periodic cleaning, professional extermination, and snow removal. The activity must be the responsibility of the client eligible individual and not the responsibility of the landlord.
- 6.5. The department may provide an emergency response system to a ~~client~~ an eligible individual who lives alone or with an adult who is incapacitated adult, or who lives with an individual whose routine absences from the home present a safety risk for the client eligible individual, and the client eligible individual is cognitively and physically capable of activating the emergency response system.
- 7.6. The department may provide environmental modification to a ~~client~~ an eligible individual, if the client eligible individual owns or rents the home to be modified and when the modification will enable the client eligible individual to complete the client's eligible individual's own personal care or to receive care and will allow the client eligible individual to safely stay in the home for a period of time that is long enough to offset the cost of the modification. If the home is rented the property owner shall approve the modification consistent with the property owner's obligations pursuant to section 804(f)(3)(A) of the Fair Housing Act [42 U.S.C. 3604(f)(3)(A)] before the installation of the environmental modification.
- 8.7. a. The department may provide family personal care to a ~~client~~ an eligible individual who:
- (1) Lives in the same residence as the care provider on a twenty-four-hour basis;
 - (2) Agrees to the provision of services by the care provider; and

- (3) Is the legal spouse of the care provider or is a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02.
 - b. Family personal care payments may not be made for assistance with the activities of communication, community integration, laundry, meal preparation, money management, shopping, social appropriateness, or transportation unless the activity benefits the client/eligible individual. Family personal care payment may not be made for assistance with the activity of housework unless the activity is for the client's/eligible individual's personal space or if the client/eligible individual is living with an adult, the client's/eligible individuals share of common living space.
- 9-8. The department may provide home and community-based services case management services to a ~~client~~an eligible individual who needs a comprehensive assessment and the coordination of cost-effective delivery of services. Case management services provided under this subsection must be provided by a social worker licensed under North Dakota Century Code section 43-41-04.
- 40-9. The department may provide home-delivered meals to a ~~client~~an eligible individual who lives alone and is unable to prepare an adequate meal for ~~himself or herself~~themselves or who lives with an individual who is unable or not available to prepare an adequate meal.
- 44-10. The department may provide homemaker services to a ~~client~~an eligible individual who needs assistance with environmental maintenance activities, including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis. The department may pay a provider for laundry, shopping, meal preparation, money management, or communication, if the activity benefits the client/eligible individual. The department may pay a provider for housekeeping activities involving the client's/eligible individual's personal private space and if the client/eligible individual is living with an adult, the client's/eligible individual's share of common living space. The homemaker service funding cap applies to a household and may not be exceeded regardless of the number of clients/eligible individuals residing in that household.
- 42-11. a. The department may provide extended personal care services to a ~~client~~an eligible individual who:
- (1) Requires skilled or nursing care that requires training by a nurse licensed under North Dakota Century Code chapter 43-12.1; and

(2) Has a cognitive or physical impairment that prevents the ~~client~~eligible individual from completing the required activity.

b. Extended personal care services do not include assistance with activities of daily living and instrumental activities of daily living.

~~13-12.~~ The department may provide nonmedical transportation services to a ~~client~~an eligible individual who is unable to provide ~~his or her~~their own transportation and who needs transportation to access essential community services such as grocery stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.

~~14-13.~~ The department may provide up to twenty-four hours per day of supervision to a ~~client~~an eligible individual who has a cognitive or physical impairment that results in the ~~client~~eligible individual needing monitoring to assure the ~~client's~~eligible individual's continued health and safety.

~~15-14.~~ a. The department may provide respite care services to a ~~client~~an eligible individual in the ~~client's~~eligible individual's home, in the provider's home, in a nursing home, in a swing-bed facility, in a basic care facility, or in a hospital, if:

(1) The ~~client~~eligible individual has a full-time primary caregiver;

(2) The ~~client~~eligible individual needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;

(3) The primary caregiver's need for the relief is intermittent or occasional; and

(4) The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.

b. ~~A client~~An eligible individual who is a resident of an adult foster care home may choose a respite provider and is not required to use a relative of the adult foster care provider as the ~~client's~~eligible individual's respite provider.

~~16-15.~~ The department may provide specialized equipment and supplies to a ~~client~~An eligible individual, if:

- a. The ~~client's~~eligible individual's need for the items is based on an adaptive assessment;
- b. The items directly benefit the ~~client's~~eligible individual's ability to perform personal care or household activities;
- c. The items will reduce the intensity or frequency of human assistance required to meet the ~~client~~eligible individual care needs;
- d. The items are necessary to prevent the ~~client's~~eligible individual's institutionalization;
- e. The items are not available under the Medicaid state plan; and
- f. The ~~client~~eligible individual is motivated to use the item.

~~47-16.~~ The department may provide supported employment to a ~~client~~an eligible individual who is unlikely to obtain competitive employment at or above the minimum wage; who, because of the ~~client's~~eligible individual's disabilities, needs intensive ongoing support to perform in a work setting; and who has successfully completed the supported employment program available through the North Dakota vocational rehabilitation program.

~~48-17.~~ The department may provide transitional living services to a ~~client~~an eligible individual who needs supervision, training, or assistance with self-care, communication skills, socialization, sensory and motor development, reduction or elimination of maladaptive behavior, community living, and mobility. The department may provide these services until the ~~client's~~eligible individual's independent living skills development has been met or until an interdisciplinary team determines the service is no longer appropriate for the ~~client~~eligible individual.

~~49-18~~ The department may provide community transition services to a ~~client~~an eligible individual who is transitioning from an institution or another provider-operated living arrangement to a living arrangement in a private residence where the ~~client~~eligible individual is directly responsible for ~~his or her~~their own living expenses and needs nonrecurring set-up expenses. Community transition services include one-time transition costs and transition coordination.

- a. Allowable expenses are those necessary to enable a ~~client~~an eligible individual to establish a basic household that do not constitute room and board and may include:
 - (1) Security deposits that are required to obtain a lease on a private residence;

- (2) Essential household furnishings required to occupy and use a private residence, including furniture, window coverings, food preparation items, and bed and bath linens;
 - (3) Setup fees or deposits for utility or service access, including telephone, electricity, heating, and water;
 - (4) Services necessary for the ~~client~~eligible individual's health and safety, such as pest eradication and one-time cleaning prior to occupancy;
 - (5) Moving expenses;
 - (6) Necessary home accessibility adaptations; and
 - (7) Activities to assess need and to arrange for and procure need resources.
- b. Community transition services do not include monthly rental or mortgage expenses, escrow, specials, insurance, food, regular utility or service access charges, household appliances, or items that are intended for purely diversional or recreational purposes.
 - c. Community transition services are furnished only to the extent that they are reasonable and necessary as determined through the service plan development process, clearly identified in the service plan and the ~~client~~eligible individual is unable to meet such expense, or when the services cannot be obtained from other sources.

~~20. The department may provide a nurse assessment to a client who requires an evaluation of his or her health care needs to ensure the health, welfare, and safety of the client. The service is limited to a nurse assessment, consultation, and recommendations to address the health-related need for services that are necessary to support a client in a home- or community-based setting. The service must be provided by an advanced practice registered nurse or a registered nurse who is in good standing.~~

~~21.~~19. The department may provide other services as permitted by an approved waiver.

~~22. Subsections 19 and 20 become effective on the effective date of approved amendments to the 1915(c) Medicaid waiver sufficient to secure federal financial participation in the cost of services provided to individuals found eligible under subsections 19 and 20, remain effective as long as federal~~

~~financial participation continues to be available and state law authorizes such coverage, and is thereafter ineffective.~~

- ~~23-20.~~ The department may provide residential habilitation up to twenty-four hours per day to ~~a client~~an eligible individual who needs formalized training and supports and requires some level of ongoing daily support. This service is designed to assist with and develop self-help, socialization, and adaptive skills that improve the ~~client's~~eligible individual's ability to independently reside and participate in an integrated community. Residential habilitation may be provided in an agency foster home for adults facility or in a private residence owned or leased by ~~a client~~an eligible individual or their family member.
- ~~24-21.~~ The department may provide community support services up to twenty-four hours per day to ~~a client~~an eligible individual who requires some level of ongoing daily support. This service is designed to assist with self-care tasks and socialization that improves the ~~client's~~eligible individual's ability to independently reside and participate in an integrated community. Community support services may be provided in an agency foster home for adults facility or in a private residence owned or leased by ~~a client~~an eligible individual or their family member.
- ~~25-22.~~ The department may provide companionship services up to ten hours per month to ~~clients~~eligible individuals who live alone and could benefit from services to help reduce social isolation.
23. The department may provide personal care services to an eligible individual who needs supervision and help with personal care services.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2018; January 1, 2020; January 1, 2022; January 1, 2024.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5)

SECTION 6: Section 75-03-23-07 is amended as follows:

75-03-23-07. Qualified service provider standards and agreements.

1. An individual or agency seeking designation as a qualified service provider shall complete and return the applicable forms supplied by the department in the form and manner prescribed. The qualified service provider, including any employees of an agency designated as a qualified service provider, shall meet all licensure, certification, or competency requirements applicable under state or federal law and departmental standards necessary to provide care to ~~clients~~eligible individuals whose care is paid by public funds. An application is not complete until the individual or agency

submits all required information and required provider verifications to the department.

2. A provider or an individual seeking designation as a qualified service provider:
 - a. Must have the basic ability to read, write, and verbally communicate;
 - b. Must not be an individual who has been found guilty of, pled guilty to, or pled no contest to:
 - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or North Dakota Century Code section 12.1-17-01, simple assault, if a class C felony under subdivision a of subsection 2 of that section; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering a vulnerable adult; 12.1-31-07.1, exploitation of a vulnerable adult; 14-09-22, abuse of a child; 14-09-22.1, neglect of a child; subsection 1 of section 26.1-02.1-02.1, fraudulent insurance acts; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or
 - (2) An offense, other than a direct-bearing offense identified in paragraph 1 of subdivision b of subsection 2, if the department determines that the individual has not been sufficiently rehabilitated.

- (a) The department may not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment without subsequent charge or conviction has elapsed, unless sufficient evidence is provided of rehabilitation.
 - (b) An individual's completion of a period of three years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation;
- c. In the case of an offense described in North Dakota Century Code section 12.1-17-01, simple assault, if a felony; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence, if a misdemeanor; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-18-03, unlawful imprisonment; 12.1-20-05, corruption or solicitation of minors, if a misdemeanor; 12.1-20-07, sexual assault, if a misdemeanor; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent convictions;
- d. Shall maintain confidentiality;
- e. Shall, using applicable forms and providing documentation as required by the department:
 - (1) Revalidate qualified service provider enrollment except as provided in paragraph 3, within the time period as required by the Medicaid state plan option for personal care services or Medicaid waiver program, whichever occurs first; and
 - (2) Provide evidence of competency, except as provided in paragraph 3, at least every sixty months for an agency enrolled as a qualified service provider or at least every thirty months for an individual enrolled as a qualified service provider, and within the time period as required by the Medicaid state plan option for personal care services or Medicaid waiver program, whichever occurs first; or

- (3) Revalidate qualified service provider enrollment only every sixty months for an individual enrolled as a qualified service provider providing family home care services under the SPED program and expanded service payments for elderly and disabled;
 - f. Must be physically capable of performing the service for which they were contracted with or hired as an independent contractor; and
 - g. Must be at least eighteen years of age.
 - h. A representative of an enrolled qualified service provider agency or an individual qualified service provider must complete a department approved Qualified Service Provider orientation prior to initial enrollment.
3. If the physical, cognitive, social, or emotional health capabilities of an applicant or provider appear to be questionable, the department may require the applicant or ~~provide~~provider to present evidence of the applicant's or provider's ability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
4. The offenses enumerated in paragraph 1 of subdivision b of subsection 2 have a direct bearing on an individual's ability to be enrolled as a qualified service provider.
- a. An individual enrolled as a qualified service provider prior to January 1, 2009, who has been found guilty of, pled guilty to, or pled no contest to, an offense considered to have a direct bearing on the individual's ability to provide care may be considered rehabilitated and may continue to provide services if the individual has had no other offenses and provides sufficient evidence of rehabilitation to the department.
 - b. The department may not approve, deny, or renew an application for an individual or employee of an agency who is applying to enroll or re-enroll as a qualified service provider and who has been charged with an offense considered to have a direct bearing on the individual's ability to provide care or an offense in which the alleged victim was under the applicant's care, until final disposition of the criminal case against the individual.
5. Evidence of competency for adult foster care providers serving clientseligible individuals eligible for the developmental disability waiver

must be provided in accordance with subdivision b of subsection 2 of section 75-03-21-08.

6. A provider of services for adult day care, adult foster care, attendant care, community support services, extended personal care, family personal care, nurse assessment, personal care, residential care, respite care, residential habilitation, supervision, and transitional living care shall provide evidence of competency in generally accepted procedures for:
 - a. Infection control and proper handwashing methods;
 - b. Handling and disposing of body fluids;
 - c. Tub, shower, and bed bathing techniques;
 - d. Hair care techniques, sink shampoo, and shaving;
 - e. Oral hygiene techniques of brushing teeth and cleaning dentures;
 - f. Caring for an ~~incontinent client~~ eligible individual who is incontinent;
 - g. Feeding or assisting a ~~client~~ eligible individual with eating;
 - h. Basic meal planning and preparation;
 - i. Assisting a ~~client~~ eligible individual with the self-administration of medications;
 - j. Maintaining a kitchen, bathroom, and other rooms used by a ~~client~~ eligible individual in a clean and safe condition, including dusting, vacuuming, floor care, garbage removal, changing linens, and other similar tasks;
 - k. Laundry techniques, including mending, washing, drying, folding, putting away, ironing, and related work;
 - l. Assisting a ~~client~~ eligible individual with bill paying and balancing a check book;
 - m. Dressing and undressing a ~~client~~ eligible individual;
 - n. Assisting with toileting;
 - o. Routine eye care;
 - p. Proper care of fingernails;

- q. Caring for skin;
 - r. Turning and positioning a ~~client~~ eligible individual in bed;
 - s. Transfer using a belt, standard sit, or bed to wheelchair;
 - t. Assisting a ~~client~~ eligible individual with ambulation; and
 - u. Making wrinkle-free beds.
7. An applicant for qualified service provider status for attendant care, adult foster care, extended personal care, family personal care, nurse assessment, personal care, residential care, supervision, transitional living care, respite care, or adult day care must secure written verification that the applicant is competent to perform procedures specified in subsection 5 from a physician, chiropractor, registered nurse, licensed practical nurse, occupational therapist, physical therapist, or an individual with a professional degree in specialized areas of health care. Written verification of competency is not required if the individual holds one of the following licenses or certifications in good standing: physician, physician assistant, chiropractor, registered nurse, licensed practical nurse, registered physical therapist, registered occupational therapist, or certified nurse assistant. A certificate or another form of acknowledgment of completion of a program with a curriculum that includes the competencies in subsection 5 may be considered evidence of competence.
 8. The department may approve global and ~~client~~ eligible individual-specific endorsements to provide particular procedures for a provider based on written verification of competence to perform the procedure from a physician, chiropractor, registered nurse, occupational therapist, physical therapist, or other individual with a professional degree in a specialized area of health care or approved within the scope of the individual's health care license or certification.
 9. Competence may be demonstrated in the following ways:
 - a. A demonstration of the procedure being performed;
 - b. A detailed verbal explanation of the procedure; or
 - c. A detailed written explanation of the procedure.
 10. The department shall notify the individual or the agency of its decision on designation as a qualified service provider.

11. The department shall maintain a list of qualified service providers. Once the ~~client~~eligible individual's need for services has been determined, the ~~client~~eligible individual selects a provider from the list and the department's designee issues an authorization to provide services to the selected qualified service provider.
12. A service payment may be issued only to a qualified service provider who bills the department after the delivery of authorized services.
13. Agency providers who employ nonfamily members must have a department-approved quality improvement program that includes a process to identify, address, and mitigate harm to the ~~clients~~eligible individuals they serve.
14. Agency providers who have accepted an authorization to provide twenty-four-hour supports to an eligible individual must give a thirty-day written notice before they can involuntarily discharge the eligible individual from their care.

History: Effective June 1, 1995; amended effective March 1, 1997; January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2018; January 1, 2020; January 1, 2022; October 1, 2022; January 1, 2024.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5)

SECTION 7. Section 75-03-23-08 is amended as follows:

75-03-23-08. Denial of application to become a qualified service provider.

The department may deny an application to become a qualified service provider if:

1. The applicant voluntarily withdraws the application;
2. The applicant is not in compliance with applicable state laws, state regulations, or program issuances governing providers;
3. The applicant, if previously enrolled as a qualified service provider, was not in compliance with the terms set forth in the application or provider agreement;
4. The applicant, if previously enrolled as a qualified service provider, was not in compliance with the provider certification terms on the claims submitted for payment;
5. The applicant, if previously enrolled as a qualified service provider, had assigned or otherwise transferred the right to payment of a program claim,

except as provided in 42 U.S.C. 1396a(a) (32);

6. The applicant, if previously enrolled as a qualified service provider, had demonstrated a pattern of submitting inaccurate billings or cost reports;
7. The applicant, if previously enrolled as a qualified service provider, had demonstrated a pattern of submitting billings for services not covered under department programs;
8. The applicant has been debarred or the applicant's license or certificate to practice in the applicant's profession or to conduct business has been suspended or terminated;
9. The applicant has delivered goods, supplies, or services that are of an inferior quality or are harmful to individuals;
10. The applicant has been convicted of an offense determined by the department to have a direct bearing upon the applicant's ability to be enrolled as a qualified service provider, or the department determines, following conviction of any other offense, the applicant is not sufficiently rehabilitated;
11. The applicant, if previously enrolled as a qualified service provider, owes the department money for payments incorrectly made to the provider;
12. The qualified service provider is currently excluded from participation in Medicare, Medicaid, or any other federal health care program;
13. The applicant has not provided sufficient evidence to the department, after obtaining a formal evaluation under subsection 3 of section 75-03-23-07, that the applicant is physically, cognitively, socially, or emotionally capable of providing the care;
14. The applicant previously has been terminated for inactivity and does not have a prospective public pay clienteligible individual;
15. The applicant previously has been terminated for inactivity and has not provided valid reason for the inactivity; or
16. For other good cause.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2020; January 1, 2022; October 1, 2022; January 1, 2024.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5)

SECTION 8: Section 75-03-23-08.1 is amended as follows:

75-03-23-08.1. Sanctions and termination of qualified service providers.

1. The department may impose sanctions against a qualified service provider for any of the reasons listed under section 75-02-05-05 or subdivisions b through g of subsection 4. Prior to imposing sanctions, the department may require provider education or a business integrity agreement.
2. The department may consider the following in determining the sanction to be imposed:
 - a. Seriousness of the qualified service provider's offense.
 - b. Extent of the qualified service provider's violations.
 - c. Qualified service provider's history of prior violations.
 - d. Prior imposition of sanctions against the qualified service provider.
 - e. Prior provision of information and training to the qualified service provider.
 - f. Qualified service provider's agreement to make restitution to the department.
 - g. Actions taken or recommended by peer groups or licensing boards.
 - h. Access to care for recipients eligible individuals.
 - i. Qualified service provider's self-disclosure or self-audit discoveries.
 - j. Qualified service provider's willingness to enter a business integrity agreement.
3. The department may impose any of the sanctions listed in subsections 8 or 9 of section 75-02-05-07.
4. The department may terminate a qualified service provider if:
 - a. The qualified service provider voluntarily withdraws from participation as a qualified service provider.
 - b. The qualified service provider is not in compliance with applicable state laws, state regulations, or program issuances governing providers.

- c. The qualified service provider is not in compliance with the terms set forth in the application or provider agreement.
- d. The qualified service provider is not in compliance with the provider certification terms on the claims submitted for payment.
- e. The qualified service provider has assigned or otherwise transferred the right to payment of a program claim, except as provided in 42 U.S.C. 1396a(a)(32).
- f. The qualified service provider has demonstrated a pattern of submitting inaccurate billings or cost reports.
- g. The qualified service provider has demonstrated a pattern of submitting billings for services not covered under department programs.
- h. The qualified service provider has been debarred or the provider's license or certificate to practice in the provider's profession or to conduct business has been suspended or terminated.
- i. The qualified service provider has delivered goods, supplies, or services that are of an inferior quality or are harmful to individuals.
- j. The qualified service provider has been convicted of an offense determined by the department to have a direct bearing upon the provider's ability to be enrolled as a qualified service provider, or the department determines, following conviction of any other offense, the provider is not sufficiently rehabilitated.
- k. The qualified service provider is currently excluded from participation in Medicare, Medicaid, or any other federal health care program.
- l. The qualified service provider has not provided sufficient evidence to the department, after obtaining a formal evaluation under subsection 3 of section 75-03-23-07 that the provider is physically, cognitively, socially, or emotionally capable of providing the care.
- m. The qualified service provider refuses to repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments.
- n. There has been no billing activity within the twelve months since the qualified service provider's enrollment or most recent re-enrollment date.

- o. The qualified service provider has demonstrated a pattern of absenteeism by failing to provide care they have been authorized and agreed to provide per subsection 11 of section 75-03-23-07 to an eligible individual.
- p. _____ For other good cause.

History: Effective January 1, 2020; amended effective January 1, 2022; October 1, 2022 January 1, 2024.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5)

SECTION 9. Section 75-03-23-09 is amended as follows:

75-03-23-09. Payment under the SPED program and the Medicaid waiver program.

1. The department shall establish provider rates for home and community-based service in accordance with a procedure that factors in:
 - a. Whether a provider is an individual or an agency; and
 - b. The range of rates submitted by various providers.
2. The rate for a specific qualified service provider is established at the time the provider agreement is signed.
3. The department shall grant a request for a rate decrease when the department receives a written request for the decrease from the qualified service provider.
4. The department shall grant in full or in part, or shall deny, a request for a rate increase when the department receives a written request for the rate increase from the qualified service provider.
5. The department shall determine the maximum amount allowable per client eligible individual each month for a specific service.
6. The department shall establish the aggregate maximum amount allowable per client eligible individual each month for all services. The aggregate maximum amount per client eligible individual depends on whether the client eligible individual is receiving services under the SPED program, under the Medicaid waiver program, or under both programs.
7. The department or designee may grant approval to exceed the monthly service program maximum for a specific client eligible individual who is only receiving SPED funds and no Medicaid funds if the client eligible individual

has a special or unique circumstance; the SPED ~~client~~eligible individual is not eligible for Medicaid; and the need for additional service program funds will not initially exceed three months. Under emergency conditions, the department may grant a one-time extension not to exceed an additional three months.

8. The department may grant approval to exceed the monthly service program maximum for a specific ~~client~~eligible individual who is receiving SPED funds and Medicaid funds or only Medicaid funds if the ~~client~~eligible individual has a special or unique circumstance; and the need for additional service program funds does not exceed three months. Under emergency conditions, the department may grant a one-time extension not to exceed an additional three months.
9. The department's designee shall notify the ~~client~~eligible individual of the department's determination regarding the request to exceed the monthly service program maximum. If the department denies the request to exceed the monthly aggregate maximum, the department's designee shall inform the ~~client~~eligible individual in writing of the reason for the denial, the ~~client~~eligible individual's right to appeal, and the appeal process, as provided in chapter 75-01-03.
10. The department will grant approval to exceed the monthly program maximum or service maximum for eligible individuals receiving SPED funds or Medicaid funds, or both, whose service units exceed the program caps as a result of the qualified service provider rate increase. This extension is limited to eligible individuals who were receiving services prior to July 1, 2007.
11. Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance to the three months extension and one-time extension limitation in subsections 7 and 8 upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of a client and no variance may be granted except at the discretion of the department. A refusal to grant a variance is not subject to appeal.

History: Effective June 1, 1995; amended effective September 27, 2007; January 1, 2009; October 1, 2022; January 1, 2024.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5)

SECTION 10. Section 75-03-23-11 is amended as follows:

75-03-23-11. Denial, reduction, and termination of services - Appeal.

1. The department or its designee shall inform ~~a person~~an individual who is

determined to be ineligible for covered services or who becomes ineligible while receiving services in writing of the denial, termination, or reduction, the reasons for the denial, termination, or reduction, the right to appeal, and the appeal process as provided in chapter 75-01-03.

2. ~~A client~~An eligible individual must receive ten calendar days' written notice before termination of services occurs. The ten-day notice is not required if:
 - a. The ~~client~~eligible individual enters a basic care facility or a nursing facility;
 - b. The termination is due to changes in federal or state law;
 - c. The ~~client~~eligible individual requests termination of services; or
 - d. The ~~client~~eligible individual moves from the service area.
3. An applicant denied services or a ~~client~~an eligible individual terminated from services should be given an appropriate referral to other public or private service providers and should be assisted in finding other resources.
4. The department shall deny or terminate SPED program and Medicaid waiver program services when service to the ~~client~~eligible individual presents an immediate threat to the health or safety of the ~~client~~eligible individual, the provider of services, or others or when services that are available are not adequate to prevent a threat to the health or safety of the ~~client~~eligible individual, the provider of services, or others. Examples of health and safety threats include physical abuse of the provider by the ~~client~~eligible individual, ~~client~~eligible individual self-neglect, an unsafe living environment for the ~~client~~eligible individual, or contraindicated practices, like smoking while using oxygen.

History: Effective June 1, 1995; amended effective January 1, 2009; July 1, 2020; January 1, 2024.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5), 50-06.2-03(6), 50-06.2-04(1), 50-06.2-04(3)

SECTION 11. Section 75-03-23-14 is amended as follows:

75-03-23-14. Disqualifying transfers.

1. An individual is not eligible for SPED benefits under this chapter if the department determines that the individual or the spouse of the individual has made any assignment or transfer of any asset for the purpose of making the individual eligible for benefits before or after making application for SPED services except as provided in subsection 2.

2. An individual is not ineligible for SPED benefits under this chapter by reason of subsection 1 to the extent that:
 - a. The value of the transferred assets when added to the value of the individual's other assets would not otherwise make the individual ineligible for SPED or does not decrease the individual's service fee.
 - b. The asset transferred was a home, and title to the home was transferred to:
 - (1) The individual's spouse; or
 - (2) The individual's son or daughter who is under the age of twenty-one or who is blind or disabled.
 - c. The assets:
 - (1) Were transferred to the individual's spouse or to another person for the sole benefit of the individual's spouse; or
 - (2) Were transferred from the individual's spouse to another person for the sole benefit of the individual's spouse.
 - d. The individual makes a satisfactory showing that:
 - (1) The individual intended to dispose of the assets at fair market value or for other valuable consideration, and the individual had an objectively reasonable belief that fair market value or its equivalent was received;
 - (2) The assets were transferred exclusively for a purpose other than to qualify for SPED benefits under this chapter; or
 - (3) All assets transferred for less than fair market value have been returned to the individual.
 - e. If a disqualifying transfer occurred five years prior to the date an individual initially applies for SPED services, the department will presume that the transfer was not for the purpose of obtaining SPED benefits.
3. There is a presumption that a transfer was made for purposes of making an individual eligible for SPED services under this chapter:
 - a. If an inquiry about SPED benefits or benefits under this chapter was

made, by or on behalf of the individual to any other individual, before the date of transfer;

- b. If the individual or the individual's spouse was an applicant for or ~~recipient~~ eligible individual of SPED benefits under this chapter before the date of transfer;
 - c. If a transfer is made by or on behalf of the individual's spouse, if the value of the transferred asset, when added to the value of the individual's other assets, would exceed SPED asset limits; or
 - d. If the transfer was made, on behalf of the individual or the individual's spouse, by a guardian, conservator, or attorney-in-fact, to the guardian, conservator, or attorney-in-fact or to any spouse, child, grandchild, brother, sister, niece, nephew, parent, or grandparent, by birth, adoption, or marriage, of the guardian, conservator, or attorney-in-fact.
4. An applicant or ~~recipient~~ eligible individual who claims that assets were transferred exclusively for a purpose other than to qualify for SPED benefits under this chapter must show a desire to receive SPED benefits under this chapter played no part in the decision to make the transfer and must rebut any presumption arising under subsection 3.
 5. If the transferee of any assets is the child, grandchild, brother, sister, niece, nephew, parent, grandparent, stepparent, stepchild, son-in-law, daughter-in-law, or grandchild-in-law of the individual or the individual's spouse, services or assistance furnished by the transferee to the individual or the individual's spouse may not be treated as consideration for the transferred asset unless the transfer is made pursuant to a valid written contract entered into prior to rendering the services.
 6. A transfer is complete when the individual, or the individual's spouse, making the transfer has no lawful means of undoing the transfer or requiring a restoration of ownership.
 7. For purposes of this section, fair market value is received:
 - a. When one hundred percent of apparent fair market value is received for an asset whose value is not subject to reasonable dispute, such as cash, bank deposits, stocks, and fungible commodities;
 - b. When seventy-five percent of estimated fair market value is received for an asset whose value may be subject to reasonable dispute; and

- c. When one hundred percent of fair market value is received for an asset considered to be income to the individual or individual's spouse.
8. If an applicant or ~~client~~eligible individual is denied Medicaid based on a disqualifying transfer of assets, the SPED applicant or ~~client~~eligible individual is also ineligible for SPED-funded services.

History: Effective January 1, 2009; amended effective January 1, 2024.

General Authority: NDCC 50-06.2-07

Law Implemented: NDCC 50-06.2-07

SECTION 12. Subsection 5 of section 75-03-23-15 is amended as follows:

5. The department or its designee shall provide information concerning eligibility requirements, available services, and the rights and responsibilities of individuals seeking services under this chapter and of ~~recipients~~eligible individuals to all who require it.

History: Effective October 1, 2014; amended effective July 1, 2020; January 1, 2024.

General Authority: NDCC 50-06.2-03

Law Implemented: NDCC 50-06.2-03

CHAPTER 75-03-24
EXPANDED SERVICE PAYMENTS FOR ELDERLY AND DISABLED

Section	
75-03-24-01	Definitions
75-03-24-02	Eligibility Criteria
75-03-24-03	Eligibility Determination - Authorization of Services
75-03-24-04	Application
75-03-24-05	Applicant's or Guardian's Duty to Establish Eligibility
75-03-24-06	Functional Assessment
75-03-24-07	Services Covered Under the Ex-SPED Program - Programmatic Criteria
75-03-24-08	Residency
75-03-24-09	Denial, Reduction, and Termination of Services - Appeal
75-03-24-10	Payment Under the Ex-SPED Program
75-03-24-11	Department to Recover Funds Upon Establishment of Noncompliance
75-03-24-12	Administration

SECTION 13: Section 75-03-24-01 is amended as follows:

75-03-24-01. Definitions.

For purposes of this chapter, unless the context requires otherwise:

1. "Activities of daily living" means bathing, dressing, toileting, transferring, eating, bed mobility, medication management, and personal hygiene.
2. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
3. "Department" means the department of health and human services.
4. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
5. "Ex-SPED program pool" means the list maintained by the department which contains the names of ~~clients~~ eligible individuals for whom ex-SPED program funding is available when the ~~clients'~~ eligible individuals' names are transferred from the ex-SPED program pool to ex-SPED program active status.
6. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to four or more individuals who are not related to the proprietor.

7. "Instrumental activities of daily living" means activities to support independent living, including housekeeping, shopping, laundry, transportation, and meal preparation.

History: Effective April 1, 2012; amended effective July 1, 2020; January 1, 2024.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

SECTION 14: Subsection 1 of section 75-03-24-03 is amended as follows:

1. The department is responsible for:
 - a. Verifying that the ~~person~~individual transferred to active status continues to meet the eligibility criteria for placement into the ex-SPED program pool;
 - b. Developing a care plan;
 - c. Authorizing covered services in accordance with department policies and procedures; and
 - d. Assuring that other potential federal and third-party funding sources for similar services are sought first.

History: Effective April 1, 2012; amended effective July 1, 2020; January 1, 2022; January 1, 2024.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

SECTION 15: Subsection 5 of section 75-03-24-05 is amended as follows:

5. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and ~~recipients~~eligible individuals must be furnished to all who require it.

History: Effective April 1, 2012; amended effective July 1, 2020; January 1, 2024.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

SECTION 16: Section 75-03-24-07 is amended as follows:

75-03-24-07. Services covered under the ex-SPED program - Programmatic criteria.

Room and board costs may not be paid in the ex-SPED service payment. The following categories of services are covered under the ex-SPED program and may be provided to ~~a client~~ an eligible individual:

1. The department may provide adult day care services to ~~a client~~ an eligible individual:
 - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
 - b. Who is able to participate in group activities; and
 - c. Who, if the ~~client~~ eligible individual does not live alone, has a primary caregiver who will benefit from the temporary relief of caregiving.
2. The department may provide adult family foster care, using a licensed adult family foster care provider, to ~~a client~~ an eligible individual eighteen years of age or older:
 - a. Who resides in a licensed adult family foster care home;
 - b. Who requires care or supervision;
 - c. Who would benefit from a family environment; and
 - d. Whose required care does not exceed the capability of the foster care provider.
3. The department may provide chore services to ~~a client~~ an eligible individual for one-time, intermittent, or occasional activities which would enable the ~~client~~ eligible individual to remain in the home. Activities such as heavy housework and periodic cleaning, professional extermination, snow removal, and emergency response systems may be provided. ~~Clients~~ Eligible individuals receiving emergency response services must be cognitively and physically capable of activating the emergency response system. The activity must be the responsibility of the ~~client~~ eligible individual and not the responsibility of the landlord.
4. The department may provide environmental modification to ~~a client~~ an eligible individual:
 - a. Who owns or rents the home to be modified. If the home is rented the property owner shall approve the modification consistent with the property owner's obligations pursuant to section 804(f)(3)(A) of the Fair Housing Act [42 U.S.C. 3604(f)(3)(A)] before the installation of the environmental modification; and

- b. When the modification will enable the ~~client~~eligible individual to complete the ~~client's~~eligible individual's own personal care or to receive care and allow the ~~client~~eligible individual to safely stay in the home.
5. The department may provide family home care services to a ~~client~~an eligible individual:
 - a. Who lives in the same residence as the care provider on a twenty-four-hour basis;
 - b. Who agrees to the provision of services by the care provider; and
 - c. Whose care provider is a relative identified within the definition of "family home care" under subsection 2 of North Dakota Century Code section 50-06.2-02 and is enrolled as a qualified service provider.
6. The department may provide home-delivered meals to a ~~client~~an eligible individual who lives alone and is unable to prepare an adequate meal for ~~himself or herself~~themselves, or who lives with an individual who is unable or not available to prepare an adequate meal for the ~~client~~eligible individual.
7. The department may provide homemaker services to a ~~client~~an eligible individual who needs assistance with environmental maintenance activities including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis. The department may pay a provider for laundry, shopping, meal preparation, money management, or communication, if the activity benefits the ~~client~~eligible individual. The department may pay a provider for housekeeping activities involving the ~~client's~~eligible individual's personal private space and if the ~~client~~eligible individual is living with an adult, the ~~client's~~eligible individual's share of common living space. The homemaker service cap funding applies to a household and may not be exceeded regardless of the number of ~~clients~~eligible individuals residing in that household.
8. Nonmedical transportation services may be provided to ~~clients~~eligible individuals who are unable to provide their own transportation and need transportation to access essential community services such as grocery stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.
9. The department may provide respite care services to a ~~client~~an eligible individual in the ~~client's~~eligible individual's home, in the provider's home, in

a nursing home, in a swing-bed facility, in a basic care facility, or in a hospital, if:

- a. The ~~client~~eligible individual has a full-time primary caregiver;
 - b. The ~~client~~eligible individual needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;
 - c. The primary caregiver's need for the relief is intermittent or occasional; and
 - d. The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.
10. The department may provide companionship services up to ten hours per month to eligible individuals who live alone and could benefit from services to help reduce social isolation.
11. The department may provide other services as the department determines appropriate.

History: Effective April 1, 2012; amended effective October 1, 2014; January 1, 2022; January 1, 2024.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

SECTION 17. Section 75-03-24-09 is amended as follows:

75-03-24-09. Denial, reduction, and termination of services - Appeal.

1. The department shall inform ~~a person~~an individual who is determined to be ineligible for covered services or who becomes ineligible while receiving services in writing of the denial, termination, or reduction, the reasons for the denial, termination, or reduction, the right to appeal, and the appeal process as provided in chapter 75-01-03.
2. ~~A client~~An eligible individual must receive ten calendar days' written notice before termination of services occurs. The ten-day notice is not required if:
 - a. The ~~client~~eligible individual enters a basic care facility or a nursing facility;
 - b. The termination is due to changes in federal or state law;
 - c. The ~~client~~eligible individual requests termination of services;

- d. The ~~client~~eligible individual moves from the service area; or
 - e. The ~~client~~eligible individual is deceased.
3. An applicant denied services or a ~~client~~an eligible individual terminated from services should be given an appropriate referral to other public or private service providers and should be assisted in finding other resources.
 4. The department shall deny or terminate ex-SPED program services when service to the ~~client~~eligible individual presents an immediate threat to the health or safety of the ~~client~~eligible individual, the provider of services, or others or when services that are available are not adequate to prevent a threat to the health or safety of the ~~client~~eligible individual, the provider of services, or others. Examples of health and safety threats include physical abuse of the provider by the ~~client~~eligible individual, ~~client~~eligible individual self-neglect, an unsafe living environment for the ~~client~~eligible individual, or contraindicated practices, like smoking while using oxygen.
 5. Errors made by public officials and delays caused by the actions of public officials do not create eligibility and may not form the basis for the award of any benefit to an adversely affected applicant or ~~recipient~~eligible individual who would not otherwise be eligible to receive that benefit.

History: Effective April 1, 2012; amended effective July 1, 2020; January 1, 2024.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

SECTION 18. Section 75-03-24-10 is amended as follows:

75-03-24-10. Payment under the ex-SPED program.

1. Payment for ex-SPED services may only be made to an enrolled qualified service provider who meets the standards described in chapter 75-03-23.
2. The department shall establish provider rates for home and community-based services in accordance with a procedure that factors in:
 - a. Whether a provider is an individual or an agency; and
 - b. The range of rates submitted by various providers.
3. The rate for a specific qualified service provider is established at the time the provider agreement is signed.
4. The department shall grant a request for a rate decrease when the department receives a written request for the decrease from the qualified

service provider.

5. The department shall grant in full or in part, or shall deny, a request for a rate increase, when the department receives a written request for the rate increase from the qualified service provider.
6. The department shall determine the maximum amount allowable per client/eligible individual each month for a specific service.
7. The department shall establish the aggregate maximum amount allowable per client/eligible individual each month for all services.
8. The department may grant approval to exceed the monthly service program maximum for a specific client/eligible individual who is only receiving ex-SPED funds if:
 - a. The client/eligible individual has a special or unique circumstance; and
 - b. The need for additional service program funds will not initially exceed three months. Under emergency conditions, the department may grant a one-time extension not to exceed an additional three months.
9. The department shall notify the client/eligible individual of the department's determination regarding the request to exceed the monthly service program maximum. If the department denies the request to exceed the monthly aggregate maximum, the department shall inform the client/eligible individual in writing of the reason for the denial, the client's/eligible individual's right to appeal, and the appeal process, as provided in chapter 75-01-03.
10. The department will grant approval to exceed the monthly program maximum or service maximum for eligible individuals receiving ex-SPED funds whose service units exceed the program caps as a result of the qualified service provider rate increase. This extension is limited to eligible individuals who were receiving services prior to July 1, 2007.

History: Effective April 1, 2012; amended effective July 1, 2020; January 1, 2024.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

SECTION 19. Section 75-03-24-12 is amended as follows:

75-03-24-12. Administration.

The department must be responsible for the administration of the program with respect to that applicant or ~~recipient~~eligible individual.

History: Effective April 1, 2012; amended effective July 1, 2020; January 1, 2024.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7