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

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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. "Department" means the North Dakota department of human services.

7. "Designee" means a person that enrolls as a qualified service provider to provide case management services for the Medicaid waiver program.

8. "Disability due to trauma" means a disability that results from an injury or assault to the body by an external force.

~~8.~~ 9. "Disability that is acquired" means a disability that results from an assault that occurs internally within the body.

~~9.~~ 10. "Disabled" means under age sixty-five with a congenital disability, a disability due to trauma, or a disability that is acquired.

~~10.~~ 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.

~~11.~~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.

~~12.~~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.

~~13.~~14. "Institution" means a hospital, swing bed facility, nursing facility, or other provider-operated living arrangement receiving prior approval from the department.

~~14.~~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.

~~15.~~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 and disabled persons who are at risk of being institutionalized.

~~16.~~17. "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.

~~17.~~18. "Service fee" means the amount a SPED client is required to pay toward the cost of the client's SPED services.

~~18.~~19. "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 and disabled persons.

~~19.~~20. "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 and disabled individuals.

~~20.~~21. "SPED program pool" means the list maintained by the department which contains the names of clients for whom SPED program funding is available when the clients' 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.
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. ~~The department shall provide written notice to the department's designee of the effective date of the applicant's eligibility for services funded under the SPED program.~~

~~2.~~ A person 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.

~~3.~~2. The ~~department's designee~~department is responsible for:

a. Verifying that the person 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.

~~4.~~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 meets all eligibility criteria in section 75-03-23-02.

~~5.~~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 meets all eligibility criteria in section 75-03-23-02.

~~6.~~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 meets all eligibility criteria in section 75-03-23-02.

~~7.~~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 sixty 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.
General Authority: NDCC 50-06.2-03(6)
Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5)

SECTION 3: Section 75-03-23-11 is amended as follows:

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

1. The ~~department's~~department or its designee shall inform a person 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 must receive ten calendar days' written notice before termination of services occurs. The ten-day notice is not required if:

   a. The client enters a basic care facility or a nursing facility;

   b. The termination is due to changes in federal or state law;

   c. The client requests termination of services; or

d. The client moves from the service area.

3. An applicant denied services or a client 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. ~~For denial or termination of services, a review of the decision by the county social service board director or the designee may be requested. A request for review does not change the time within which the request for an appeal hearing must be filed.~~

~~5.~~ The department shall deny or terminate SPED program and Medicaid waiver program services when service to the client presents an immediate threat to the health or safety of the client, 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, the provider of services, or others. Examples of health and safety threats include physical abuse of the provider by the client, client self-neglect, an unsafe living environment for the client, or contraindicated practices, like smoking while using oxygen.

History: Effective June 1, 1995; amended effective January 1, 2009; July 1, 2020.
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 4: Section 75-03-23-15 is amended as follows:

75-03-23-15. Application - Applicant required to provide proof of eligibility.

1. An individual wishing to apply for benefits under this chapter must have the opportunity to do so, without delay.

2. An application is a request made to the department or its designee by an individual seeking services under this chapter, or by an individual properly seeking services on behalf of another individual. "An individual properly seeking services" means an individual of sufficient maturity and understanding to act responsibly on behalf of the individual for whom services are sought.

3. An application must include a functional assessment.

4. The individual seeking services under this chapter, or an individual properly seeking services on behalf of that individual, shall sign the application.

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 to all who require it.

6. The date of application is the date the department or ~~the department's~~its designee receives the properly signed application.

7. The individual seeking services under this chapter shall provide information sufficient to establish eligibility for benefits, including a social security number and proof of age, identity, residence, blindness, disability, functional limitation, financial eligibility, and other information required under this chapter.

History: Effective October 1, 2014; amended effective July 1, 2020.
General Authority: NDCC 50-06.2-03
Law Implemented: NDCC 50-06.2-03