

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. "Disability due to trauma" means a disability that results from an injury or assault to the body by an external force.
8. "Disability that is acquired" means a disability that results from an assault that occurs internally within the body.
9. "Disabled" means under age sixty-five with a congenital disability, a disability due to trauma, or a disability that is acquired.
10. "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

- I. Other information about the individual's condition not recorded elsewhere.
11. "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. "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. "Institution" means a hospital, swing bed facility, nursing facility or other provider-operated living arrangement receiving prior approval from the department.
 14. "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.
 - ~~44.~~15. "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.
 - ~~45.~~16. "Service fee" means the amount a SPED client is required to pay toward the cost of the client's SPED services.
 - ~~46.~~17. "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.
 - ~~47.~~18. "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.
 - ~~48.~~19. "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.

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

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

SECTION 2: Subsection 3 of section 75-03-23-02 is amended as follows:

75-03-23-02. Eligibility criteria.

3. An applicant eighteen years of age or older is eligible for the SPED program pool if:
 - a. The applicant has a functional impairment as specified by the department in policies and procedures to indicate applicant eligibility;
 - b. The applicant's functional impairment has lasted, or can be expected to last, three months or longer;
 - c. The applicant's functional impairment is not the result of a mental illness or a condition of mental retardation, or a closely related condition;
 - d. The applicant is living in North Dakota in a housing arrangement commonly considered a private family dwelling residence and not in an institution;
 - e. The applicant is not eligible for services under the medicaid waiver program or the medicaid state plan option of personal care services unless the applicant's estimated monthly benefits under this chapter, excluding the cost of case management, are between the current medically needy income level for a household of one plus the disregard established in North Dakota Century Code section 50-24.1-02.3, and the lowest level of the fee schedule for services under North Dakota Century Code chapter 50-06.2, or unless the individual is receiving a service that is not available under medicaid or the medicaid waiver;
 - f. The applicant would receive one or more of the covered services under department policies and procedures for the specific service;
 - g. The applicant agrees to the plan of care developed for the

provision of home and community-based services;

- h. The applicant is not responsible for one hundred percent of the cost of the covered service provided, under the SPED program sliding fee scales based on family size and income; and
- i. The applicant has not made a disqualifying transfer of assets.

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

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

Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5), 50-06.2-04(3)

SECTION 3: 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:

- 1. The department may provide adult day care services to a client:
 - 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 does not live alone, the client'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 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 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 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 for one-time, intermittent, or occasional activities that would enable the client 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 and not the responsibility of the landlord.
6. The department may provide an emergency response system to a client who lives alone or with an incapacitated adult, or who lives with an individual whose routine absences from the home present a safety risk for the client, and the client is cognitively and physically capable of activating the emergency response system.
7. When no alternative community resource is available, the department may provide environmental modification to a client, if the client owns the home to be modified and when the modification will enable the client to complete the client's own personal care or to receive care and will allow the client to safely stay in the home for a period of time that is long enough to offset the cost of the modification.
8. a. The department may provide family personal care to a client 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.

- b. Family personal care payments may not be made for assistance with the activities of communication, community integration, housework, laundry, meal preparation, money management, shopping, social appropriateness, or transportation.
- 9. The department may provide home and community-based services case management services to a client 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.
- 10. The department may provide home-delivered meals to a client who lives alone and is unable to prepare an adequate meal for himself or herself or who lives with an individual who is unable or not available to prepare an adequate meal.
- 11. The department may provide homemaker services to a client who needs assistance with environmental maintenance activities, including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis when the client lives alone or with an adult who is unable or is not obligated to complete homemaking activities. The department may not pay a provider for laundry, shopping, housekeeping, meal preparation, money management, or communication, if the provider lives with the client and is a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02, or is a former spouse of the client; except the department may provide essential homemaking activities such as meal preparation if the responsible adult not receiving care who resides in the home is unavailable due to employment. Shopping assistance may be provided only if at least one other activity is performed and no other shopping assistance is available through informal networks or other community providers. The homemaker service funding cap applies to a household and may not be exceeded regardless of the number of clients residing in that household.
- 12. a. The department may provide extended personal care services to a client 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 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. The department may provide nonmedical transportation services to a client who is unable to provide his or her 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. The department may provide up to twenty-four hours per day of supervision to a client who has a cognitive or physical impairment that results in the client needing monitoring to assure the client's continued health and safety, if the client lives alone or with an individual who is not a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02.
- 15.
 - a. The department may provide respite care services to a client in the client'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 has a full-time primary caregiver;
 - (2) The client 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 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 respite provider.
- 16. The department may provide specialized equipment and supplies to a client, if:
 - a. The client's need for the items is based on an adaptive assessment;
 - b. The items directly benefit the client'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 care needs;
 - d. The items are necessary to prevent the client's institutionalization;
 - e. The items are not available under the medicaid state plan; and
 - f. The client is motivated to use the item.
17. The department may provide supported employment to a client who is unlikely to obtain competitive employment at or above the minimum wage; who, because of the client'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.
18. The department may provide transitional living services to a client 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 independent living skills development has been met or until an interdisciplinary team determines the service is no longer appropriate for the client.
19. The department may provide community transition services to a client who is transitioning from an institution or another provider-operated living arrangement to a living arrangement in a private residence where the client is directly responsible for his or her own living expenses and needs non-recurring set-up expenses. Community transition services include one-time transition costs and transition coordination.
- a. Allowable expenses are those necessary to enable a client 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) Set-up fees or deposits for utility or service access.

including telephone, electricity, heating, and water;

(4) Services necessary for the client'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 determining through the service plan development process, clearly identified in the service plan and the client 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. The department may provide other services as permitted by an approved waiver.

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

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

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

SECTION 4: Subsections 6 and 7 of section 75-03-23-07 are amended as follows:

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

6. A provider of services for adult day care, adult foster care, attendant care, extended personal care, family personal care, nurse assessment, personal care, residential care, respite care, 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;
 - g. Feeding or assisting a client with eating;
 - h. Basic meal planning and preparation;
 - i. Assisting a client with the self-administration of medications;
 - j. Maintaining a kitchen, bathroom, and other rooms used by a client 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 with bill paying and balancing a check book;
 - m. Dressing and undressing a client;
 - n. Assisting with toileting;
 - o. Routine eye care;
 - p. Proper care of fingernails;
 - q. Caring for skin, including giving a back rub;
 - r. Turning and positioning a client in bed;
 - s. Transfer using a belt, standard sit, or bed to wheelchair;

- t. Assisting a client 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, 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.

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

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

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