

**ARTICLE 75-04
DEVELOPMENTAL DISABILITIES**

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**CHAPTER 75-04-01
LICENSING OF PROGRAMS AND SERVICES FOR INDIVIDUALS WITH
DEVELOPMENTAL DISABILITIES**

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SECTION 1. Section 75-04-01-01 is amended as follows:

75-04-01-01. Definitions.

In this chapter, unless the context or subject matter requires otherwise:

1. "Accreditation" means recognition by a national organization of a licensee's compliance with a set of specified standards.
2. "Applicant" means an entity which has requested licensure from the North Dakota department of human services pursuant to North Dakota Century Code chapter 25-16.
3. "Basic services" means those services required to be provided by an entity in order to obtain and maintain a license.
4. ~~"Case management" means a process of interconnected steps which will assist a client in gaining access to needed services, including medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.~~
5. "Client" means an individual found eligible as determined through the application of North Dakota Administrative Code chapter 75-04-06 for

services coordinated through developmental disabilities case program management, on whose behalf services are provided or purchased.

~~6.~~ "Congregate care" means a specialized program to serve elderly individuals with developmental disabilities whose health and medical conditions are stable and do not require continued nursing and medical care, and are served within a community group living arrangement.

5. "Consumer" means an individual with developmental disabilities.

~~7.6.~~ "Day supports habilitation" means a day program to assist individuals in acquiring, retaining, and improving skills necessary to successfully reside in a community setting. Services may include assistance with of scheduled activities, formalized training, and staff supports to promote skill development for the acquisition, retention, or improvement in self-help, socialization, and adaptive skills; provision of social, recreational, and therapeutic activities to maintain physical, recreational, personal care, and community integration skills; and development of non-job task-oriented prevocational skills such as compliance, attendance, task completion, problem solving, and safety; and supervision for health and safety. Activities should focus on improving a client's sensory motor, cognitive, communication, and social interaction skills.

~~8.7.~~ "Department" means the North Dakota department of human services.

~~9.8.~~ "Developmental disability" means a severe, chronic disability of an individual which:

- a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- b. Is manifested before the individual attains age twenty-two;
- c. Is likely to continue indefinitely;
- d. Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (1) Self-care;
 - (2) Receptive and expressive language;
 - (3) Learning;
 - (4) Mobility;
 - (5) Self-direction;
 - (6) Capacity for independent living; and
 - (7) Economic sufficiency; and

- e. Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic ~~care services~~, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.
- ~~10-9.~~ "Extended services Employment support" means a federally mandated component designed to provide employment-related, ongoing support for an individual in supported employment upon completion of training; or on or off the job employment-related support for individuals needing intervention to assist them in maintaining employment. This may include job development, replacement in the event of job loss, and, except for those individuals with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite. If offsite monitoring is appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month ongoing supports to assist clients in maintaining paid employment in an integrated setting. Services are designed for clients who need intensive ongoing support to perform in a work setting. Service includes on-the-job or off-the-job employment-related support for clients needing intervention to assist them in maintaining employment, including job development. Employment support includes individual employment support and small group employment support.
- ~~10.~~ "Extended home health care" means a service that provides skilled nursing tasks that cannot be delegated to unlicensed personnel that is available when a client has exceeded the amount of service available under the medicaid state plan.
- ~~11.~~ "Family member" means relatives of a client to the second degree of kinship.
- ~~11-12.~~ "Family support services" means a family-centered support service contracted for a client based on the client's or primary caregiver's need for support in meeting the health, developmental, and safety needs of the client in order for the client to remain in an appropriate home environment.
- ~~13.~~ "Generic service" means a service that is available to any member of the population and is not specific to meeting specialized needs of individuals with intellectual disabilities or developmental disabilities.
- ~~12-14.~~ "Governing body" means the individual or individuals designated in the articles of incorporation of a corporation or constitution of a legal entity as being authorized to act on behalf of the entity.
- ~~13-15.~~ "Group home" means any community residential service facility, licensed by the department pursuant to North Dakota Century Code chapter 25-16, housing more than four-two individuals with developmental disabilities.

"Group home" does not include a community complex with self-contained rental units.

- ~~14.~~ "Individualized supported living arrangements" means a residential support services option in which services are contracted for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.
16. "Independent habilitation" means formalized training and staff supports provided to clients on less than a daily basis. This service is designed to assist with and develop self-help, socialization, and adaptive skills that improve the client's ability to independently reside and participate in an integrated community.
17. "In-home support" means supports for a client residing with their primary caregiver and their family to prevent or delay unwanted out of home placement. Services may assist the client in activities of daily living, and help with maintaining health and safety.
- ~~15-18.~~ "Infant development" means a systematic application of an individualized family service plan designed to alleviate or mediate developmental delay of the client from birth through age two.
19. "Intellectual disability" means a diagnosis of the condition of intellectual disability, based on an individually administered standardized intelligence test and standardized measure of adaptive behavior, and made by an appropriately licensed professional.
- ~~16-20.~~ "Intermediate care facility for individuals with intellectual or developmental disabilities" means a residential health facility operated pursuant to regulation under title 42, CFR Code of Federal Regulations, parts 442 and 483, et seq.
21. "Less restrictive" means a residential situation allowing less control over a client's personal choices, movement, and activities, but still meeting the client's basic needs.
- ~~17-22.~~ "License" means authorization by the department to provide a service to individuals with developmental disabilities, pursuant to North Dakota Century Code chapter 25-16.
- ~~18-23.~~ "Licensee" means that entity which has received authorization by the department, pursuant to North Dakota Century Code chapter 25-16, to provide a service or services to individuals with developmental disabilities.
- ~~19.~~ "Mental retardation" means a diagnosis of the condition of mental retardation, based on an individually administered standardized intelligence test and standardized measure of adaptive behavior, and made by an appropriately licensed professional.

- ~~20.~~ "Minimally supervised living arrangements" means either:
- ~~a.~~ A group home with an available client adviser; or
 - ~~b.~~ A community complex that provides self-contained rented units with an available client adviser.
24. "Prevocational services" means formalized training, experiences, and staff supports designed to prepare clients for paid employment in integrated community settings. Services are structured to develop general abilities and skills that support employability in a work setting. Services are not directed at teaching job-specific skills, but at specific habilitative goals outlined in the client's person-centered service plan.
25. "Primary caregiver" means a person who has assumed responsibility for supervision and assistance in meeting the needs of the client and who is not employed by or working under contract of a provider licensed pursuant to this chapter.
- ~~21-26.~~ "Principal officer" means the presiding member of a governing body, a chairperson, or president of a board of directors.
27. "Program management" means a process of interconnected steps which will assist a client in gaining access to needed services, including medical, social, educational, and other services, regardless of the funding source for the services to which access is gained.
- ~~22-28.~~ "Resident" means an individual receiving services provided through any licensed residential facility or service.
29. "Residential habilitation" means formalized training and supports provided to clients who require 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 ability to independently reside and participate in an integrated community.
- ~~23-30.~~ "Standards" means requirements which result in accreditation by the council on quality and leadership in supports for people with disabilities, certification as an intermediate care facility for individuals with intellectual disabilities, or for ~~extended service~~ individual employment supports results in accreditation by the commission on accreditation of rehabilitation facilities.
- ~~24.~~ "Supported living arrangement" means a program providing a variety of types of living arrangements that enable individuals with disabilities to have choice and options comparable to those available to the general population. Clients entering this service shall have the effects of any skill deficits subject to mitigation by the provision of individualized training and follow along services.

~~25. "Transitional community living facility" means a residence for clients with individualized programs consisting of social, community integration, and daily living skills development preliminary to entry into less restrictive settings.~~

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; July 1, 2001; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

SECTION 2. Section 75-04-01-02 is amended as follows:

75-04-01-02. License required.

No individual, association of individuals, partnership, limited liability company, or corporation shall offer or provide a service or own, manage, or operate a facility offering or providing a service to more than ~~four~~two individuals with developmental disabilities without first having obtained a license from the department unless the facility is:

- ~~1.~~ Exempted by ~~subsection 1 or 2 of North Dakota Century Code section 15-59.3-02~~ 15.1-34-02; or
- ~~2.~~ A health care facility, as defined in North Dakota Century Code section ~~23-17.2-02~~, other than an intermediate care facility for individuals with intellectual disabilities; or
- ~~3.~~ Operated by a nonprofit corporation that receives no payments from the state or any political subdivision and provides only day supports for six or fewer individuals with developmental disabilities. "Payment" does not include donations of goods and services or discounts on goods and services.

Licensure does not create an obligation for the state to purchase services from the licensed facility.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 2001; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-02

SECTION 3. Section 75-04-01-04 is amended as follows:

75-04-01-04. License denial, ~~suspension,~~ or revocation.

The department may deny a license to an applicant ~~or suspend~~ or revoke an existing license upon a finding of noncompliance with the rules of the department.

1. If the department denies a license, the applicant may not reapply for a license for a period of six months from the date of denial. After the six month period has elapsed, the applicant may submit a new application to the department.
2. If the department revokes a license, the licensee may not reapply for a license for a period of one year from the date of the revocation. After the one year period has elapsed, the licensee may submit a new application to the department.
3. A license denial or revocation may affect all or some of the services and facilities operated by a licensee, as determined by the department.

History: Effective April 1, 1982; amended effective June 1, 1986; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03, 25-16-08

SECTION 4. Section 75-04-01-05 is amended as follows:

75-04-01-05. Notification of denial, ~~suspension,~~ or revocation of license.

1. The department shall, within sixty days from the date of the receipt of an application for a license, or upon finding a licensee in noncompliance with the rules of the department, notify the applicant or licensee's principal officer of the department's intent to grant, deny, ~~suspend,~~ or revoke a license.
2. The department shall notify the applicant or licensee in writing. Notification is made upon deposit with the United States postal service. The notice of denial, ~~suspension,~~ or revocation shall identify any rule or standard alleged to have been violated and the factual basis for the allegation, the specific service or facility responsible for the violation, the date after which the denial, ~~suspension,~~ or revocation is final, and the procedure for appealing the action of the department.
3. The applicant or licensee may appeal the denial, ~~suspension,~~ or revocation of a license by written request for an administrative hearing, mailed or delivered to the department within ten days of receipt of the notice of intent to deny, ~~suspend,~~ or revoke. The hearing must be governed by the provisions of chapter 75-01-03.
4. The licensee may continue to provide services until the final appeal decision is rendered. If clients have been removed from the licensed facility because of a health, welfare, or safety issue, they shall remain out of the facility while the appeal is pending.

5. The licensee shall, upon final revocation notification, return the license to the department immediately.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-08

SECTION 5. Section 75-04-01-06 is amended as follows:

75-04-01-06. Disclosure of criminal record.

1. Each member of the governing body of the applicant, the chief executive officer, and any employees, volunteers, or agents who receive and disburse funds on behalf of the governing body, or who provide any direct service to clients, shall disclose to the department any conviction of that they have been found guilty of, pled guilty to, or pled no contest to a criminal offense.
2. The applicant or licensee shall conduct federal and state criminal background checks on all persons employed who work with clients, including volunteers. If the applicant or licensee is contracting or subcontracting with other entities, there must be an agreement ensuring federal and state criminal background checks have been completed on all persons employed who work with clients, including volunteers.
3. The applicant or licensee shall disclose to the department the names, type of offenses, dates of conviction having been found guilty of, pled guilty to, or pled no contest to a criminal offense, and position and duties within the applicant's organization of employees and volunteers with a criminal record.
4. Such disclosure must not disqualify the applicant from licensure or an individual from employment or volunteering, unless the conviction having been found guilty of, pled guilty to, or pled no contest to, is for a crime having direct bearing on the capacity of the applicant, employee, or volunteer to provide a service under the provision of this chapter and or the individual applicant, employee, or volunteer is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1.
5. The department shall determine the effect of a conviction an applicant, employee, or volunteer having been found guilty of, pled guilty to, or pled no contest to of an a criminal offense.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03.1

SECTION 6. Section 75-04-01-06.1 is amended as follows:

75-04-01-06.1. Criminal conviction - Effect on operation of facility or employment by facility.

1. A facility operator may not be, and a facility may not employ in any capacity that involves or permits contact between the employee or volunteer and any individual cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; ~~12.1-17, assaults—threats—coercion if a class A misdemeanor or a felony; or~~ 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 in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 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 a police 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; 12.1-20-07, sexual assault; 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; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; 14-09-22, abuse of child; or 14-09-22.1, neglect of child; 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
 - b. An offense, other than an offense identified in subdivision a, if the department determines that the individual has not been sufficiently rehabilitated.
2. For purposes of subdivision b of subsection 1, an offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community correction, or imprisonment,

without subsequent conviction, is prima facie evidence of sufficient rehabilitation.

3. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of services to individuals with developmental disabilities.
4. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 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 conviction.
- 4.5. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - a. Common knowledge in the community;
 - b. Acknowledged by the individual;~~or~~
 - c. Reported to the facility as the result of an employee background check;or
 - d. Discovered by the department.

History: Effective July 1, 2001; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03, 25-16-03.1

Section 7. Section 75-04-01-07 is amended as follows:

75-04-01-07. Content of license.

A license issued by the department must include the legal name of the licensee, the address or location where services are provided, the occupancy or service limitations of the licensee, the unique services authorized for provision by the licensee, and the expiration date of the license.

History: Effective April 1, 1982; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-05

Section 8. Section 75-04-01-08 is amended as follows:

75-04-01-08. Types of licenses.

1. A license issued pursuant to this chapter must be denominated "license," or "provisional license", ~~or "special provisional license".~~
2. A "license" is unrestricted. The department shall issue a license to any applicant who complies with the rules and regulations of the department and North Dakota Century Code section 25-16-03, and who is accredited by the accreditation council for services for individuals with disabilities, or for ~~extended employment~~ services accredited by the rehabilitation accreditation commission (CARF). The license is nontransferable, expires not more than one year from the effective date of the license, and is valid for only those services or facilities identified thereon.
3. A "provisional license" may be issued subject to the provision of section 75-04-01-09.
4. ~~A "special provisional license" may be issued subject to the provision of section 75-04-01-10.~~

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

Section 9. Section 75-04-01-09 is amended as follows:

75-04-01-09. Provisional license.

1. A provisional license may be issued to an applicant or licensee with an acceptable plan of correction notwithstanding a finding of noncompliance with the rules of the department and North Dakota Century Code section 25-16-03. A provisional license must not be issued to an applicant whose practices or facilities pose a clear and present danger to the health and safety of individuals with developmental disabilities, including fire safety requirements as evidenced in writing by the fire marshal, negligent or intentional misrepresentations to the department regarding any aspect of the applicant's or licensee's operations, or any violation that places a client's life in danger.
2. A provisional license may be issued for any or all services provided or facilities operated by an applicant or licensee as determined by the department.
3. Upon a finding that the applicant or licensee is not in compliance with the

rules, the department ~~may~~ shall notify the applicant or licensee, in writing, of its intent to issue a provisional license. The notice must provide the reasons for the action, the specific services that are affected by the provisional license, and ~~must describe~~ the corrective actions required of the applicant or licensee, which, if taken, will result in the issuance of an unrestricted license.

- ~~3.4.~~ The applicant or licensee shall, within ten days of the receipt of notice under subsection ~~23~~, submit to the department, on a form provided, a plan of correction. The plan of correction must include the elements of noncompliance, a description of the corrective action to be undertaken, and a date certain of compliance. The department may accept, modify, or reject the applicant or licensee's plan of correction and shall notify the licensees of their decision within thirty days. If the plan of correction is rejected, the department shall notify the applicant or licensee that the license has been denied or revoked. The department may conduct periodic inspection of the facilities and operations of the applicant or licensee to evaluate the implementation of a plan of correction.
- ~~5.~~ The department will terminate a provisional license and issue an unrestricted license to the applicant or licensee upon successful completion of an accepted plan of correction, as determined by the department.
- ~~4.6.~~ A provisional license may be issued for any period not exceeding one year. A provisional license may be renewed for an additional six months only upon successful completion of an accepted plan of correction the department's determination that the applicant or licensee has made significant progress toward meeting the standards identified in the plan of correction or that the applicant or licensee has shown good cause for failure to implement the plan of correction. A provisional license is nontransferable and valid only for the facilities or services identified thereon. Notice of the granting of a provisional license, or of a decision to modify or reject a plan of correction, may be appealed in the same manner as a notice of denial or revocation of a license.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

Section 10. Section 75-04-01-10 is repealed.

75-04-01-10. Special provisional license.

- ~~1.~~ A licensee or applicant may submit an application, on a form provided, for a special provisional license, permitting the provision of a new service, the occupancy of a facility, or the vacation of a facility provided that:

- a. ~~The new service is in conformity with the service definitions of these rules or is a service designed by and recognized through policy issued by the developmental disabilities division of the department and, upon completion of the rule promulgation process, will be a service able to be licensed under this chapter; or~~
 - b. ~~The issuance of the special provisional license is required by a natural disaster, calamity, fire, or other dire emergencies.~~
2. ~~A special provisional license issued for this purpose must include the dates of issuance and expiration, a description of the service or facility authorized, an identification of the licensee to whom the special provisional license is issued, and any conditions required by the department.~~

History: Effective April 1, 1982; ~~amended effective December 1, 1995.~~

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

Repealed effective January 1, 2017.

Section 11. Section 75-04-01-11 is amended as follows:

75-04-01-11. License renewal.

The licensee shall submit to the department, on a form or forms provided, an application for a license not later than sixty days prior to the expiration date of a valid license. If the provider continues to meet all standards established by the rules under this chapter, the department shall issue a license renewal annually on the expiration date of the previous year's license.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

Section 12. Section 75-04-01-12 is amended as follows:

75-04-01-12. Display of license.

The licensee shall place any license, ~~provisional license,~~ or ~~special-provisional license~~ in an area accessible to the public and where it may be readily seen. Licenses need not be placed on display in residences or residential areas of a facility, but must be available to the public or the department upon request.

History: Effective April 1, 1982; amended effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

Section 13. Section 75-04-01-12.1 is created as follows:

75-04-01-12.1 Provider Agreement.

Licensees shall sign a medicaid provider agreement and required addendums with the department to provide services to individuals with developmental disabilities.

History: Effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

Section 14. Section 75-04-01-13 is amended as follows:

75-04-01-13. Purchase of service or recognition of unlicensed entities.

The department ~~shall~~may not recognize or approve the activities of unlicensed entities in securing public funds from the United States, North Dakota, or any of its political subdivisions, ~~nor shall it.~~ The department may not purchase any service from such entities.

History: Effective April 1, 1982; amended effective June 1, 1986; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03

Section 15. Section 75-04-01-14 is amended as follows:

75-04-01-14. Unlicensed entities - Notification.

Upon a determination that activities subject to licensure are occurring or have occurred, the department shall notify the parties ~~thereto~~ that the activities are subject to licensure. The notice must include a citation of the applicable provisions of these rules, an application for a license, a date ~~certain when by which~~ the application must be submitted, and, if applicable, a request for the parties to explain that the activities identified in the notification are not subject to licensure. The parties shall receive notification within seven days and the entity shall be required to submit a complete application to the department within thirty days of notice.

History: Effective April 1, 1982; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-16-02

Section 16. Section 75-04-01-15 is amended as follows:

75-04-01-15. Standards of the department.

The department herein adopts and makes a part of these rules for all licensees the current standards used for accreditation by the council on quality and leadership in supports for people with disabilities, additionally, for intermediate care facilities for individuals with intellectual disabilities, standards for certification under title 42, CFR Code of Federal Regulations, parts 442 and 483 et seq., or for extended service employment supports, by the rehabilitation accreditation commission (CARF). If a licensee fails to meet an accreditation standard, the department may analyze the licensee's failure using the appropriate ~~1990-current~~ standards of the council on quality and leadership in supports for people with disabilities. Infant development licensees who have attained accreditation status by the council on quality and leadership in supports for people with disabilities are not required to maintain accreditation status.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; April 1, 2000; May 1, 2006; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

Section 17. Section 75-04-01-17 is amended as follows:

75-04-01-17. Identification of basic services subject to licensure.

Services provided to ~~more than four individuals with developmental disabilities in treatment or care centers~~ eligible clients must be identified and licensed by the following titles:

1. Residential habilitation services;
 - a. ~~Individualized supported living arrangement;~~
 - b. ~~Community intermediate care facility for individuals with intellectual disabilities of fifteen beds or less;~~
 - c. ~~Institutional intermediate care facility for individuals with intellectual disabilities of sixteen or more beds;~~
 - d. ~~Minimally supervised living arrangement;~~
 - e. ~~Transitional community living facility;~~
 - f. ~~Supported living arrangement;~~
 - g. ~~Family support services; or~~
 - h. ~~Congregate care.~~
2. Day services: habilitation;

- a. ~~Day supports;~~
- b. ~~Extended service; or~~
- c. ~~Infant development.~~
- 3. Independent habilitation services;
- 4. Intermediate care facility for individuals with intellectual disabilities;
- 5. Employment services:
 - a. Individual employment supports; or
 - b. Small group employment supports;
- 6. Prevocational services;
- 7. Family support services:
 - a. Parenting supports;
 - b. In-home supports;
 - c. Extended home health care; or
 - d. Family care option; or
- 8. Infant development services.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; July 1, 1996; July 1, 2001; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06

Section 18. Section 75-04-01-20 is amended as follows:

75-04-01-20. Applicant guarantees and assurances.

- 1. Applicants shall submit, in a manner prescribed by the department, evidence that policies and procedures approved by the governing body are written and implemented in a manner which:
 - a. Guarantees each client ~~an individual program~~ a person-centered service plan pursuant to the provisions of North Dakota Century Code section 25-01.2-14;
 - b. Guarantees that each client, parent, guardian, or advocate receives written notice of the client's rights in the manner provided by North Dakota Century Code section 25-01.2-16;

- c. Guarantees that each client admission is subject to a multidisciplinary determination that placement is appropriate pursuant to North Dakota Century Code section 25-01.2-02;
- d. Guarantees the client the right to receive the services and supports included in his or her person-centered service plan in a timely manner to fully participate in the benefits of community living, the opportunity to vote, to worship, to interact socially, to freely communicate and receive guests of their choosing at any time, to own and use personal property, to unrestricted access to legal counsel, and guarantees that all rules regarding such conduct are posted or made available pursuant to North Dakota Century Code sections 25-01.2-03; 25-01.2-04; and 25-01.2-05;
- e. Guarantees that such restrictions as may be imposed upon a client relate solely to capability and are imposed pursuant to the provisions of ~~an individual program~~ a person-centered service plan;
- f. Guarantees the confidentiality of all client records;
- g. Guarantees that the client receives adequate remuneration for compensable labor, that subminimum wages are paid only pursuant to title 29 CFR, Code of Federal Regulations, part 525, et seq., that the client has the right to seek employment in integrated settings, that restrictions upon client access to money are subject to the provisions of ~~an individual program~~ a person-centered service plan, that assets managed by the applicant on behalf of the client inure solely to the benefit of that client, that each client has a money management plan or documented evidence of the client's capacity to manage money, and that, in the event the applicant is a representative payee of a client, the informed consent of the client is obtained and documented;
- h. Guarantees the client access to appropriate and timely medical and dental care and adequate protection from infectious and communicable diseases, and guarantees effective control and administration of medication, as well as prevention of drug use as a substitute for programming;
- i. Guarantees the client freedom from corporal punishment, ~~guarantees the client freedom from~~ imposition of isolation, seclusion, chemical, physical, or mechanical restraint, except as prescribed by North Dakota Century Code section 25-01.2-10 or these rules, and guarantees the client freedom from psychosurgery, sterilization, medical behavioral research, pharmacological research, and electroconvulsive therapy, except as prescribed by North Dakota Century Code sections 25-01.2-09 and 25-01.2-11;

- j. Guarantees, where applicable, that a nutritious diet, approved by a qualified dietitian, will be provided in sufficient quantities to meet the client's dietary needs;
- k. Guarantees the client the right to choose and refuse services, who provides the services, the right of the client and the client's representatives to be informed of the possible consequences of the refusal, alternative services available, and specifically, the extent to which such refusal may harm the client or others;
- l. Assures the client safe and sanitary living and working arrangements and provides for emergencies or disasters and first-aid training for staff;
- m. Assures the existence and operation of both behavior management and human rights committees;
- n. Assures that residential services will coordinate with the developmental and remedial services outside the residential setting in which a client lives;
- o. Assures that adaptive equipment, where appropriate for toilet training, toileting, mobility, communication, or eating is provided in the service facility for use by individuals with ~~multiple~~ disabilities consistent with the person-centered service plan;
- p. Assures that all service staff demonstrate basic professional competencies as required by their job descriptions and complies with all required trainings, credentialing, and professional development activities;
- q. Assures that annual evaluations that measure program outcomes against previously stated goals and objectives are conducted;
- r. Assures that all vehicles transporting clients are subject to routine inspection and maintenance, licensed by the department of transportation, equipped with a first-aid kit and a fire extinguisher, carry no more individuals than the manufacturer's recommended maximum capacity, handicapped accessible, where appropriate, and are driven by individuals who hold a valid state driver's license;
- s. Assures that an annual inspection with a written report of safety program and practices is conducted in facilities providing day services;
- t. Guarantees that incidents of alleged abuse and neglect are thoroughly investigated and reported to the governing body, chief executive officer, parent, guardian or advocate, the protection and advocacy project, and the department with written records of these

proceedings being retained for three years; guarantees that all incidents of restraint utilized to control or modify a client's behavior are recorded and reported to the governing body; guarantees that any incident resulting in injury to the client or agency staff that requires medical attention or hospitalization must be recorded and reported to the governing body immediately, and as soon thereafter as possible to the parent, guardian, or advocate; and guarantees that incidents resulting in injury to the client or agency staff that requires extended hospitalization, endangers life, or results in permanent disability must also be reported to the department immediately; and guarantees that corrective action plans are implemented;

- u. Guarantees that a grievance procedure, reviewed and approved by the department, affords the client or the client's parent or parents, guardian, or advocate the right to a fair hearing of any complaint; and guarantees that records of such hearings are maintained and must note therein the complaint, the names of the individuals complaining, and the resolution of the grievance-;
 - v. Assures that policies and procedures are established and maintained for the management and maintenance of property and equipment purchased or depreciated with state funds. The applicant shall make the records, and items identified in them, available for inspection by the department, or designee, upon request to facilitate a determination of the adequacy with which the applicant is managing property and equipment;
 - w. Assures that policies and procedures regarding admission to their services and termination of services are in conformance with the rules of the department;
 - x. Assures that all documentation, data reporting requirements, rules, regulations, and policies are conducted as required by the department; and
 - y. Assures that all applicable federal and state laws and regulations are being abided by.
2. Accredited applicants shall submit evidence, satisfactory to the department, of accreditation.
 3. The department shall determine the degree to which the unaccredited applicant's policies and procedures are in compliance with the standards must be determined by the department.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

Section 19. Section 75-04-01-20.2 is amended as follows:

75-04-01-20.2. Recording and reporting abuse, neglect, and use of restraint.

1. Licensees shall implement policies and procedures to assure that incidents of alleged abuse ~~and~~, neglect, and restraints:
 - a. Are reported to the governing board, ~~administrator~~ body, chief executive officer or designee of the provider agency, parent, guardian, advocate, and the protection and advocacy project;
 - b. Are thoroughly investigated, the findings reported to the governing board ~~body, chief executive officer or designee of the provider agency~~, parent, guardian, advocate, and the protection and advocacy project and that the report and the action taken are recorded in writing and retained for three years; and
 - c. Are immediately reported to the department.
2. ~~Licensees shall record and report to the governing board any and all incidents of restraint utilized to control or modify the behavior of individuals with developmental disabilities.~~
3. ~~Incidents resulting in injury to the staff of the licensee or an individual with developmental disabilities, requiring medical attention or hospitalization, endangering life, or result in a permanent disability must be recorded and reported to the chairman of the governing board~~ body, chief executive officer or designee of the provider agency and to the department immediately, and as soon thereafter as possible to the parent, guardian, or advocate.
4. ~~Incidents resulting in injury to the staff of the licensee or an individual with developmental disabilities, which require extended hospitalization, endanger life, or result in a permanent disability, must also be immediately reported to the department.~~

History: Effective December 1, 1995; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06, 50-25.1-02

Section 20. Section 75-04-01-21 is amended as follows:

75-04-01-21. Legal status of applicant. The applicant shall submit, in a form or manner prescribed by the department, the following items:

1. A correct and current statement of their articles of incorporation, bylaws, license issued by a local unit of government, partnership agreement, or any other evidence of legal registration of the entity;
2. A correct and current statement of tax exempt or taxable status under the laws of North Dakota or the United States;
3. A current list of partners or members of the governing body and any advisory board with their address, telephone number, principal occupation, term of office, and status as a consumer or consumer representative and any changes in this list since last submission;
4. A statement disclosing the owner of record of any buildings, facilities, or equipment used by the applicant, the relationship of the owner to the applicant, and the cost, if any, of such use to the applicant and the identity of the entity responsible for the maintenance and upkeep of the property;
5. A statement disclosing any financial benefit which may accrue to the applicant or applicants to be diverted to personal use, including director's fees or expenses, dividends, return on investment, rent or lease proceeds, salaries, pensions or annuities, or any other payments or gratuities; and
6. The amount of any payments made to any member or members of the governing board of the applicant or board of a related organization, exclusive of reimbursement for actual and reasonable personal expenses.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

Section 21. Section 75-04-01-22 is amended as follows:

75-04-01-22. Applicant's buildings.

Applicants occupying buildings, whether owned or leased, ~~must~~ shall provide the department with a license or registration certificate properly issued pursuant to North Dakota Century Code chapter ~~15-59-3-15.1-34~~ or 50-11 or with:

1. The written report of an authorized fire inspector, following an initial or subsequent annual inspection of a building pursuant to section 75-04-01-23, which states:
 - a. Rated occupancy and approval of the building for occupancy; or
 - b. Existing hazards and recommendations for correction which, if followed, would result in approval of the building for occupancy;

2. A statement prepared by a sanitarian or authorized public health officer, following an initial or subsequent annual inspection that the building's plumbing, water supply, sewer disposal, and food storage and handling meet acceptable standards to assure a healthy environment;
3. A written statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances; and
4. For existing buildings, floor plans drawn to scale showing the use of each room or area and a site plan showing the source of utilities and waste disposal; or
5. Plans and specifications of buildings and site plans for facilities, proposed for use, but not yet constructed, showing the proposed use of each room or area and the source of utilities and waste disposal.

History: Effective April 1, 1982; amended effective June 1, 1986; December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-06

Section 22. Section 75-04-01-24 is amended as follows:

75-04-01-24. Entry and inspection.

1. The applicant shall affirm the right of duly authorized representatives of the department, or designee, to enter any of the applicant's buildings or facilities and access to its records to determine the extent to which the applicant is in compliance with the rules of the department, to facilitate verification of the information submitted with an application for licensure, and to investigate complaints. Inspections must be scheduled for the mutual convenience of the department and the provider unless the effectiveness of the inspection would be substantially diminished by prearrangement.
2. The provider shall authorize the department, or designee, entry to its facilities and access to its records in the event the provider declares bankruptcy, transfers ownership, ceases operations, evicts residents of its facilities, or the contract with the department is terminated by either of the parties. The department's entry is for the purpose of facilitating the orderly transfer of clients to an alternative service or the maintenance of appropriate service until an orderly transfer can be made.

History: Effective April 1, 1982; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

Section 23. Section 75-04-01-26 is amended as follows:

75-04-01-26. Denial of access to facilities and records.

Any applicant or licensee which denies the department, or designee, access to a facility or its records, ~~by the authorized representative of the department, to a facility or records, for the purpose of determining the applicant's state of compliance with the rules of the department,~~ shall have its license revoked or its application denied.

History: Effective April 1, 1982; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-08, 25-16-06

Section 24. Section 75-04-01-29 is amended as follows:

75-04-01-29. Group home bedrooms.

1. Bedrooms in group home facilities must accommodate no more than two individuals.
2. Bedrooms in group home facilities must provide at least eighty square feet [7.43 square meters] per individual in a single occupancy bedroom, and at least sixty square feet [5.57 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space. Bedrooms in newly constructed homes or existing homes converted to group home facilities completed after July 1, 1985, must provide at least one hundred square feet [9.29 square meters] per individual in a single occupancy bedroom, and at least eighty square feet [7.43 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space.
3. Bedrooms in group home facilities must be located on outside walls and separated from other rooms and spaces by walls extending from floor to ceiling and be at or above grade level.
4. Bedrooms in group home facilities must not have doors with vision panels and must ~~not~~ be capable of being locked, ~~except where individuals may lock their own rooms as consistent with their programs when justified by a specific assessed need and documented in the person-centered service plan.~~
5. Bedrooms in group home facilities must provide furnishings which are appropriate to the psychological, emotional, and developmental needs of each individual. Each individual shall ~~must~~ be provided a separate bed of proper size and height, a clean comfortable mattress, bedding appropriate to the climate, and a place for personal belongings. Individual furniture,

such as a chest of drawers, table, or desk, and an individual closet with clothes racks and shelves must be provided. A mirror must be available to mobile individuals and a tilted mirror must be available to nonambulatory individuals.

6. Bedrooms in group home facilities must provide storage space for clothing in the bedroom which is accessible to all, including nonambulatory individuals.
7. Group home facilities shall provide space outside the bedrooms to be equipped for out-of-bed activities for all individuals not yet mobile, except for those who have a short-term illness or those for whom out-of-bed activity is a threat to life.

History: Effective June 1, 1986; amended effective December 1, 1995; January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

Section 25. Section 75-04-01-40 is created as follows:

75-04-01-40. Documentation and Data Reporting Requirements.

1. Licensee shall submit and retain all requisite documentation to demonstrate the right to receive payment for all services and supports and comply with all federal and state laws, regulations, and policies necessary to disclose the nature and extent of services provided and all information to support claims submitted by, or on behalf of the provider agency.
2. The department may require a licensee to submit a statement of policies and procedures, and evidence of the implementation of the statement, in order to facilitate a determination that the licensee is in compliance with the rules of the department and with North Dakota Century Code section 25-01-01.
3. Licensee shall maintain program records, fiscal records, and supporting documentation, including:
 - a. Authorization from the department for each client for who service is billed;
 - b. Attendance sheets and other records documenting the days and times that the clients received the billed services from the licensee; and
 - c. Records of all bills submitted to the department for payment.
4. Licensee shall report the results of designated quality and performance indicators, as requested by the department.

5. Licensee shall retain a copy of the records required for six years from the date of the bill unless an audit in process requires a longer retention.
6. The department maintains the right to withhold a payment for services or suspend or terminate medicaid enrollment if the licensee has failed to abide by terms of the medicaid contract, federal and state laws, regulations, and policies regarding documentation or data reporting.

History: Effective January 1, 2017.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

CHAPTER 75-04-02
PURCHASE OF SERVICE FOR DEVELOPMENTALLY DISABLED PERSONS

Section

75-04-02-01	Purchase of Service
75-04-02-02	Fiscal Requirement
75-04-02-03	Insurance and Bond Requirements [Repealed]
75-04-02-04	Disclosure of Ownership and Interest [Repealed]
75-04-02-05	Payments to Members of Governing Boards Restricted [Repealed]
75-04-02-06	Payments to Related Organizations Restricted
75-04-02-07	Articles and Bylaws of Provider
75-04-02-08	Providers Policies and Procedures
75-04-02-09	Recording and Reporting Abuse, Neglect, and Use of Restraint [Repealed]
75-04-02-10	Wages of Developmentally Disabled Persons [Repealed]
75-04-02-11	Access to Provider Premises and Records
75-04-02-12	Lobbying and Political Activity
75-04-02-13	Indemnification
75-04-02-14	Grievance Procedure
75-04-02-15	Property Management and Inventory
75-04-02-16	Accounting for Funds
75-04-02-17	Rate of Reimbursement
75-04-02-18	Case Management

SECTION 26: Chapter 75-04-02 is repealed.

~~75-04-02-01. Purchase of service.~~

~~The department may purchase services only from licensed providers in compliance with the requirements of this chapter.~~

~~**History:** Effective April 1, 1982.~~

~~**General Authority:** NDCC 25-16-06, 50-06-16~~

~~**Law Implemented:** NDCC 25-16-10~~

~~75-04-02-02. Fiscal requirement.~~

~~Providers shall submit, no less than annually, a full financial disclosure including, but not limited to:~~

- ~~1. A statement of assets and liabilities.~~
- ~~2. An operations statement.~~
- ~~3. A statement disclosing contract income and client wages.~~
- ~~4. A statement of client fees or payments and their distribution.~~

~~5. — A statement showing the distribution of historical costs and a forecast of future costs.~~

~~6. — A statement of the assets and liabilities of any related organizations.~~

History: Effective April 1, 1982.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

~~75-04-02-03. Insurance and bond requirements.~~

~~Repealed effective May 1, 2004.~~

~~75-04-02-04. Disclosure of ownership and interest.~~

~~Repealed effective May 1, 2004.~~

~~75-04-02-05. Payments to members of governing boards restricted.~~

~~Repealed effective June 1, 1985.~~

~~75-04-02-06. Payments to related organizations restricted.~~

~~1. — Payments, to related organizations, by the provider shall be limited to the actual and reasonable cost of the service received or the product purchased.~~

~~2. — Financial transactions between the provider and the related organization shall be documented by the provider. The terms of such transactions shall be those which would be obtained by a prudent buyer negotiating at arms length with a willing and knowledgeable seller.~~

History: Effective April 1, 1982; amended effective June 1, 1985.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

~~75-04-02-07. Articles and bylaws of provider.~~

~~1. — The articles, bylaws, or constitution of the provider shall identify developmentally disabled persons as eligible recipients of the provider's services and the provisions of those services as a purpose of the organization.~~

~~2. — The articles, bylaws, or constitution of the provider shall authorize the governing board to enter into contracts, agreements, or any other~~

arrangement to secure funds to provide services consistent with the provider's purpose.

3. ~~The provider's dissolution provisions shall provide that the assets of the organization, which have been purchased, in whole or in part, with funds loaned or granted by the state or with the state's necessary approval, shall inure to the benefit of developmentally disabled persons and shall further provide that such assets shall be transferred subject to the approval of the department.~~

History: Effective April 1, 1982; amended effective August 1, 1984.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

~~75-04-02-08. Providers policies and procedures.~~

~~The department may require a provider to submit a statement of policies and procedures, and evidence of the implementation of the statement, in order to facilitate a determination that the provider is in compliance with the rules of the department and with North Dakota Century Code section 25-01-01.~~

History: Effective April 1, 1982.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

~~75-04-02-09. Recording and reporting abuse, neglect, and use of restraint.~~

~~Repealed effective May 1, 2004.~~

~~75-04-02-10. Wages of developmentally disabled persons.~~

~~Repealed effective May 1, 2004.~~

~~75-04-02-11. Access to provider premises and records.~~

~~The provider shall authorize the department's entry to its facilities and access to its records, in the event the provider declares bankruptcy, transfers ownership, ceases operations, evicts residents of its facilities, or the contract with the department is terminated by either of the parties, for the purpose of facilitating the orderly transfer of clients to an alternative service or the maintenance of appropriate service until an orderly transfer can be made.~~

History: Effective April 1, 1982.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-03, 25-16-10

~~75-04-02-12. Lobbying and political activity.~~

Providers shall not utilize funds provided by or through the department to support lobbying, political candidates, or political activity.

History: Effective April 1, 1982.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-13. Indemnification.

Contracting providers may be required to indemnify and reimburse the department for any federal funds, the expenditure of which is disallowed as a consequence of the provider's failure to establish and maintain adequate records or the provider's failure to otherwise comply with written standards, rules and regulations, or statutes.

History: Effective April 1, 1982.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-10

75-04-02-14. Grievance procedure.

1. Providers shall submit to the department, for review and approval, a copy of a grievance procedure, approved by the governing board, which affords the developmentally disabled person, or that person's parents, guardian, or advocate, a fair hearing of any complaint.
2. The provider shall maintain a record of all hearings provided pursuant to its grievance procedure, and shall note therein the complaint, persons complaining, and the resolution of the grievance.

History: Effective April 1, 1982.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-10

75-04-02-15. Property management and inventory.

1. The provider shall establish and maintain policies and procedures for the management and maintenance of property and equipment purchased or depreciated with state funds.
2. An inventory of property and equipment meeting the description of subsection 1 shall be separately maintained and identified by serial number and descriptions.
3. The provider shall make the records, and items identified in them, available for inspection by the department upon request to facilitate a

determination of the adequacy with which the applicant is managing property and equipment.

~~History: Effective April 1, 1982.~~

~~General Authority: NDCC 25-16-06, 50-06-16~~

~~Law Implemented: NDCC 25-16-10~~

~~75-04-02-16. Accounting for funds.~~

~~The provider shall establish and maintain financial records consistent with generally accepted accounting principles and the financial reporting requirements of the department.~~

~~History: Effective April 1, 1982.~~

~~General Authority: NDCC 25-16-06, 50-06-16~~

~~Law Implemented: NDCC 25-16-10~~

~~75-04-02-17. Rate of reimbursement.~~

- ~~1. The provider shall be reimbursed for services to a developmentally disabled person on the basis of reasonable cost.~~
- ~~2. The rate of reimbursement shall be established pursuant to the applicable provisions of the manual for provider reimbursement of the department.~~
- ~~3. The applicant shall be subject to a financial audit pursuant to the provisions of the manual for provider reimbursement of the department.~~
- ~~4. The denial of access to financial records for audit purposes shall constitute a breach of a contract with the department.~~

~~History: Effective April 1, 1982.~~

~~General Authority: NDCC 25-16-06, 50-06-16~~

~~Law Implemented: NDCC 25-16-10~~

~~75-04-02-18. Case management.~~

~~Providers shall establish policies and procedures regarding admission to their services and termination of services in conformance with the North Dakota case management system.~~

~~History: Effective April 1, 1982.~~

~~General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16~~

~~Law Implemented: NDCC 25-01.2-18, 25-16-10~~

Repealed effective January 1, 2017.

**CHAPTER 75-04-03
DEVELOPMENTAL DISABILITIES LOAN PROGRAM**

Section

75-04-03-01	Definitions
75-04-03-02	State and Federal Requirements
75-04-03-03	Applicant Eligibility
75-04-03-04	Location of Residential Facility
75-04-03-05	Hazardous Areas [Repealed]
75-04-03-06	Fire Protection [Repealed]
75-04-03-07	Water Supply [Repealed]
75-04-03-08	Sewage Disposal [Repealed]
75-04-03-09	Residential Physical Plant
75-04-03-10	Day Service Facilities
75-04-03-11	Variance
75-04-03-12	Financing
75-04-03-13	Zoning
75-04-03-14	Tax Exemption
75-04-03-15	Facilities for the Chronically Mentally Ill
75-04-03-16	Facilities for the Physically Handicapped
75-04-03-17	Transfer and Assignment
75-04-03-18	Reapplications

SECTION 27: Chapter 75-04-03 is repealed.

~~75-04-03-01. Definitions.~~

~~In this chapter, unless the context or subject matter requires otherwise:~~

- ~~1. "Applicant" means an entity which has requested a loan of moneys from the revolving loan funds maintained in the Bank of North Dakota pursuant to North Dakota Century Code chapter 6-09.6.~~
- ~~2. "Common ownership" exists where an individual or organization possesses significant ownership or equity in both the previous successful applicant and the new applicant.~~
- ~~3. "Control" exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of another individual or organization.~~
- ~~4. "Department" means the North Dakota department of human services.~~
- ~~5. "Day service facility" means a nonresidential building in which a variety of activities are designed to maximize the developmental potential of persons served.~~

6. — "Facility" means a building constructed, reconstructed, or acquired to serve eligible developmentally disabled, chronically mentally ill, and physically disabled persons.

History: Effective April 1, 1982; amended effective May 1, 1984.

General Authority: NDCC 6-09.6-02, 50-06-16

Law Implemented: NDCC 6-09.6

75-04-03-02. State and federal requirements.

Facilities proposed for acquisition, construction, or reconstruction financing shall comply with the requirements of chapter 33-03-13 or 33-03-14, and this chapter; provided however, that a facility may not be disqualified from the receipt of financing for a failure to comply with chapter 33-03-13 or 33-03-14 if that facility complies with specific standards in this chapter as exceptions to the application of chapter 33-03-13 or 33-03-14.

History: Effective April 1, 1982; amended effective May 1, 1984.

General Authority: NDCC 6-09.6-02, 50-06-16

Law Implemented: NDCC 6-09.6

75-04-03-03. Applicant eligibility.

Application for participation in the developmental disabilities facility loan program will be considered by the department upon a showing that the applicant:

1. — Proposes the acquisition, construction, or reconstruction of a facility located in a community identified by the department as a designated area of program development;
2. — Is in compliance with the application and submission requirements of the Bank of North Dakota;
3. — Is in compliance with the certificate of need requirements of the department of health;
4. — Proposes a site approved by local zoning authorities;
5. — Proposes a facility for acquisition supported by an appraisal prepared by a certified appraiser;
6. — Is a nonprofit entity pursuant to the laws of this state and the United States;
7. — Has a governing board whose members live in the geographical area in which the facility or facilities are located;

- ~~8. Has a governing board whose members consist of at least one-third consumers or representative of consumers; and~~
- ~~9. Possesses effective control of land, upon which construction is proposed, and buildings to be reconstructed.~~

~~History:~~ Effective April 1, 1982; amended effective May 1, 1984.

~~General Authority:~~ NDCC 6-09.6-02, 50-06-16

~~Law Implemented:~~ NDCC 6-09.6

~~75-04-03-04. Location of residential facility.~~

~~Facilities shall be located in residential neighborhoods reasonably accessible to shops, commercial facilities, and other community services. Facilities shall be located not less than six hundred feet [182.88 meters] from existing facilities or institutions licensed by the department, schools for the disabled, workshops, a residential complex for the disabled, nursing homes, or other institutional facilities.~~

~~History:~~ Effective April 1, 1982.

~~General Authority:~~ NDCC 6-09.6-02, 50-06-16

~~Law Implemented:~~ NDCC 6-09.6

~~75-04-03-05. Hazardous areas.~~

~~Repealed effective May 1, 1984.~~

~~75-04-03-06. Fire protection.~~

~~Repealed effective May 1, 1984.~~

~~75-04-03-07. Water supply.~~

~~Repealed effective May 1, 1984.~~

~~75-04-03-08. Sewage disposal.~~

~~Repealed effective May 1, 1984.~~

~~75-04-03-09. Residential physical plant.~~

- ~~1. Facilities must be limited in size to three hundred fifty square feet [32.52 square meters] per resident, inclusive of space for two employees of the applicant. Facilities of more than eight resident beds must be limited to one hundred seventy-five square feet [16.26 square meters] per additional resident bed.~~

2. ~~Facilities must be designed to provide sufficient laundry space to include, in addition to a washer and a dryer, storage for laundry supplies, accommodation for ironing, and counterspace for folding clothing and linens.~~
3. ~~Facilities must be equipped with emergency lighting capable of sustained battery operation.~~
4. ~~Facilities must be in compliance with the applicable requirements of chapter 33-03-13 or 33-03-14.~~
5. ~~Facilities must be of modest design minimizing the length of hallways, the number of exterior corners, and complexity of construction.~~
6. ~~Facility design must include provisions for its conversion to an alternate use at a reasonable cost.~~
7. ~~Facility design and use must accommodate both sexes with space allocated in a manner which provides for the appropriate separation of bedrooms and bathrooms to assure the privacy of both sexes.~~

~~History: Effective April 1, 1982; amended effective May 1, 1984.~~

~~General Authority: NDCC 6-09.6-02, 50-06-16~~

~~Law Implemented: NDCC 6-09.6~~

~~75-04-03-10. Day service facilities.~~

~~Day service facilities may be constructed, reconstructed, or acquired pursuant to North Dakota Century Code chapter 6-09.5 and the applicable provisions of North Dakota Administrative Code chapter 33-03-14.~~

~~History: Effective April 1, 1982; amended effective May 1, 1984.~~

~~General Authority: NDCC 6-09.6-02, 50-06-16~~

~~Law Implemented: NDCC 6-09.6~~

~~75-04-03-11. Variance.~~

~~Upon written application, and good cause shown, the department may grant a variance from the provisions of this chapter upon such conditions as the department may prescribe, except no variance may permit or authorize a danger to health or safety, or impede the normalization process.~~

~~History: Effective April 1, 1982.~~

~~General Authority: NDCC 6-09.6-02, 50-06-16~~

~~Law Implemented: NDCC 6-09.6~~

~~75-04-03-12. Financing.~~

1. ~~The department will establish for each project the level of state financial participation.~~
2. ~~The applicant shall, upon final settlement of project cost, submit to the department a cost report certifying that all loan proceeds have been disbursed for project costs pursuant to the requirements of North Dakota Century Code chapter 6-09.6.~~
3. ~~The applicant shall promptly report to the department the filing of any lien, or other encumbrance, any work stoppage, or any circumstance likely to cause extraordinary delay of project completion.~~
4. ~~Architects' fees are subject to the limits established by the department.~~
5. ~~Architects' fees for the reuse of designs for duplicate buildings must be limited to no more than fifty percent of the original design fee.~~

History: Effective May 1, 1984.

General Authority: NDCC 6-09.6-02, 50-06-16

Law Implemented: NDCC 6-09.6

75-04-03-14. Tax exemption.

~~The applicant shall show that it has made application to exempt its property from taxation insofar as exemptions may be available under North Dakota Century Code section 57-02-08.~~

History: Effective May 1, 1984.

General Authority: NDCC 6-09.6-02, 50-06-16

Law Implemented: NDCC 6-09.6

75-04-03-15. Facilities for the chronically mentally ill.

~~Facilities for the chronically mentally ill must comply with chapter 33-03-14; provided, however, that:~~

1. ~~Sections 33-03-14-03 and 33-03-14-07, and subsection 1 of section 33-03-14-06 may not be applied;~~
2. ~~Such facilities must be designed so as to be accessible to nonambulatory visitors and employees, with at least one bathroom accessible to and usable by such visitors and employees; and~~
3. ~~Such facilities must comply with chapter 20 of the Life Safety Code 1981 edition.~~

~~History: Effective May 1, 1984.~~

~~General Authority: NDCC 6-09.6-02, 50-06-16~~

~~Law Implemented: NDCC 6-09.6~~

~~75-04-03-16. Facilities for the physically handicapped.~~

~~Facilities for the physically handicapped must comply with chapter 33-03-13.~~

~~History: Effective May 1, 1984.~~

~~General Authority: NDCC 6-09.6-02, 50-06-16~~

~~Law Implemented: NDCC 6-09.6~~

~~75-04-03-17. Transfer and assignment.~~

~~No applicant may transfer or assign any interest in property which secures, in whole or in part, any loan made pursuant to North Dakota Century Code chapter 6-09.6, without the written consent of the department. No applicant, which has constructed a facility which secures, in whole or in part, any such loan, may transfer or assign any right to operate that facility, with or without consideration, without the written consent of the department. The department may condition the granting of any consent, requested under this section, upon the use of any consideration received to repay outstanding interest or principal due on any such loan which may have been made to the applicant.~~

~~History: Effective May 1, 1984.~~

~~General Authority: NDCC 6-09.6-02, 50-06-16~~

~~Law Implemented: NDCC 6-09.6~~

~~75-04-03-18. Reapplications.~~

~~Any applicant who has made prior application, and who has received a loan pursuant to such prior application, or who is related to a prior successful applicant by common ownership or control, shall report the prior loan as a part of the application. No loan will be granted to an applicant so situated unless the identity of the applicant is the same on the original application and any reapplication. The department may condition its approval of any reapplication upon the applicant's consent to changes in the terms and conditions upon which any previous loan was made.~~

~~History: Effective May 1, 1984.~~

~~General Authority: NDCC 6-09.6-02, 50-06-16~~

~~Law Implemented: NDCC 6-09.6~~

Repealed effective January 1, 2017.

CHAPTER 75-04-05
REIMBURSEMENT FOR PROVIDERS OF SERVICES TO INDIVIDUALS WITH
DEVELOPMENTAL DISABILITIES

Section	
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75-04-05-24	Application
<u>75-04-05-25</u>	<u>Indemnification</u>

Section 28. Section 75-04-05-01 is amended as follows:

75-04-05-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Absence factor" means a cost component of the residential habilitation direct care rate intended to cover costs when a consumer is not in the residence.
- 4.2. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses costs in the period when incurred, regardless of when they are paid.

3. "Administrative costs" means those costs that are necessary to operate the business but are not client related.
- ~~2.4.~~ "Allowable cost" means the program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations.
5. "Assessment score" means the client's score from the standard assessment tool administered by the department or its designee.
- ~~3.6.~~ "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable which were created or acquired in providing covered services that are eligible for reimbursement through medicaid federal financial participation.
7. "Basic services" means all of the services that providers deliver to clients, including non-developmental disabilities services.
- 4.8. "Board" means all food and dietary supply costs.
9. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used for client care.
- ~~5.10.~~ "Clients-Client" means eligible individuals with an individual found eligible as determined through the application of chapter 75-04-06 for services coordinated through developmental disabilities program management, on whose behalf services are provided or purchased.
11. "Client authorized representative" means a person designated as a guardian for the client.
- ~~6.~~ "Consumer" means an individual with developmental disabilities.
- ~~7.12.~~ "Consumer-Client representative" means a parent, guardian-client authorized representative, or relative, to the third degree of kinship, of an individual with developmental disabilities.
13. "Community contribution" means a contribution to a civic organization or sponsorship of community activities. Community contribution does not include a donation to a charity.
14. "Consumer" means an individual with developmental disabilities.
- ~~8.15.~~ "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which

functions of a providership are divided for purposes of cost assignment and allocations.

- ~~9-16.~~ "Day supports habilitation" means a day program to assist individuals in acquiring, retaining, and improving skills necessary to successfully reside in a community setting. Services may include assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills; provision of social, recreational, and therapeutic activities to maintain physical, recreational, personal care, and community integration skills and development of non-job task-oriented prevocational skills such as compliance, attendance, task completion, problem solving, and safety; and supervision for health and safety of scheduled activities, formalized training, and staff supports to promote skill development for the acquisition, retention, or improvement in self-help, socialization, and adaptive skills. Activities should focus on improving a client's sensory motor, cognitive, communication, and social interaction skills.
- ~~10-17.~~ "Department" means the North Dakota department of human services.
- ~~18.~~ "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
- ~~19.~~ "Depreciable asset" means a capital asset or other asset for which the cost must be capitalized for statement of costs purposes.
- ~~20.~~ "Depreciation guidelines" means the American hospital association's guidelines as published by American hospital publishing, inc., in the most recently published "Estimated Useful Lives of Depreciable Hospital Assets."
- ~~21.~~ "Direct care staff" means employees who are actively providing support to clients receiving a service from a provider.
- ~~22.~~ "Direct care wage" means the wage level that is used as the basis of the payment system.
- ~~23.~~ "Direct program support costs" means costs that are specific to the service provision of a client, including medical and program supplies.
- ~~11-24.~~ "Documentation" means the furnishing of written records including original invoices, contracts, timecards, and workpapers prepared to complete reports or for filing with the department.
- ~~12.~~ "Extended services" means a federally mandated component designed to provide employment-related, ongoing support for an individual in supported employment upon completion of training, or on or off the job

~~employment-related support for individuals needing intervention to assist them in maintaining employment. This may include job development, replacement in the event of job loss and, except for those individuals with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite. If offsite monitoring is appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month.~~

- ~~25. "Employment related expenses" means employee benefits including federal Insurance Contributions Act, unemployment insurance, medical insurance, workers' compensation, retirement, disability, long-term care insurance, dental, vision, life, accrued paid time off, and unrecovered medical costs furnished at the provider's cost.~~
- ~~26. "Employment support" means ongoing supports to assist client in maintaining paid employment in an integrated setting. Services are designed for clients who need intensive ongoing support to perform in a work setting. Service includes on-the job or off-the-job employment-related support for clients needing intervention to assist them in maintaining employment, including job development. Employment support includes individual employment support and small group employment support.~~
- ~~13.27. "Facility-based" means a workshop facility for individuals with developmental disabilities licensed by the department to provide day services. This definition is not to be construed to include areas of the building determined by the department to exist primarily for nontraining or for production purposes.~~
- ~~14.28. "Fair market value" means value at which an asset could be sold in the open market in an arm's-length transaction between unrelated parties.~~
- ~~15. "Family support services" means a family-centered support service authorized for a client based on the primary caregiver's need for support in meeting the health, developmental, and safety needs of the client in order for the client to remain in an appropriate home environment.~~
- ~~29. "Fiscal agent" means a company contracted with the department to make payments on behalf of the department for self-directed support services.~~
- ~~30. "Fixed equipment" means equipment used for client care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.~~

- ~~46.31.~~ "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
32. "Group home" means any community residential service facility, licensed by the department pursuant to North Dakota Century Code chapter 25-16, housing more than two individuals with developmental disabilities. "Group home" does not include a community complex with self-contained rental units.
- ~~47.33.~~ "Historical cost" means those costs incurred and recorded on the facility's accounting records as a result of an arm's-length transaction between unrelated parties.
- ~~48. "Individual service plan" means an individual plan that identifies service needs of the eligible client and the services to be provided, and which is developed by the developmental disabilities case manager and the client or that client's legal representative, or both, considering all relevant input.~~
- ~~49. "Individualized supported living arrangements Independent habilitation" means a residential home based support services option in which services are authorized for a client based on individualized needs resulting in an individualized rate setting process and are provided to a client in a residence rented or owned by the client.~~
34. "Hospital leave day" means any day that a client is not in the facility, but is in an acute care setting as an inpatient and is expected to return to the facility. A hospital leave day is only available to clients residing in an intermediate care facility for the intellectually disabled.
35. "In-house client day" means a day that a client was actually receiving services in the intermediate care facility or residential habilitation setting and was not on therapeutic leave, in the hospital, or absent.
36. "Independent habilitation" means formalized training and staff supports provided to clients on a less than daily basis. This service is designed to assist with and develop self-help, socialization, and adaptive skills that improve the client's ability to independently reside and participate in an integrated community.
37. "Indirect program support costs" means costs that are neither direct care nor administrative, such as program development, supervision and quality assurance, and are not separately billable.
38. "In-home supports" means supports for a client residing with their primary caregiver and their family to prevent or delay unwanted out of home

placement. Services may assist the client in activities of daily living, and help with maintaining health and safety.

- ~~20-39.~~ "Interest" means the cost incurred with the use of borrowed funds.
40. "Intermediate care facility for individuals with intellectual disabilities" means a residential health facility operated pursuant to title 42, Code of Federal Regulations, parts 442 and 483, et seq.
41. "Land improvements" means any improvement to the land surrounding the facility used for client care and identified as such in the depreciation guidelines.
42. "Life-changing event" means a change in a client's life that will affect his or her support needs for six months or more, including a significant medical event, a crisis situation, a change in living arrangement, aging caregiver, significant medical or behavioral health event in the life of a caregiver, significant change in family functioning, or trauma.
43. "Medical assistance program" means the program which pays the cost of health care provided to eligible clients pursuant to North Dakota Century Code chapter 50-24.1.
- ~~21-44.~~ "Movable equipment" means moveable care and support services equipment generally used in a facility, including equipment identified as major moveable equipment in the ~~American hospital association~~ depreciation guidelines.
- ~~22-45.~~ "Net investment in fixed assets" means the cost, less accumulated depreciation and the balance of notes and mortgages payable.
46. "Other asset" means any asset that has a life of more than one year and has a cost of five thousand dollars or greater.
47. "Parenting Supports" means assisting clients who are or will be parents in parenting skills training that is individualized to assist with focusing on the health, welfare, and developmental needs of their child.
48. "Person-centered service plan" means an individual plan that identifies service needs of the eligible client, the services to be provided, and is developed by the developmental disabilities program manager and the client or client authorized representative, or both, considering all relevant input.
49. "Prevocational services" means formalized training, experiences, and staff supports designed to prepare clients for paid employment in integrated

community settings. Services are structured to develop general abilities and skills that support employability in a work setting. Services are not directed at teaching job-specific skills, but at specific habilitative goals outlined in the client's person-centered service plan.

50. "Program support" means the direct and indirect program support costs that support providing services to client.

51. "Program support staff" means employees whose duties are associated with client care but who are not actively providing direct support services to consumers receiving a service from a provider agency.

52. "Property costs" means the cost category for allowable costs to operate the owned or leased property.

53. "Provider agency" means the organization or individual who has executed a medicaid agreement with the department to provide services to individuals with developmental disabilities.

~~23-~~54. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

~~24-~~55. "Related organization" means an organization which a provider agency is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider agency. Control exists when an individual or an organization has the power, directly or indirectly, significantly to influence or direct the action or policies of an organization or institution.

56. "Relief staff" means the replacement of direct care staff when the regular direct care staff are on leave and there is a cost component in the direct care hourly rate that covers the cost of relief staff.

57. "Residential habilitation" means formalized training and supports provided to clients who require 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 ability to independently reside and participate in an integrated community.

58. "Residential services" means services provided in an intermediate care facility for individuals with intellectual disabilities or residential habilitation.

~~25-~~59. "Room" means the cost associated with the provision of shelter, housekeeping staff or purchased housekeeping services and the

maintenance thereof, including depreciation and interest or lease payments of a vehicle used for transportation of clients.

~~26-60.~~ "Service" means the provision of living arrangements and programs of daily activities subject to licensure by the department.

~~27-61.~~ "Staff training" means an organized program to improve staff performance.

~~62.~~ "Statement of costs" means the department approved form for reporting costs, statistical data, and other relevant information of the provider agency.

~~63.~~ "Statement of costs year" means the fiscal year from July first through June thirtieth.

~~64.~~ "Therapeutic leave day" means any day that a client is not in the intermediate care facility for individuals with intellectual disabilities, nursing facility, swing-bed facility, transitional care unit, sub-acute unit, another intermediate care facility for individuals with intellectual disabilities, a basic care facility, or an acute care setting, or if not in an institutional setting, is not receiving home and community based waiver services and is expected to return to the facility. A therapeutic leave day is only available to clients residing in an intermediate care facility for the intellectually disabled.

~~65.~~ "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.

~~28-66.~~ "Units of service" for billing purposes means:

- a.
 - (1) ~~In residential settings-services, one individual-client served for one 24-hour day;~~
 - (2) ~~In day service habilitation, prevocational services, employment services, and independent habilitation settings, one individual-client served for one hour; and fifteen minutes;~~
or
 - (3) ~~In extended services, one individual served for one hour of job-coach intervention~~
In parenting supports and in-home support settings one client served for one hour.
- b. The day of admission and the day of death, but not the day of discharge, are treated as a day served for residential services.

67. "Vacancy" means an opening in residential services where a consumer has not been admitted. A vacancy can occur when a client leaves a residence with no intent to return, or in a residence that has capacity for more clients than those who are currently living in the residence.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; May 1, 2006; July 1, 2010; January 1, 2013; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

Section 29. Section 75-04-05-02 is amended as follows:

75-04-05-02. Eligibility for reimbursement payment.

~~Providers~~ Provider agencies of service are eligible for reimbursement for the costs of rendered services contingent upon the following:

1. The provider agency, other than a state-owned or state-operated provider agency, ~~holds, and is required to hold,~~ a current valid license, issued pursuant to the provisions of chapter 75-04-01 authorizing the delivery of the service, ~~the cost of which is subject to reimbursement.~~
2. The ~~provider's~~ provider agency's clients have on file with the department a current ~~individual~~ person-centered service plan.
3. The provider agency has a current valid ~~purchase of service~~ provider agency agreement with the department authorizing the ~~reimbursement payment.~~
4. The provider agency adopts and uses a system of accounting prescribed by the department.
5. The provider agency participates in the program audit and utilization review process established by the department.
6. The provider agency is in compliance with all documentation requirements in chapter 75-04-02-75-04-01.
7. ~~Providers~~ Provider agency, as a condition of eligibility for reimbursement for the ~~cost of services for provided to~~ individuals with developmental disabilities, ~~must~~ shall accept, as payment in full, sums paid in accordance with the ~~final~~ established rate of ~~reimbursement payment.~~
8. ~~Providers must obtain approval from the department for additional square footage if the cost of the additional space is to be reimbursed by the department.~~

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

Section 30. Section 75-04-05-08 is amended as follows:

75-04-05-08. Financial reporting requirements.

1. **Records.**

- a. The provider agency shall maintain on the premises the required census records and financial information sufficient to provide for a proper state and federal audit or review. ~~For Data must be available for any cost being claimed on the cost report, sufficient data must be available~~ statement of costs as of the audit date to fully support the report statement item.
- b. If several programs are associated with a group and their accounting and reports are centrally prepared, additional fiscal information ~~shall~~ must be submitted for costs, undocumented at the reporting facility, with the cost report statement of costs or provided prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost.
- c. Each provider agency shall maintain, for a period of not less than ~~five~~ six years following the date of submission of the cost report statement of costs to the department, financial and statistical records of the period covered by such cost report statement of costs which are accurate and in sufficient detail to substantiate the cost data reported. If an audit has begun, but has not been finally resolved, the financial and statutory records relating to the audit ~~shall~~ must be retained until final resolution. Each provider agency shall make such records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives thereof.

2. **Census Records**

- a. Adequate census records for all consumers, regardless of payer source, must be prepared and maintained on a daily basis by the provider agency to allow for proper audit of the census data. The daily census records must include:

- (1) Identification of the consumer;
 - (2) Entries for all days that services are offered including the duration of service, and not just by exception; and
 - (3) Identification of type of day, i.e., hospital or in-house consumer day.
- b. A maximum of fifteen days per occurrence may be allowed for payment by the medical assistance program for hospital leave day in an intermediate care facility for individuals with intellectual disabilities. Hospital leave days in excess of fifteen consecutive days are not billable to the medical assistance program.
- c. A maximum of thirty therapeutic leave days per consumer per calendar year may be allowed for payment by the medical assistance program in an intermediate care facility for individuals with intellectual disabilities. Therapeutic leave days in excess of thirty per calendar year are not billable to the medical assistance program.

3. Accounting and reporting requirements.

- a. The accounting system must be double entry.
- b. The basis of accounting for reporting purposes must be accrual in accordance with generally accepted accounting principles. Ratesetting procedures will prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles.
- c. To properly facilitate auditing, the accounting system must be maintained in a manner that will allow cost accounts to be grouped by cost center and readily traceable to the cost report statement of costs.
- d. ~~The forms for annual reporting for reimbursement purposes must be the report forms designated by the department. The department will send a letter to a provider containing budget instructions one hundred twenty days prior to the start of the provider's fiscal year. The provider shall submit the statement of budgeted costs to the department within sixty days of the date of the letter consistent with the budget guidelines for establishing an interim rate in the subsequent year. The department shall issue the provider's interim rate within sixty days of the receipt of a provider's budget. Providers must submit requests for information and responses to the~~

department in writing. In computing any period of time prescribed or allowed in this subdivision, the day of the act, event, or default from which the designated period of time begins to run may not be included. The last day of the period so computed must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. In determining whether the deadline described in this subsection is met, the department shall not count any day in which sufficient information has not been timely provided by a provider when the provider has shown good cause for its inability to provide the required information within the time periods prescribed in this subdivision. A provider who offers intermediate care facility for individuals with intellectual disability services may have an independent certified public accountant or the department complete an audit of provider agency during the statement of costs year of each year to ensure the provider agency is in compliance with applicable state and federal regulations.

- e. For each provider agency that chose to have an independent certified public accountant complete a department compliance audit report in compliance with state and federal regulations, shall provide to the department no later than October first of each year:
- (1) A statement of costs for the statement of cost year on forms prescribed by the department.
 - (2) A copy of an audited report of the provider agency's financial records from an independent certified public accountant. The audit must be conducted in accordance with generally accepted auditing standards. The information must be reconciled to each provider agency's statement of costs and must include:
 - (a) A statement of assets and liabilities;
 - (b) An operations statement;
 - (c) A statement disclosing contract income and consumer wages;
 - (d) A statement of consumer fees or payments and their distribution including private pay individuals;
 - (e) A statement of the assets and liabilities of any related organizations;

- (f) A statement of ownership for the provider agency, including the name, address, and proportion of ownership of each owner;
- [1] If a privately held or closely held corporation or partnership has an ownership interest in the provider agency, the provider agency shall report the name, address, and proportion of ownership of all owners of the corporation or partnership who have an ownership interest of five percent or more, except that any owner whose compensation or portion of compensation is claimed in the provider agency's statement of costs must be identified regardless of the proportion of ownership interest; or
- [2] If a publicly held corporation has an ownership interest of fifteen percent or more in the provider agency, the provider agency shall report the name, address, and proportion of ownership of all owners of the publicly held corporation who have an ownership interest of fifteen percent or more;
- (g) Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the provider agency's facilities or a certification that the content of the document remains unchanged since the most recent statement given pursuant to this subsection;
- (h) Supplemental information reconciling the costs on the financial statements with costs on the statement of costs; and
- (i) Independent audit report must comply with this chapter and follow:
- [1] Medicare and medicaid guidance and provider reimbursement manual;
- [2] Government auditing standards;
- [3] North Dakota Century Code chapters 25-01.2 and 25-04;

- [4] Title 2, 42 and 45 Code of Federal Regulations, American institution of certified public accountants, financial accounting standards board, and government accounting standards board rules and regulations; and
- [5] All other applicable state and federal regulations.

(3) The following information upon request by the department:

- (a) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services claimed as allowable costs;
- (b) Audited financial statements for any home or corporate office organization, excluding individual developmental disabilities provider agencies of a chain organization owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconciles costs on the financial statements to costs for the report year; and
- (c) Audited financial statements for every organization that the facility conducts business and is owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconciles costs on the financial statements to costs for the report year.

f. For each provider agency that chose not to have an independent certified public accountant complete a department compliance audit report in compliance with state and federal regulations, shall provide to the department no later than October first of each year:

- (1) A statement of costs for the statement of cost year on forms prescribed by the department;
- (2) Except for state-owned facilities and provider agencies that do not have an independent audit completed annually, a copy of an audited report of the provider agency's financial records from an independent certified public accountant. The audit must be conducted in accordance with generally

accepted auditing standards. The information must be reconciled to each provider agency's statement of costs;

- (3) A statement of assets and liabilities;
- (4) An operations statement;
- (5) A statement disclosing contract income and consumer wages;
- (6) A statement of consumer fees or payments and their distribution including private pay individuals;
- (7) A statement of the assets and liabilities of any related organizations;
- (8) A statement of ownership for the provider agency, including the name, address, and proportion of ownership of each owner;
 - (a) If a privately held or closely held corporation or partnership has an ownership interest in the provider agency, the provider agency shall report the name, address, and proportion of ownership of all owners of the corporation or partnership who have an ownership interest of five percent or more, except that any owner whose compensation or portion of compensation is claimed in the provider agency's statement of costs must be identified regardless of the proportion of ownership interest; or
 - (b) If a publicly held corporation has an ownership interest of fifteen percent or more in the provider agency, the provider agency shall report the name, address, and proportion of ownership of all owners of the publicly held corporation who have an ownership interest of fifteen percent or more;
- (9) Copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the provider agency's facilities or a certification that the content of the document remains unchanged since the most recent statement given pursuant to this subsection;

(10) Supplemental information reconciling the costs on the financial statements with costs on the statement of costs; and

(11) The following information upon request by the department:

(a) Copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services claimed as allowable costs;

(b) Audited financial statements for any home or corporate office organization, excluding individual developmental disabilities provider agencies of a chain organization owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconciles costs on the financial statements to costs for the report year; and

(c) Audited financial statements for every organization that the facility conducts business and is owned in whole or in part by an individual or entity that has an ownership interest in the facility, together with supplemental information that reconciles costs on the financial statements to costs for the report year.

g. A cost report statement of costs must contain the actual costs, adjustments for nonallowable costs, and units of service for establishing the final rate. The mailing of a cost report statement of costs by registered mail, return receipt requested, will ensure ensures documentation of the filing date.

f.h. Adjustments made by the audit unit, to determine allowable cost, though not meeting the criteria of fraud or abuse on their initial identification, could may, if repeated on future cost filings, be considered as possible fraud or abuse. The audit unit will forward all such items identified to the appropriate investigative unit.

i. The provider agency shall make all adjustments, allocations, and projections necessary to arrive at allowable costs. The department may reject any statement of costs when the information filed is incomplete or inaccurate. If a statement of costs is rejected, the department may reduce the current payment rate to ninety-five percent of its most recently established rate until the information is completely and accurately filed.

34. **Auditing.** In order to properly validate the accuracy and reasonableness of cost information reported by the provider agency, the department shall provide for audits as necessary.
- a. A provider agency shall submit its ~~cost report ninety days from the last day of the provider's fiscal year~~ statement of costs by October first of the statement of cost year.
 - b. A provider agency may request, and the department may grant, one ~~thirty day~~ 30-day extension of the due date of the ~~cost report~~ statement of costs for good cause. ~~If an extension is granted, no penalty will apply during the extension period. The grant of a thirty-day extension does not extend the implementation of the penalty as described in subdivision a of subsection 4 if the cost is not received by the extended due date.~~
 - (1) In the event a provider agency fails to file the required statement of costs on or before the due date, the department may reduce the current payment rate to ninety-five percent of its most recently established rate.
 - (2) Reinstatement of the rate must occur on the first of the month beginning after receipt of the required information, but is not retroactive.
 - c. The preliminary audit report shall be submitted to the provider agency no later than ~~twelve six~~ months after the department receives the ~~provider's cost report~~ provider agency's statement of costs. The provider agency shall be notified by facsimile transmission or electronic mail.
 - d. The provider ~~shall~~ agency may submit a ~~preliminary response to the preliminary audit report to the department within forty five days of receipt of the preliminary audit report information, within fifteen days after notification, to explain why the provider agency believes the desk adjustment is incorrect. The department shall review the information and make appropriate adjustments.~~
 - e. The final audit report shall be submitted to the provider agency within ~~ninety sixty~~ days of the department's receipt of the ~~preliminary provider agency's response~~.
 - f. ~~Providers must~~ Provider agency shall submit requests for information and responses to the department in writing. In computing any period of time prescribed or allowed in this

~~subdivision subsection~~, the day of the act, event, or default from which the designated period of time begins to run may not be included. The last day of the period so computed must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. In determining whether the deadlines described in subdivision c, d, or e have been met, the department ~~shall~~ may not count any day in which ~~that~~ sufficient information has not been timely provided by a provider agency when the provider agency has shown good cause for its inability to provide the required information within the time periods prescribed in any one of those subdivisions.

4.5. Penalties for False Reports.

- a. ~~If a provider fails to file its on or before the due date, the department shall assess against the provider a nonrefundable penalty of one percent of one twelfth of final allowable costs for each month in which the was not timely filed. Final allowable costs means a program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations for the year being reported. A false report is when a provider agency knowingly supplies inaccurate or false information in a required statement of costs and supporting documentation that results in inaccurate costs.~~
- b. ~~At the time of audit and final computation for settlement, the department may invoke a penalty of five percent of a provider's administrative costs for the period of deficiency if:~~
 - (1) ~~Poor or no daily census records are available to document client units. Poor census records exist if those records are insufficient for audit verification of client units against submitted claims for reimbursement.~~
 - (2) ~~After identification and notification through a previous audit, a provider continues to list items exempted in audit as allowable costs on the cost report.~~
- c. ~~Penalties may be separately imposed for each violation.~~
- d. ~~No penalty may be waived by the department except those described in subdivision b and only then upon a showing of good cause. If a false report is received, the department may:~~

- (1) Place the provider agency's license on provisional status as defined in chapter 75-04-01 for six months;
- (2) Terminate the department's agreement with the provider agency;
- (3) Refer to law enforcement for investigation and prosecution under applicable state or federal law; or
- (4) Use any combination of the foregoing actions.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; August 1, 1997; July 1, 2001; May 1, 2006; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: ~~NDCC 25-16-10~~ 25-18-03, 50-24.1-01

Section 31. Section 75-04-05-09 is amended as follows:

75-04-05-09. Rate payments.

1. Except for intermediate care facilities for the mentally retarded, payment rates will be established for training, room, and board. The direct care hourly rate and components for each service are issued in a rate matrix established by the department. The components are:
 - a. The direct care hourly rate for intermediate care facilities for individuals with developmental disabilities must include direct care wage, employment related costs, relief staff, administrative cost, and program support including room and board. Room costs will be calculated either by an established percentage, or if a facility is built after January 1, 2010, the provider agency may choose the actual depreciation and interest costs relating to the facility for the life of the building will be added to the rate. After the depreciable life is complete the established percentage for room will be utilized.
 - b. The direct care hourly rate for residential habilitation must include direct care wage, employment related expenses, relief staff, program support, administrative costs, and an absence factor.
 - c. The direct care hourly rate for independent habilitation, day habilitation, prevocational services, individual employment supports and small group employment supports must include direct care wage, employment related expenses, relief staff, program support, and administrative costs.

- d. The direct care hourly rate for in-home supports and parenting supports must include direct care wage, employment related expenses, program support, and administrative costs.
2. Interim rates based on factors including budgeted data, as approved, will be used for payment of services during the year. For residential habilitation, independent habilitation, day habilitation, prevocational and individual and small group supported employment supports, the maximum authorized direct care staff hours for a client are:
- a. The direct care staff hours in a twenty-four hour period identified by the multiplier based on the department identified assessment score from the standard assessment tool.
 - b. The sum of the authorized hours for the year for each of the above services will be multiplied by the rate matrix for each service to determine each client's annual authorized individual budget. The individual budget may be managed directly by the client, client's authorized representative, the provider agency, or an approved fiscal agent.
 - c. Self-directed services or provider agency directed in home habilitation do not require prior authorization based on the assessment score. Needed hours shall be estimated by the program manager based on the person-centered services planning process with input from the client and the client authorized representative, if applicable. These services are subject to the maximum annual hours as prescribed by the department.
 - d. The established payment must be calculated by multiplying the rate from the rate matrix times the direct care staff hours identified by the multiplier based on the client's assessment score from the standard assessment tool, except for residential services provided in an intermediate care facility for individuals with intellectual disabilities, for which the established rate shall be the sum of all services identified for the client.
3. Base Staffing Rate:
- a. A provider agency may receive a base staffing rate when opening a new licensed group home or intermediate care facility for individuals with an intellectual disabilities, including prior to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] certification and survey requirements.

- b. A base staffing rate must be calculated based on minimum required staffing levels identified by the department.
- c. A base staffing rate is effective for an intermediate care facility for individuals with intellectual disabilities on the date it is licensed by the department.
- d. A provider agency shall receive a base staffing rate until the setting is fully occupied or for three months, whichever comes first.

4. Vacancy:

- a. A residential habilitation provider agency or intermediate care facility for individuals with intellectual disabilities may receive a vacancy rate add-on in the event of a vacancy.
- b. A provider agency shall request the vacancy rate add-on within fifteen days of the vacancy.
- c. A vacancy rate add-on is available only for licensed residential habilitation or intermediate care facilities for individuals with intellectual disabilities.
- d. The vacancy rate add-on is calculated using the rate of the client who vacated the setting. The vacancy rate add-on is evenly applied to all other client rates in the setting.
- e. A provider agency shall receive a vacancy rate add-on until the vacancy is filled but shall not exceed three months.

~~3-5.~~ Room and board charges to clients may not exceed the maximum supplemental security income payment less ~~twenty-five~~ one hundred dollars for the personal incidental ~~expenses~~ costs of the client, plus the average dollar value of food stamps to the eligible clientele in the facility. ~~If the interim room and board rate exceeds the final room and board rate, the provider shall reimburse clients in a manner approved by the department.~~

~~4-6.~~ In residential facilities where rental assistance is available to individual clients or the facility, the rate for room costs chargeable to individual clients ~~will be~~ are established by the governmental unit providing the subsidy.

~~5-7.~~ In residential facilities where energy assistance program benefits are available to individual clients or the facility, room and board rates ~~will be~~

are reduced to reflect the average annual dollar value of the energy assistance program such benefits.

- ~~6-8.~~ Income from client production must be applied to client wages and the cost of production. The department will not participate in the gains or losses associated with client production conducted pursuant to the applicable provision of title 29-CFR, Code of Federal Regulations, part 525.
- ~~7.~~ ~~The final rate is payment of all allowable, reasonable, and costs for all elements necessary to the delivery of a basic service to eligible clients subject to limitations and cost offsets of this chapter.~~
- ~~8-9.~~ A provider agency may not solicit or receive a payment from a client or any other individual to supplement the final established rate of reimbursement payment.
- ~~9-10.~~ The rate of reimbursement payment established must be no greater than the rate charged to a private payor for the same or similar service.
- ~~10.~~ ~~The department will determine interim and final rates of reimbursement for continuing contract providers based upon cost data from the:~~
 - ~~a.~~ ~~Submission requirements of section 75-04-05-02; and~~
 - ~~b.~~ ~~Field and desk audits.~~
11. The department shall base rates of continuing service providers, except for those identified in subdivision f of subsection 3 of section 75-04-05-10, on the following Limitations:
 - a. For rates for continuing contract providers, who have had no increase in the number of clients the provider is licensed to serve: ninety-five percent of the rated occupancy established by the department, or actual occupancy, whichever is greater. The department shall accumulate and analyze statistics on costs incurred by provider agencies. Statistics may be used to establish reasonable ceiling limitations for needed services. Limitations may be established on the basis of cost of comparable facilities and services, or audited costs, and may be applied as ceilings on the overall costs, on the costs of providing services, or on the costs of specific areas of operations. The department may implement ceilings at any time, based upon the statistics available, or as required by guidelines, regulations, rules, or statutes.

- b. For rates for continuing service providers, who have an increase in the number of clients the provider is licensed to serve in an existing service:
- (1) ~~Subdivision a of subsection 11 of section 75-04-05-09 for the period until the increase takes effect; and~~
 - (2) ~~Ninety five percent of the projected units of service for the remaining period of the fiscal year based upon an approved plan of integration or actual occupancy, whichever is greater~~ The department shall review, on an ongoing basis, aggregate payments to intermediate care facilities for the intellectually disabled to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under medicare payment principles. If aggregate payments to facilities exceed estimated payments under medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under medicare payment principles.
- c. ~~When establishing the final rates, the department may grant nonenforcement of subdivisions a and b of subsection 11 of section 75-04-05-09 when it determines the provider implemented cost containment measures consistent with the decrease in units, or when it determines that the provider's implementation of cost-containment measures consistent with the decrease in units would have imposed a detriment to the well-being of its clients.~~
- (1) ~~Acceptable cost containment measures include a decrease in actual salary and fringe benefit costs from the approved salary and fringe benefit costs for the day service or group home proportionate to the decrease in units.~~
 - (2) ~~Detriment to the well-being of clients includes a forced movement from one group home to another or obstructing the day service movement of a client in order to maintain the ninety five percent rated occupancy requirement~~ Provider agencies, to maintain reasonable rates of payment, shall deliver units of service at or near their rated capacity. Upon a finding by the department that an excess idle capacity exists and has existed, the cost of which is borne by the department, the provider agency shall be notified of the department's intention to reduce the level of state financial participation or invoke the cancellation provisions of the

provider agency agreement. The provider agency, within ten days of such notification, shall demonstrate to the satisfaction of the department that the department not take action and invoke its authority under this subsection or must accept the department's finding.

- d. Provider agencies may not be reimbursed for services, rendered to consumer, which exceed the rated occupancy of any facility as established by a fire prevention authority.
- e. Provider agencies of residential services shall offer services to each consumer three hundred sixty-five days per year, except for leap years in which three hundred sixty-six days must be offered. Provider agencies may not be reimbursed for those days in which services are not offered to consumer.
- f. Provider agencies of day services shall offer services to each consumer eight hours per day two hundred sixty days per year, except leap years in which two hundred sixty-one days must be offered, less any state-recognized holidays, unless a holiday exception is approved by the department. Provider agencies may not be reimbursed for hours of service in which the consumer is not in attendance.
- g. Provider agencies of day services to consumers of intermediate care facilities for individuals with intellectual disabilities shall bill the intermediate care facility for individuals with intellectual disabilities the day habilitation rate established for the consumer.

12. Adjustments and ~~appeal~~review procedures are as follows:

- a. ~~A rate adjustment~~Adjustments may be made to correct ~~an error~~errors. Statement of costs must be reviewed taking into consideration prior years' adjustments. The provider agency shall be notified by facsimile transmission or electronic mail of any adjustments based on the desk review. A provider agency may submit information, within fifteen days after notification, to explain why the desk adjustment is incorrect. The department shall review the information and make appropriate adjustments.
- b. ~~A final adjustment will be made for a facility that has terminated participation in the program.~~
- e. ~~A provider agency may submit a request for reconsideration of the rate~~final statement of costs review in writing to the ~~disability services~~developmental disabilities division within fifteen calendar

days of the date of the final rate-statement of costs review notification. A request for reconsideration must provide new evidence indicating why a new determination should be made or explain how the department has incorrectly interpreted the law. The department shall respond to a properly submitted request for reconsideration within ninety ~~calendar~~-days of receipt of the request. The department may ~~redetermine a rate~~ revise the final statement of costs review on its own motion.

- d.c. ~~If a provider is dissatisfied with the decision resulting from the request for reconsideration, the~~ A provider agency may appeal the decision within thirty days after the department mails the written notice of the decision resulting from the ~~on a~~ request for reconsideration of the final rate-review of the statement of costs.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 1995; April 1, 1996; August 1, 1997; July 1, 2001; May 1, 2006; July 1, 2012; January 1, 2013; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: ~~NDCC 25-16-10-25-18-03,~~ 50-24.1-01

Section 32. Section 75-04-05-09.1 is created as follows:

75-04-05-09.1. Assessments.

1. An assessment must be completed within ninety days for a client who has been determined eligible to receive developmental disabilities services and is receiving a service that requires an assessment score to determine reimbursement. The assessment effective date is the first date the client began receiving a service.
2. A reassessment must be completed every thirty-six months for a client aged sixteen or older or every twelve months for a client under age sixteen, or more frequently if a life-changing event occurs.
 - a. A reassessment based on a life-changing event may be requested by a client, a client authorized representative, or an employee of a provider agency. Requests for reassessment must be made in writing to the appropriate department regional office.
 - b. The assessment effective date is reset upon completion of a reassessment as a result of a life-changing event.
3. A client or a client authorized representative may request a reconsideration of the results of the assessment within thirty days of the date of receipt of results of the assessment.

- a. Reconsideration requests must be made in writing to the department. A request for reconsideration must provide new evidence indicating why a new determination should be made or explain how the department has incorrectly interpreted the law.
 - b. Upon receipt of a reconsideration request, the department shall review the request and make a determination within thirty days. Results of the reconsideration decision shall be transmitted to the client or the client authorized representative in writing.
 - c. If the department determines that the reconsideration is justified, a new assessment must be conducted within forty-five days. If the department denies the reconsideration, the department shall indicate the reason for denial in the notification letter that is sent to the client or the client authorized representative.
 - d. A client or client authorized representative may appeal the denial of the reconsideration within thirty days of the date of receipt of results of the reconsideration.
4. A client or client authorized representative may appeal the results of the assessment within thirty days of the date of receipt of results of the assessment.

History: Effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-18-03, 50-24.1-01

Section 33. Section 75-04-05-10 is amended as follows:

75-04-05-10. Reimbursement Cost Centers.

Reported allowable costs will be included in determining the interim and final rate. The method of finalizing the reimbursement rate per unit will be through the use of the retrospective ratesetting system. The departments or cost centers where direct and indirect costs are allocated on a provider agency's statement of costs may include:

1. Retrospective ratesetting requires that an interim rate be established prior to the year in which it will be effective. Providers are required to submit a statement of budgeted costs to the department no less than annually so an interim rate may be determined. The determination of a final rate for all services begins with the reported cost of the provider's operations for that fiscal year. Once it has been determined that reported costs are allowable, reasonable, and client related, those costs are compared to the reimbursements received through the interim rate Administration:

- a. Administration staff salaries and fringe benefits;
- b. Accreditation;
- c. Advertising and recruitment;
- d. Contracted services;
- e. Depreciation;
- f. Dues, subscriptions, and memberships;
- g. Home office costs;
- h. Other equipment not related to consumer care;
- i. Office supplies;
- j. Postage and freight;
- k. Printing;
- l. Employee travel;
- m. Employee training;
- n. Interest;
- o. Maintenance supplies;
- p. Rental of building;
- q. Repairs;
- r. Insurance;
- s. Telephone and internet;
- t. Utilities;
- u. Property taxes and specials; and
- v. Other costs not identified elsewhere.

2.
 - a. ~~Settlements will be made through a recoupment or refund to the department for an overpayment or an additional payment to the provider for an underpayment.~~
 - b. ~~Interprovider settlements between intermediate care facilities for individuals with intellectual disabilities and day services will be made through a recoupment or refund to the department from the day service provider to correct an overpayment; or a payout to the intermediate care facilities for individuals with intellectual disabilities, for the day service provider, to correct an underpayment.~~ Indirect program support costs:
 - a. Program support staff salaries and fringe benefits;
 - b. Consultants;
 - c. Employee travel;
 - d. Employee training;
 - e. Moveable equipment;
 - f. Other vehicle repair costs; and
 - g. Telephone, internet, and cable located in common areas of a residential setting or intermediate care facility for individuals with intellectual disabilities.
3. Limitations. Provider agency shall disclose to the department direct care costs for staff that provide direct care and nursing services separately for the annual statement of costs. Costs shall only include:
 - a. ~~The department shall accumulate and analyze statistics on costs incurred by providers. Statistics may be used to establish reasonable ceiling limitations for needed services. Limitations maybe established on the basis of cost of comparable facilities and services, or audited costs, and may be applied as ceilings on the overall costs, on the costs of providing services, or on the costs of specific areas of operations. The department may implement ceilings at any time, based upon the statistics available, or as required by guidelines, regulations, rules, or statutes.~~ Direct care staff salaries and fringe benefits; and
 - b. ~~Providers, to maintain reasonable rates of reimbursement, must deliver units of service at or near their rated capacity. Upon a finding by the department that an excess idle capacity exists and~~

has existed, the cost of which is borne by the department, the provider shall be notified of the department's intention to reduce the level of state financial participation or invoke the cancellation provisions of the provider agreement. The provider, within ten days of such notification, must demonstrate to the satisfaction of the department that the department should not invoke its authority under this provision, or must accept the department's finding Contracted costs for services purchased to actively provide support to clients receiving a service from a provider agency.

- c. — Providers shall not be reimbursed for services, rendered to clients, which exceed the rated occupancy of any facility as established by a fire prevention authority.
- d. — Providers of residential services must offer services to each client three hundred sixty five days per year, except for leap years in which three hundred sixty six days must be offered. Costs and budget data must be reported on this basis and rates of reimbursement will be established on the same basis. Providers may not be reimbursed for those days in which services are not offered to clients.
- e. — Providers of day services must offer services to each client eight hours per day two hundred sixty days per year less any state-recognized holidays, except for leap years in which two hundred sixty one days must be offered. The budgeted units of service for a full-time client will be equivalent to two hundred thirty days per year at eight hours per day.
- f. — Services exempted from the application of subdivisions d and e are:
 - (1) — Emergency services.
 - (2) — Family subsidy.
 - (3) — Supported living.
- g. — (1) — Days of services in facilities subject to the application of subdivision d must be provided for a minimum of three hundred thirty five days per year per client. A reduction of payment to the provider in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability program administrator determines that a failure to meet the minimum was justified.

- ~~(2) For purposes of this subdivision, the fiscal year of the facility will be used, and all days before the admission, or after the discharge of the client, will be counted toward meeting the minimum.~~

- ~~h. Salary and fringe benefit cost limits, governing the level of state financial participation, may be established by the department by calculating:
 - ~~(1) Comparable salaries and benefits for comparable positions, by program size and numbers served, and programs in and out of state;~~
 - ~~(2) Comparable salaries and benefits for comparable positions in state government;~~
 - ~~(3) Comparable salaries and benefits for comparable positions in the community served by the provider; or~~
 - ~~(4) Data from paragraphs 1, 2, and 3, taken in combination. By using private funds, providers may establish higher salaries and benefit levels than those established by the department.~~~~

- ~~i. Management fees and costs may not exceed the lesser of two percent of administrative costs or the price of comparable services, facilities, or supplies purchased elsewhere, primarily in the local market.~~

4. Direct Program Support Costs:

a. Costs allowable for all services:

- (1) Day habilitation pass through;
- (2) Fixed equipment;
- (3) Medical supplies;
- (4) Program Supplies; and
- (5) Vehicle repair costs for vehicles used to transport consumers.

b. Additional costs only allowable for facility-based day habilitation:

- (1) Household supplies;

- (2) Housekeeping staff or purchased housekeeping services;
- (3) Insurance;
- (4) Interest;
- (5) Transportation of consumers;
- (6) Vehicle purchase or lease;
- (7) Vehicle depreciation;
- (8) Rental of building;
- (9) Utilities;
- (10) Maintenance supplies;
- (11) Property taxes and specials; and
- (12) Repairs.

5. Room:

- a. Depreciation;
- b. Transportation of consumers, including vehicle insurance and gas;
- c. Vehicle depreciation or lease;
- d. Interest;
- e. Rental of building;
- f. Repairs;
- g. Insurance;
- h. Utilities;
- i. Property taxes and specials;
- j. Household supplies;

k. Housekeeping staff or purchased housekeeping services, including lawn and snow removal services; and

l. Maintenance supplies.

6. Board:

a. Food; and

b. Dietary supplies.

7. Other Costs:

a. Other program or services; and

b. Production:

(1) Advertising;

(2) Consumer salaries and fringe benefits;

(3) Production materials; and

(4) Production supplies.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 1995; April 1, 1996; July 1, 2001; July 1, 2010; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

Section 34. Section 75-04-05-11 is amended as follows:

75-04-05-11. ~~Cost Report~~ Statement of costs allocations.

1. ~~The cost report statement of costs~~ provides for the identification of the allowable expenditures and basic services subject to reimbursement by the department. When costs are incurred solely for a basic service, the costs must be assigned directly to that basic service. When costs are incurred jointly for two or more basic services, and not able to be directly assigned, the costs ~~will~~ must be allocated as follows:

a. 1. Personnel. The total cost of all staff identified in payroll records must be listed by position title and distributed to basic services ~~subject to the approval of staff to client ratios by the department.~~ Time studies may be performed for one week at least quarterly for allocation. When no time studies exist, the applicable units must be used for allocation. When there

is no definition of a unit of service, the department ~~will~~must use the unit of service for billing purposes for residential settings.

- b-2. Fringe benefits. The cost of fringe benefits must be allocated to basic services based on the ratio of the basic service personnel costs to total personnel costs. Personnel costs on which no fringe benefits are paid ~~will~~be ~~are~~ excluded.
- c-3. Equipment. The total cost of all equipment, whether rented, leased, purchased, or depreciated, must be distributed to basic ~~service~~services based on usage or applicable units.
- d-4. Real property ~~expense cost~~. The total of all property costs, whether rented, leased, purchased, or depreciated, must be allocated based on direct square footage. When multiple usage of direct use area occurs, the allocation ~~will~~is first ~~be~~ done by square footage and then by applicable units.
- e-5. Travel. The total of all unassigned travel costs must be included in administrative costs.
- f-6. Supplies. The total of all unassigned supply costs must be included with administrative costs.
- g-7. Food services. The total of all food costs ~~should~~must be allocated based on meals served. When the number of meals served has not been identified, applicable units must be used.
- h-8. Insurance and bonds. The total of all such costs, except insurance costs representing real property ~~expense costs~~ or vehicle insurance costs applicable to vehicles used for one or more basic services must be included as administrative costs.
- ~~i. Contractual services. The total of all contractual costs must be allocated based upon applicable units or, if appropriate, included as part of the administrative costs.~~
- j-9. ~~General client~~Indirect program support costs. Total ~~general client expenses~~indirect program support costs, not including personnel and fringe benefits, must be allocated to basic service categories, exclusive of production, room, and board, ~~supported living arrangements, family support services, and extended services~~ based on actual units of service. When determining the day ~~support~~habilitation ratio of ~~general client indirect program support~~ costs, total day ~~support~~habilitation units ~~will be~~ are divided by eight and rounded to the nearest whole number.

~~k.10.~~ Administrative costs. Total administrative expenses may be allocated to all service categories, on time studies done in compliance with subdivision a. If time studies are not available, total administrative expenses costs must be allocated to all service categories, exclusive of residential habilitation room, board, and production, based upon the ratio of the basic service cost to total cost excluding administrative and production costs. The percentage calculated for residential ~~services~~ habilitation must be based on total costs for training, room, and board for the specific residential service with the allocation made only to training direct care costs, direct program support costs, and indirect program support costs.

~~2.~~ Identification of the means of financing is to be as follows:

- ~~a.~~ Budget reports require the disclosure of all revenues currently used to finance costs and those estimated to finance future costs, inclusive of the provider's estimate of state financial participation.
- ~~b.~~ Revenues must be distributed on the appropriate budget report by program. When private contributions are used to supplement or enrich services, the sum may be distributed accordingly. When contributions are held in reserve for special purposes, it may be described by narrative.
- ~~c.~~ The disclosure of contract income and production costs is required to establish a rate of reimbursement supplemental to, and not duplicative of, these revenues and costs.
- ~~d.~~ State financial participation in the habilitative costs associated with day supports shall not include production costs.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; May 1, 2006; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: ~~NDCC 25-16-10~~ 25-18-03, 50-24.1-01

Section 35. Section 75-04-05-12 is amended as follows:

75-04-05-12. Adjustment to cost and cost limitation.

1. ~~Providers~~ Provider agencies under contract with the department to provide services to individuals with developmental disabilities ~~must who provide intermediate care facilities for individuals with intellectual disabilities shall submit to the department, no less than annually, a statement of actual costs on the cost report to the department by October first of each year.~~
2. ~~Providers must~~ Provider agencies shall disclose all costs and all revenues.

3. ~~Providers must~~ Provider agencies shall identify income to offset costs when applicable in order that state financial participation not supplant or duplicate other funding sources. Income must be offset up to the total of appropriate allowable costs. If actual costs are not identifiable, income must be offset up to the total of costs described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each cost category. These sources, and the cost to be offset, must include the following:
- a. Fees, the cost of the service or time for which the fee was imposed excluding those fees based on cost as established by the department.
 - b. Insurance recoveries income, costs reported in the current year to the extent of costs allowed in the prior or current year for that loss.
 - c. Rental income, cost of space in facilities or for equipment included in the rate of reimbursement.
 - d. Telephone and ~~telegraph~~ internet income from ~~clients~~ consumers, staff, or guests, cost of the service.
 - e. Rental assistance or subsidy when not reported as third-party income, total costs.
 - f. Interest or investment income, interest expense.
 - g. Medical payments, cost of medical services included in the rate of reimbursement as appropriate.
 - h. Respite care income when received for a reserved bed, room, board, and staff costs.
 - i. Other income to the provider agency from local, state, or federal units of government may be determined by the department to be an offset to cost.
4. Payments to a provider agency by its vendor ~~will be~~ are considered as discounts, refunds, or rebates in determining allowable costs under the program even though these payments may be treated as "contributions" or "unrestricted grants" by the provider agency and the vendor. However, such payments may represent a true donation or grant, and as such may not be offset against costs. Examples include when:

- a. Payments are made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited.
 - b. Payments are in addition to discounts, refunds, or rebates, which have been customarily allowed under arrangements between the provider agency and the vendor.
 - c. The volume or value of purchases is so nominal that no relationship to the contribution can be inferred.
 - d. The contributor is not engaged in business with the provider agency or a facility related to the provider agency.
5. If an owner or other official of a provider agency directly receives from a vendor monetary payments or goods or services for the owner's or official's own personal use as a result of the ~~provider's~~ provider agency's purchases from the vendor, the value of such payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the ~~provider's~~ provider agency's costs for goods or services purchased from the vendor.
6. If the purchasing function for a provider agency is performed by a central unit or organization, all discounts, allowances, refunds, and rebates ~~should~~ must be credited to the costs of the provider agency in accordance with the instructions above. These ~~should~~ may not be treated as income of the central purchasing function or used to reduce the administrative costs of that function. Such administrative costs are, however, properly allocable to the facilities serviced by the central purchasing function.
7. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased. They ~~should~~ must be used to reduce the specific costs to which they apply. If possible, they ~~should~~ must accrue to the period to which they apply. If not, they will reduce ~~expenses~~ costs in the period in which they are received. The reduction to ~~expense~~ cost for supplies or services must be used to reduce the total cost of the goods or services for all clients without regard to whether the goods or supplies are designated for all clients or a specific group.
- a. "Purchase discounts" include cash discounts, trade, and quantity discounts. "Cash discount" is for prepaying or paying within a certain time of receipt of invoice. "Trade discount" is a reduction of cost granted certain customers. "Quantity discounts" are reductions of price because of the size of the order.

- b. Allowances are reductions granted or accepted by the creditor for damage, delay, shortage, imperfection, or other cause, excluding discounts and refunds.
- c. Refunds are amounts paid back by the vendor generally in recognition of damaged shipments, overpayments, or return purchases.
- d. Rebates represent refunds of a part of the cost of goods or services. Rebates differ from quantity discounts in that they are based on the dollar value of purchases, not the quantity of purchases.
- e. "Other cost-related income" includes amounts generated through the sale of a previously expensed item, e.g., supplies or equipment.

History: Effective July 1, 1984; amended effective June 1, 1995; July 1, 2001; May 1, 2006; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

Section 36. Section 75-04-05-13 is amended as follows:

75-04-05-13. Nonallowable costs. Nonallowable costs include:

1. Advertising designed to encourage potential consumers to select a particular provider agency.
2. Amortization of noncompetitive agreements.
3. ~~Bad debt expense except as provided in section 75-04-05-13.1.~~
4. Barber and beautician services.
5. Basic research.
6. Fees paid to a member of a board of directors for meetings attended to the extent that the fees exceed the compensation paid per day to a member of the legislative council pursuant to North Dakota Century Code section 54-35-10.
7. Concession and vending machine costs.
8. Contributions or charitable donations.

9. Corporate costs, such as organization costs, reorganization costs, and other costs not related to client services.
10. Costs for which payment is available from another primary third-party payor or for which the department determines that payment may lawfully be demanded from any source.
11. Costs of functions performed by clients in a residential setting which are typical of functions of any individual living in the individual's own home, such as keeping the home sanitary, performing ordinary chores, lawnmowing, laundry, cooking, and dishwashing. These activities shall be an integral element of an individual program plan consistent with the client's level of function.
12. Costs of donations or memberships in sports, health, fraternal, or social clubs or organizations, such as Elks, YMCA, or country clubs.
13. Costs, including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to the vendor.
14. Costs incurred by the ~~provider's~~ provider agency's subcontractors, or by the lessor of property which the provider agency leases, and which becomes an element in the subcontractor's or lessor's charge to the provider agency, if such costs would not have been allowable under this section had they been incurred by a provider agency directly furnishing the subcontracted services, or owning the leased property.
15. ~~Costs exceeding the approved budget unless the written prior approval of the department has been received.~~
- 46.—Depreciation on assets acquired with federal or state grants.
- 47.16. Education costs incurred for the provision of services to clients who are, could be, or could have been, included in a student census. Education costs do not include costs incurred for a client, defined as a "child-student with disabilities" by ~~subsection 2 of North Dakota Century Code section 15-59-01~~ chapter 15.1-32, who is enrolled in a school district pursuant to an interdepartmental plan of transition.
- 48.17. Employee benefits not offered to all full-time employees.
- 49.18. Entertainment costs including activities.

- ~~20-19.~~ Equipment costs for any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates to the satisfaction of the department that any particular use of the equipment was related to client services. ~~Equipment used for client services, other than developmental disabilities contract services, will be allocated by time studies, mileage, client census, percentage of total operational costs, or otherwise as determined appropriate by the department.~~
- ~~21-20.~~ Expense or liabilities established through or under threat of litigation against the state of North Dakota or any of its agencies; provided that reasonable insurance expense shall may not be limited by this subsection.
- ~~22-21.~~ Community contributions, employer sponsorship of sports teams, and dues to civic and business organizations, such as Lions, chamber of commerce, Kiwanis, in excess of one thousand five hundred dollars per ~~cost reporting statement of costs~~ period.
- ~~23.~~ ~~Fringe benefits exclusive of Federal Insurance Contributions Act, unemployment insurance, medical insurance, workers' compensation, retirement, disability, long term care insurance, dental, vision, life, education costs as described in subsection 33, and the cost of a provider's unrecovered cost of medical services rendered to an employee. The provider must receive written prior approval of the department before including any other benefits.~~
- ~~24-22.~~ Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose.
- ~~25-23.~~ Funeral and cemetery ~~expenses~~ costs.
- ~~26-24.~~ Goodwill.
- ~~27-25.~~ Home office costs when unallowable if incurred by facilities in a chain organization.
- ~~28-26.~~ Travel not directly related to industry conferences, state or federally sponsored activities, or client services.
- ~~29-27.~~ Interest cost related to money borrowed for funding depreciation.
- ~~30-28.~~ Items or services, such as telephone, television, and radio, located in a client's room and furnished primarily for the convenience of the clients.
- ~~31-29.~~ Key man Top management personnel insurance.

~~32-30.~~ Laboratory salaries and supplies.

~~33-31.~~ The cost of education unless:

- a. The education was provided by an accredited academic or technical educational facility;
- b. The ~~expenses~~costs were for materials, books, or tuition;
- c. The employee was enrolled in a course of study intended to prepare the employee for a position at the facility and is in the a position; and
- d. The facility claims the cost of the education at a rate that does not exceed one dollar and twenty-five cents per hour of work performed by the employee in the position for which the employee received education at the ~~provider's expense~~provider agency's cost provided the amount claimed per employee may not exceed two thousand five hundred dollars per year or an aggregate of ten thousand dollars per employee and in any event may not exceed the cost to the facility of the employee's education.

~~34-32.~~ Meals and food service in day service programs.

~~35-33.~~ Membership fees or dues for professional organizations exceeding three thousand dollars in any ~~fiscal~~statement of costs year.

~~36-34.~~ Miscellaneous ~~expenses~~costs not related to client services.

- ~~37-35.~~ a. Except as provided in subdivisions b, c, and d, payments to a member of the governing board of the provider agency, a member of the governing board of a related organization, or a family member of a member of those governing boards, including a spouse and an individual in the following relationship to a member or to a spouse of a member: parent, stepparent, child, stepchild, grandparent, step-grandparent, grandchild, step-grandchild, brother, sister, ~~half brother~~half-brother, ~~half sister~~half-sister, stepbrother, and stepsister.
- b. Payments made to a member of the governing board of the provider agency to reimburse that member for allowable ~~expenses~~costs incurred by that member in the conduct of the ~~provider's~~provider agency's business may be allowed.
- c. Payments for a service or product unavailable from another source at a lower cost may be allowed.

- d. Wages allowed are limited to those wages paid to a family member of a member of the board and the amount must be consistent with wages paid to anyone else who would hold the same or similar position and the position is such that if the family member were not to hold the position, the provider agency would hire someone else to do the job.

~~38-36.~~ Penalties, fines, and related interest and bank charges other than regular service charges.

~~39-37.~~ Personal purchases.

~~40-38.~~ Pharmacy salaries.

~~41-39.~~ Physician and dentist salaries.

- ~~42-40.~~ a. For facility-based day ~~supports-habilitation~~ programs, production costs, such as client salaries and benefits, supplies, and materials representing unfinished or finished goods or products that are assembled altered, or modified.
- b. For non-facility-based day ~~supports-habilitation~~ programs, production costs, such as client salaries and benefits, supplies, and materials representing unfinished or finished goods or products that are assembled, altered, or modified, square footage, and equipment.
- c. For ~~extended services-employment supports~~, in addition to subdivisions a and b, costs of employing clients, including preproduction and postproduction costs for supplies, materials, property, and equipment, and property costs other than an office, office supplies, and equipment for the supervisor, job coach, and support staff.
- d. Total production-related legal fees in excess of five thousand dollars in any fiscal period.

~~43-41.~~ Religious salaries, space, and supplies.

~~44-42.~~ Room and board costs in residential services other than an intermediate care facility for individuals with intellectual disabilities.

~~45-43.~~ Salary costs of employees determined by the department to be inadequately trained to assume assigned responsibilities, but when an

election has been made to not participate in appropriate training approved by the department.

~~46.44.~~ Salary costs of employees who fail to meet the functional competency standards established or approved by the department.

~~47.45.~~ Travel of clients visiting relatives or acquaintances in or out of state.

~~48.46.~~ Mileage reimbursement in excess of the standard mileage rate established by the state of North Dakota and meal reimbursement in excess of rates established by the general services administration for the destination city.

~~49.47.~~ Undocumented expenditures.

~~50.48.~~ Value of donated goods or services.

~~51.49.~~ Vehicle and aircraft costs not directly related to provider agency business or client services.

~~52.50.~~ X-ray salaries and supplies.

~~51.~~ Alcohol and tobacco products.

~~52.~~ Political contributions.

~~53.~~ Salaries or costs of a lobbyist.

History: Effective July 1, 1984; amended effective June 1, 1985; January 1, 1989; August 1, 1992; June 1, 1995; July 1, 1995; April 1, 1996; August 1, 1997; July 1, 2001; May 1, 2006; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: ~~NDCC 25-16-10-25-18-03,~~ 50-24.1-01

Section 37. Section 75-04-05-14 is repealed.

75-04-05-14. Profit-motivated entities - Return on investment. ~~Effective August 1, 1995, the annual average percentage of existing debt divided by the original asset cost shall determine the annual return on the original cost of fixed assets.~~

~~1. For an annual average percentage of debt to annual average assets that is between fifty one and eighty percent, a two percent return on the original cost of fixed assets must be allowed.~~

2. ~~For an annual average percentage of debt to annual average assets that is between zero and fifty percent, a three percent return on the original cost of fixed assets must be allowed.~~

~~History: Effective July 1, 1984; amended effective June 1, 1985; August 1, 1997.~~

~~General Authority: NDCC 25-01.2-18, 50-06-16~~

~~Law Implemented: NDCC 25-16-10, 25-16-10.1, 50-24.1-01~~

Repealed effective January 1, 2017.

Section 38. Section 75-04-05-15 is amended as follows:

75-04-05-15. Depreciation.

1. The principles of reimbursement for provider agency costs require that payment for services include depreciation on depreciable assets that are used to provide allowable services to clients. This includes assets that may have been fully or partially depreciated on the books of the provider agency, but are in use at the time the provider agency enters the program. The useful lives of these assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. Depreciation is recognized as an allocation of the cost of an asset over its estimated useful life. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the ~~cost report~~ statement of costs. The facility shall use the sale price in computing the gain or loss on the disposition of assets.
2. Special assessments in excess of one thousand dollars paid in a lump sum must be capitalized and depreciated. Special assessments not paid in a lump sum may be expensed as billed by the taxing authority.
3. Depreciation methods:
 - a. A provider agency shall use the straight-line method of depreciation. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used. A provider agency shall apply the method and procedure for computing depreciation on a basis consistent from year to year and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different than that submitted on the ~~cost report~~ statement of costs, a provider agency shall prepare a reconciliation.

- b. For all assets obtained prior to August 1, 1997, a provider agency shall compute depreciation using a useful life of ten years for all items except vehicles, which must be depreciated over four years, and buildings, which must be depreciated over twenty-five years or more. For assets other than vehicles and buildings obtained after August 1, 1997, a provider agency may use the American hospital association depreciation guidelines as published by the American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 2004 edition, to determine the useful life or the composite useful life of ten years. ~~A provider may not use an option other than the useful life methodology the provider initially chooses to use without the department's prior written approval.~~ For all assets, other than vehicles and buildings, obtained prior to January 1, 2017, a provider agency's prior depreciation schedule must be used. A provider agency shall use a useful life of ten years used for all equipment not identified in the American hospital association depreciation guidelines.

- c. A provider agency acquiring assets as an ongoing operation shall use as a basis for determining depreciation:
 - (1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and
 - (2) (a) A composite remaining useful life for movable equipment, determined from the seller's records; or
(b) The remaining useful life for movable equipment, determined from the seller's records.

4. Acquisitions are treated as follows:

- a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least five thousand dollars, its cost must be capitalized and depreciated in accordance with subdivision b of subsection 3. A provider agency shall capitalize as part of the cost of the asset, costs incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest.

- b. A provider agency shall capitalize major repair and maintenance costs on equipment or buildings if they exceed five thousand dollars per project and will be depreciated in accordance with subdivision b of subsection 3.

5. A provider agency shall maintain records that provide accountability for the ~~fixed-capital assets and other~~ assets and also provide adequate means by which depreciation can be computed and established as an allowable client-related cost.
6. The basis for depreciation is the lower of the purchase price or fair market value at the time of purchase.

If the ~~provider's~~ provider agency's cash payment for a purchase is reduced by a trade-in, fair market value will consist of the sum of the book value of the trade-in plus the cash paid.

7. For depreciation and reimbursement purposes, a provider agency may record and depreciate donated depreciable assets based on the asset's fair market value. If the ~~provider's~~ provider agency's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal must be made. An appraisal made by a recognized appraisal expert will be accepted for depreciation.
8. Provision for increased costs due to the sale of a facility may not be made.
9. ~~If a provider finances a facility pursuant to North Dakota Century Code chapter 6-09.6, the provider, subject to the approval of the department, may elect to be reimbursed based upon the mortgage principal payments rather than depreciation. Once an election is made by the provider, it may not be changed without department approval.~~

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; August 1, 1997; July 1, 2001; May 1, 2004; May 1, 2006; January 1, 2013; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10, 25-16-15~~ 25-18-03, 50-24.1-01

Section 39. Section 75-04-05-16 is amended as follows:

75-04-05-16. Interest expense.

1. In general:
 - a. To be allowable under the program, interest must be:
 - (1) Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required;
 - (2) Identifiable in the ~~provider's~~ provider agency's accounting records;

- (3) Related to the reporting period in which the costs are incurred;
 - (4) Necessary and proper for the operation, maintenance, or acquisition of the ~~provider's~~ provider agency's facilities used therein;
 - (5) Unrelated to funds borrowed to purchase assets in excess of cost or fair market value; and
 - (6) When borrowed for the purpose of making capital expenditures for assets that were owned by any other facility or service provider agency on or after July 18, 1984, limited to that amount of interest cost which such facility or service provider agency may have reported, for ratesetting purposes, had the asset undergone neither refinancing nor a change of ownership.
 - b. In cases when it was necessary to issue bonds for financing, any bond premium or discount ~~shall~~ must be accounted for and written off over the life of the bond issue.
2. Interest paid by the provider agency to partners, stockholders, or related organizations of the provider agency is not allowable as a cost ~~except when interest expense is incurred subject to North Dakota Century Code chapter 6-09.6.~~
 3. A provider agency may combine or "pool" various funds in order to maximize the return on investment. If funds are pooled, proper records must be maintained to preserve the identity of each fund in order to permit the earned income to be related to its source. Income earned on gifts and grants does not reduce allowable interest expense.
 4. Funded depreciation requirements are as follows:
 - a. Funding of depreciation is the practice of setting aside cash or other liquid assets to be used for replacement of the assets depreciated or for other capital purposes. This provision is recommended as a means of conserving funds for the replacement of depreciable assets. It is expected that the funds will be invested to earn revenues. The revenues generated by this investment will not be considered as a reduction of allowable interest expense provided such revenues remain in the fund.

- b. The deposits are, in effect, made from the cash generated by the noncash expense depreciation and do not include interest income. Deposits to the funded depreciation account are generally in an amount equal to the depreciation expense charged to costs each year. In order to qualify for all provisions of funding depreciation, the minimum deposits to the account must be fifty percent of the depreciation expensed that year. Deposits in excess of accumulated depreciation are allowable; however, the interest income generated by the "extra" deposits will be considered as a reduction of allowable interest expense.
- c. Monthly or annual deposits representing depreciation must be in the funded depreciation account for six months or more to be considered as valid funding transactions. Deposits of less than six months are not eligible for the benefits of a funded depreciation account. However, if deposits invested before the six-month period remain in the account after the six-month period, the investment income for the entire period will not reduce the allowable interest expensed in that period. Total funded depreciation in excess of accumulated depreciation on client-related assets will be considered as ordinary investments and the income therefrom will be used to offset interest expense.
- d. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on these assets and for other capital expenditures are on a first-in, first-out basis.
- e. The provider agency may not use the funds in the funded depreciation account for purposes other than the improvement, replacement, or expansion of facilities or equipment replacement or acquisition related to client services.
- f. Existing funded depreciation accounts must be used for all capital outlays in excess of five thousand dollars except with regard to those assets purchased exclusively with donated funds or from the operating fund, provided no amount was borrowed to complete the purchase. Should funds be borrowed, or other provisions not be met, the entire interest for the funded depreciation income account will be offset up to the entire interest expense paid by the facility for the year in question.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; January 1, 2013; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: ~~NDCC 25-16-10~~ 25-18-03, 50-24.1-01

Section 40. Section 75-04-05-17 is amended as follows:

75-04-05-17. Related organization.

1. Costs applicable to services, facilities, and supplies furnished to a provider agency by a related organization shall not exceed the lower of the cost to the related organization or the ~~price of comparable~~ reasonable cost of services, facilities, or supplies purchased elsewhere ~~primarily in the local market~~. ~~Providers~~ Provider agencies must identify such related organizations and costs in the ~~cost report~~ statement of costs. An appropriate statement of cost and allocations must be submitted with the ~~cost report~~ statement of costs. For ~~cost reporting~~ statement of costs purposes, management fees ~~will be~~ are considered administrative costs.
2. A chain organization consists of a group of two or more service ~~providers~~ provider agencies which are owned, leased, or through any other device, controlled by one business entity.
3. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their member facilities. Although the home office of a chain is normally not a provider agency in itself, it may furnish to the individual provider agency, central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual cost of providing such services is includable in the ~~providers~~ provider agency's allowable costs under the program. Any services provided by the home office which are included in cost as payments to an outside provider agency will be considered a duplication of costs and not be allowed.
4. If the home office makes a loan to or borrows money from one of the components of a chain organization, the interest paid is not an allowable cost and interest income is not used to offset interest expense.
5. Payments, to related organizations, by the provider agency shall be limited to the actual and reasonable cost of the service received or the product purchased.
6. Provider agency shall document financial transactions between the provider agency and the related organization. The terms of such transactions must be similar as those obtained by a prudent buyer negotiating at arm's length with a willing and knowledgeable seller.

History: Effective July 1, 1984; amended effective June 1, 1985; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

Section 41. Section 75-04-05-18 is amended as follows:

75-04-05-18. Rental expense paid to a related organization.

1. A provider agency may lease a facility from a related organization within the meaning of the principles of reimbursement. In such a case, the rent paid to the lessor by the provider agency is not allowable as a cost, ~~except for providers subject to chapter 75-04-03, whose.~~ Provider agency's rent payments shall not exceed the actual cost of mortgage payments of principal and interest. The cost of ownership of the facility would, however, be an allowable cost to the provider agency. Generally, these would be costs such as depreciation, interest on the mortgage, real estate taxes, and other property expenses attributable to the leased facility. The effect is to treat the facility as though it were owned by the provider agency. Therefore, the owner's equity in the leased assets is includable in the equity capital of the provider agency.
2. In order to be considered an allowable cost, the home office cost must be directly related to those services performed for individual providers provider agencies and relate to client services. An appropriate share of indirect costs will also be considered. Documentation as to the time spent, the services provided, the hourly valuation of services and the allocation method used must be available to substantiate the reasonableness of the cost.

History: Effective July 1, 1984; amended effective June 1, 1985; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: ~~NDCC 25-16-10~~ 25-18-03, 50-24.1-01

Section 42. Section 75-04-05-19 is amended as follows:

75-04-05-19. Taxes.

1. **General.** Taxes assessed against the provider agency, in accordance with the levying enactments of the several states and lower levels of government and for which the provider agency is liable for payment, are allowable costs. Tax ~~expense-costs~~ may not include fines, penalties, or those taxes listed in subsection 2.
2. **Taxes not allowable as costs.** The following taxes are not allowable as costs:
 - a. Federal income and excess profit taxes, including any interest or penalties paid thereon.
 - b. State or local income and excess profit taxes.

- c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes in the issuance of bonds, property transfers, issuance or transfers of stocks, etc. Generally, these costs are either amortized over the life of the securities or depreciated over the life of the asset. They are not, however, recognized as tax costs.
- d. Taxes from which exemptions are available to the provider agency.
- e. Taxes on property which is not used in the provision of covered services.
- f. Taxes, including sales taxes levied against residents and collected and remitted by the provider agency.
- g. Self-employment (FICA) taxes applicable to persons, including individual proprietors, partners, or members of a joint venture.

History: Effective July 1, 1984; amended effective July 1, 2001; May 1, 2006; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: ~~NDCC 25-16-10~~ 25-18-03, 50-24.1-01

Section 43. Section 75-04-05-20 is amended as follows:

75-04-05-20. Personal incidental funds.

1. Each client is allowed to retain a specific monthly amount of income for personal needs. These personal needs include such items as clothes, tobacco, or other day-to-day incidentals. This monthly allowance is not to be applied toward the client's cost of care. Generally, the source of income for personal needs is from social security, veterans' benefits, private income, economic assistance, or supplemental security income.
2. ~~Providers~~ Provider agencies managing client funds must maintain a current client account record in a form and manner prescribed by the department. Copies of the client account record must be provided to the client without charge.
3. The department may conduct audits of client account records in conjunction with regular field audits.
4. Adult client funds may be disbursed with the client's permission in the absence of a ~~guardian~~ client authorized representative or declaration of incompetency.

5. The department uses the amount of a client's income to determine:
 - a. Eligibility for medical assistance benefits.
 - b. Amount of income and other resources which must be applied toward the client's care.
 - c. Amount of income and other resources which can be retained by the client.

6. The following personal incidental items, supplies, or services furnished as needed or at the request of the client may be paid for by the client from the client's personal incidental allowance or by outside sources, such as relatives and friends:
 - a. Outside barber and beautician services, if requested by the client for regular shaves, haircuts, etc.
 - b. Personal supplies, such as toothbrushes, toothpaste or powder, mouthwashes, dental floss, denture cleaners, shaving soap, cosmetic and shaving lotions, dusting powder, cosmetics, personal deodorants, hair combs and brushes, and sanitary pads and belts for menstrual periods.
 - c. Dry cleaning of personal clothing.
 - d. Recliner chairs, standard easy chairs, radios, television sets, etc., that the client desires for the client's personal use.
 - e. Special type wheelchairs, e.g., motorized, permanent leg support, hand-controlled, if needed by client, recommended by the client's attending physician, and if no other payment resource is available.
 - f. Personal clothing, including robes, pajamas, and nightgowns, except for clothing at distinct parts of the state institution for individuals with developmental disabilities certified as intermediate care facilities for individuals with intellectual disabilities, when the ownership of the clothing is retained by the facility or the clothing is included as a part of the individual's plan of care.
 - g. Miscellaneous items, such as tobacco products and accessories, beverages and snacks served at other than mealtime except for supplemental nourishment, television rental for individual use, stationery supplies, postage, pens and pencils, newspapers and periodicals, cable television, internet and long-distance telephone services. Nonprescription vitamins or combinations of vitamins with

minerals may be paid when ordered by the attending physician and the ~~client, parent, guardian, or responsible relative~~ or client authorized representative approves such use of the client's funds.

7. Charges by the program for items or services furnished clients will be allowed as a charge against the client or outside sources, only if separate charges are also recorded by the facility for all clients receiving these items or services directly from the program. All such charges must be for direct, identifiable services or supplies furnished individual clients. A periodic "flat" charge for routine items, such as beverages, cigarettes, etc., will not be allowed. Charges may be made only after services are performed or items are delivered, and charges are not to exceed charges to all classes of clients for similar services.
8. A client's private property must be clearly marked by name. The facility must keep a record of private property. If items are lost, the circumstances of disappearance must be documented in the facility's records.
9. If client funds are deposited in a bank, they must be deposited in an account separate and apart from any other bank accounts of the facility. Any interest earned on this account will be credited to the applicable client's accounts.
10. A client's funds on deposit with the facility must be available to a client on the client's request. No funds may be withdrawn from accounts of a client capable of managing the client's own funds without the client's permission.
11. Should a disagreement exist as to whether a client is capable of managing the client's own funds, a joint determination will be made by the ~~individual person centered service plan team, parent, guardian, or responsible relative~~ and client authorized representative in settling this dispute. The decision must be documented in the ~~provider's~~ provider agency's records.
12. On discharge, the facility must provide the client with a final accounting of personal funds and remit any balance on deposit with the facility.
13. Upon death, the balance of a client's personal incidental funds along with the name and case number, ~~will~~ must be maintained in an interest-bearing account for disposition by the client's estate. Personal property, such as television sets, radios, wheelchairs, and other property of more than nominal value, ~~will~~ must be maintained for disposition by the client's estate.
14. Upon sale or other transfer of ownership interest of a facility, both transferor and transferee must transfer the client's personal incidental funds, moneys, and records in an orderly manner.

15. Failure to properly record the receipt and disposition of personal incidental funds may constitute grounds for suspension of provider agency payments.
16. Client personal incidental funds must not be expended by the provider agency for the purchases of meals served in licensed day service programs nor may the purchase of such meals be a condition for admission to such programs.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10-25-18-03~~, 50-24.1-01

Section 44. Section 75-04-05-21 is amended as follows:

75-04-05-21. Transfer, discharge, and expulsion of clients.

1. Movement of clients between levels of service by a provider agency or ~~between providers~~ provider agencies must be pursuant to a determination by ~~an individual habilitation~~ the person centered service plan team. Reimbursement for the cost of a new service ~~must be~~ is contingent upon the timely submission to the department of ~~an individual~~ a person centered service plan.
2. Movement of clients ~~must be~~ are subject to the policies and procedures of the North Dakota ~~case~~ program management system and the approval of the department.
3. Any emergency movement may be initiated by the provider agency only with immediate notification of the department, ~~parent, guardian, and advocate~~ client, and client authorized representative. The movement will ~~be~~ is subject to the subsequent review by the department which will determine if:
 - a. An emergency existed;
 - b. The rights of the client were protected and preserved;
 - c. Documentation exists in support of the ~~provider's~~ provider agency's action;
 - d. A prognosis of the client's potential for returning has been made; and

- e. Services required to maintain the client in a habilitative setting are least restrictive of ~~liberty~~ and have been provided prior to movement.
- 4. The department will determine whether a payment should be stopped as a consequence of the vacancy caused by movement of a client.
- 5. Upon a finding, by the department, that movement of a client constituted a violation of any right secured to the client by North Dakota Century Code chapter 25-01.2, the department may withhold payment for services provided during the period of time that the violation existed.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

Section 45. Section 75-04-05-22 is amended as follows:

75-04-05-22. Staff-to-client ratios.

The ~~following~~ overall direct contact staff-to-client ratios shall form the basis for the determination of the rate of reimbursement for ~~providers~~ provider agencies of service to individuals with intellectual or developmental disabilities. Additional staff may be necessary to meet the needs of the clients and may be added subject to the approval of the department.

- 1. ~~Intermediate care facilities for the mentally retarded shall be~~ individuals with intellectual disabilities are subject to the direct contact staffing requirements of title 42, CFR Code of Federal Regulations, part 483, section 430.
- 2. ~~Transitional community living facility shall maintain a one to eight direct contact staff to client ratio during those periods when the clients are awake and on the premises, and one direct contact staff when clients are asleep.~~
- 3. ~~Minimally supervised living arrangements and providers of congregate care for the aged shall maintain one direct contact staff onsite when clients are present when required by the department.~~
- 4. ~~In minimally supervised apartment living arrangements, one direct contact staff shall be onsite when clients are present when required by the department.~~

- ~~5. Supported living arrangements shall maintain a direct contact staff to client ratio of one to twenty.~~
- ~~6. Day supports shall maintain a direct contact staff to client ratio of one to five.~~

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; July 1, 2010; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~ 25-18-03, 50-24.1-01

Section 46. Section 75-04-05-23 is repealed.

75-04-05-23. Staff hours.

- ~~1. A calculation of the total number of employees necessary to meet staff to client ratios is made on the basis of a full-time equivalent employee. Assuming that a full-time employee has fifty-two working weeks of five days each, twelve holidays, ten vacation days, and ten sick days per year, the actual number of days worked is two hundred twenty-eight per year. Providers who grant fewer paid absences must use a full-time equivalent calculation which reflects a higher number of working days.~~
- ~~2. Assuming a two hundred twenty-eight day work year:
 - ~~a. Staffing for the three hundred sixty-five day service provided by a residential service provider each year requires 1.6 full-time equivalent staff members for each shift slot to be filled at all times (two hundred twenty-eight times 1.6 equals three hundred sixty-five).~~
 - ~~b. Staffing for the two hundred sixty days of service provided by a day service provider each year requires 1.14 full-time equivalent staff members for each staff required by the ratio (two hundred twenty-eight times 1.14 equals two hundred sixty).~~~~
- ~~3. To calculate the number of duty hours in a week, eight hours per day for five days (day services) and eight hours per night for seven nights (sleep time) are subtracted from the total hours of the week for residential service providers.~~

History: Effective July 1, 1984; amended effective July 1, 2001.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~, 50-24.1-01

Repeal effective January 1, 2017.

Section 47. Section 75-04-05-24 is amended as follows:

75-04-05-24. Application.

1. — This chapter will be applied to ~~providers of provider agencies~~ for services to individuals with developmental disabilities, except distinct parts of state institutions for individuals with developmental disabilities which are certified as intermediate care facilities for individuals with intellectual disabilities, starting the first day of a facility's first ~~fiscal statement of costs~~ year which begins on or after July 1, 1985, or provide home and community based developmental disabilities traditional waiver services, starting the first day of a facility's first statement of costs year which begins on or after January 1, 2017; provided, however, that neither this section, nor the effective date, shall preclude the application and implementation of some or all of the provisions of this chapter through contract or through official statements of department policy. Specific sections of this chapter will be applied to services provided in distinct parts of state institutions for individuals with developmental disabilities which are certified as intermediate care facilities for individuals with intellectual disabilities. The sections of this chapter that apply are section 75-04-05-01; subsections 1, 4, 5, ~~6~~, and ~~7-5~~ of section 75-04-05-02; subsections ~~1, 2, and 3~~ of section 75-04-05-08; ~~sections~~ subsections 8 through 12 of section 75-04-05-09; sections 75-04-05-10, 75-04-05-11, and 75-04-05-12; subsections 1 through 10, 12 through ~~20-19, 22-21~~ through ~~27-29, 29~~ through 32, 34, ~~35~~, through 37 through, 40, 43, and 45-42 through 45, 47 through 49, 51 through 52-53 of section 75-04-05-13; sections 75-04-05-13.1, ~~75-04-05-14, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, 75-04-05-19, 75-04-05-20, 75-04-05-21, 75-04-05-22, and 75-04-05-23~~; and subsection ~~1~~ of section 75-04-05-24.

2. — This chapter will be applied to ~~providers of supported employment extended services to individuals with developmental disabilities, mental illness, traumatic brain injury, and other severe disabilities, except as operated through the human service centers~~; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, subsections 1 through 3, 8 through 14, 16 through 18, 20 through 23, 26, and 27 of section 75-04-05-01; section 75-04-05-02; section 75-04-05-08; subsections 2, 6 through 10, and 12 of section 75-04-05-09; subsection 1, subsection 2, and subdivisions a, h, and i of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and k of subsection 1, and subdivisions a through c of subsection 2 of section 75-04-05-11; subsections 1 and 2, subdivisions a through d, f, and i of subsection 3, and subsections 4 through 7 of section 75-04-05-12; subsections 2 through 10, 12 through 53 of section 75-04-05-13; sections 75-04-05-13.1,

~~75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; and subsections 1, 2, and 5 of section 75-04-05-21 of this chapter will be applied to supported employment extended services.~~

~~3. This chapter will be applied to providers of individualized supported living arrangements services; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, the following sections apply to the providers of individualized supported living arrangements services: sections 75-04-05-01, 75-04-05-02, and 75-04-05-08; subdivisions a and h of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and k of subsection 1 and subdivisions a and b of subsection 2 of section 75-04-05-11; section 75-04-05-12; subsections 1 through 10, 12 through 14, and 16 through 53 of section 75-04-05-13; sections 75-04-05-13.1, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; subsections 1 through 7 and 9 through 16 of section 75-04-05-20; and sections 75-04-05-21, 75-04-05-23, and 75-04-05-24. The following additions apply only to the providers of individualized supported living arrangements services:~~

~~a. Each provider of individualized supported living arrangements shall maintain separate revenue records for direct service reimbursements and for administrative reimbursement. Records must distinguish revenues from the department from all other revenue sources. Direct service revenues are:~~

~~(1) Direct service reimbursements from the department;~~

~~(2) Copayment responsibility of an individual receiving individualized supported living arrangements services; and~~

~~(3) Intended to cover direct service costs.~~

~~b. Each provider of individualized supported living arrangements shall maintain cost records distinguishing costs attributable to the department from other cost sources. Private pay client revenues and cost records are to be separately maintained from revenue and cost records whose payment source is the department.~~

~~c. When direct service reimbursements from the department exceed direct service costs attributable to the department by the margin established by department policy, payback to the department is required. In these situations, the entire overpayment must be refunded.~~

- d. — A provider may appeal the department's determination of direct costs and reimbursements by requesting a hearing within thirty days after the departmental mailing of the payback notification.
4. — This chapter will be applied to providers of family support services; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, the following sections apply to providers of family support services: sections 75-04-05-01, 75-04-05-02, and 75-04-05-08; subdivisions a and h of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and k of subsection 1 and subdivisions a and b of subsection 2 of section 75-04-05-11; section 75-04-05-12; subsections 1 through 10, 12 through 14, and 16 through 53 of section 75-04-05-13; sections 75-04-05-13.1, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; subsections 1 through 7 and 9 through 16 of section 75-04-05-20; and sections 75-04-05-21, 75-04-05-23, and 75-04-05-24. The following additions apply only to the providers of family support services:
- a. — Each provider of family support services shall maintain separate revenue records for direct service reimbursements and for administrative reimbursements. These cost records must distinguish revenues from the department from all other revenue sources. Direct service revenues are:
- (1) — Direct service reimbursements from the department; and
- (2) — Parental copayment responsibility as documented on the family support service authorization.
- b. — Each provider of family support services shall maintain cost records distinguishing costs attributable to the department from other cost sources. Private pay client cost records are to be separately maintained from cost records for clients whose payment source is the department.
- c. — Payback in the form of a refund is required when direct service revenues from the department exceed direct service costs attributable to the department.
- d. — A provider may appeal the department's determination of direct costs and reimbursements by requesting a hearing within thirty days after the departmental mailing of the payback notification.

History: Effective July 1, 1984; amended effective July 1, 1984; June 1, 1985; June 1, 1995; August 1, 1997; July 1, 2001; May 1, 2006; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC ~~25-16-10~~25-18-03, 50-24.1-01; 34 CFR 363

Section 48. Section 75-04-05-25 is created as follows:

75-04-05-25. Indemnification.

Provider agencies may be required to indemnify and reimburse the department for any federal funds, the expenditure of which is disallowed as a consequence of the provider agency's failure to establish and maintain adequate records or the provider agency's failure to otherwise comply with written standards, rules and regulations, or statutes.

History: Effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-18-03, 50-24.1-01

CHAPTER 75-04-06
ELIGIBILITY FOR INTELLECTUAL DISABILITIES-DEVELOPMENTAL DISABILITIES
CASE MANAGEMENT SERVICES

Section

75-04-06-01	Principles of Eligibility
75-04-06-02	Criteria for Service Eligibility - Class Member [Repealed]
75-04-06-02.1	Criteria for Service Eligibility
75-04-06-03	Criteria for Service Eligibility - Applicants Who Are Not Members of the Plaintiff Class [Repealed]
75-04-06-04	Criteria for Service Eligibility - Children Birth Through Age Two
75-04-06-05	Service Availability
75-04-06-06	Developmental Disabilities Program Management Eligibility for Three-Year-Old and Four-Year-Old Children [Repealed]

SECTION 49. Section 75-04-06-01 is amended as follows:

75-04-06-01. Principles of eligibility.

1. The process of determining an individual's eligibility to receive intellectual disabilities-developmental disabilities ~~case-program~~ management services involves the recognition of several criteria and an understanding of expected outcomes as each criterion is applied. Professional judgment is applied to determine the applicability of the provision of intellectual disabilities-developmental disability ~~case-program~~ management services in accordance with chapter ~~75-05-06~~ 75-05-04.
2. The following criteria must be used as the frame of reference for a team of at least three professionals in the human service center, led by the developmental disabilities program administrator or the administrator's designee, for the determination of an individual's eligibility for intellectual disabilities-developmental disabilities case management services.

History: Effective July 1, 1991; amended effective January 1, 1997; July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, 50-06-05.3

SECTION 50. Section 75-04-06-02.1 is amended as follows:

75-04-06-02.1. Criteria for service eligibility.

1. An individual is eligible for intellectual disabilities-developmental disabilities ~~case-program~~ management services if the individual has a diagnosis of ~~mental retardation~~ intellectual disability which is severe enough to constitute a developmental disability.
 - a. A diagnosis of the condition of ~~mental retardation~~ intellectual

disability must be made by an appropriately licensed professional using diagnostic criteria accepted by the American psychiatric association.

- b. Determination of whether the manifestation of the condition is severe enough to constitute a developmental disability must be done in accordance with the definition of developmental disability in North Dakota Century Code section 25-01.2-01.
2. An individual is eligible for intellectual disabilities-developmental disabilities ~~case-program~~ management services if the individual has a condition of ~~mental retardation~~ intellectual disability, diagnosed by an appropriately licensed professional using diagnostic criteria accepted by the American psychiatric association, which is not severe enough to constitute a developmental disability, and the individual must be able to benefit from treatment and services purchased through the developmental disability division on behalf of an individual who meets the criteria of subsection 1.
3. An individual is eligible for intellectual disabilities-developmental disabilities ~~case-program~~ management services if the individual has a condition, other than mental illness, severe enough to constitute a developmental disability, which results in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with the condition of ~~mental retardation~~ intellectual disability, and the individual must be able to benefit from services and intervention techniques which are so closely related to those applied to an individual with the condition of ~~mental retardation~~ intellectual disability that provision is appropriate. Determination of eligibility for individuals described in this subsection requires the application of professional judgment in a two-step process:
 - a. The team must first determine whether the condition is severe enough to constitute a developmental disability. North Dakota Century Code section 25-01.2-01 must be applied in order to determine if a developmental disability is present. The presence of a developmental disability does not establish eligibility for services through the intellectual disabilities-developmental disabilities ~~case-program~~ management services system, but does require the team to consider all assessment data and apply professional judgment in the second step.
 - b. The team must then determine whether services can be provided to an individual determined to have a condition, other than mental illness, severe enough to constitute a developmental disability. The team must have a thorough knowledge of the condition and service needs of the applicant, as well as a thorough knowledge of services that would be appropriate through the developmental disabilities system. When considering if intellectual disabilities-developmental

disabilities case-program management is appropriate, the team must consider factors, including:

- (1) Whether the individual would meet criteria appropriately used to determine the need for services in an intermediate care facility for individuals with intellectual disabilities.
 - (2) Whether appropriate services are available in the existing developmental disabilities service delivery system.
 - (3) Whether a service, which uses intervention techniques designed to apply to an individual with intellectual disabilities, delivered by staff trained specifically in the field of intellectual disabilities, would benefit the individual.
 - (4) Whether a service, designed for an individual with the condition of ~~mental retardation~~ intellectual disability, could be furnished to the individual without any significant detriment to the individual or others receiving the service.
- c. If the team concludes, through the application of professional judgment, that an individual's needs can be met through specific services purchased by the department for individuals who meet the criteria of subsection 1, a an intellectual disabilities-developmental disabilities case-program manager may be assigned. Services may be provided, subject to the limits of legislative appropriation. New services need not be developed on behalf of the individual.

History: Effective January 1, 1997; amended effective July 1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, 50-06-05.3

SECTION 51. Section 75-04-06-04 is amended as follows:

75-04-06-04. Criteria for service eligibility – Children birth through age two.

1. Service eligibility for children from birth through age two is based on distinct and separate criteria designed to enable preventive services to be delivered. Young children may have conditions which could result in substantial functional limitations if early and appropriate intervention is not provided. The collective professional judgment of the team must be exercised to determine whether the child is high risk or developmentally delayed, and if the child may need early intervention services. If a child, from birth through age two, is either high risk or developmentally delayed, the child may be included on the caseload of a an intellectual disabilities-developmental disabilities case-program manager and considered for those services designed to meet specific needs. Eligibility for continued service inclusion through intellectual disabilities-developmental disabilities

case management must be redetermined by age three using criteria specified in section 75-04-06-02.1.

2. For purposes of this section:

a. "Developmentally delayed" means a child, from birth through age two:

(1) Who is performing twenty-five percent below age norms in two or more of the following areas:

- (a) Cognitive development;
- (b) Gross motor development;
- (c) Fine motor development;
- (d) Sensory processing (hearing, vision, haptic);
- (e) Communication development (expressive or receptive);
- (f) Social or emotional development; or
- (g) Adaptive development; or

(2) Who is performing at fifty percent below age norms in one or more of the following areas:

- (a) Cognitive development;
- (b) Physical development, including vision and hearing;
- (c) Communication development (expressive and receptive);
- (d) Social or emotional development; or
- (e) Adaptive development.

b. "High risk" means a child, from birth through age two:

(1) Who, based on a diagnosed physical or mental condition, has a high probability of becoming developmentally delayed; or

(2) Who, based on informed clinical opinion which is documented by qualitative and quantitative evaluation information, has a high probability of becoming developmentally delayed.

History: Effective July 1, 1991; amended effective July 1, 1993; January 1, 1997; July

1, 2012; January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, 50-06-05.3

SECTION 52. Section 75-04-06-05 is amended as follows:

75-04-06-05. Service availability.

The extent to which appropriate services other than ease-program management services are available to eligible clients is dependent upon legislative appropriations and resources. Eligibility for ease-program management services does not create an entitlement to services other than ease-program management services if resources are not available.

History: Effective August 1, 1997; amended effective January 1, 2017.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, ~~50-06-05~~

CHAPTER 75-04-07
INDIVIDUALIZED SUPPORTED LIVING ARRANGEMENTS FOR PERSONS WITH
INTELLECTUAL DISABILITIES - DEVELOPMENTAL DISABILITIES

Section

75-04-07-01	Definitions
75-04-07-02	Conditions of Client Participation
75-04-07-03	Conditions of Provider Participation
75-04-07-04	Discontinuation, Termination, and Nonrenewal of Individualized Supported Living Arrangements Contracts or Services
75-04-07-05	Services Available in the Individualized Supported Living Arrangements Program
75-04-07-06	Appeals

SECTION 53: Chapter 75-04-07 is repealed.

~~**75-04-07-01. Definitions.**~~

~~In this chapter, unless the context or subject matter requires otherwise:~~

- ~~1. "Administrative reimbursement" means a flat fee intended for reimbursement toward administrative costs and management incentive.~~
- ~~2. "Ancillary services" means consultative services from a psychologist, physical therapist, nurse, audiologist, dietician, speech pathologist, or orthotic and prosthetic specialist. Consultative services must be necessary to provide training to staff for completion of behavioral or service objectives for a particular client, or necessary to maintain or restore functioning level for a client. This subsection may not be construed to allow the purchase of durable medical equipment. This definition of "ancillary services" applies only to the individualized supported living arrangements program.~~
- ~~3. "Clients" means eligible persons with developmental disabilities on whose behalf services are provided or purchased.~~
- ~~4. "Cost-effective" means a daily rate for residential support which is equal to or less than that of a residential program the client was in prior to being referred to an individualized supported living arrangements program. An assessment of cost effectiveness of a prospective contract may include environmental considerations for others that are affected by the client's current or proposed placement in the individualized supported living arrangements program.~~
- ~~5. "Department" means the department of human services.~~

6. — "Division" means the developmental disabilities division of the department.
7. — "Failure to cooperate" means refusal of a client in individualized supported living arrangements to participate in support, training, or therapeutic services designed to increase the client's capacity for independent functioning or perform self-care or activities of daily living which the client has been found to have the skills or adaptive methods to competently perform. A determination of the skills or adaptive methods to competently perform may be made based on assessments made by the individual plan program team.
8. — "Family member" means relatives of a client to the second degree of kinship.
9. — "Generic service" means services that are available to any member of the population and are not specific to meeting specialized needs of individuals with intellectual disabilities developmental disabilities.
10. — "Individual program plan team" means a multiagency, interdisciplinary team consisting of the client, significant others, advocates, direct contact workers, and others necessary to design a written plan of specific program intervention and action to meet the client's needs as identified in the client's individual service plan. The individual program plan team must be developed in accord with the accreditation council standards pursuant to chapter 75-04-01.
11. — "Individual service plan" means an individual plan which identifies services required by the eligible client and the services to be provided. The individual service plan is developed by the intellectual disabilities developmental disabilities case manager and the client or that client's legal representative, or both, considering all relevant input.
12. — "Individualized supported living arrangements" means residential support services options in which services are contracted for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.
13. — "Intellectual disability development disability related condition" means a condition that results in the person being eligible pursuant to chapter 75-04-06.
14. — "Less intrusive" means a residential situation for a client allowing levels of direct supervision or intervention lower than other residential service program arrangements, yet meets the client's basic needs.

15. ~~"Less restrictive" means a residential situation allowing less control over a client's personal choices, movement, and activities, yet meets the person's basic needs.~~
16. ~~"Personal independence development" means intervention strategies, supports, and adaptations which have the effect of reducing a client's dependence on external support and assistance to meet basic needs.~~
17. ~~"Primary caregiver" means a person who has assumed responsibility for supervision and assistance in meeting the needs of the client and who is not employed by or working under contract of a provider licensed pursuant to chapter 75-04-01.~~
18. ~~"Related organization" means an organization that a provider is, to a significant extent, controlled by, associated with, affiliated with, or able to control, and which furnishes services, facilities, or supplies to the provider. Control exists when an individual or an organization has the power, directly or indirectly, to significantly influence or direct the action or policies of an organization or institution.~~
19. ~~"Similar benefits" means services, supports, or benefits a client may be eligible for through services other than a developmental disabilities division purchased service.~~
20. ~~"Twenty four hour staffing" means continuous and ongoing direct staff supervision by paid staff for all hours of a day which may be inclusive of a day service or employment program.~~

History: Effective June 1, 1995; July 1, 2012.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

~~75-04-07-02. Conditions of client participation.~~

~~A client may be eligible to receive services in an individualized supported living arrangements setting if:~~

1. ~~The client has been determined eligible for intellectual disabilities-developmental disabilities case management pursuant to chapter 75-04-06;~~
2. ~~The client has been recommended for individualized supported living arrangements by an individual service plan;~~
3. ~~The client's need for residential support is primarily the result of mental retardation or a closely related condition;~~

4. ~~The client's needs cannot be more appropriately met by a generic service or service including hospitals, clinics, human service centers, nursing facilities, or correctional facilities;~~
5. ~~The client's needs can be expected to be met by the supports and services provided for in this chapter;~~
6. ~~Service through the individualized supported living arrangements program is cost effective in meeting the client's needs;~~
7. ~~An individualized supported living arrangements program is expected to be a less intrusive and less restrictive residential living alternative;~~
8. ~~The client is at least twenty one years of age or the client has completed all educational programming to which the client is entitled under state and federal laws and will reach the age of twenty one years by the next September first, unless the client is participating during the last semester of education and the participation is part of a formal transition plan;~~
9. ~~The client is living in the client's own residence, independent of a primary caregiver, or lives in a residence meeting the licensing requirements pursuant to chapter 75-03-21;~~
10. ~~A licensed qualified provider is willing to provide necessary services;~~
11. ~~The client has an individualized supported living arrangements contract with terms approved by the provider, the regional developmental disabilities program administrator, and the division, and which terms may:~~
 - a. ~~Reflect individual service plans and individual program plan assessments of need and their respective recommendations;~~
 - b. ~~Reflect the considerations of the client's legal rights and responsibilities; and~~
 - c. ~~Reflect the efficient use of public resources.~~
12. ~~The client's service needs remain compatible with the available services listed in section 75-04-07-05; and~~
13. ~~When the client receives services in the home of a family, the home is licensed pursuant to chapter 75-03-21.~~

History: Effective June 1, 1995; July 1, 2012.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

~~75-04-07-03. Conditions of provider participation.~~

- ~~1. Individualized supported living arrangement services shall be purchased by the department through the developmental disabilities division by individual contract from providers licensed pursuant to chapter 75-04-01.~~
- ~~2. As a condition of participation in the program, a licensed service provider shall include its individualized supported living arrangements program in the accreditation council on services for people with disabilities survey process.~~
- ~~3. In the event of discontinuation, termination, or nonrenewal of a contract or service, the provider shall cooperate in the referral and transition of the client to alternative services.~~
- ~~4. The provider shall make copies of all client records available to the department upon request.~~
- ~~5. For audit purposes, providers participating in the program shall maintain records of revenue and cost pursuant to chapter 75-04-05.~~
- ~~6. At the client's request, the department may negotiate contracts between providers of services and clients who pay the entire cost of the contract from their own financial resources. After negotiations are completed, the department shall have no further participation in the costs or payment of the contract provisions.~~
- ~~7. Each provider shall compile written job descriptions for their employees that include provisions for participation in ongoing training and requirements for education, experience, and skills. Provision must also be made for at least one performance evaluation per year.~~

History: Effective June 1, 1995.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

~~75-04-07-04. Discontinuation, termination, and nonrenewal of individualized supported living arrangements contracts or services.~~

- ~~1. Individualized supported living arrangement services to a client must be discontinued at the expiration of an executed contract when:
 - ~~a. A client with legal capacity fails to cooperate with the delivery of services;~~~~

- b. — Based on the assessment of available material, the continued provision of services to the client presents a threat to the health and safety of the client or others; or
 - c. — Based on the assessment of available material, it is determined that the needs of the client are no longer being met by the individualized supported living arrangements program or that continued services will not bring satisfactory results.
2. — Nonrenewal of a service contract with a provider for a client must be considered by the department for reasons that include:
- a. — The client exhibits a lack of progress, assessed by the developmental disabilities case management utilization review process, in development of independent functioning consistent with the client's potential, unless barriers to development of independent functioning exist that cannot reasonably be expected to be controlled or ameliorated through available services;
 - b. — The provider fails to deliver the levels and types of services specified in the contract, to provide qualified staff, or to provide resources necessary to meet the individual's needs which have not decreased during the term of the contract;
 - c. — The provider, regional developmental disabilities office, and the division fail to agree on contract renewal terms;
 - d. — The provider fails to develop and activate an individual program plan within thirty days of admission or annual program plan development;
 - e. — Misrepresentation of the client's needs;
 - f. — The provider fails to give the client a reasonable opportunity to participate in selection of ancillary service providers and direct service staff; or
 - g. — The housing occupied by the client is owned or controlled by the provider of service and service to the client is contingent upon the client remaining in that housing or lease or rental agreement, which is less favorable to the renter than that normally used in the local real estate market.
3. — Immediate termination of a current contract for a client with a specific provider, or termination of services through the individualized supported living arrangements program, must be considered by the department

~~based on available information and assessments through its developmental disabilities division for reasons that include:~~

- ~~a. An individual service plan has been completed, which would terminate individualized supported living arrangements services or authorize an alternative residential service;~~
- ~~b. Substantiated abuse, neglect, or exploitation of the client by an employee or agent of the provider;~~
- ~~c. Institutionalization, incarceration, or alternative placement of the client, except as provided in subdivision g of subsection 1 of section 75-04-07-05;~~
- ~~d. Death of the client with the contract terminating on the date of death;~~
- ~~e. The client establishes a residence out of state;~~
- ~~f. The client refuses to cooperate in the provision of services; or~~
- ~~g. Continued service to the client presents an immediate threat to the health or safety of the client or others.~~

~~History: Effective June 1, 1995.~~

~~General Authority: NDCC 25-01.2-18~~

~~Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10~~

~~**75-04-07-05. Services available in the individualized supported living arrangements program.**~~

- ~~1. Services and supports available for reimbursement in individualized supported living arrangements contracts:
 - ~~a. Temporary room and board subsidies;~~
 - ~~b. Ancillary services as defined in subsection 2 of section 75-04-07-01;~~
 - ~~c. Service coordination and individual program plan development and monitoring, including:
 - ~~(1) Qualified mental retardation or mental health professional allowance; and~~
 - ~~(2) Internal case management allowance;~~~~~~

- d. — Direct contact staff time for personal supports, including:
 - (1) — Safety and health monitoring and maintenance;
 - (2) — Personal hygiene and grooming;
 - (3) — Management of personal affairs related to daily living needs;
 - (4) — Food preparation and storage;
 - (5) — Housekeeping and home maintenance;
 - (6) — Clothing care and maintenance; and
 - (7) — General supervision for health and safety;

- e. — Direct contact staff time for personal independence development strategies, including:
 - (1) — Development of natural supports;
 - (2) — Activities and strategies to promote community inclusion;
 - (3) — Support and adaptive strategies to enhance client control and independence over the individual's environment, resources, activities, self-care, and self-control; and
 - (4) — Training:
 - (a) — Modeling;
 - (b) — Demonstration;
 - (c) — Experiential activities;
 - (d) — Reinforcement; and
 - (e) — Structured learning;

- f. — Administrative reimbursement;

- g. — Only an administrative reimbursement and service coordination allowance are available for the time a client is absent from the service setting and out of the provider's sphere of direct service responsibility for a time period that exceeds thirty consecutive days;

- ~~h. Relief staff time;~~
 - ~~i. Direct contact staff training time; and~~
 - ~~j. Fringe benefits for subdivisions c, d, e, and h of subsection 1 of section 75-04-07-05.~~
- ~~2. Services not available for reimbursement in individualized supported living arrangements contracts include:~~
- ~~a. Room and board subsidies when:

 - ~~(1) The housing occupied by the client does not meet local codes for occupancy;~~
 - ~~(2) The housing occupied by the client is owned or controlled by the provider or a related organization, except when no other lessor is willing to rent to the client at a comparable rate due to credit, behavioral, or other factors attributable to the client;~~
 - ~~(3) The client resides in a residential unit that has more than one bedroom per resident, except where the department determines standby, overnight staffing is a necessity for the protection of others;~~
 - ~~(4) The client fails to apply for or accept maintenance benefits when eligible;~~
 - ~~(5) The client resides in a building where more than twenty-five percent of the total bedrooms are occupied by individuals currently eligible for developmental disabilities intellectual disabilities case management services; or~~
 - ~~(6) The client's income exceeds basic need expenses by more than the personal spending allowance level for a resident of an intermediate care facility for individuals with intellectual disabilities;~~~~
 - ~~b. Financial assistance to purchase real property or motor vehicles;~~
 - ~~c. Direct supervision in excess of what is necessary for health and safety with determination based on available assessments;~~
 - ~~d. Personal support and assistance to complete daily living tasks a client is unwilling to perform, but capable of performing, unless~~

~~assistance is necessary to avert threats to the client's safety with determination based on available assessments;~~

- ~~e. — Personal support for maintenance of housing that does not meet local dwelling codes;~~
- ~~f. — Support staffing for the care of pets or livestock;~~
- ~~g. — Assistance for maintenance of property other than the client's immediate residence and personal property;~~
- ~~h. — Services available to the client under entitlement programs or generic services;~~
- ~~i. — Supports or services to address personal preferences unless accommodation is cost neutral or is instrumental in developing the client's personal independence and will result in decreased need for paid support;~~
- ~~j. — Services provided to a client by a family member or in the home of a family member;~~
- ~~k. — Services provided to a client prior to execution of a contract;~~
- ~~l. — Direct support for travel for a client outside the client's community of residence unless support needs would be the same during the time of travel as at home or the travel is necessary for medical needs, emergency, or obtaining basic necessities not available in the client's home community;~~
- ~~m. — Purchase of real property or maintenance of income-producing property;~~
- ~~n. — Fees for guardianship, conservatorship, legal services, or financial management of investments, trusts, or estates;~~
- ~~o. — Replacement of institutional-based services when the client's needs are predominantly due to a condition not related to intellectual disabilities or a developmental disabilities case management eligible condition;~~
- ~~p. — Material or financial reinforcers for behavior management plans; and~~
- ~~q. — Continuous or twenty-four-hour supervision by paid staff on a one-to-one basis within the individualized supported living arrangements~~

program for a client unless a shared staffing arrangement would create a safety threat to the client or others.

3. ~~Excluding the qualifying intellectual disability developmental disability, individualized supported living arrangements support or treatment is not available for any condition whose general medical protocol or generally accepted medical practices for treatment for the general population requires institutional care. Individualized supported living arrangements allow support services for management of medical conditions that are not attributable to the qualifying intellectual disability developmental disability, if the qualifying intellectual disability developmental disability causes the client to be unable to perform self care that is normally expected by the general population medical protocol and generally accepted medical practices.~~
4. ~~Services authorized by contract may include those in this section, but cost ceilings may be established by the department for rates of reimbursement for these services.~~

History: Effective June 1, 1995; July 1, 2012.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

~~75-04-07-06. Appeals.~~

~~A client may perfect an appeal if the client has been denied services or has had services discontinued based on subsections 3, 4, 5, 6, 7, 9, and 12 of section 75-04-07-03, subdivisions a, b, and c of subsection 1, and subdivisions f and g of subsection 3 of section 75-04-07-04. An appeal under this section is timely perfected only if made in writing on forms developed and provided by the department. The complaining subject must submit the written request for an appeal and formal hearing to:~~

~~Appeals Supervisor
North Dakota Department of Human Services
State Capitol—Judicial Wing
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0250~~

History: Effective June 1, 1995.

General Authority: NDCC 25-01.2-18

Law Implemented: NDCC 25-01.2-02, 25-01.2-18, 25-16-10

Repealed effective January 1, 2017.

**CHAPTER 75-02-02
MEDICAL SERVICES**

Section	
75-02-02-01	Purpose [Repealed]
75-02-02-02	Authority and Objective
75-02-02-03	State Organization
75-02-02-03.1	Definitions [Repealed]
75-02-02-03.2	Definitions
75-02-02-04	Application and Decision [Repealed]
75-02-02-05	Furnishing Assistance [Repealed]
75-02-02-06	Coverage for Eligibility [Repealed]
75-02-02-07	Conditions of Eligibility [Repealed]
75-02-02-08	Amount, Duration, and Scope of Medical Assistance
75-02-02-09	Nursing Facility Level of Care
75-02-02-09.1	Cost Sharing
75-02-02-09.2	Limitations on Inpatient Rehabilitation
75-02-02-09.3	Limitations on Payment for Dental Services
75-02-02-09.4	General Limitations on Amount, Duration, and Scope
75-02-02-09.5	Limitations on Personal Care Services
75-02-02-10	Limitations on Inpatient Psychiatric Services
75-02-02-10.1	Limitations on Services in Psychiatric Residential Treatment Facilities
75-02-02-10.2	Limitations on Ambulatory Behavioral Health Care
75-02-02-11	Coordinated Services
75-02-02-12	Limitations on Emergency Room Services
75-02-02-13	Limitations on Out-of-State Care
75-02-02-13.1	Travel Expenses for Medical Purposes - Limitations
75-02-02-13.2	Travel Expenses for Medical Purposes - Institutionalized Individuals – Limitations
75-02-02-14	County Administration
75-02-02-15	Groups Covered [Repealed]
75-02-02-16	Basic Eligibility Factors [Repealed]
75-02-02-17	Blindness and Disability [Repealed]
75-02-02-18	Financial Eligibility [Repealed]
75-02-02-19	Income and Resource Considerations [Repealed]
75-02-02-20	Income Levels and Application [Repealed]
75-02-02-21	Property Resource Limits [Repealed]
75-02-02-22	Exempt Property Resources [Repealed]
75-02-02-23	Excluded Property Resources [Repealed]
75-02-02-24	Contractual Rights to Receive Money Payments [Repealed]
75-02-02-25	Disqualifying Transfers [Repealed]
75-02-02-26	Eligibility Under 1972 State Plan [Repealed]
75-02-02-27	Scope of Drug Benefits - Prior Authorization
75-02-02-28	Drug Use Review Board and Appeals
75-02-02-29	Primary Care Provider

SECTION 54: Section 75-02-02-13.2 is amended as follows:

75-02-02-13.2. Travel expenses for medical purposes - Institutionalized individuals - Limitations.

1. For purposes of this section:
 - a. "Long-term care facility" means a nursing facility, intermediate care facility for individuals with intellectual disabilities, or swing-bed facility; and
 - b. "Medical center city" means Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Jamestown, Minot, and Williston, and includes any city that shares a common boundary with any of those cities.
2. A long-term care facility may not charge a resident for the cost of travel provided by the facility. Except as provided in subsection 4, a long-term care facility shall provide transportation to and from any provider of necessary medical services located within, or at no greater distance than the distance to, the nearest medical center city. Distance must be calculated by road miles.
3. If the resident has to travel farther than the nearest medical center city, the costs of travel may be reimbursed by medicaid according to the appropriate fee schedule. Distance must be calculated by map miles.
4. A long-term care facility is not required to pay for transportation by ambulance for emergency or nonemergency situations for residents,
5. A service provider that is paid a rate, determined by the department on a cost basis that includes transportation service expenses, however denominated, may not be compensated as a transportation service provider for transportation services provided to an individual residing in the provider's facility. The following service providers may not be so compensated:
 - a. Basic care facilities;
 - b. ~~Congregate care facilities~~ residential habilitation serving individuals with developmental disabilities;
 - c. Group homes serving children in foster care;
 - d. Intermediate care facilities for individuals with intellectual disabilities;

- e. ~~Minimally supervised living arrangement facilities~~ Independent habilitation serving individuals with developmental disabilities;
 - f. Nursing facilities;
 - g. Psychiatric residential treatment facilities;
 - h. Residential child care facilities; and
 - i. Swing-bed facilities; and
 - j. ~~Transitional community living facilities serving individuals with developmental disabilities.~~
6. If, under the circumstances, a long-term care facility is not required to transport a resident, and the facility does not actually transport the resident, the availability of transportation services and payment of travel expenses is governed by section 75-02-02-13.1.

History: Effective July 1, 1996; amended effective July 1, 2012; October 1, 2012; April 1, 2016; January 1, 2017.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04