

**CHAPTER 75-01-03  
APPEALS AND HEARINGS**

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

**75-01-03-01. Definitions.**

In this chapter:

1. “Adverse benefit determination” means, in the case of a managed care organization, any of the following:
  - a. The denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;
  - b. The reduction, suspension, or termination of a previously authorized service;
  - c. The denial, in whole or in part, of payment for a service;
  - d. The failure to provide services in a timely manner, as defined by the department;
  - e. The failure of a managed care organization to act within the timeframes provided in 42 CFR 438.408(b)(1) and (2) regarding the standard resolution of grievances and appeals;
  - f. For a resident of a rural area with only one managed care organization, the denial of an enrollee’s request to exercise the right under 42 CFR 438.52(b)(2) to obtain services outside the network; or
  - g. The denial of an enrollee’s request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.

- ~~2.~~ "Appeal" means a specific request for departmental review, by a dissatisfied applicant, recipient, provider, resident, registrant, or licensee concerning a decision made by a county agency, division of the department, or nursing facility.
- ~~2.3.~~ "Appeal hearing" means an administrative procedure by which the department reviews a decision by considering evidence and argument presented by a claimant, by the entity that made the decision appealed from, or by authorized representatives of either.
- ~~3.4.~~ "Appeals supervisor" means the official designated by the department to be responsible for the administration of this chapter.
- ~~4.5.~~ "Authorized representative" means an individual, including an attorney at law, who has been authorized by the claimant or has legal authority to act for and represent the claimant in any and all aspects of a hearing. The claimant need not designate an authorized representative.
- ~~5.6.~~ "Claimant" means a person who has perfected an appeal.
- ~~6.7.~~ "County agency" means a county social service board.
- ~~7.8.~~ "Date of action" means the date upon which an action is intended to become effective.
- ~~8.9.~~ "Department" means the North Dakota department of human services.
- ~~10.~~ "Developmental disability provider" 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.
- ~~9.11.~~ "Facility" means a nursing facility taking an action to transfer or discharge a resident.
- ~~10.12.~~ "Fair hearing" means an appeal hearing, established pursuant to 42 U.S.C. 8624(b)(13), 7 CFR 273.15, 42 CFR part 431, subpart D and E, 45 CFR 205.10, ~~45 CFR 250.36(c), 45 CFR 255.2(h), 45 CFR 256.4(d)~~, or any other federal law or regulation that specifically requires the department to provide a dissatisfied claimant an opportunity for a hearing that meets the requirements for due process of law imposed under Goldberg v. Kelly, 397 U.S. 254 (1970).
- ~~11.13.~~ "Filing date" of the claimant's appeal, in all cases except ~~food stamps~~ supplemental nutrition assistance program and medicaid appeals, means the postmark date of mailed appeals, the delivery date of delivered appeals, the date of transmission of appeals made by ~~facsimile~~

~~transmission~~ telephone, internet web site, and other commonly available electronic means, or, if an oral appeal is permitted, the date of an oral appeal. The filing date of a request for fair hearing or administrative disqualification hearing in ~~food stamps~~ supplemental nutrition assistance program or medicaid matters means the date the request is received in ~~the office of the executive director of~~ by the department or county agency.

~~12.14.~~ "Hearing officer" means any person assigned, appointed, or designated to preside in the hearing of an appeal or in an intentional program violation hearing under this chapter.

~~13.15.~~ "Household" means an individual or group of individuals receiving or applying for ~~food stamps~~ supplemental nutrition assistance program benefits.

~~14.16.~~ "Intentional program violation" means ~~any~~:

a. ~~Intentionally made false or misleading statement, or misrepresented, concealed, or withheld fact;~~ Supplemental nutrition assistance program:

(1) Any act or false statement intended to mislead, misrepresent, conceal, or withhold facts; or

(2) \_\_\_\_\_

b. ~~Intentionally committed~~ Commission of any act that constitutes a violation of the Food Stamp and Nutrition Act [7 U.S.C. 2011-20272036], the food stamps supplemental nutrition assistance program regulation [7 CFR parts 270-282271-285], or any provision of the North Dakota Century Code or North Dakota Administrative Code relating to the use, presentation, transfer, acquisition, receipt, or possession, or trafficking of food stamps supplemental nutrition assistance program coupons; ~~or~~

~~e.b.~~ Action by an individual, for the purpose of establishing or maintaining a family's eligibility for aid to families with dependent children or for increasing or preventing a reduction in the amount of the grant, which is intentionally Temporary assistance for needy families:

(1) A false or misleading statement or misrepresentation, concealment, or withholding of Any act or false statement intended to mislead, mispresent, conceal, or withhold facts;

~~or~~

- (2) Any Commission of any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity that constitutes a violation of the temporary assistance for needy families program or any provision of the North Dakota Century Code or federal statute; or
- (3) Use of temporary assistance for needy families program electronic payment card in a liquor store, a casino, gambling casino, or gambling establishment, or a retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state of environment unless:
  - i. The temporary assistance for needy families recipient does not have adequate access to their cash assistance other than one of the establishments listed; or
  - ii. The temporary assistance for needy families recipient does not have access to using or withdrawing assistance with a minimal fee or charge, including an opportunity to access assistance with no fee or charge; or

c. Child care assistance program:

- (1) Any act or false statement intended to mislead, misrepresent, conceal, or withhold facts;
- (2) Commission of any act that constitutes a violation of the child care assistance program; or
- (3) The signatures of any provider or caretaker on the application, review form, change report form, child care billing report form, or any other appropriate materials attest to providing factual information that is required to determine eligibility.

~~15.~~17. "Intentional program violation hearing" means a hearing conducted for individuals or households accused of intentional program violations, who do not waive their rights to such a hearing, to determine if the individuals or household members committed, and intended to commit, intentional program violations.

~~16.~~18. "Regulation", as used in 42 CFR 431.210, 431.244, and ~~435.912~~, and 45 CFR 205.10(a)(4)(i)(B), includes any written statement of federal or state

law or policy, including federal and state constitutions, statutes, regulations, rules, policy manuals or directions, policy letters or instructions, and relevant controlling decisions of federal or state courts.

~~47-19.~~ "Request for an intentional program violation hearing" means a written statement from a county agency, filed at the office of the appeals supervisor, which contains the name, mailing address, and telephone number (if any) of the charged household members or individuals, a detailed statement of charges against household members or individuals, and copies of all available evidence.

~~48-20.~~ "Request for fair hearing" means a specialized appeal consisting of any clear written expression or in the case of a request in a ~~food stamps~~supplemental nutrition assistance program matter under 7 CFR 273.15, ~~any clear oral expression, or in the case of a medicaid matter under 42 CFR 431.220(a)(1), any clear expression through the telephone, internet web site, mail, in person, or through other commonly available electronic means,~~ from a claimant, or the claimant's duly authorized representative, filed with the county agency or in the office of the appeals supervisor, that the claimant wants the department to conduct a fair hearing to take action concerning the claimant's expressed reasons for dissatisfaction.

~~49-21.~~ "Timely notice period" means that period beginning on the date a timely notice is mailed and concluding on the date of action.

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 2:** Section 75-01-03-03 is amended as follows:

**75-01-03-03. Fair hearing - Who may receive.**

1. An opportunity for a fair hearing is available to any applicant for or recipient of ~~food stamps; aid to families with dependent children; job opportunities and basic skills training program; employment, education, or training-related child care; transitional child care; medicaid; children's health insurance program; economic assistance programs, intellectual disabilities-developmental disabilities program management services, or low-income home energy assistance program~~medicaid eligibility benefits who requests a hearing in the manner set forth in this chapter and who is dissatisfied:
  - a. Because an application was denied or not acted upon with reasonable promptness; or

- b. Because county agency or department action has resulted in the suspension, reduction, discontinuance, or termination of benefits.
2. An opportunity for a fair hearing is available to any resident who believes a facility has erroneously determined that the resident must be transferred or discharged.
3. An opportunity for a fair hearing is available to any individual who requests it because the individual believes the department has made an erroneous determination with regard to the preadmission and ~~annual~~-review requirements of 42 U.S.C. 1396r(e)(7).
4. An opportunity for a fair hearing is available to any individual whose medicaid benefits are administered through a managed care organization and has received a notice of resolution that the managed care organization is upholding the adverse benefit determination or failed to adhere to the notice and timing requirements of 42 CFR 438.408(b)(1) and (2).
5. An opportunity for a fair hearing is available to a parent, custodian, or legal guardian who requests it because the parent, custodian, or legal guardian believes the department has erroneously denied or terminated an autism voucher under chapter 75-03-38.
6. The department may, on its own motion, review individual cases and make determinations binding upon a county agency. An applicant or recipient aggrieved by such determination shall upon request be afforded the opportunity for a fair hearing. All references in this chapter to appeals from decisions of county agencies must be understood to include appeals taken from determinations made by the department.
- ~~5-7.~~ A fair hearing request may be denied or dismissed when the sole issue is one of state or federal law requiring automatic benefit adjustments for classes of recipients unless the reason for an individual appeal is incorrect benefit computation.
- ~~6-8.~~ The claimant may first seek corrective action from the department or claimant's county agency before filing a request for a fair hearing.
- ~~7-9.~~ If a claimant dies after a request for a fair hearing has been filed by the claimant, and before the decision of the department has been rendered in the case, the proceedings may be continued on behalf of the claimant's estate, or any successor, as that term is defined in North Dakota Century Code section 30.1-01-06, of the claimant if a personal representative of the estate has been appointed.

~~8-10.~~ If a dissatisfied claimant dies before the claimant can file a request for a fair hearing, the duly appointed personal representative of the claimant's estate, or any successor, as that term is defined in North Dakota Century Code section 30.1-01-06, of the claimant if no personal representative of the estate has been appointed, may file such request when the claimant was dissatisfied with the denial of the claimant's application for assistance, or was dissatisfied with the benefits the claimant was receiving prior to the claimant's death.

~~9-11.~~ A fair hearing under this section is available only if:

- a. Federal law or regulation requires that a fair hearing be provided; or
- b. The appeal is related to the autism voucher and intellectual disabilities-developmental disabilities program management services; and
- ~~b.c.~~ The dissatisfied claimant timely perfects an appeal.

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; August 1, 2005; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 3:** Section 75-01-03-03.2 is amended as follows:

**75-01-03-03.2. Appeals from determinations of the department.**

1. A claimant aggrieved of a ratesetting decision of the department may perfect an appeal only if it is accompanied by written documents including all of the following information:
  - a. A copy of the letter received from the department advising of the department's decision on the claimant's request for reconsideration;
  - b. A statement of each disputed item and the reason or basis for the dispute;
  - c. A computation and the dollar amount that reflects the facility's or developmental disability provider's claim as to the correct computation and dollar amount for each disputed item;
  - d. The authority in statute or rule upon which the facility or developmental disability provider relies for each disputed item; and



- e. The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.
2. A claimant aggrieved by a licensing determination made by any unit/division of the department may perfect an appeal only if it is accompanied by written documents including all of the following information:
    - a. A copy of the letter received from the department advising of the department's decision on the claimant's request for reconsideration;
    - b. A statement of disputed facts, if any;
    - c. The authority in statute or rule upon which the claimant relies for each disputed item; and
    - d. The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.
  3. A claimant not entitled to a fair hearing, whose appeal is not described in subsection 1 or 2, may perfect an appeal from a determination of a unit/division of the department only if a statute or rule of the department specifies that such a claimant may appeal to the department and only in the manner provided for such an appeal.
  4. A claimant entitled to a fair hearing of a ~~food stamp~~supplemental nutrition assistance program, medicaid, or medicaid eligibility matter under 7 CFR 273.15 may perfect an appeal by making a timely oral ~~or~~written, telephonic, internet web site, and other commonly available electronic transmissions request for fair hearing.
  5. A claimant entitled to a fair hearing concerning any other matter except a food stamp matter under 7 CFR 273.15 may perfect an appeal by making a timely written request for a fair hearing.

**History:** Effective February 1, 1995; amended effective April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 4:** Section 75-01-03-04 is amended as follows:

**75-01-03-04. Withdrawal of appeal before decision.**

1. The claimant may withdraw an appeal at any time before a decision is made by the department. A withdrawal in a supplemental nutrition assistance program, medicaid, or medicaid eligibility matter may be made through the telephone, internet, mail, in person, or through other

commonly available electronic means. All other withdrawals must be in writing.

2. In cases where there appears to be a possibility for corrective action without further appeal proceedings, the claimant may file a conditional withdrawal of the appeal. The conditional withdrawal does not prevent the claimant from filing a new appeal if the claimant remains dissatisfied with any such corrective action. No hearing shall be delayed or canceled because of this possibility unless the claimant consents to the delay.

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 5:** Section 75-01-03-05 is amended as follows:

**75-01-03-05. Claimant responsibility.**

1. The claimant must appeal in writing unless the request concerns a ~~food stamps~~supplemental nutrition assistance program, medicaid, or a medicaid eligibility decision. A claimant may appeal a ~~food stamps~~supplemental nutrition assistance program, medicaid, or a medicaid eligibility decision ~~either orally or in writing~~through the telephone, internet, mail, in person, or through other commonly available electronic means. Oral requests must be clear expressions, made by the claimant or the claimant's authorized representative, to an employee of a county agency or the department to the effect that the claimant wishes to appeal a decision. The employee hearing such a request shall promptly reduce the request to writing and file it as provided by this chapter. An appeal need not be in any particular form. The county agency, division of the department, or nursing facility, which issued a decision with respect to which a claimant is entitled to, and requests, a fair hearing, shall assist the claimant in filing the claimant's appeal.
2. For the purpose of prompt action, the claimant may be informed that the claimant's appeal should identify the program involved as well as the reason for the claimant's dissatisfaction with the particular action involved in the case.
3. An appeal must be received by the department or county agency.

**History:** Effective September 1, 1979; amended effective July 1, 1980; January 1, 1984; February 1, 1995; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 6:** Section 75-01-03-06 is amended as follows:

**75-01-03-06. Time limit on appeals.**

1. The request for fair hearing by a household aggrieved by any action of a county agency that affects participation in the ~~food stamps~~supplemental nutrition assistance program must be filed within ninety days after the order or action with which the claimant is dissatisfied. In all other cases, except as provided in ~~subsections~~subsections 3 and 4, an appeal or a request for a fair hearing must be filed within thirty days after the order or action with which the claimant is dissatisfied unless a different limitation is specified in state or federal law for a particular class of cases.
2. The date of the order or action on which the appeal or request for fair hearing is based is the date on which notice of the order or action was mailed to the claimant except:
  - a. If requests for a fair hearing concern the return of erroneous repayments, the date of collection or the date of the last installment payment is the determining date; and
  - b. If requests for a fair hearing concern the amount of the grant, the request must be filed within thirty days, but the period of review will extend back only to the first of the month on which the first day of the thirty-day period occurred.
3. A request for a fair hearing by an individual whose medicaid benefits were denied, reduced, or discontinued because of a denial or discontinuance of disability status by the social security administration or state review team determination must be filed within six months after the official notification from the social security administration that disability status has been approved or reversed.
4. A request for a fair hearing by an individual whose medicaid benefits are administered through a managed care organization and has received notice of resolution that the managed care organization is upholding the adverse benefit determination must be filed no later than one hundred and twenty days from the date of the notice of resolution from the managed care organization.
5. A request for a fair hearing by a parent, custodian, or legal guardian of a child seeking services through the autism voucher must be filed within thirty days of the date of the notice of denial or termination.

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; May 1, 2006; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 7:** Section 75-01-03-07 is amended as follows:

**75-01-03-07. Explanation of right to fair hearing.**

1. The county agency, the department, if the action is taken by the department, or the facility, if action is taken to transfer or discharge a resident of the facility, must, at the times specified in subsection 2, inform the individual in writing:
  - a. Of the individual's right to a fair hearing;
  - b. Of the method by which the individual may obtain a fair hearing; and
  - c. That the individual may represent him or herself or may use legal counsel, a relative, a friend, or other spokesperson.
2. The information described in subsection 1 must be provided:
  - a. At the time the individual applies for benefits administered by the county agency under the direction and supervision of the department;
  - b. At the time of any action to grant, terminate, suspend, discontinue, or reduce such benefits, change the manner or form of ~~an aid to families with dependent children~~ a temporary assistance for needy families payment to a protective vendor, or two-party payment, or reduce covered medicaid services;
  - c. At the time a facility notifies a resident of the facility that the resident is to be transferred or discharged; and
  - d. At the time an individual receives an adverse determination by or on behalf of the department with regard to the preadmission screening and ~~annual~~-resident review requirements of 42 U.S.C. 1396r(e)(7).

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 8:** Section 75-01-03-08 is amended as follows:

**75-01-03-08. Timely and adequate notice - Assistance pending hearing.**

1. A notice is adequate if it includes:
  - a. An explanation of the type of proposed action;
  - b. An explanation of the reason for the proposed action and the regulation or law upon which the action is based; and
  - c. An explanation of the person's right to request corrective action from the county agency and the department, the person's right to request a fair hearing, and the circumstances under which assistance will be continued if a fair hearing is requested.
2. ~~A~~Except as provided in subsection 6, a notice is timely if mailed at least five days prior to the date of action based on subsection 3, and at least ten days prior to the date of any other action.
3. ~~Except in food stamp~~supplemental nutrition assistance program cases, if facts indicate that assistance should be discontinued, suspended, terminated, or reduced because of suspected fraud by the recipient, and, where possible, such facts have been verified through collateral sources, notice of a benefit adjustment is timely if mailed at least five days prior to the effective date of the proposed action.
4. If county agency or department action results in a denial of medicaid, ~~aid to families with dependent children, food stamp, or low income home energy assistance program benefits~~children's health insurance program, economic assistance programs, autism voucher, intellectual disabilities-developmental disabilities program management services, or medicaid eligibility, an adequate written notice must be sent to the person affected.
5. Except as provided in subsection 6, if county agency or department action results in a discontinuance, termination, suspension, withholding, or reduction of medicaid, ~~aid to families with dependent children, food stamp, or low income home energy assistance program~~children's health insurance program, economic assistance programs, autism voucher, intellectual disabilities-developmental disabilities program management services, or medicaid eligibility benefits, a timely and adequate written notice must be sent to the person affected.
6. If county agency or department action results in a discontinuance, termination, suspension, withholding, or reduction of medicaid, ~~aid to families with dependent children, food stamp, or low income home energy assistance program~~children's health insurance program, economic assistance programs, autism voucher, intellectual disabilities-developmental disabilities program management services, or medicaid

eligibility benefits, an adequate written notice must be sent to the person affected no later than the date of action if:

- a. The county agency or department has factual information confirming the death of the person affected or for temporary assistance for needy families factual information exists confirming the death of the payee when there is no other relative to serve as a new payee;
- b. The county agency or department receives a clear written statement signed by the person affected that the person no longer wishes assistance; or that gives information which requires discontinuance or reduction of assistance and the person has indicated, in writing, that the person understands that this must be the consequence of supplying such information;
- c. The person affected has been admitted or committed to an institution, and further payments to that individual do not qualify for federal financial participation under the state plan;
- d. The person affected has been placed in a nursing facility or is receiving long-term hospitalization. A ten day notice is required for supplemental nutrition assistance program when the individual moves into a long term care facility, basic care, or institution within the county;
- e. The whereabouts of the person affected are unknown and mail directed to the person has been returned by the post office indicating no known forwarding address;
- f. ~~An aid to families with dependent children~~ A temporary assistance for needy families child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by the child's parent or legal guardian;
- g. The person affected has been accepted for assistance in new jurisdiction and that fact has been established by the county previously providing assistance;
- h. A change in level of medical care is prescribed by the recipient patient's physician or other practitioner of the healing arts;
- i. A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period;

- j. The state or federal government initiates a mass change which uniformly and similarly affects all similarly situated applicants, recipients, and households;
- k. A determination has been made, based on reliable information, that all members of a household have died;
- l. A determination has been made, based on reliable information, that the household has moved from the project area;
- m. The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the increased allotment would terminate;
- n. The household's allotment varies from month to month within the certification period to take into account changes anticipated at the time of certification, and the household was so notified at the time of certification;
- o. The household jointly applied for public assistance and ~~food stamps~~supplemental nutrition assistance program benefits and has been receiving ~~food stamps~~supplemental nutrition assistance program benefits pending the approval of the public assistance grant and was notified at the time of certification that ~~food stamps~~supplemental nutrition assistance program benefits would be reduced upon approval of the public assistance grant;
- p. A household member is disqualified for an intentional program violation, or the benefits of the remaining household members are reduced or terminated, to reflect the disqualification of that household member;
- q. The household contains a member subject to a lockout or strike or signs a waiver of its right to notice of adverse action for purposes of receiving a longer certification period than is otherwise allowed for such households;
- r. The county agency or department has elected to assign a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is contingent on its providing the verification which was initially postponed and that the county agency or

department may act on the verified information without further notice;

- s. The action is based upon information the recipient furnished in a monthly report; or
  - t. The action is taken because the recipient has failed to submit a complete or timely monthly report without good cause;
  - u. A special item or need or job opportunities and basic skills program supportive service is terminated at the end of a specified period;
  - v. Benefits are reduced or terminated following the imposition of a child support or job opportunities and basic skills program sanction;
  - w. Upon receipt of factual information confirming that the household is no longer a resident of the state;
  - x. If household is entitled to a supplemental nutrition assistance program underpayment and has chosen monthly installments instead of a lump sum and the household was previously notified in writing when the monthly installments would terminate;
  - y. Joint temporary assistance for needy families and supplemental nutrition assistance program application results in the receipt of supplemental nutrition assistance program pending temporary assistance for needy families grant approval and household is notified at the time of certification that supplemental nutrition assistance program benefits would be reduced upon receipt of a grant; or
  - z. For supplemental nutrition assistance program, changing a household from cash repayment to allotment reductions as a result of failure to make the agreed payments.
7. In any case where assistance has been discontinued, suspended, withheld, or reduced without timely notice, if the person affected requests a fair hearing within ten days of the mailing of the notice of action, assistance must be reinstated retroactively and the provisions of subsection 9 shall apply.
8. If, within the timely notice period, the person affected indicates a wish for a conference, that person or that person's authorized representative will be given an opportunity by the county to discuss the problems, and will be given an explanation of the reasons for the proposed action, and will be permitted to show that proposed action is incorrect.



- a. During this conference, the person affected will be permitted to represent himself or herself or be represented by legal counsel or by a friend or other spokesman.
  - b. The conference does not diminish the person's right to a fair hearing.
9. Where the person affected is a recipient and has filed a request for a fair hearing within the timely notice period, the assistance will be continued without implementation of the proposed action, until the fair hearing decision is rendered, unless:
- a. Prior thereto the claimant unconditionally withdraws or abandons the fair hearing request;
  - b. Prior thereto the department reverses the proposed action without a hearing;
  - c. The department determines, based upon the record of the claimant's fair hearing, that the issue involved in such hearing is one of state or federal law or change in state or federal law and not one of incorrect benefit computation;
  - d. A change affecting the recipient's benefits occurs before the decision on the request for fair hearing and the recipient fails to file a timely request for a fair hearing after notice of such change; or
  - e. A food stamp supplemental nutrition assistance program household's certification period expires.
10. Any assistance continued under subsection 9 is subject to recovery if the claimant does not prevail in the claimant's appeal.
11. Any notice that is the subject of a request for fair hearing may be supplemented at any time before the conclusion of the hearing. The information in any supplemental notice must be considered in determining the adequacy of the notice unless the claimant shows that the claimant is prejudiced by that consideration.

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 9:** Section 75-01-03-08.3 is amended as follows:

### **75-01-03-08.3. Notice of intentional program violation hearing.**

1. A written notice of an intentional program violation hearing must contain:
  - a. The date, time, and place of the hearing;
  - b. The charge against the individual or household member;
  - c. A summary of the evidence, and how and where the evidence can be examined;
  - d. A warning that the decision will be based solely on evidence provided by the department or county agency if the individual or household member fails to appear at the hearing;
  - e. A statement that the individual or household member may request a postponement of the hearing, provided that the request for postponement is made at least ten days in advance of the scheduled hearing;
  - f. A statement that the individual, household member, or authorized representative will have ten days from the date of the scheduled hearing to represent good cause for failure to appear in order to receive a new hearing;
  - g. A description of the penalties that can result from a determination that the individual or household member has committed an intentional program violation and a statement of which penalty the department or county agency believes applicable to the case;
  - h. A listing of the rights of the individual or household member, as set forth in section 75-01-03-03.1;
  - i. A statement that the hearing does not preclude the state or federal government from prosecuting the individual or household member for an intentional program violation in any civil or criminal action, or from collecting overissuances or overpayments;
  - j. A listing of individuals or organizations that provide free legal representation to individuals or household members alleged to have committed intentional program violations and that have authorized the department to include their name, address, and telephone number on such list;

- k. An explanation that the individual or household member may waive the individual's or household member's right to appear at an intentional program violation hearing;
  - l. A statement of the accused individual or household member's right to remain silent concerning the charge, and that anything said or signed by the individual concerning the charge may be used against the individual in a court of law; and
  - m. A statement that the individual or household member may waive the right to appear at an intentional program violation hearing that includes:
    - (1) The date the signed waiver must be received by the department or county agency to avoid the holding of a hearing;
    - (2) A signature block for the accused individual, along with a statement that the head of or caretaker relative must also sign the waiver if the accused individual is not the head of household or caretaker relative, with an appropriately designated signature block;
    - (3) The fact that a waiver of the right to appear at the intentional program violation hearing will result in a disqualification penalty and a reduction in benefits or assistance payment for the appropriate period, even if the accused individual does not admit to the facts presented by the department or county agency;
    - (4) An opportunity for the accused individual to specify whether the individual admits to the facts as presented by the department or county agency; and
    - (5) In ~~food stamp~~supplemental nutrition assistance program matters, a telephone number to contact for additional information and a statement that remaining household members, if any, will be held responsible for repayment of the resulting claim.
2. All notices alleging an intentional program violation concerning the ~~food stamp~~supplemental nutrition assistance program must either:
- a. Have attached a copy of the department's published hearing procedures; or

- b. Inform the household of its right, upon request, to obtain a copy of the department's published hearing procedures.

**History:** Effective February 1, 1995; amended effective April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 10:** Section 75-01-03-09 is amended as follows:

**75-01-03-09. County agency or program responsibility prior to fair hearing concerning assistance or benefits.**

1. Upon receipt of the ~~notice from the appeals supervisor~~ that a recipient has filed a request for a fair hearing ~~with the supervisor's office~~, the county agency or program, if applicable, shall immediately ascertain whether the request for fair hearing was filed within the timely notice period. If the request was not filed within that period, the county agency or program, if applicable, shall neither reinstate nor continue aid except that households appealing adverse food stamps supplemental nutrition assistance program actions may have benefits continued if the household can show good cause for the failure to file a request within ten days.
2. Upon receipt of notice of a request for fair hearing the county agency or program, if applicable, shall, no later than the fifth day after receiving the request, provide the office of the appeals supervisor with all information pertinent to the request.
3. Prior to the fair hearing, the county agency or program, if applicable, shall:
  - a. Review the applicable statutes, regulations, rules, and policies in light of the evidence. When assistance of the department is required to clarify any question, such assistance shall be sought without delay;
  - b. Organize all oral and written evidence and plan for its presentation at the hearing;
  - c. Prepare copies of all written evidence and relevant statutes, regulations, rules, and policies for presentation at the hearing;
  - d. Arrange for the attendance of all witnesses necessary for the presentation of the case;
  - e. Notify the appeals supervisor of any communication problem the claimant may have;

- f. Notify the appeals supervisor of any hearing site access problem the claimant may have;
- g. Prepare a complete final budget computation, month by month, for the period subject to review, and up to the date of hearing, if the issue is:
  - (1) Amount of aid;
  - (2) Grant adjustment; or
  - (3) Demand for repayment;
- h. Remain in touch with the claimant, and report without delay to the appeals supervisor any change in the claimant's address or in any other circumstances that might affect the necessity for or conduct of the hearing; and
- i. Arrange to have present at the hearing a county agency representative or program representative, if applicable, with full authority to make ~~binding agreements and~~ factual stipulations on behalf of the county agency or department.

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 11:** Section 75-01-03-9.2 is amended as follows:

**75-01-03-09.2. Department responsibility prior to fair hearing concerning preadmission screening and ~~annual~~ resident review.**

- 1. Upon receipt of a request for fair hearing, the ~~unit~~division of the department that made the adverse determination, no later than the fifth day after receiving the request, shall provide the appeals supervisor with all information pertinent to the request.
- 2. Prior to the fair hearing, the ~~unit~~division of the department that made the adverse determination shall:
  - a. Review the applicable statutes, regulations, rules, and policies in light of the evidence;
  - b. Organize all oral and written evidence and plan for its presentation at the hearing;

- c. Prepare copies of all written evidence and relevant statutes, regulations, rules, and policies for presentation at the hearing;
- d. Arrange for the attendance of all witnesses necessary for the presentation of the unit's division's case;
- e. Notify the appeals supervisor of any communication problem the claimant may have;
- f. Notify the appeals supervisor of any hearing site access problem the claimant may have;
- g. Notify the appeals supervisor of any change in the claimant's circumstances that may affect the necessity for or the conduct of the hearing; and
- h. Arrange to have present at the hearing a unit division representative with full authority to make ~~binding agreements and~~ factual stipulations.

**History:** Effective February 1, 1995; amended effective April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 12:** Section 75-01-03-09.3 is amended as follows:

**75-01-03-09.3. Department responsibility prior to appeal hearing.**

- 1. Upon receipt of notice of an appeal, which does not involve a request for a fair hearing, the unit division of the department that made the adverse determination, no later than the fifth day after receiving the notice of appeal, shall provide the appeals supervisor with all information pertinent to the appeal.
- 2. Prior to the hearing of the appeal, the unit division of the department that made the adverse determination shall:
  - a. Review the applicable statutes, regulations, rules, and policies in light of the evidence;
  - b. Organize all oral and written evidence and plan for its presentation at the appeal hearing;
  - c. Prepare copies of all written evidence and relevant statutes, regulations, rules, and policies for presentation at the appeal hearing;

- d. Arrange for the attendance of all witnesses necessary for the presentation of the unit's division's case;
- e. Notify the appeals supervisor of any change in the resident's circumstances that may affect the necessity for or the conduct of the appeal hearing; and
- f. Arrange to have present at the appeal hearing a unit division representative with full authority to make ~~binding agreements and~~ factual stipulations.

**History:** Effective February 1, 1995; amended effective April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

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

**75-01-03-13. Acknowledgment of appeal.**

1. An appeal must be acknowledged by a written communication to the claimant and to the county agency, nursing facility, or unit division of the department that made the determination under appeal.
2. The claimant who is entitled to a fair hearing shall also be provided with a list of all free legal service organizations available to the claimant and that have authorized the department to include their name, address, and telephone number on such list.

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 14:** Section 75-01-03-14 is amended as follows:

**75-01-03-14. Hearing - Place and notification.**

1. The hearing of the appeal may be held in the county seat of the county in which the claimant is living at the time of the hearing, at the regional office serving such county, at any public building convenient to the parties, or at any other location agreeable to the parties. If the claimant is unable to travel to the hearing site because of the claimant's health, transportation problems, or other reasons, the claimant shall promptly notify the county agency, nursing facility, or unit division of the department that made the determination under appeal. The hearing shall be conducted at a reasonable time, date, and place to be set by the office of administrative hearings.

2. The office of administrative hearings shall mail or deliver to the claimant, the claimant's authorized representative, if any, and the county agency, nursing facility, or ~~unit~~division of the department (whichever made the determination under appeal) a written notice of the time and place of the hearing. In all ~~food-stamps~~supplemental nutrition assistance program appeals, the notice must be sent not less than ten days prior to the hearing unless the household should, in writing, request less advance notice to expedite the scheduling of the hearing.
  
3. The office of administrative hearings shall mail or deliver to the household and its authorized representative, if any, the individual or the individual's authorized representative, (in a proceeding involving ~~aid to families with dependent children~~temporary assistance for needy families), and the county agency a written notice of an intentional program violation hearing, that conforms to the requirements of section 75-01-03-08.3, not less than thirty days prior to the hearing, unless the hearing is combined with a fair hearing and the individual or household member requests that the thirty-day period be waived.

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 15:** Section 75-01-03-15 is amended as follows:

**75-01-03-15. Hearing - General rules and procedure.**

1. Attendance at the hearing shall be limited to those directly concerned, namely, the claimant; the claimant's authorized representative, if any; an interpreter, if any; witnesses; representatives of the county agency, nursing facility, or ~~unit~~divisions of the department that made the determination under appeal; and the hearing officer. The hearing officer shall exclude unauthorized persons from a fair hearing unless both principals agree to their presence. The hearing officer may exclude persons whose actions cause substantial disruption of the hearing. Appearance by the claimant, in person or by authorized representative, is required at a fair hearing. Representation by the county agency, nursing facility, or ~~unit~~division of the department that made the determination under appeal is also required.
  
2. Hearings may be conducted by telephone or other acceptable electronic means unless the person requesting the hearing demands to appear personally before the hearing officer. In all ~~food-stamps~~supplemental nutrition assistance program telephone or other acceptable electronic means hearings, except ~~food-stamps~~supplemental nutrition assistance



program intentional program violation hearings, the person requesting the hearing shall be present at the same location as the county agency representative. This provision may be waived by the department when illness, disability, travel difficulty, or other reason makes attendance of the person requesting the hearing, or that person's authorized representative, at the location of the county agency representative impracticable.

3. Witnesses may give testimony by telephone or other acceptable electronic means unless the hearing officer determines that it will be unreasonably difficult to judge the witness's credibility without the witness's presence before the hearing officer. The party calling a witness by telephone or other acceptable electronic means shall provide reliable identification of the witness and assume responsibility for providing a satisfactory telephone connection. A party intending to call a witness by telephone or other acceptable electronic means shall provide notice of that intention to the administrative law judge and to the other parties at least three days before the date of the witness's intended testimony unless the administrative law judge determines arrangements for a satisfactory telephone or other acceptable electronic means connection may be made on shorter notice.
4. The hearing must be conducted in an impartial manner. All testimony must be submitted under oath or affirmation.
5. The proceedings at the hearing must be reported or otherwise perpetuated by mechanical, electronic, or other means capable of reproduction or transcription.
6. The hearing officer shall consider if the parties or their authorized representatives are familiar with the North Dakota Rules of Evidence and shall waive application of those rules unless all parties to the proceeding or their authorized representatives are familiar with the North Dakota Rules of Evidence. The waiver, if necessary, must be stated prior to or at any hearing.
7. An interpreter shall be provided by the state if the hearing officer determines this necessary.

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; January 1, 1997; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 16:** Section 75-01-03-16 is amended as follows:

**75-01-03-16. ~~Economic assistance claimant~~Claimant living outside of North Dakota.**

When a request for fair hearing is received from an applicant for or recipient of ~~medicaid, aid to families with dependent children, food stamps, or low income home energy assistance program~~children's health insurance program, economic assistance programs, intellectual disabilities-developmental disabilities program management services, or medicaid eligibility benefits, who is living outside of the state, it must be acknowledged and reported in the same manner as other requests for fair hearing. Unless the claimant returns to North Dakota for the hearing or ~~authorizes a~~has an authorized representative in North Dakota, the hearing will be conducted by telephone or other acceptable electronic means.

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 17:** Section 75-01-03-18 is amended as follows:

**75-01-03-18. Withdrawal or abandonment.**

1. An appeal may not be dismissed without hearing unless:
  - a. The claimant withdraws or abandons the appeal;
  - b. The department reverses the decision appealed ~~from~~ without a hearing; or
  - c. Informal resolution of a vocational rehabilitation request for review is achieved.
2. A withdrawal occurs when the hearing officer is notified by the claimant that the claimant no longer wishes a hearing.
3. An abandonment occurs when:
  - a. The claimant or the claimant's authorized representative fails to appear at the hearing without good cause; or
  - b. The claimant cannot be located through the claimant's last address of record, or through the claimant's authorized representative, and such inability to locate the claimant precludes the scheduling of a hearing.

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 18:** Section 75-01-03-20 is amended as follows:

**75-01-03-20. Appeals procedures for determinations affecting participation of intermediate care facilities for individuals with intellectual disabilities and certain nursing facilities in medicaid.**

1. a. This section sets forth the appeals procedures the department makes available:
  - (1) To a nursing facility that is dissatisfied with the department's finding of noncompliance that has resulted in an enforcement action under chapter 75-02-05.2; or
  - (2) To an intermediate care facility for individuals with intellectual disabilities that is dissatisfied with the department's finding of noncompliance with medicaid program requirements that has resulted in the denial of a ~~provided~~provider agreement or the termination or nonrenewal of its ~~provided~~provider agreement as a sanction imposed under ~~paragraph 1 of subdivision a of subsection 2 of section 75-02-05-08~~chapter 75-02-05.
- b. This section also sets forth the special rules that apply in particular circumstances, the limitations on the grounds for appeal, and the scope of review during a hearing.
2. a. Except as provided in subdivision b, a facility is entitled to a full evidentiary hearing, as described in subsection 3, on any of the actions specified in subsection 1.
- b. A facility may not appeal:
  - (1) The choice of sanction or remedy;
  - (2) The state monitoring remedy;
  - (3) The loss of approval for a nurse aide training program; or
  - (4) The level of noncompliance found by the state survey agency except when a favorable decision would affect the amount of the civil money penalty imposed under section 75-02-05.2-02.
3. The appealing facility is entitled:

- a. To appear before an impartial hearing officer to refute the finding of noncompliance upon which the department has based an action taken under subsection 1;
  - b. To be represented by counsel or other representative; and
  - c. To be heard directly or through its representative, to call witnesses, and to provide documentary evidence.
4. In appeals disputing the imposition of a civil money penalty:
- a. The department's finding as to a nursing facility's level of noncompliance must be upheld unless it is clearly erroneous; and
  - b. Upon a finding that a basis for imposing a civil money penalty exists, the appeal decision may not:
    - (1) Set a penalty of zero or reduce a penalty to zero;
    - (2) Review the exercise of discretion by the department to impose a civil money penalty; or
    - (3) Consider any factors in reviewing the amount of the penalty other than the factors described in subsection 6 of section 75-02-05.2-04 and the facility's degree of culpability. For purposes of this paragraph, "culpability" includes neglect, indifference, or disregard for resident care, comfort, or safety. The absence of culpability is not a mitigating circumstance in reducing the amount of the penalty.
5. An appeal may be perfected by mailing or delivering the information described in subdivisions a through c to the appeals supervisor. The mailed or delivered material must arrive at the office of the appeals supervisor on or before five p.m. on the sixtieth day ~~after~~from the date the ~~appealing party is provided~~of the notice of an action appealable under subdivision a of subsection 1. The appeal request must include:
- a. A statement of each disputed deficiency and the reason or basis in fact for the dispute;
  - b. The authority in statute or rule upon which the appealing party relies for each disputed item; and
  - c. The name, address, and telephone number upon whom all notices regarding the appeal must be served.

6. An appeal of a deficiency may not suspend or delay enforcement action except as provided in this section and chapter 75-02-05.2.
7. If an intermediate care facility for individuals with intellectual disabilities requests a hearing concerning a finding of noncompliance with medicaid program requirements that has resulted in an action under paragraph 2 of subdivision a of subsection 1, the evidentiary hearing must be completed within one hundred twenty days after the effective date of the action based on that finding.
8. If a nursing facility requests a hearing on the denial or termination of its provider agreement, the request does not delay the denial or termination and the hearing decision need not be issued before the effective date of the denial or termination.

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; February 1, 1997; July 1, 2012; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1; 42 CFR 431.151, et seq.

**SECTION 19:** Section 75-01-03-23 is amended as follows:

**75-01-03-23. Notice of decision.**

1. After a decision is rendered by the director of vocational rehabilitation or the executive director, the appeals supervisor shall mail a copy to the claimant and the county agency, nursing facility, or ~~unit~~division of the department that made the determination under appeal. The notice of decision must also contain a statement explaining the right to request a rehearing or reconsideration unless the decision is itself a decision on rehearing or reconsideration.
2. The notice may be mailed by certified mail, return receipt requested, by certified mail, or by regular mail. If notice is given by certified mail without return receipt or by regular mail, an affidavit of mailing indicating to whom the order was mailed must be prepared.

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 20:** Section 75-01-03-24 is amended as follows:

**75-01-03-24. Preservation of record.**

The verbatim record of the testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, the hearing officer's recommended decision, and the department's decision constitute the exclusive record for decision and must be available to the parties to the appeal at any reasonable time for three years after the date of the department's decision in all ~~food-stamp~~supplemental nutrition assistance program cases, and for ninety days after the date of the department's decision in all other cases. A transcribed copy of recorded testimony requested within ninety days after the date of the department's decision must be made available to the claimant or a county agency upon payment of a reasonable transcription fee.

**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1

**SECTION 21:** Section 75-01-03-26 is created as follows:

**75-01-03-26. Appeals supervisor address.**

The appeals supervisor's address is:

Appeals Supervisor  
North Dakota Department of Human Services  
State Capitol - Judicial Wing  
600 East Boulevard Avenue - Department 325  
Bismarck, North Dakota 58505-0250

**History:** Effective April 1, 2018.

**General Authority:** NDCC 28-32-02, 50-06-16

**Law Implemented:** NDCC 50-06-05.1