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**TITLE 61**  
**STATE BOARD OF PHARMACY**





**JANUARY 2003**

**CHAPTER 61-02-02**

**61-02-02-01. Building standards for pharmacies.** Any new pharmacy, or any existing pharmacy which is being remodeled, except in the cases of institutional practice, must comply with the following provisions:

1. **Approval of plans.** The prescription area, merchandising area, waiting area, storeroom, restroom, and all partitions, doors, windows, and fixtures shall be indicated on floor plans showing appropriate elevations submitted to the board at the time the application for a new pharmacy is filed, or prior to remodeling. Such plans shall be submitted to the board prior to proceeding with the new construction. Before a pharmacy permit is issued, the plans submitted must meet the approval of the board.
2. **Minimum size of the prescription area.** The minimum size of the prescription area, including adjacent patient consultation and information area and drug storage areas shall be not less than one thousand square feet [92.90 square meters], with an additional two hundred fifty square feet [23.23 square meters], to be used but not restricted to prescription receiving, checkout, and entrance area, but in all cases shall be large enough to carry out efficiently the elements of the practice of pharmacy at the level of activity of that operation. All of the allotted square footage space, including adequate shelving, shall lend itself to efficient pharmaceutical practice so as to permit free movement and visual surveillance. A patient consultation and information center must be provided. This patient consultation and information center may not be located in the prescription area or drug storage area. The patient consultation and information center must afford the patient privacy from visual or auditory detection or surveillance by any unauthorized person or persons. The patient consultation and information center must be accessible by a patient by provision of an entrance and exit that does not require the patient to enter or traverse the prescription area or drug storage areas.

3. **Prescription compounding counter.** There shall be a prescription compounding counter which shall provide a minimum of sixteen square feet [1.49 square meters] of unobstructed working space for one pharmacist, and a minimum of twenty-four square feet [2.23 square meters] of unobstructed working space where two or more pharmacists are on duty at any one time.

The floor area to be occupied by the dispensing pharmacists shall extend the full length of the prescription compounding counter, and shall be clear and unobstructed for a minimum distance of thirty inches [76.2 centimeters] from the counter.

4. **Prescription area.** The prescription area shall be separated from other areas in such a manner that prescription or nonproprietary drugs or devices are inaccessible to the reach of any unauthorized person.
5. **Light and ventilation.** The prescription area and all storerooms shall be well-lighted, ventilated, and kept free of obnoxious odors.
6. **Refrigerator.** The restricted area shall contain a refrigerator for its exclusive use.
7. **Change in location of a pharmacy.** Before a licensed pharmacy changes the location of its business, or its physical dimensions or elements of physical security, it shall first submit the changes to the board for its approval that the changes do conform with all rules of the board.
8. **Storage of other merchandise - Telephone.** The prescription department shall not be used for storage of merchandise other than that used in the preparation or dispensing of medical needs. If such stored material is present, such area shall not be included as part of the prescription department. A telephone shall be immediately accessible in the prescription area, and the telephone number shall coincide with the telephone number on prescription labels.
9. **Building standards variations.** The board of pharmacy recognizes that the building standards for pharmacies will depend on the type of pharmaceutical services offered, and therefore, variations for required building standards may be granted by the board of pharmacy.
10. **Remodeling or improvement variations.** When the pharmacy is remodeling within existing permitted space or when a pharmacy is attempting to improve toward the standards in section 61-02-02-01 or chapters 61-02-03 or 61-02-04, the board may grant approval to move

toward the standards even though the amount of space available does not allow complete compliance with the standards.

**History:** Amended effective August 1, 1983; April 1, 1988; June 1, 1992; January 1, 2003.

**General Authority:** NDCC 28-32-02, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(14)

**Law Implemented:** NDCC 28-32-03, 43-15-01(16), 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(14)





**TITLE 67**

**DEPARTMENT OF PUBLIC INSTRUCTION**





JULY 2003

## CHAPTER 67-11-08

**67-11-08-01. Credentials required.** For purposes of school accreditation, a school may employ as a special education director only an individual who holds ~~a North Dakota special education director credential issued by the department. The department may issue a credential under this chapter to an individual who has graduated from a program that meets the program standards approved by the department for special education directors as described in the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002 either the North Dakota special education director credential as outlined in this chapter or who has not been authorized by the education standards and practices board as a special education director at a level the department determines meets or exceeds the requirements of this chapter and which is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.~~

**History:** Effective February 1, 2000; amended effective November 18, 2002; July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-08-03. Credential standards.** Each applicant for a special education director's credential must meet the standards in this section. The documentation on each standard must be verified within the department before any credential will be issued. An applicant must have:

1. A valid North Dakota teaching educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10 and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement;
2. A master's degree, preferably in special education;

3. Basic preparation in one area of special education which will entitle the applicant to the special education credential for North Dakota in that area;
4. An additional nine semester hours in more than one other area of special education;
5. Eight semester hours in school administration or a four-semester-hour internship in administration of special education and two semester hours in school administration. The eight semester hours in school administration ~~should~~ must be chosen from courses in school law, administration of the public school, school finance, teacher personnel administration, or a seminar in administration;
6. At least two years of successful experience in one area of special education; and
7. ~~Recommendation~~ Written recommendations from supervisors of practicum experiences two persons who supervised the applicant during the applicant's teaching experience.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-08-04. Types of credentials.** The professional credential is issued and is valid for the same period as the teaching educator's professional license ~~and is issued on the standards identified in section 67-11-08-03.~~

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-08-05. Application process.** The application process to obtain a credential under this chapter is:

1. A special education director's credential application form provided by the department of public instruction must be submitted including the applicant's name, social security number, date, address, telephone number, ~~teaching certificate~~ educator's professional license number and expiration date, signature, employment information, academic preparation, references; and



2. A ~~photocopy~~ copy of official transcripts must be provided.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-08-06. Renewal requirements.** To renew the credential, an individual must complete the requirements established by the North Dakota education standards and practices board relative to renewal of the North Dakota ~~teacher's~~ educator's professional license. The special education director's credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew a special education credential.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

## CHAPTER 67-11-09

**67-11-09-01. Credentials required.** ~~A teacher of early childhood special education students must hold the North Dakota special education professional credential in early childhood special education. For purposes of school accreditation, a school that educates a student in early childhood special education must employ teachers who hold the North Dakota teacher of early childhood special education students credential as outlined in this chapter or who have been authorized by the education standards and practices board in this specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.~~

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-09-03. Credential standards.** Each applicant for a teacher of students in early childhood special education credential must meet the standards in this section. The documentation on each standard must be verified by the department before ~~any~~ an early childhood special education credential is issued. The

1. Prior to August 1, 2003, the standards are as follows:
  - ~~4-~~ a. An applicant must hold a valid North Dakota ~~teaching~~ educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10, 15.1-13-11, and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or kindergarten education.
  - ~~2-~~ b. Areas of preparation of early childhood special education teachers include the coursework listed in this ~~subsection~~ subdivision. The coursework ~~should~~ must be taken primarily at graduate level from a college or university with accreditation in this area and offering a major in special education that includes study in the areas listed in this ~~subsection~~ subdivision. Because not all of these are course titles, applicants ~~should~~ must have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as early childhood special education teachers ~~are required to meet the requirements for~~ must hold a general elementary or kindergarten educator's professional license. The credential requires at least one practicum working with preschool children with disabilities, as outlined by the applicant's college or university. The practicum in working with preschool children with



disabilities must be provided after other qualifications are met. If the practicum is offered in two units, both the initial practicum and the advanced practicum must be completed to meet this requirement. Including the hours attributable to the practicum, the applicant must take the equivalent of at least twenty-four semester hours of graduate credit in. The additional credits must include coursework in each of these areas:

- a. (1) Exceptional children and youth.
- b. (2) Assessment of preschool children with disabilities.
- c. (3) Child development.
- d. (4) Home and school relations or parents, the school, and community agencies.
- e. (5) Characteristics of preschool children with disabilities.
- f. (6) Methods and materials in education of preschool children with disabilities.
- g. (7) An additional course in education of preschool children with disabilities.
- ~~h. Practicum working with preschool children with disabilities, as outlined by the college or university. It is typical that limited practicum experiences are included in many of the courses in this subsection. This final practicum in working with preschool children with disabilities should be provided after other qualifications are met. If the practicum is offered in two units, both the initial practicum and the advanced practicum must be completed to meet this requirement.~~

2. After July 31, 2003, an applicant must:

- a. Have a valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10, 15.1-13-11, and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or kindergarten education; and
- b. Meet education standards and practices board specialty area standards for early childhood special education as set out in North



Dakota teacher education program approval standards 2000 with 2002 revisions adopted effective August 1, 2002.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-09-04. Types of credentials.**

1. The professional credential is:
  - a. ~~Issued~~ issued and is valid for the same period as the teaching educator's professional license; ~~and.~~
  - b. ~~Issued on the standards identified in section 67-11-09-03~~
2. Provisional letter of approval.
  - a. A letter of approval is issued and is valid for one school year, including the following summer. The letter of approval may be renewed for up to three consecutive years.
  - b. Approval is based on documentation of general education teaching experiences, a current teaching educator's professional license, a program of study based on the standards identified in section 67-11-09-03 outlined by a college or university with an accredited training program, and a copy of current transcripts.
  - c. Approval is based on the school district's description of the need for the position and the plan of supervision of the teacher in training by a qualified early childhood special education teacher.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-09-05. Application process.** The application process to obtain a credential under this chapter is:

1. A special education credential application form provided by the department of public instruction must be submitted for the early childhood special education credential. Information including the date and the applicant's name, social security number, address, telephone number, ~~teaching certificate~~ educator's professional license number and expiration date, signature, and academic preparation is required in the application.

2. A ~~photocopy~~ copy of official transcripts must be provided.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-09-06. Renewal requirements.** To renew the early childhood special education credential, the teacher must:

1. Complete the requirements established by the North Dakota education standards and practices board relative to renewal of the North Dakota ~~teacher's~~ educator's professional license. The special education credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew a special education credential that is renewed on a continuing basis.
2. In those instances in which a significant lapse of the applicant's educator's professional license of more than ten years has occurred prior to renewal, the special education credential application will be reviewed to assure that all special education requirements have been met.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)



## CHAPTER 67-11-10

**67-11-10-01. Credentials required.** ~~A teacher of students with emotional disturbance must hold the North Dakota special education professional credential in emotional disturbance.~~ For purposes of school accreditation, a school that educates a student with emotional disturbance must employ teachers who hold the North Dakota teacher of students with emotional disturbance credential as outlined in this chapter or who have been authorized by the education standards and practices board in this specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-10-03. Credential standards.** Each applicant for a teacher of students with emotional disturbance credential must meet the standards in this section. The documentation on each standard must be verified by the department before any special education credential is issued. The standards are as follows:

1. Prior to August 1, 2003:

- a. An applicant must hold a valid North Dakota ~~teaching~~ educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10, 15.1-13-11, and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or secondary education.
2. ~~b.~~ Areas of preparation of teachers in emotional disturbance include the coursework listed in this ~~subsection~~ subdivision. The coursework ~~should~~ must be taken primarily at the graduate level from a college or university with accreditation in this area and offering a major in special education that includes study in the areas listed in this ~~subsection~~ subdivision. Because not all of these are course titles, applicants ~~should~~ must have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as emotional disturbance teachers ~~are required to meet the requirements for~~ must hold either an elementary or secondary educator's professional license. Emotional disturbance teachers with a secondary ~~teaching~~ educator's professional license must have an elementary mathematics methods and an elementary reading methods course. ~~The credential requires and must complete a practicum in emotional disturbance as outlined by the~~

applicant's college or university. The final practicum in working with children with emotional disturbance must be provided after other qualifications are met. If the practicum is offered in two units, both the initial practicum and the advanced practicum must be completed to meet this requirement. Including the hours attributable to the practicum, the applicant must take the equivalent of at least twenty-four semester hours of graduate credit in. The additional credits must include coursework in each of these areas:

- a- (1) Exceptional children and youth.
- b- (2) Introduction to the area of emotional disturbance, which includes psychopathology of childhood and adolescence.
- c- (3) Methods of teaching children with emotional disturbance.
- d- (4) Developmental psychology.
- e- (5) Behavior management, which typically includes a study of student reaction to frustration, response to failure, emotional problems, and ways of managing problems in the classroom.
- f- (6) Assessment and test interpretation of children and youth with disabilities. This ~~should not be primarily the administration of tests but rather~~ course must contain considerable experience in the use of information from tests as they relate to curriculum, adjustment, and behavior.
- g- (7) Methods and materials in specific learning disabilities. It is typical that the course will describe the intent of materials, modifying and adapting materials, problem-solving methods, interventions including behavior modification and other applied learning theory; or specific learning disability practicum.
- h- (8) Interdisciplinary and community resources and consultation skills.
- i- (9) Family or home school relations.
- j- (10) Guidance or educational alternatives.
- k- ~~A complete practicum in emotional disturbance as outlined by the college or university. It is typical that limited practicum experiences are included in many of the courses in this subsection. This final practicum in working with children with emotional disturbance should be provided after other qualifications are met. If the practicum is offered in two units, both the initial practicum and the advanced practicum must be completed to meet this requirement.~~



- 3. c. For students completing a four-year undergraduate degree from a university with appropriate accreditation in this area, two additional graduate-level courses will be required and must include an advanced seminar in emotional disturbance and emotional disturbance practicum.
2. After July 31, 2003, an applicant must have:
- a. A valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10, 15.1-13-11, and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or secondary education; and
  - b. Meet education standards and practices board specialty area standards for teachers of students with emotional disturbance as set out in North Dakota teacher education program approval standards 2000 with 2002 revisions adopted effective August 1, 2002.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

#### **67-11-10-04. Types of credentials.**

- 1. The professional credential is:
  - ~~a.~~ Issued issued and is valid for the same period as the teaching educator's professional license; ~~and.~~
  - ~~b.~~ Issued on the standards identified in section 67-11-10-03
- 2. Tutor in training (available only until July 1, 2007).
  - ~~a.~~ A letter of approval for a tutor in training is issued and is valid for one school year. The letter of approval may be renewed for up to three consecutive years. Persons seeking authorization to work under a tutor in training certification as an emotional disturbance teacher must:
    - a. Have an offer of employment or be employed as a teacher of students with emotional disturbance in a North Dakota school; and
    - b. ~~Approval is based on~~ Provide documentation of ~~two~~.

- (1) Two school years of general education teaching experiences;  
~~current;~~
- (2) Current teacher certification or licensure;~~a;~~
- (3) A program of study based on the standards identified in section 67-11-10-03 outlined by a college or university with an accredited training program;
- (4) Provide a document prepared by the school district that describes the need for the position and the plan of supervision of the tutor in training;
- (5) A statement signed by the proposed supervisor who must be certified as an emotional disturbance teacher in North Dakota; and ~~a~~
- (6) A copy of current transcripts documenting successful completion of a minimum of eight semester hours of applicable coursework.

~~e. Approval is based on the school district's description of the need for the position and the plan of supervision of the tutor in training by a qualified emotional disturbance teacher.~~

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-10-05. Application process.** The application process to obtain a credential under this chapter is:

1. A special education credential application form provided by the department of public instruction must be submitted for the emotional disturbance credential. Information including the date and the applicant's name, social security number, address, telephone number, ~~teaching certificate~~ educator's professional license number and expiration date, signature, and academic preparation is required in the application.
2. A ~~photocopy~~ copy of official transcripts must be provided.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-10-06. Renewal requirements.** To renew the emotional disturbance credential, the teacher shall:

1. Complete the requirements established by the North Dakota education standards and practices board relative to renewal of the North Dakota ~~teacher's~~ educator's professional license. The special education credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew special education credentials that are renewed on a continuing basis.
2. In those instances in which a ~~significant~~ lapse of the applicant's educator's professional license of more than ten years has occurred prior to renewal, the special education credential application will be reviewed to assure that all special education requirements have been met.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15-1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)



## CHAPTER 67-11-11

**67-11-11-01. Credentials required.** ~~A teacher of gifted and talented students must hold the North Dakota special education professional credential in gifted and talented~~ For purposes of school accreditation, a school that educates a gifted and talented student must employ teachers who hold the North Dakota special education professional credential in gifted and talented education as outlined in this chapter or who have been authorized by the education standards and practices board in this speciality at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**67-11-11-03. Credential standards.** Each applicant for a gifted and talented teacher credential must meet the standards in this section. The documentation on each standard must be verified by the department before any special education credential is issued.

1. The standards prior to August 1, 2003, are as follows:

~~1. a.~~ An applicant must hold a valid North Dakota teaching educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10, 15.1-13-11, and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or secondary education.

~~2. b.~~ Areas of preparation of teachers of gifted and talented students include the coursework listed in this ~~subsection~~ subdivision. The coursework ~~should~~ must be taken at graduate level from a college or university with accreditation in this area and offering a major in special education that includes study in the areas listed in this ~~subsection~~ subdivision. Because not all of these are course titles, applicants ~~should~~ must have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as teachers of gifted and talented students are required to meet the requirements for must hold either a general elementary or secondary educator's professional license. The credential requires at least nine ~~three~~ semester hours of graduate credit in each of these areas:

~~a. (1)~~ Education of gifted students.

~~b. (2)~~ Gifted education curriculum.



- e. (3) Student teaching in gifted education.
- ~~3.~~ c. One year of successful teaching experience is required in general education with verification from the employing school district.
- ~~4.~~ Continuing education toward a master's degree is recommended.
- 2. After July 31, 2003, an applicant must:
  - a. Hold a valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10, 15.1-13-11, and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a licensable major or minor or an endorsement in elementary or secondary education; and
  - b. Meet education standards and practices board specialty area standards for teachers of gifted and talented students as set out in North Dakota teacher education program approval standards 2000 with 2002 revisions adopted effective August 1, 2002.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

#### **67-11-11-04. Types of credentials.**

- 1. The professional credential is issued and is valid for the same period as the educator's professional license.
- 2. The provisional letter of approval is:
  - a. Issued and is valid for one school year, including the following summer.
  - b. Based on documentation of general education teaching experiences, a current teaching license, and a program of study ~~based on the standards identified in section 67-11-11-03~~ at a college or university with an accredited training program.
  - c. Based on the school district's description of the need for a provisionally credentialed staff member.

**History:** Effective February 1, 2000; amended effective July 1, 2002; July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**67-11-11-05. Application process.** The application process to obtain a credential under this chapter is:

1. A special education credential application form provided by the department of public instruction must be submitted for the gifted and talented credential. Information including the date and the applicant's name, social security number, address, telephone number, ~~teaching certificate~~ educator's professional license number and expiration date, signature, and academic preparation are required in the application.
2. A ~~photocopy~~ copy of official transcripts must be provided.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**67-11-11-06. Renewal requirements.** To renew the gifted and talented credential, the teacher shall:

1. Complete the requirements established by the North Dakota education standards and practices board relative to renewal of the North Dakota ~~teacher's~~ educator's professional license. The special education credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew a special education credential that is renewed on a continuing basis.
2. In those instances in which a ~~significant~~ lapse of the applicant's educator's professional license of more than ten years has occurred prior to renewal, the special education credential application will be reviewed to assure that all special education requirements have been met.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09



## CHAPTER 67-11-12

**67-11-12-01. Credentials required.** ~~A teacher of students with physical disabilities must hold the North Dakota special education professional credential in physical disabilities. For purposes of school accreditation, a school that educates students with physical disabilities must employ teachers who hold the North Dakota teacher of students with physical disabilities credential as outlined in this chapter or who have been authorized by the education standards and practices board in this specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.~~

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-12-03. Credential standards.** Each applicant for a teacher of students with physical disabilities credential must meet the standards in this section. The documentation on each standard must be verified by the department before any special education credential is issued. The

1. Prior to August 1, 2003, the standards are as follows:

1. a. An applicant must hold a valid North Dakota ~~teaching~~ educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10, 15.1-13-11, and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or secondary education.
2. b. Areas of preparation of teachers for students with physical disabilities include the coursework listed in this ~~subsection~~ subdivision. The coursework ~~should~~ must be taken from a college or university with accreditation in this area and offering a major in special education that includes study in the areas listed in this ~~subsection~~ subdivision. Because not all of these are course titles, applicants ~~should~~ must have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as physical disabilities teachers ~~are required to meet the requirements for~~ must hold either a general elementary or secondary educator's professional license. The credential requires at least ~~fifteen~~ three semester hours of credit in each of these areas:

- a. (1) Exceptional children and youth.

- b. (2) Introduction to physical disabilities or orthopedics for teachers.
  - c. (3) Methods and materials in teaching students with physical disabilities.
  - d. (4) At least one full course in another area of exceptionality.
  - e. (5) Student teaching in the area of physical disabilities.
3. ~~Recommended coursework includes transition planning, consultation and collaboration, and social and psychological implications of physical disabilities.~~
2. After July 31, 2003, an applicant must:
- a. Hold a valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10, 15.1-13-11, and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or secondary education; and
  - b. Meet education standards and practices board specialty area standards for this specialty as set out in North Dakota teacher education program approval standards 2000 with 2002 revisions adopted effective August 1, 2002.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-12-04. Types of credentials.** The professional credential is:

- 1. ~~Issued~~ issued and is valid for the same period as the teaching educator's professional license; ~~and.~~
- 2. ~~Issued on the standards identified in section 67-11-12-03~~

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-12-05. Application process.** The application process to obtain a credential under this chapter is:



1. A special education credential application form provided by the department of public instruction must be submitted for the physical disabilities credential. Information including the date and the applicant's name, social security number, address, telephone number, ~~teaching certificate~~ educator's professional license number and expiration date, signature, and academic preparation are required in the application.
2. A ~~photocopy~~ copy of official transcripts must be provided.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-12-06. Renewal requirements.** To renew the physical disabilities credential, the teacher shall:

1. Complete the requirements established by the North Dakota education standards and practices board relative to renewal of the North Dakota ~~teacher's~~ educator's professional license. The special education credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew a special education credential that is renewed on a continuing basis.
2. In those instances in which a ~~significant~~ lapse of the applicant's educator's professional license of more than ten years has occurred prior to renewal, the special education credential application will be reviewed to assure that all special education requirements have been met.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

## CHAPTER 67-11-13

**67-11-13-01. Credentials required.** ~~A teacher of students with specific learning disabilities must hold the North Dakota special education professional credential in specific learning disabilities. For purposes of school accreditation, a school that educates a student with specific learning disabilities must employ teachers who hold the North Dakota teacher of students with specific learning disabilities credential as outlined in this chapter or who have been authorized by the education standards and practices board in this specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.~~

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-13-03. Credential standards.** Each applicant for a teacher of students with specific learning disabilities credential must meet the standards in this section. The documentation on each standard must be verified by the department before any special education credential is issued. The

1. Prior to August 1, 2003, the standards are as follows:

4. a. An applicant must hold a valid North Dakota teaching educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-10, 15.1-13-11, and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or secondary education.
2. b. Areas of preparation of teachers in specific learning disabilities include the coursework listed in this ~~subsection~~ subdivision. The coursework ~~should~~ must be taken primarily at the graduate level from a college or university with accreditation in this area and offering a major in special education that includes study in the areas listed in this ~~subsection~~ subdivision. Because not all of these are course titles, applicants ~~should~~ must have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as specific learning disabilities teachers ~~are required to meet the requirements for~~ must hold either a general elementary or secondary educator's professional license. Specific learning disabilities teachers with a secondary ~~teaching~~ educator's professional license must have an elementary mathematics methods and an elementary reading methods course. The credential requires at least one



practicum working with children with specific learning disabilities after other qualifications are met. If the practicum is offered in two units, both the initial practicum and the advanced practicum must be completed to meet this requirement. Including the hours attributable to the practicum, the applicant must take the equivalent of at least twenty-four semester hours of graduate credit in. The additional credits must include coursework in each of these areas:

- a- (1) Exceptional children and youth.
  - b- (2) Characteristics of specific learning disabilities.
  - e- (3) Assessment and interpretation of children and youth with disabilities. ~~This should not be primarily the administration of tests but rather~~ must contain considerable experience in the use of information from tests as they relate to curriculum, adjustment, and behavior.
  - d- (4) Methods and materials in specific learning disabilities. It is typical that the course will describe the intent of materials, modifying and adapting materials, problem-solving methods, interventions including behavior modification, and other applied learning theory.
  - e- (5) Developmental psychology or language development and disorders.
  - f- (6) Behavior management. The course typically includes a study of student reaction to frustration, response to failure, emotional problems, and ways of managing problems in the classroom.
  - g- (7) Corrective reading. Undergraduate hours in corrective reading must include supervised practicum.
  - h- ~~Practicum. It is typical that limited practicum experiences are included in many of the above courses. This final practicum in working with children with specific learning disabilities should be provided after other qualifications are met. If the practicum is offered in two units, both the initial practicum and the advanced practicum must be completed to meet this requirement.~~
- 3- (c) For students completing a four-year undergraduate degree from a university with appropriate accreditation in this area, two additional graduate-level courses will be required and must include an advanced seminar in specific learning disabilities and specific learning disabilities practicum.

2. After July 31, 2003, an applicant must:

- a. An applicant must hold a valid North Dakota educator's professional license issued by the education standards and practices board based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or secondary education; and
- b. Meet education standards and practices board specialty area standards for this specialty as set out in North Dakota teacher education program approval standards 2000 with 2002 revisions adopted effective August 1, 2002.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

#### **67-11-13-04. Types of credentials.**

1. The professional credential is:
  - a. ~~Issued~~ issued and is valid for the same period as the teaching educator's professional license; ~~and~~.
  - b. ~~Issued on the standards identified in section 67-11-13-03~~
2. Tutor in training (available only until July 1, 2007).
  - a. A letter of approval is issued and is valid for one school year including the following summer. The letter of approval may be renewed for up to three consecutive years. Persons seeking authorization to work under a tutor in training certification as a specific learning disabilities teacher must:
    - a. Have an offer of employment or be employed as a specific learning disabilities teacher in a North Dakota school; and
    - b. ~~Approval is based on~~ Provide documentation of ~~two~~:
      - (1) Two school years of general education teaching experiences; ~~a~~
      - (2) A current teaching educator's professional license; ~~a~~
      - (3) A program of study based on the standards identified in section 67-11-13-04 67-11-13-03 outlined by a college or university with an accredited training program; ~~i~~



- (4) Provide a document prepared by the school district that describes the need for the position and the plan of supervision of the tutor in training;
  - (5) A statement signed by the proposed supervisor who must be certified as a specific learning disabilities teacher in North Dakota; and a
  - (6) A copy of current transcripts documenting successful completion of a minimum of eight semester hours of applicable coursework.
- ~~c. Approval is based on the school district's description of the need for the position and the plan of supervision of the tutor in training by a qualified specific learning disabilities teacher.~~

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-13-05. Application process.** The application process to obtain a credential under this chapter is:

1. A special education credential application form provided by the department of public instruction must be submitted for the specific learning disabilities credential. Information including the date and the applicant's name, social security number, address, telephone number, ~~teaching certificate~~ educator's professional license number and expiration date, signature, and academic preparation are required in the application.
2. A ~~photocopy~~ copy of official transcripts must be provided.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-13-06. Renewal requirements.** To renew the specific learning disabilities credential, the teacher shall:

1. Complete the requirements established by the North Dakota education standards and practices board relative to renewal of the North Dakota ~~teacher's~~ educator's professional license. The special education credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew a special education credential that is renewed on a continuing basis.

2. In those instances in which a ~~significant~~ lapse of the applicant's educator's professional license of more than ten years has occurred prior to renewal, the special education credential application will be reviewed to assure that all special education requirements have been met.

**History:** Effective February 1, 2000; amended effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**CHAPTER 67-11-17**  
**MENTAL RETARDATION TEACHER CREDENTIAL**

Section

<u>67-11-17-01</u>	<u>Credentials Required</u>
<u>67-11-17-02</u>	<u>Issuing Agency</u>
<u>67-11-17-03</u>	<u>Credential Standards</u>
<u>67-11-17-04</u>	<u>Types of Credentials</u>
<u>67-11-17-05</u>	<u>Application Process</u>
<u>67-11-17-06</u>	<u>Renewal Requirements</u>
<u>67-11-17-07</u>	<u>Notification of Denial</u>

**67-11-17-01. Credentials required.** For purposes of school accreditation, a school that educates students with mental retardation must employ persons that hold either the North Dakota special education professional credential in mental retardation as provided in this chapter, a North Dakota educator's professional license with a major in mental retardation or the special education strategist credential provided for in chapter 67-11-16.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-09; 2001 S.L. ch. 186 § 5; 20 USC 1412(a)(14)

**67-11-17-02. Issuing agency.** The North Dakota special education teaching credential in mental retardation issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-09; 20 USC 1412(a)(14)

**67-11-17-03. Credential standards.** Each applicant seeking a credential to provide special education in the area of mental retardation must meet the standards set out in this section. The documentation submitted to obtain a credential must be verified by the department.

1. Prior to August 1, 2003, the standards are as follows:
  - a. An applicant must hold a valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-17 and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a certifiable major or minor or an endorsement in elementary or



secondary education or a major in mental retardation, in which case a special education credential need not be issued.

- b. Areas of preparation of teachers for students with mental retardation include the coursework listed in this subdivision. The coursework must be taken from a college or university with accreditation in this area and offering a major in special education that includes study in the areas listed in this subdivision. Because not all of these are course titles, applicants must have their transcripts and course content evaluated by the department of public instruction staff. All candidates who are to be employed as mental retardation teachers must hold either a general elementary or secondary educator's professional license or hold a North Dakota educator's professional license with a major in mental retardation. The special education credential requires twenty semester hours of credit taken from coursework in each of these areas:

- (1) Exceptional children and youth;
- (2) Mental hygiene or psychology of adjustment or personality theory or abnormal psychology;
- (3) Methods and materials in mental retardation. It is typical that the course will describe the intent of materials, modifying and adapting materials, problem-solving methods, interventions including behavior modification, and other applied learning theory;
- (4) Practicum in mental retardation;
- (5) Characteristics or assessment of specific learning disabilities;
- (6) Transition to adult life; and
- (7) Music or art methods, corrective reading, behavior management, or consultation and collaboration.

2. After July 31, 2003, an applicant must:

- a. Hold a valid North Dakota educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15.1-13-17 and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a licensable major or minor or an endorsement in elementary or secondary education or a major in mental retardation, in which case a special education credential need not be issued; and

- b. Meet education standards and practices board specialty area standards for this specialty as set out in North Dakota teacher education program approval standards 2000 with 2002 revisions adopted effective August 1, 2002.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-09; 20 USC 1412(a)(14)

**67-11-17-04. Types of credentials.** The professional credential is issued and is valid for the same period as the educator's professional license.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-09; 20 USC 1412(a)(14)

**67-11-17-05. Application process.** The application process to obtain a credential under this chapter is:

1. A special education credential application form provided by the department of public instruction must be submitted for the mental retardation credential. Information including the date and applicant's name, social security number, address, telephone number, educator's professional license number and expiration date, signature, and academic preparation are required in the application.
2. A copy of an official transcript must be provided.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-09; 20 USC 1412(a)(14)

**67-11-17-06. Renewal requirements.** To renew the mental retardation credential, the teacher shall:

1. Complete the requirements established by the education standards and practices board relative to renewal of the North Dakota educator's professional license. The special education credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew a special education credential that is renewed on a continuing basis.
2. In those instances in which a lapse of the applicant's educator's professional license of more than ten years has occurred prior to



renewal, the special education credential application will be reviewed to assure that all special education requirements have been met.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-09; 20 USC 1412(a)(14)

**67-11-17-07. Notification of denial.** If issuance of any credential is denied, the denial must be in writing and must state all reasons for denial. The written documentation must also include the specific requirements from section 67-11-17-03 which must be completed for reconsideration.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-09; 20 USC 1412(a)(14)

**CHAPTER 67-11-18**  
**CREDENTIAL REQUIREMENT FOR TEACHERS OF THE VISUALLY IMPAIRED**

Section

<u>67-11-18-01</u>	<u>Credentials Required</u>
<u>67-11-18-02</u>	<u>Issuing Agency</u>
<u>67-11-18-03</u>	<u>Credential Standards</u>
<u>67-11-18-04</u>	<u>Validity of Credentials</u>
<u>67-11-18-05</u>	<u>Application Process</u>
<u>67-11-18-06</u>	<u>Renewal Requirements</u>
<u>67-11-18-07</u>	<u>Notification of Denial</u>

**67-11-18-01. Credentials required.** For purposes of school accreditation, a school that educates students who are visually impaired must employ a teacher of the visually impaired who holds either the North Dakota teacher of the visually impaired credential as outlined in this chapter or who has been authorized by the education standards and practices board in this specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-18-02. Issuing agency.** The North Dakota teacher of the visually impaired credential issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-18-03. Credential standards.** Each applicant for a teacher of the visually impaired credential must meet the standards in this section. The documentation on each standard must be verified by the department before a credential will be issued.

1. Prior to August 1, 2003, an applicant must have:
  - a. A valid North Dakota educator's professional license issued by the education standards and practices board in accordance with



North Dakota Century Code sections 15.1-13-10 and 15.1-13-23 and North Dakota Administrative Code title 67.1, based on a bachelor's degree with a minimum of a licensable major or minor or an endorsement;

- b. Recommendations from two persons who supervised the applicant during the applicant's teaching experience; and
- c. The applicant's education must include twenty-one hours of coursework specific to the teaching of visually impaired children from a state-approved program. Course preparation must include at least one from each of the following:
  - (1) Education of the exceptional student;
  - (2) Method in the education of the visually impaired;
  - (3) Introduction to orientation and mobility of the visually impaired;
  - (4) Communication with visually impaired students;
  - (5) Educational and medical implications of visual impairment;
  - (6) Student teaching of the visually impaired; and
  - (7) Education of the exceptional student or a composite of courses related to exceptionalities other than visual handicaps.

2. After July 31, 2003, an applicant must:

- a. Have a valid North Dakota educator's professional license issued by the education standards and practices board based on a bachelor's degree with a licensable major or minor or an endorsement;
- b. Provide written recommendations from two persons who supervised the applicant during the applicant's teaching experience; and
- c. Meet education standards and practices board specialty area standards for this specialty as set out in North Dakota teacher

education program approval standards 2000 with 2002 revisions adopted effective August 1, 2002.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-18-04. Validity of credentials.** A credential authorizing a teacher of the visually impaired to teach students with visual impairments at any level is issued and is valid for the same period as the teacher's educator's professional license.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-18-05. Application process.** The application process to obtain a teacher of the visually impaired credential under this chapter is:

1. A teacher of the visually impaired credential application form provided by the department of public instruction must be submitted including the applicant's name, social security number, date, address, telephone number, educator's professional license number and expiration date, signature, employment information, academic preparation, references; and
2. A copy of official transcripts must be provided.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-18-06. Renewal requirements.** To renew the teacher of the visually impaired credential, an individual must meet the requirements established by the education standards and practices board relative to renewal of the North Dakota educator's professional license. The teacher of the visually impaired credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew a teacher of the visually impaired credential.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-18-07. Notification of denial.** If issuance or renewal of a teacher of the visually impaired credential is denied, the denial must be in writing and



must state all reasons for denial. The written documentation must also include requirements for completion for issuance or renewal of a teacher of the visually impaired credential.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**CHAPTER 67-11-19**  
**CREDENTIAL REQUIREMENT FOR TEACHERS OF STUDENTS WHO ARE**  
**DEAF OR HARD OF HEARING**

Section

<u>67-11-19-01</u>	<u>Credentials Required</u>
<u>67-11-19-02</u>	<u>Issuing Agency</u>
<u>67-11-19-03</u>	<u>Credential Standards</u>
<u>67-11-19-04</u>	<u>Validity of Credentials</u>
<u>67-11-19-05</u>	<u>Application Process</u>
<u>67-11-19-06</u>	<u>Renewal Requirements</u>
<u>67-11-19-07</u>	<u>Notification of Denial</u>

**67-11-19-01. Credentials required.** For purposes of school accreditation, a school that teaches students who are deaf or hard of hearing must employ a teacher of students who are deaf or hard of hearing who holds either the North Dakota teacher of students who are deaf or hard of hearing credential as outlined in this chapter or who has been authorized by the education standards and practices board in this specialty at a level the department determines meets or exceeds the requirements of this chapter and is consistent with the North Dakota teacher education program approval standards 2000 with 2002 revisions adopted by the education standards and practices board on August 1, 2002.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-19-02. Issuing agency.** The North Dakota teacher of students who are deaf or hard of hearing credential issuing agency address is:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-19-03. Credential standards.** Each applicant for a teacher of students who are deaf or hard of hearing credential must meet the standards in this section. The documentation on each standard must be verified within the department before a credential will be issued.

1. Prior to August 1, 2003, an applicant must have:



- a. A valid North Dakota educator's professional license issued by the education standards and practices board based on a bachelor's degree with minimum of a licensable major or minor or an endorsement;
- b. Recommendations from two persons who supervised the applicant during the applicant's teaching experience; and
- c. The applicant's education must include preparation in teaching students who are deaf or hard of hearing consisting of a minimum of:
  - (1) For teachers of students who are deaf or hard of hearing:
    - (a) Theory and methods of teaching speech to children who are deaf or hard of hearing (four semester hours);
    - (b) Theory and methods of teaching language to children who are deaf or hard of hearing (four semester hours);
    - (c) Methods of teaching reading and academic subjects to children who are deaf or hard of hearing (four semester hours);
    - (d) Sign language (two semester hours);
    - (e) History, guidance, and education of the deaf or hard of hearing (two semester hours);
    - (f) Auditory and speech mechanisms (two semester hours);
    - (g) Auditory assessment and training (two semester hours);
    - (h) Observation and student teaching (eight semester hours);
    - (i) Child growth and development (two semester hours); and
    - (j) Psychology or education of exceptional children (two semester hours).
  - (2) For teachers of elementary students in academic subjects, the teacher must meet the requirements of subdivision a.
  - (3) For teachers of students in grades nine through twelve in academic subjects, the teacher must have:

- (a) A major or minor in the area in which the teacher is teaching; or
- (b) Met the requirements of subdivision a.

2. After July 31, 2003, an applicant must:

- a. Have a valid North Dakota educator's professional license issued by the education standards and practices board based on a bachelor's degree with a licensable major or minor or an endorsement;
- b. Provide written recommendations from two persons who supervised the applicant during the applicant's teaching experience; and
- c. Meet education standards and practices board specialty area standards for this specialty as set out in North Dakota teacher education program approval standards 2000 with 2002 revisions adopted effective August 1, 2002.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-19-04. Validity of credentials.** A credential authorizing a teacher of students who are deaf or hard of hearing to teach students who are deaf or hard of hearing at any level is issued and is valid for the same period as the teacher's educator's professional license.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-19-05. Application process.** The application process to obtain a teacher of students who are deaf or hard of hearing credential under this chapter is:

- 1. A teacher of students who are deaf or hard of hearing credential application form provided by the department of public instruction must be submitted including the applicant's name, social security number, date, address, telephone number, educator's professional license number and expiration date, signature, employment information, academic preparation, and references; and



2. A copy of official transcripts must be provided.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-19-06. Renewal requirements.** To renew the teacher of students who are deaf or hard of hearing credential, an individual must meet the requirements established by the education standards and practices board relative to renewal of the North Dakota educator's professional license. The teacher of students who are deaf or hard of hearing credential follows the expiration date established by the education standards and practices board. No further action is required on the part of the teacher to renew a teacher of students who are deaf or hard of hearing credential.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

**67-11-19-07. Notification of denial.** If issuance or renewal of a teacher of students who are deaf or hard of hearing credential is denied, the denial must be in writing and must state all reasons for denial. The written documentation must also include requirements for completion for issuance or renewal of a teacher of students who are deaf or hard of hearing credential.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09; 20 USC 1412(a)(15)

## CHAPTER 67-12-01

**67-12-01-01. Minimum standards required.** All Except as specifically provided in this chapter, all public schoolbuses operated in North Dakota must meet the minimum body and chassis standards established or referenced in this chapter.

**History:** Effective May 1, 1999; amended effective July 1, 2003.

**General Authority:** NDCC 28-32-02, 39-21-27, 39-21-27.1

**Law Implemented:** NDCC 39-21-27, 39-21-27.1

**67-12-01-02. National standards adopted.** Except as provided in section 67-12-01-03, the body and chassis standards identified in the federal motor vehicle safety standards for schoolbuses, 49 CFR part 571 [as revised through July 1, 2002], are hereby adopted for schoolbuses in this state.

**History:** Effective May 1, 1999; amended effective July 1, 2003.

**General Authority:** NDCC 28-32-02, 39-21-27, 39-21-27.1

**Law Implemented:** NDCC 39-21-27, 39-21-27.1

### **67-12-01-03. Additional standards.**

1. Whenever body and chassis standards identified in the ~~1995~~ 2000 revised edition of the national minimum standards for schoolbus construction, as developed by the ~~twelfth~~ thirteenth national conference on school transportation, May ~~24-26~~ 14-18, ~~1995~~ 2000, exceed or are in addition to the federal motor vehicle safety standards for schoolbuses, those national minimum standards for schoolbus construction apply and are hereby adopted by reference.
2. All schoolbuses purchased after September 1, 2002, may not include interior overhead racks unless the rack:
  - a. Meets head requirements of FMVSS no. 222 effective on July 1, 2002, when applicable;
  - b. Has a maximum rated capacity displayed for each compartment;
  - c. Is completely enclosed and equipped with latching doors which must be sufficient to withstand a force of five times the maximum rated capacity of the compartment;
  - d. Has all corners and edges rounded with a minimum radius of one inch [25.4 millimeters] or padded equivalent to door header padding;
  - e. Is attached to the bus sufficiently to withstand a force equal to twenty times the maximum rated capacity of the compartment; and



- f. Has no protrusions greater than one-fourth of one inch [6.35 millimeters].

**History:** Effective May 1, 1999; amended effective July 1, 2003.

**General Authority:** NDCC 28-32-02, 39-21-27, 39-21-27.1

**Law Implemented:** NDCC 39-21-27, 39-21-27.1

**67-12-01-05. Investigation and enforcement.** If the department of public instruction has reason to believe that a school district is operating a bus which does not conform to the standards established by this chapter, the department shall request that the North Dakota highway patrol investigate and report its findings to the department. If the findings indicate noncompliance, the department of public instruction shall notify the school district accordingly and order that the vehicle not be operated until it is in compliance. The department shall also notify the school district of its opportunity to request a review and reconsideration of the decision if such request is made in writing within two weeks of the date of mailing by the department of public instruction. The reconsideration request must state the following:

1. The facts, law, or rule which the school district believes was erroneously interpreted or applied; and
2. The school district's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction will issue a final written response on the reconsideration request within two weeks after receiving a complete reconsideration request.

**History:** Effective May 1, 1999; amended effective July 1, 2003.

**General Authority:** NDCC 28-32-02, 39-21-27, 39-21-27.1

**Law Implemented:** NDCC 39-21-27, 39-21-27.1





**TITLE 69**  
**PUBLIC SERVICE COMMISSION**





## MARCH 2003

### CHAPTER 69-07-01

**69-07-01-10. License suspension.** Upon suspension of its license, a licensee must:

1. ~~Notify~~ Within five days of receipt of notice, provide each receiptholder with written notice that its license is suspended, if applicable, and that grain must be removed from the facility or it will be priced and redeemed in cash in accordance with state law. The notice must contain the projected date of license revocation and indicate that if a receiptholder chooses not to sell the grain to the licensee and does not take redelivery prior to revocation, the grain may no longer be covered by insurance or bond.
2. If applicable, keep the commission's suspension notice conspicuously posted in the office window or on the front driveway door of the facility.
3. Surrender the license to the commission.
4. If applicable, not receive additional grain for purchase, storage, shipping, or processing.
5. If applicable, refrain from selling or shipping grain without prior written commission approval.

**History:** Effective February 1, 1991; amended effective August 1, 1999; March 1, 2003.

**General Authority:** NDCC 60-02-03, 60-02.1-03

**Law Implemented:** NDCC 60-02-09.1, 60-02-10.1, 60-02-35.1, 60-02.1-09, 60-02.1-11, 60-02.1-22

## CHAPTER 69-07-02

**69-07-02-05. Physically disconnected lease space.** Facilities that are physically disconnected from licensed warehouse capacity may be leased to other entities for nonpublic use. These leased facilities are not part of the licensee's licensed capacity and related lease agreements must be based on the capacity of the facility involved and not on the number of bushels held in the space. The lessee is responsible for its own contents insurance, if any. The licensee need not bond the space. In case of licensee insolvency, the contents of the leased facilities are not a trust asset and the lessee is not entitled to protection for grain held therein. If the leased facilities are owned by the licensee, lease agreements must be on file at the warehouse.

**History:** Effective March 1, 2003.

**General Authority:** NDCC 60-02-03, 60-02.1-03

**Law Implemented:** NDCC 60-02-09, 60-02.1-03

**69-07-02-06. Universal nonpublic use.** When an entire facility is owned under a condominium arrangement or is leased to other entities for nonpublic use, the facility is not a public warehouse and no license is required. Ownership arrangements or lease agreements must be based on the capacity of the facility involved and not on the number of bushels held in the space. Grain owners are responsible for providing their own insurance on grain held in the facility.

**History:** Effective March 1, 2003.

**General Authority:** NDCC 60-02-03, 60-02.1-03

**Law Implemented:** NDCC 60-02-09, 60-02.1-03



## **CHAPTER 69-09-02**

**69-09-02-35. Installation and maintenance - Conformance to National Electrical Safety Code.** The installation and maintenance of electric supply and communication lines shall conform to rules and regulations established in the ~~1997~~ 2002 edition of the National Electrical Safety Code, issued August 1, ~~1996~~ 2001, which is adopted by reference. Copies of these regulations may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

**History:** Amended effective September 1, 1984; January 1, 1988; December 1, 1990; August 1, 1993; July 1, 1997; March 1, 2003.

**General Authority:** NDCC 49-02-04

**Law Implemented:** NDCC 49-02-04, 49-20-02

## CHAPTER 69-10-01

### 69-10-01-01. Definitions. As used in article 69-10:

1. "Automatic bulk weighing system" means a weighing system which weighs grain in successive drafts, automatically records the no-load and loaded weight values, and accumulates the net weight of each draft.
2. "Batching scale" means a noncommercial weighing or measuring device used to determine, in part, the amount of an ingredient in a finished, manufactured commodity.
3. "Certify" means to seal, if upon testing and inspection, a weighing or measuring device is within the permitted tolerance and properly installed.
4. "Commerce" means the distribution or consumption of quantities, things, produce, commodities, or articles which may be offered or submitted by any person for sale or hire.
5. "Equipment repair notice tag" means a tag that allows a device to be operated for thirty days from its inspection date ~~while repairs are being made to that~~ pending correction of cited defects relating to the device or any of its required peripheral equipment. ~~The tag may be used only when the tolerance is less than 0.5 percent for a measuring device or one scale division for a weighing device.~~ The tag becomes defaults to a rejection tag if the device is not repaired and placed into service in compliance within thirty days.
6. "Liquid or LPG computing pump" means a device that provides fuel or LPG to a consumer.
7. "NIST" means the United States department of commerce, national institute of standards and technology.
8. "Not sealed" means a sticker or seal applied to a device which has not been inspected and tested, does not meet applicable design or tolerance requirements, or is no longer being used commercially. A device that is not sealed shall not be used in commerce.
9. "Random testing" means the random retesting and recertification by a weights and measures inspector of any weighing or measuring device being tested under the self-certification rules.
10. "Registered service person" means a person or agency authorized by the commission to remove an official rejection seal placed on a weighing or measuring device or to repair and certify weighing and measuring devices described in North Dakota Century Code section 64-02-13.



11. "Rejected for repair" means a sticker or seal applied to a device which has been inspected and tested and does not meet applicable design or tolerance requirements. A device that is rejected for repair shall be modified or repaired by a registered service person within thirty days of the date it was rejected and may not be used in commerce until placed into service.
12. "Retail fuel device" means a commercial, indicating fuel pump used to deliver fuel to individual highway vehicles in quantities of one hundred gallons [378.54 liters] or less per transaction.
13. "Seal" means marking a weighing or measuring device to show certification or rejection.
14. "Security seal" means either a lead and wire pressure-sensitive seal, a plastic and wire pressure-sensitive seal, or a sealing sticker, permanently attached to a weighing or measuring device to prevent unauthorized access to the tolerance-adjusting mechanisms of that device.
15. "Single draft weighing" means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.
16. "Split-weighing" means determining the weight of a vehicle, combination vehicle, or a commodity by adding together the results obtained by separately and not simultaneously weighing each end of such vehicle or individual elements of such coupled combinations.
17. "Standard" means test equipment used for certifying weighing or measuring devices.
18. "Variance" means a temporary or permanent suspension of a particular rule granted to an owner or operator of a commercial weighing or measuring device because of an economic hardship, a site restriction requiring modification to the design or installation of a device, or a special installation or operational condition, to be determined by the commission on a case-by-case basis.
19. "Weights and measures inspector" means a commission employee in the testing and safety division performing duties set by the commission.

**History:** Amended effective April 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; August 1, 2000; January 1, 2002; March 1, 2003.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-03

**69-10-01-03.2. Equipment repair notice - Applicable usage.** An equipment repair notice tag may be used if a commercial device is:

1. No more than two-tenths of one percent outside of applicable tolerance, for all measuring devices;
2. No more than one scale division outside of applicable tolerance, for all weighing devices;
3. Waiting for a response to a variance request;
4. Waiting for completion of design requirements; or
5. Waiting for repair of required peripheral equipment.

**History:** Effective March 1, 2003.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02, 64-02-13



## CHAPTER 69-10-03

**69-10-03-01.2. National institute of standards and technology (NIST) Handbook No. 105-1 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for class f field standard weights.** The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing commercial weighing and measuring devices in North Dakota shall conform to the sections and subsections of the 1990 edition of the United States department of commerce, NIST Handbook No. 105-1, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480

**History:** Effective March 1, 2003.  
**General Authority:** NDCC 64-02-03  
**Law Implemented:** NDCC 64-02-03

**69-10-03-01.3. National institute of standards and technology (NIST) Handbook No. 105-3 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for graduated neck-type volumetric field standards.** The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing commercial measuring devices in North Dakota shall conform to the sections and subsections of the 1997 edition of the United States department of commerce, NIST Handbook No. 105-3, which is adopted by reference. In the event of a conflict, North Dakota laws and other administrative rules shall prevail. Copies of the handbook may be obtained from:

Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480

**History:** Effective March 1, 2003.  
**General Authority:** NDCC 64-02-03  
**Law Implemented:** NDCC 64-02-03

**69-10-03-01.4. National institute of standards and technology (NIST) Handbook No. 105-4 - Specifications and tolerances for reference standards and field standard weights and measures - Specifications and tolerances for liquefied petroleum gas and anhydrous ammonia liquid volumetric provers.** The specifications, tolerances, and other technical requirements for reference standards and field standards used for testing commercial liquefied petroleum gas and anhydrous ammonia liquid measuring devices in North Dakota shall conform to the sections and subsections of the 1997 edition of the United States department of commerce, NIST Handbook No. 105-4, which is adopted by reference. In the



event of a conflict, North Dakota laws and other administrative rules shall prevail.  
Copies of the handbook may be obtained from:

Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480

**History:** Effective March 1, 2003.  
**General Authority:** NDCC 64-02-03  
**Law Implemented:** NDCC 64-02-03

**TITLE 75**  
**DEPARTMENT OF HUMAN SERVICES**





JANUARY 2003

CHAPTER 75-02-01.2

**75-02-01.2-01. Definitions.** For the purposes of this chapter:

1. "Aid to families with dependent children" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] during periods prior to July 1, 1997.
2. "Applicant" means an individual who is seeking a benefit under this chapter.
3. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.
4. "Assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs, but does not include nonrecurring, short-term benefits, work subsidies, supportive services provided to families who are employed, and refundable earned income tax credits.
5. "Base month" means the month, immediately before the processing month, about which the income and circumstances of the training, education, employment, and management household are evaluated to determine the amount of any training, education, employment, and management benefits to be paid during the benefit month.
6. "Benefit cap child" means a child born after June 30, 1998, to a household member who was a recipient of assistance under this chapter during the month of probable conception.
- 5- 7. "Benefit month" means the calendar month immediately following the processing month.

- ~~6- 8.~~ 8. "Caretaker relative" means the relative so designated by the ~~training, education, employment, and management~~ household who:
- a. Lives with an eligible dependent child;
  - b. Is a pregnant woman, caretaker relative to no dependent child, in the last trimester of her pregnancy; or
  - c. Lives with a dependent child, under age eighteen and receiving supplemental security income benefits, who is the last child in the home.
- ~~7- 9.~~ 9. "Child support agency" means any entity created by a county agency or any combination of county agencies, in execution of the county agency's duties under subsection 5 of North Dakota Century Code section 50-09-03.
- ~~8- 10.~~ 10. "County agency" means the county social service board.
11. "County demonstration project" means a project operated by a county, with state approval, to conduct a temporary assistance for needy families program with different objective criteria for the delivery of benefits, services, and the determination of eligibility from those provided elsewhere in the state.
- ~~9- 12.~~ 12. "Department" means the North Dakota department of human services.
- ~~10- 13.~~ 13. "Dependent child" means a needy child:
- a. Who lives in the home of a relative by birth, marriage, or adoption;
  - b. Who has been deprived of parental support or care by reason of:
    - (1) The continued absence of a parent from the home, other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States;
    - (2) The death of a parent; or
    - (3) The physical or mental incapacity of a parent; and
  - c. Who is:
    - (1) Under the age of eighteen; or
    - (2) Under the age of nineteen and a full-time student in a secondary school or the equivalent (secondary school) level in a vocational school, or technical school, if, before the end of the calendar month in which the student attains



age nineteen, the student may reasonably be expected to complete the program of such school.

44. 14. "Earned income" means income currently received as wages, salaries, commissions, or profits from activities in which a ~~training, education, employment, and management~~ household member is engaged through either employment or self-employment. There must be an appreciable amount of personal involvement and effort, on the part of the ~~training, education, employment, and management~~ household, for income to be considered earned.
42. 15. "Eligible caretaker relative" means a caretaker relative who:
- a. If, related to an eligible dependent child as a brother or sister, is not under sixteen years of age;
  - b. If deprivation of parental support or care is by reason of the incapacity of a parent, is the incapacitated parent or the eligible dependent child's other parent, but not stepparent;
  - c. If deprivation of parental support or care is by reason of the death or continued absence of a parent, is the eligible dependent child's other parent, but not stepparent;
  - d. Is not a recipient of supplemental security income benefits; and
  - e. Is in financial need; or
  - f. Is a pregnant woman, in the third trimester of her pregnancy, caretaker relative to no other dependent child, who or whose husband is incapacitated.
43. 16. "Family" includes an individual or group of related individuals within a household whose needs are recognized in a grant of benefits through temporary assistance for needy families, the parents of any dependent child and all brothers and sisters of any dependent child, whether by whole blood, half-blood, or adoption, any child, parent of an eligible dependent child, or other caretaker relative who receives supplemental security income benefits. Family includes an alien who does not meet citizen and alienage requirements, an alien who is ineligible for temporary assistance for needy families benefits because of the application of sponsor-to-alien deeming, an individual who is ineligible for temporary assistance for needy families benefits as the result of the imposition of a sanction, an individual who was eligible for temporary assistance for needy families benefits, but who became ineligible due to the receipt of lump sum income, or an individual who is a household member who is a legal dependent of a member of the filing unit, but does not include roomers and boarders.



14. ~~"Food stamp filing unit" means all members residing in the household, but not including:~~
- ~~a. Any individual who purchases and prepares meals separately and is not required by federal law to be a member of the food stamp filing unit; and~~
  - ~~b. Roomers or boarders.~~
15. 17. "Full calendar month" means the period that begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration.
16. 18. "Full-time student" means a student who:
- a. If in a secondary school, is enrolled in classes which, if completed, will earn the student four or more units of credit;
  - b. If in a vocational or technical school under state operation, a college, or a university, is enrolled in classes that, if completed, will earn the student twelve or more semester hours of credit during a regular term or six or more semester hours of credit during a summer term at an educational facility operating on a semester system, or twelve or more quarter hours of credit during a regular term or six or more quarter hours of credit during a summer term at an educational facility operating on a quarter system;
  - c. If in a private vocational or technical school, is enrolled in classes which, according to a written statement from school officials, constitutes full-time enrollment;
  - d. If is enrolled in an accredited alternative high school, correspondence courses, or adult basic education, ~~attends class~~ a minimum of twenty hours per week according to a written statement from school officials or who is home schooled; or
  - e. Is an individual participating in job corps, whether an adult or a child.
17. 19. "Ineligible caretaker relative" means a caretaker relative who is not an eligible caretaker relative.
18. 20. "Living in the home of a relative" means a circumstance that arises when a relative assumes and continues responsibility for the day-to-day care and control of a child in a place of residence maintained by the relative (whether one or more) as the relative's own home. It includes situations in which the child or the relative requires medical treatment that requires a special living arrangement. It also includes situations, ~~provided that the child is not absent from the home for a full calendar month, in which~~

the child is temporarily absent from the home, with a plan to return, when the child:

- a. Physically resides in the home, but is under the jurisdiction of a court and is receiving probation services or protective supervision;
- b. Receives education while in an educational boarding arrangement in another community if needed specialized services or facilities are unavailable in the home community or if transportation problems make school attendance near home difficult or impossible;
- c. Receives physical or speech therapy at Camp Grassick services at a summer camp such as Camp Grassick, receives services at an attention deficit hyperactivity disorder summer camp, or receives extended hospital stays during the summer months;
- d. Receives special education at the school for the deaf or school for the blind, whether as a day student or a boarding student, except that a boarding student's needs are limited to those maintenance items that are not provided by the school; or
- e. Receives education at a ~~federal~~ boarding school in another community, provided that the child was not placed in that setting following removal from the child's home by court order following a determination that the child was abused, neglected, or deprived, except that the child is entitled to a clothing and personal needs allowance only if that allowance is made available for the child's use on a regular basis.

~~19. "Low income home energy assistance filing unit" means all members residing in the household, but not including:~~

~~a. Roomers or boarders; or~~

~~b. Residents of a housing unit in which:~~

~~(1) The cost is subsidized by the federal government and the residents are not responsible for heating costs separate and apart from their rent payment; or~~

~~(2) The residents are not required to pay any heating or rental costs.~~

~~20.~~ 21. "Make an assistance payment" means, in the context of two-month retrospective budgeting, an activity that occurs on the date the department deposits an assistance payment check in the United States mail.



- 21- 22. "Monthly income" means income from any source, either earned or unearned, which is computed and reduced to monthly units for the purpose of determining eligibility and benefits. Income may be received weekly, monthly, intermittently, or annually, but is computed and considered monthly.
- 22- 23. "Needy" means:
- a. A ~~training, education, employment, and management~~ household, otherwise eligible under this chapter, whose countable income, less any applicable disregards, is less than the income identified in the basic requirements table for a family of the size and composition of the ~~training, education, employment, and management~~ household;
  - b. An unwed parent or pregnant woman in the third trimester of her pregnancy, ~~resident of the Open Home~~, with an income of less than forty-five dollars per month; or
  - c. A child resident of a boarding school with an income of less than forty-five dollars per month.
- 23- 24. "Nonlegally responsible relative" means a relative who is not the child's parent.
- 24- 25. "Parent" means the child's mother or father, whether by birth or adoption, but does not mean:
- a. An individual whose parental rights have been terminated with respect to that child; or
  - b. A stepparent.
- 25- 26. "Part-time student" means an individual enrolled in a secondary school, vocational school, correspondence courses, technical school, college, or university, or who is home schooled, who is not a full-time student.
- 26- 27. "Processing month" means the month, immediately after the base month, and immediately before the benefit month, in which the county agency determines eligibility for, and the amount of, any ~~training, education, employment, and management~~ benefit to be paid during the benefit month.
28. "Proper individual" means any individual of sufficient maturity and understanding to act responsibly on behalf of the applicant.
- 27- 29. "Prospective budgeting" means the determination, made only with respect to the initial month of eligibility and the month immediately after the initial month of eligibility, based on the county agency's best estimate of the income and circumstances of the ~~training,~~

~~education, employment, and management~~ household in those months, of the amount of any grant of ~~training, education, employment, and management~~ benefits in those two months.

30. "Prudent person concept" means a method or program administration that relies upon individual staff members:
- a. To exercise judgment in requesting, reviewing, and weighing information provided by an applicant, recipient, or any source of verification; and
  - b. To be attentive, vigilant, cautious, perceptive, and governed by reason and common sense.
- 28- 31. "Recipient" means an individual who receives a benefit ~~cash assistance~~ under this chapter.
- 29- 32. "Relative by birth, marriage, or adoption" means an individual related to the dependent child by birth, whether by blood or half-blood, by marriage including a marriage that has been terminated by death or divorce, or by adoption, as father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, or first cousin.
- 30- 33. "Retrospective budgeting" means a determination, made by the county agency during the processing month, based on income and circumstances of the ~~training, education, employment, and management~~ household, during the base month, of the amount of any grant of assistance in the benefit month.
34. "Sanction penalty month" means the month in which a sanctioned individual's financial needs may be removed from a household's temporary assistance for needy families grant.
35. "Self-sufficient" means having income sufficient to require closure of the temporary assistance for needy families case.
36. "Social contract" means the application for temporary assistance for needy families that contains the requirements for cooperation with child support enforcement, health tracks, job opportunities and basic skills program, and the goals and tasks identified in the assessment.
- 31- 37. "Standard employment expense allowance" means ~~the twenty-seven percent required by training, education, employment, and management waiver terms and conditions of earned income, or one hundred eighty dollars, whichever is greater,~~ to be first disregarded from the earned income of any child, relative applying for benefits under this chapter, or other individual whose needs are taken into account in determining eligibility under this chapter, but whose earned income is not required to



be wholly disregarded as the income of a child who is a full-time student or a part-time student who is not a full-time employee.

32. ~~38.~~ "Stepparent" means ~~a person, ceremonially~~ an individual married to a parent of a child, but who is not also a parent of that child by either birth or adoption.
33. ~~39.~~ "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
34. ~~40.~~ "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601; et seq.] during periods beginning July 1, 1997.
35. ~~"Temporary assistance for needy families filing unit" means any dependent child, the natural or adoptive parents of any dependent child, and all brothers and sisters of any dependent child, whether by whole blood or half blood, or adoption, but not including:~~
- ~~a. Any child, parent of an eligible dependent child, or other caretaker relative who receives supplemental security income benefits;~~
  - ~~b. Roomers or boarders; or~~
  - ~~c. Household members who are not legal dependents of a member of the filing unit.~~
41. "Temporary assistance for needy families household" means an individual or group of individuals who reside together and includes at least one individual in receipt of temporary assistance for needy families.
36. ~~42.~~ "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].
37. ~~43.~~ "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].
38. ~~44.~~ "Title IV-A" means title IV-A of the Social Security Act [42 U.S.C. 601 et seq.].
39. ~~45.~~ "Title IV-D" means title IV-D of the Social Security Act [42 U.S.C. 651 et seq.].
40. ~~"Training, education, employment, and management benefits" means a single cash grant which consists of temporary assistance for needy families and low income home energy assistance program benefits.~~
41. ~~"Training, education, employment, and management household" means an individual or group of individuals who reside together which includes~~

~~at least one temporary assistance for needy families filing unit and may include a food stamp filing unit and low income home energy assistance filing unit.~~

~~42- 46.~~ "Unearned income" means income that is not earned income.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-02. ~~Demonstration project - Department to determine participants~~ County demonstration projects.** ~~The training, education, employment, and management program was initially a demonstration project, established under waivers authorized by North Dakota Century Code section 50-06-01.8. Individuals within some counties, and some individuals within Cass County, may be required to participate in the training, education, employment, and management program, while individuals in other counties, and other individuals in Cass County, may be permitted to participate only in aid to families with dependent children, food stamp, and low income home energy assistance programs. The department may by order determine the counties, and the method by which individuals in those counties, may apply for training, education, employment, and management program benefits. The department may by order determine the order in which cases in each county are converted from participation in aid to families with dependent children, food stamps, and low income home energy assistance programs to participation in the training, education, employment, and management program. Counties within North Dakota may, with the department's approval, conduct a temporary assistance for needy families demonstration project in defined areas which may provide benefits and services that are not identical to benefits and services provided elsewhere in North Dakota. The demonstration projects shall have objective criteria for the delivery of benefits and the determination of eligibility for fair and equitable treatment that will provide opportunities for recipients to become self-sufficient.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-03. Request for benefits.**

1. All individuals wishing to request ~~training, education, employment, and management~~ assistance from the temporary assistance for needy families program ~~benefits~~ shall have the opportunity to do so, without delay.
2. A request for benefits is a written request made by an individual desiring assistance under the ~~training, education, employment, and management~~ program, or by a proper individual seeking such



assistance on behalf of another individual, to a county agency. ~~A proper individual means any individual of sufficient maturity and understanding to act responsibly on behalf of the applicant.~~

3. A request for benefits must be in writing and signed on a prescribed application form.
4. A prescribed request for benefits form must be signed by the applicant if the applicant is physically and mentally able to do so. An application made on behalf of an applicant adjudged incompetent by a court must be signed by the guardian.
5. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and recipients must be furnished to all who require it.
6. The date of the request for benefits is the date the applicant-signed form is received in the county agency. ~~If the household chooses not to participate in the training, education, employment, and management program or is determined ineligible for training, education, employment, and management benefits, the application date for regular program assistance benefits would also be the date when the signed request for benefits form is received in the county agency.~~

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-04. Applicant's or guardian's duty to establish eligibility.** It is the responsibility of the applicant or guardian of the applicant ~~for the training, education, employment, and management program~~ to provide information sufficient to establish the eligibility of each individual for whom assistance is requested, including the furnishing of a social security number or verification of application for a social security number, and the establishment of age, verification of relationship, identity, ~~residence~~, citizenship, verification of school attendance of any child age sixteen and older, and medical and social information to be used for any necessary incapacity determination, and financial eligibility.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-05. Verification.** While eligibility for the ~~training, education, employment, and management~~ program is determined in large measure on information supplied by the applicant or recipient, aspects of eligibility that must be supported by conclusive, documenting evidence include:

1. The existence of conditions requiring professional examinations or judgments to establish the existence of incapacity or pregnancy;

2. The amount and source of all income;
3. The equity value of assets whenever available information or the prudent person concept suggests that the equity value may exceed program limitations;
4. The basis for special need requests;
5. The relationship between any dependent child, caretaker relative, and any other member of the household whose presence, assets, or income may affect the composition, eligibility, or benefits of the ~~training, education, employment, and management~~ household;
6. School attendance of any child sixteen or older;
7. Citizenship or alien status of household members;
8. The identity of each member of the ~~training, education, employment, and management~~ household;
9. Proof of or application for a social security number; and
10. ~~Information sufficient to determine the need to participate in the job opportunity and basic skills program; and~~
11. Any other factor of eligibility for which available information is lacking, questionable, or inconclusive, and which suggests to a prudent person that further inquiry or documentation is necessary.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

#### **75-02-01.2-06. Selection of primary individual.**

1. Each ~~training, education, employment, and management~~ household shall have a primary individual. The primary individual must be identified among the household members, with one of the following relationships to a dependent child member of the household, using the following order of priority:
  - a. A natural or adoptive parent;
  - b. An adult relative, within the fifth degree of kinship;
  - c. A stepparent;
  - d. A spouse of any person identified in subdivision a, b, or c, whether or not that marriage is terminated by death or divorce; and



- e. A minor brother, sister, half-brother, half-sister, stepbrother, or stepsister who is at least sixteen years of age.
- 2. The primary individual may be eligible or ineligible for the temporary assistance for needy families portion of the training, education, employment, and management benefit assistance. An ineligible caretaker who receives supplemental security income benefits ~~must be included in the low income home energy assistance program portions of the training, education, employment, and management benefit, but may not be included in the temporary~~ receive assistance for needy families ~~portion of that benefit from the program.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

**75-02-01.2-07. Presumptive eligibility.** Repealed effective January 1, 2003.

4. ~~Definitions. As used in this section:~~

- a. ~~"Destitute household" means a migrant or seasonal farm worker household:~~
  - (1) ~~Whose only income received during the month of application is received before the date of the request for benefits and is from a terminated source; or~~
  - (2) ~~Whose only income during the month of application is from a new source and if no more than twenty-five dollars from the new source is received by the tenth calendar day after the date of request for benefits;~~
- b. ~~"Expedited service" means the issuance of training, education, employment, and management benefits no later than seven days following the request for benefits for households determined eligible for expedited service;~~
- c. ~~"Migrant household" means a household that travels away from the household's usual residence on a regular basis to seek employment in an agriculture-related activity, even if a household member secures employment of a nonagricultural nature;~~
- d. ~~"Presumptive eligibility" means a household deemed eligible to receive training, education, employment, and management benefits based on waived verifications;~~
- e. ~~"Seasonal farm worker" means an individual who:~~

- (1) ~~Is employed seasonally, but not on a yearly basis, on farms or ranches;~~
  - (2) ~~Does not migrate from one area of the country to another seeking that employment;~~
  - (3) ~~May have income other than from seasonal farm work; and~~
  - (4) ~~If not currently employed as a seasonal farm worker, has previously been employed as a seasonal farm worker and intends to return to seasonal farm work; and~~
  - f. ~~"Waived verification" means a selected factor of eligibility criteria not required to be verified for households eligible for expedited service for the first and second benefit months.~~
2. ~~A household may receive training, education, employment, and management presumptive eligibility determinations and expedited service if:~~
- a. ~~It has less than one hundred fifty dollars in monthly gross earned and unearned income when the nonexempt liquid assets do not exceed one hundred dollars;~~
  - b. ~~It consists of a destitute migrant or seasonal farm worker with liquid assets not exceeding one hundred dollars; or~~
  - c. ~~It is a household with combined nonexempt monthly gross income and nonexempt liquid assets of less than the household's monthly costs for utilities and rent or mortgage.~~
3. ~~Training, education, employment, and management presumptive eligibility must be determined for a household meeting any one of the three criteria in subsection 2 by waiving the following mandatory verification factors for the initial and second benefit month only:~~
- a. ~~Gross earned and unearned income;~~
  - b. ~~Citizenship or alien status;~~
  - c. ~~Social security number or proof that an application for social security has been filed;~~
  - d. ~~Identity for household members other than the primary individual;~~
  - e. ~~Nonexempt assets;~~
  - f. ~~Deductions from earned or unearned income; and~~



~~9. Student status.~~

- ~~4. A destitute household must have eligibility determined and benefit amount calculated for the month in which the request for benefits is filed by considering only income received between the first day of the month and the date of the request for benefits. Any income from a new source received after the date of the request for benefits may not be counted in determining eligibility and benefit amount.~~
- ~~5. Application procedures must be designed to identify a household eligible for presumptive eligibility determination and expedited service at the time a household completes a request for benefits. The county agency must screen each request for benefits when submitted and each individual inquiry about program eligibility, when made.~~
- ~~6. The household may receive expedited benefits only for the month in which the request for benefits is filed. Benefits for the initial month must be issued no later than the seventh calendar day following the date of the request for benefits.~~
- ~~7. Once expedited benefits have been issued, the household may not again receive expedited benefits until the household establishes eligibility under provisions applicable to cases in which presumptive eligibility does not exist.~~
- ~~8. Holidays, weekends, and other nonwork days may not prevent a household determined presumptively eligible for expedited service from receiving training, education, employment, and management benefits by the seventh calendar day after the date of the request for benefits.~~
- ~~9. Expedited benefits to eligible households may consist of a benefit based only on the training, education, employment, and management standard of need for the appropriate household size and may not include special items of need or job opportunities and basic skills program supportive services. No recoupment of expedited benefits for the initial month may be made if a previous overpayment exists.~~
- ~~10. An overpayment must be established if, subsequent to presumptive eligibility determination and issuance of expedited benefits, a household is determined ineligible for benefits. Intentional program violation must be explored in all instances in which subsequent ineligibility is determined.~~

**History:** ~~Effective December 9, 1996; amended effective July 1, 1997.~~

**General Authority:** ~~NDCC 50-06-01.8~~

**Law Implemented:** ~~NDCC 50-06-01.8~~

**75-02-01.2-08. Notification of program requirements.** All applicants for ~~training, education, employment, and management~~ benefits must be notified of generally applicable program requirements and of related services through the provision of brochures and through the provision of responses to inquiries made by applicants concerning program requirements. Applicants and recipients are responsible to call attention to their particular circumstances, and to inquire as to the effect of those circumstances on eligibility.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-09. Decision and notice.**

1. A decision as to eligibility must be made promptly on applications, within thirty days, except in unusual circumstances.
2. A decision as to eligibility on redeterminations must be made within thirty days.
3. Immediately upon an eligibility determination, whether eligibility can be found, ineligibility can be found, or eligibility cannot be determined, ~~training, education, employment, and management~~ program applicants or recipients shall be notified by the county agency. Adequate notice of any decision terminating or reducing ~~training, education, employment, and management~~ benefits must be sent at the time required by section 75-01-03-08 ~~with respect to aid to families with dependent children.~~
4. The effective date a case is closed or suspended is the last calendar day of the month identified in the notice. ~~The effective date of a transfer to medicaid-only status is the first day of the next month.~~
5. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for an applicant or recipient who is adversely affected.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-10. Monthly report - Must be complete and timely.**

1. When the county agency receives a completed monthly report, it shall process the payment only if all eligibility conditions are met. The county agency shall notify the ~~training, education, employment, and management~~ household of any changes from a payment made in the month immediately past. If payment is being reduced or assistance terminated as a result of information provided in the monthly report,



the county agency shall send an adequate notice, mailed to arrive no later than the resulting payment or in lieu of the payment. The ~~training, education, employment, and management~~ household may be reinstated to the payment amount made in the month immediately past if an appeal of the decision described in the notice is made within ten days of the date of the notice.

2. A county agency may terminate assistance if it has received no timely monthly report or has received only an incomplete report. The county agency shall send an adequate notice, mailed to arrive no later than the date it would have made payment if the agency had received a timely and complete monthly report. If the ~~training, education, employment, and management~~ household notifies the county agency and files a complete report within ten days of the date of the notice, the county agency may accept the replacement report and provide for payment based on the report only if the information indicates that the ~~training, education, employment, and management~~ household is still eligible but, unless the county agency determines that good cause exists for failing to file a timely report, without consideration of otherwise available earned income disregards. If, based on the replacement report, the ~~training, education, employment, and management~~ household is found ineligible or eligible for an amount less than the payment amount made in the month immediately past, the county agency shall promptly notify the ~~training, education, employment, and management~~ household of the right to a fair hearing and, if a hearing is requested ~~within ten days of the date of the notice~~ before the decision described in the notice becomes effective, the right to have payment reinstated to the payment amount made in the month immediately past.
3. A monthly report is timely, for purposes of avoiding loss of earned income disregards, if it is received by the county agency by the fifteenth day of the month or on the first working day after the fifteenth day of the month if that day falls on a Saturday, Sunday, or holiday and, for all other purposes, if it is received by the county agency by the fifth day of the month.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-11. Good cause for failure to submit complete and timely monthly report.** Good cause for failure to submit a complete and timely monthly report exists only if:

1. The monthly report form was unavailable to the ~~training, education, employment, and management~~ household because none was sent or it was lost in the mail;

2. The monthly report form was returned to the sender due to lack of sufficient postage;
3. The caretaker relative and all other responsible members of the ~~training, education, employment, and management~~ household were absent from their usual place of residence, due to a death or serious illness in the family or the relocation of the ~~training, education, employment, and management~~ household, during all the days between the day the report form was provided and the day it was to be returned;
4. Weather conditions prevented mailing by the ~~training, education, employment, and management~~ household, delivery by the postal service, or receipt by the county agency;
5. The ~~training, education, employment, and management~~ household was unable, despite reasonable efforts, to obtain necessary verification documents;
6. The county agency determines that the report form was incomplete due to the recipient's misinterpretation or misunderstanding of the form; ~~or~~
7. The county agency determines, for some other reason, that the ~~training, education, employment, and management~~ household could not reasonably have submitted a timely and complete report; or
8. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-12. Determining claims of good cause.** Determinations concerning claims of good cause require the use of decisionmaking principles. These principles must be applied to the individual's statements and information to determine if the requirements of good cause are met. The decisionmaking principles are:

1. The individual claiming good cause is responsible to show that good cause exists.
2. Uncorroborated statements of fact are less believable than corroborated statements.
3. Statements by persons with a reputation for being untruthful are less believable than similar statements by persons without that reputation.
4. A reputation for being untruthful exists if the files maintained by the department, the county agency, or the job opportunities and basic



skills program coordinator's agency contain evidence of untruthful statements made by the individual, or if the individual has made untruthful statements that are a matter of public record.

5. Statements by individuals with a reputation for failures or delays in furnishing information necessary for official action are less believable than similar statements by individuals without that reputation.
6. A reputation for failures or delays in furnishing information necessary for official action exists if the files maintained by the department, the county agency, or the job opportunities and basic skills program coordinator's agency contain evidence of any failure or delay, ~~(without good cause),~~ to furnish reports, ~~(including monthly reports)~~ or necessary verifications, or a failure or delay in attending meetings or interviews intended to secure information necessary for official action.
7. A statement of fact, made by an individual with something to gain if that statement is regarded as true, is less believable than a similar statement made by an individual with little or nothing to gain.
8. An individual's explanations or reasons for claiming good cause must be judged by a reasonable prudent person standard concept. A reasonable prudent person is one who exercises those qualities of attention, knowledge, intelligence, and judgment that society requires of its members for protection of their own interests and the interests of others.
9. Statements of fact made by the individual claiming good cause, or by other individuals who support or oppose the claim of good cause, are not presumed to be either truthful or untruthful. Rather, statements of fact must be evaluated to determine if they are more likely than not or less likely than not to be true.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

#### **75-02-01.2-13. Residence.**

1. There is no durational state residence required for eligibility for ~~training, education, employment, and management~~ benefits.
2. No individual who is otherwise eligible may be denied assistance under the ~~training, education, employment, and management~~ program if the individual resides in the state ~~and in a county determined by the department to be a demonstration county under section 75-02-01.2-02.~~
3. A resident of the state is one who:

- a. Is living in the state voluntarily with the intention of making the person's home there ~~and not for a temporary purpose~~; or
  - b. At the time of application, is living in the state, and is not receiving assistance from another state, ~~and entered the state with a job commitment or seeking employment in the state, whether or not currently employed.~~
- 4. For purposes of establishing the temporary assistance for needy families filing unit, a child is a resident of the state in which the child is living other than for a temporary basis. For all other purposes of this chapter, a child is a resident of the state in which the child is living.
  - 5. Residence may not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily ~~or for a temporary purpose~~.
  - 6. Residence is retained until abandoned. Temporary absence from the state, with subsequent returns or intent to return when the purposes of the absence have been accomplished, must not interrupt continuity of residence.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

#### **75-02-01.2-15. Continued absence of a parent.**

- 1. For purposes of this chapter:
  - a. "Deprived of parental support or care by reason of the continued absence of a parent" means a situation that occurs when all of the following factors are present:
    - (1) The parent is physically absent from the home;
    - (2) The nature of the parent's absence is such as to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and
    - (3) The known or indefinite duration of the absence precludes relying on the parent to perform the parent's functions in planning for the present support or care of the child.
  - b. A "parent's absence is such as to interrupt or terminate the parent's functioning as a provider of maintenance, physical care,



or guidance for the child" only if one of these three functions is totally interrupted or finally terminated.

2. A determination that a parent's absence has or has not interrupted or terminated the parent's functioning must be supported by information provided by the applicant or otherwise available to the county agency.
3. Except as provided in subsection 4, if all three of the conditions for showing deprivation by reason of the continued absence of a parent are met, the reason for the parent's absence and the length of the parent's absence is immaterial.
4. A parent who is performing active duty in uniformed service is "absent from the home" only if there is evidence that continued absence would have existed irrespective of the parent's serving in uniformed service. Acceptable evidence that such an absence exists includes proof of legal separation, desertion, or divorce, either final or in process. If there has been no legal action taken, some indication of how the parent came to be absent must be provided.
5. A parent temporarily living apart from the child or children while attending school or vocational training or working or seeking work in another community does not meet the requirements for continued absence as long as the parent continues to function as a parent, even if the level of support or care is deficient or diminished.
6. Types of parental absences frequently giving rise to dependency in children include:
  - a. Divorce. The continued absence of a parent may be established as the result of divorce.
  - b. Separation. Legal separation is an arrangement by which a husband and wife live apart, subject to a court order that may divide the parties' property, provide for spousal or child support, and provide for custody and visitation of children, but remain married. Such court orders may be temporary or permanent. Separation by mutual consent or agreement involves the discontinuance of the marital relationship without legal action. Continued absence of a parent as a result of this arrangement can be established if there is no collusion between the parents to render the family eligible for temporary assistance for needy families.
  - c. Imprisonment. Imprisonment of a parent is a type of parental absence that creates dependency among children. ~~A parent who is a convicted offender, but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday, is deemed absent from the home.~~ Continued absence exists only if the

parent is sentenced to and serves a thirty-day or longer term of incarceration ~~or community service~~ unless:

- (1) The term actually served is less than the sentence imposed;
  - (2) The term served is shortened by order of the court; and
  - (3) Assistance has been issued before information about the shortened term is received by the county agency.
- d. Unmarried parenthood. A child born out of wedlock is deprived of parental support by reason of continued absence of a parent if the child's parents do not reside together.
- e. Desertion. Desertion is the voluntary and willful abandonment, by a parent, of the parent's child or children without making adequate provision for the care and support of the child or children.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01-8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01-8~~ 50-09-02

#### **75-02-01.2-18. Incapacity of a parent.**

1. A child, if otherwise eligible for temporary assistance for needy families, is deprived of parental support or care when the child's parent has a physical or mental ~~defect~~ condition, supported by current competent medical testimony, of such a debilitating nature as to reduce substantially or eliminate the parent's capacity either to earn a livelihood or to discharge the parent's responsibilities as a homemaker and provider of child care for a period of thirty days or more. In making a determination of incapacity to earn a livelihood, the department shall take into account the limited employment opportunities of disabled persons.
2. The incapacity must be such that it reduces substantially or eliminates employment in the parent's usual occupation or another occupation to which a parent may be able to adapt. The fact that a parent may have to change occupation or work location does not establish incapacity or limited employment opportunities for a disabled parent. It does not matter whether a parent was employed or fulfilled the role of homemaker prior to the onset of the asserted incapacity. Incapacity is established either when the person is unable to earn a livelihood or to act as a homemaker. A parent may also establish incapacity by demonstrating that the parent has reached age sixty-five.



3. A determination that a parent is disabled or blind, made by the social security administration, constitutes adequate substantiation of incapacity for purposes of this section.
4. A parent continues to be incapacitated, for purposes of this section, if the incapacity is not reasonably subject to remediation, or if the parent makes reasonable progress ~~towards~~ toward remediation of the incapacity. For purposes of this section, reasonable progress ~~towards~~ toward remediation of the incapacity means cooperation with medical practitioners who prescribe a course of treatment intended to remediate or limit the effect of the incapacity, including physical therapy, counseling, use of prosthesis, drug therapy and weight loss, cooperation with vocational practitioners, cooperation with vocational and functional capacity evaluations, and reasonable progress in a course of training or education intended to qualify the parent to perform an occupation which, with that training or education, the parent would have the capacity to perform.
5. A parent who engages in activities inconsistent with the claimed incapacity may be determined to not be incapacitated.
6. The department may require a parent to demonstrate reasonable progress ~~towards~~ toward remediation of the incapacity, and may set reasonable deadlines for the demonstrations.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

**75-02-01.2-19. Legal custody.** Repealed effective January 1, 2003.  
~~Courts may enter orders in child custody matters that place legal custody of a child with either parent or with both parents (joint custody), and may provide for visitation between a parent and child, which results in the visiting parent and child occupying the same place of residence. While intended to help children maintain relationships with both parents, these arrangements sometimes complicate the temporary assistance for needy families eligibility determination process. For example, courts may order custody to shift from one parent to the other in alternating weeks, months, or other prescribed periods or that the child live with a given parent only on weekends or during the summer months. On occasion, the child's home may remain fixed and the parents take turns in occupying that home with the child. Such orders have little or no bearing on whether or not a child is deprived as the result of a parent's absence from the home. It is the child's physical presence, rather than legal custody, that is relevant. The facts of each situation must be carefully evaluated. If deprivation is found to exist, one residence must be established for purposes of determining eligibility. The child's caretaker relative is the relative in whose home the child ordinarily spends the greater time. Both parents may not be certified as caretaker relatives for the same child for the same period of time. The state's policy and practice are not intended to interfere with the~~



~~absent parent's wish to maintain a continuing relationship with the absent parent's children. On the contrary, reasonable visits are to be encouraged. Visitations between absent parent and child can occasionally be so frequent as to raise doubts about whether there has been a disruption of parental functioning.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997:

**General Authority:** NDCC 50-06-01.8

**Law Implemented:** NDCC 50-06-01.8

#### **75-02-01.2-20. Eligibility throughout month.**

1. In the first month in which eligibility is established, based on any one application, the benefit amount is that pro rata portion of the monthly benefit amount equal to the percentage of the month remaining after the later of the first day of eligibility or the date of application, except:
  - a. In the case of a family that has entered North Dakota from a state which issues grants twice a month, the benefit amount is that pro rata portion of the monthly benefit amount equal to the percentage of the month remaining after the later of the date coverage in the other state ends or the date of application; and
  - b. The benefit amount may be adjusted to correct an underpayment or overpayment arising out of previous periods of eligibility; and
  - ~~c. In the case of a training, education, employment, and management household which includes members who were eligible for and receiving medicaid benefits at the time the unit requests temporary assistance for needy families, if the training, education, employment, and management household provides all necessary verification and a completed application within forty-five days or by the end of the month following the month of request, whichever is less, the benefit amount in the month of request is that pro rata portion of month remaining after the date of request.~~
2. In the second and subsequent months in which eligibility is established, based on any one application, if the monthly reporting requirements are met, the household continues to be eligible throughout the month if eligible for any portion of the month.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

#### **75-02-01.2-21. Asset considerations.**

1. a. All assets that are actually available must be considered. Assets are actually available when at the disposal of a member of the



~~training, education, employment, and management~~ household; when a member of the ~~training, education, employment, and management~~ household has a legal interest in a liquidated sum and has the legal ability to make the sum available for support or maintenance; or when a member of the ~~training, education, employment, and management~~ household has the lawful power to make the asset available or to cause the asset to be made available. A determination that an asset is deemed available is a determination that the asset is actually available.

- b. Assets must be reasonably evaluated.
- c. All assets owned individually or jointly by members of a ~~training, education, employment, and management~~ household are deemed available to the household. ~~Assets owned by a training, education, employment, and management household member who is not included in the temporary assistance for needy families filing unit must be counted when determining eligibility for the low income home energy assistance program portion of the training, education, employment, and management benefit, but not the temporary assistance for needy families portion.~~
- d. Assets owned jointly by a member of the ~~training, education, employment, and management~~ household and an individual who is a member of a separate household, but has a legal obligation to support a member of the ~~training, education, employment, and management~~ household, are presumed available to the ~~training, education, employment, and management~~ household unless the applicant can show that the assets are in fact not available.
- e. If the ~~training, education, employment, and management~~ household can demonstrate that only a portion of an asset is available, only that portion may be considered.
- f. An asset is not available if it cannot be practically subdivided or sold.
- g. A stepparent's assets, whether owned exclusively by the stepparent or jointly with the parent, are deemed available in their entirety to the parent. Because the temporary assistance for needy families filing unit must include the parent, if technically eligible, the equity value of all assets, including the stepparent's assets, must fall within program asset limitations or the unit is ineligible.
- h. An asset may be temporarily unavailable while the ~~training, education, employment, and management~~ household is taking reasonable measures to overcome a legal impediment.

- i. Assets ordinarily available to the ~~training, education, employment, and management~~ household may be rendered temporarily unavailable to members of such a unit who are being served by shelters for abused persons and families while the legal ramifications of the circumstances that led to the need for such services are explored.
  - j. As in all instances in which there is a question of ownership, the ~~training, education, employment, and management~~ household must be given the opportunity to present evidence in rebuttal of the presumption that a joint account is an available asset. A successful rebuttal may result in a finding that the funds in the joint account are in fact not owned by the ~~training, education, employment, and management~~ household. For example, when the funds are clearly available to the family only in the event of the coowner's death, access is restricted and the funds are therefore not an asset. The funds are likewise not an asset to the family if withdrawals from the account are possible only with the surrendering of the passbook, which is not accessible to the applicant or recipient, or with dual signatures and the coowner may not sign.
  - k. An asset may be sold or exchanged for another asset. An asset acquired in an exchange or with the proceeds from a sale continues to be treated as an asset subject to the asset limits, exemptions, and exclusions applicable to the type of asset acquired. This subdivision does not supersede other provisions of this chapter which describe or require specific treatment of assets, or which describe specific circumstances that require a particular treatment of assets.
- 2. The financial responsibility of any individual for any applicant or recipient of temporary assistance for needy families is limited to members of the temporary assistance for needy families filing unit. Such responsibility is imposed upon applicants or recipients as a condition of eligibility. Except as otherwise provided in this section, the assets of the members of the temporary assistance for needy families filing unit are deemed available to an applicant or recipient, even if those assets are not actually contributed. For purposes of this subsection, biological and adoptive parents, but not stepparents, are treated as parents.
  - 3. ~~Training, education, employment, and management~~ Temporary assistance for needy families benefits, and any income, earned or unearned, which is taken into account in determining the amount of



a grant for a particular month, may not be treated as an asset in that month.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-22. Asset limits.** No member of a ~~training, education, employment, and management~~ household may be found eligible for ~~training, education, employment, and management benefits or food stamp~~ benefits unless the value of the ~~training, education, employment, and management~~ household's assets, not specifically excluded under this chapter, does not exceed ~~five~~ three thousand dollars for a ~~training, education, employment, and management~~ household consisting of one ~~person~~ individual, ~~or eight~~ six thousand dollars for ~~training, education, employment, and management~~ households consisting of two ~~or more persons~~ individuals, and an additional twenty-five dollars for each additional individual. In all instances, including determination of equity, property must be realistically evaluated in accord with current market value. Any reasonable costs associated with liquidation of excess assets must be taken into account.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-23. Exempt assets.** The following assets are exempt from consideration in determining eligibility for ~~training, education, employment, and management~~ temporary assistance for needy families benefits:

1. The home occupied by the ~~training, education, employment, and management~~ household including trailer homes being used as living quarters, and the land upon which the home stands, up to twenty contiguous acres [8.09 hectares], if rural, and up to two acres [.81 hectares hectare], if located within the established boundaries of a city;
2. Personal effects, wearing apparel, household goods, and furniture;
3. One ~~motor vehicle~~ car, van, or pickup of any equity value;
4. Indian trust or restricted lands, the proceeds from the sale thereof so long as those proceeds are impressed with the original trust, and the proceeds from the lease thereof so long as those proceeds are not commingled with other funds;
5. For the month of receipt and the following month, any refund of federal income taxes made to a member of the ~~training, education, employment, and management~~ household by reason of 25 U.S.C.

32, relating to earned income tax credit, and any payment made to a member of the ~~training, education, employment, and management~~ household by an employer under 26 U.S.C. 3507, relating to advance payment of earned income tax credit;

6. Real property that the ~~training, education, employment, and management~~ household is making a good-faith effort to sell;
7. Indian per capita funds and judgment funds awarded by either the Indian claims commission or the court of claims after October 19, 1973, interest and investment income accrued on such Indian per capita or judgment funds while held in trust, and purchases made using interest or investment income accrued on such funds while held in trust. The funds must be identifiable and distinguishable from other funds. Commingling of per capita funds, judgment funds, and interest and investment income earned on those funds, with other funds, results in loss of the exclusion;
8. The equity value of all assets owned by a member of the ~~training, education, employment, and management~~ household who is a recipient of supplemental security income; and
9. The equity value of the assets, jointly owned by a ~~training, education, employment, and management~~ program household member and a recipient of supplemental security income.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-24. Lump sums received by a member of the ~~training, education, employment, and management~~ household.**

1. All nonrecurring lump sum payments must be considered as an asset beginning the second month following the month of receipt. For that month, the remaining lump sum amount is included with all other nonexempt assets in determining eligibility.
2. For purposes of this section, "lump sum income or payment" includes retroactive monthly benefits provided under title II of the Social Security Act and other retroactive monthly benefits, payments in the nature of windfall, such as lottery or gambling winnings or inheritances, judgments, or settlements for injuries to person or property to the extent that the payment is not earmarked and used for the purpose for



which it was paid such as burial costs, and repair or replacement of lost or damaged assets, and workers' compensation awards.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-26. Disqualifying transfers.**

1. The transfer of an asset, without adequate consideration, disqualifies the ~~training, education, employment, and management~~ household from receipt of benefits for a period beginning with the month in which the transfer took place and continuing for a number of months equal to the result of dividing the ~~training, education, employment, and management~~ household's total equity value in the transferred asset by the standard of need applicable to the ~~training, education, employment, and management~~ household.
2. Notwithstanding subsection 1, a transfer is not disqualifying if it is made by ~~a person~~ an individual, who is not a responsible relative, by removing the name of a member of the ~~training, education, employment, and management~~ household from a jointly owned account to which no member of the ~~training, education, employment, and management~~ household contributed, provided that the name of the household member is removed:
  - a. If the existence of the account is discovered by the county agency while the ~~training, education, employment, and management~~ household is in the process of applying for assistance, before the initial payment is certified; or
  - b. If the existence of the account is discovered by the county agency while the ~~training, education, employment, and management~~ household is receiving ~~training, education, employment, and management~~ benefits, within thirty days after that discovery.
3. If the ~~training, education, employment, and management~~ household member who caused the household's ineligibility due to a disqualifying transfer leaves the household, the remaining household members are no longer subject to the disqualification penalty only if the transferred asset was owned solely by the departing household member. Effective the day following the day in which the individual left the ~~training, education, employment, and management~~ household, the remaining members may apply for ~~training, education, employment, and management~~ benefits. If the transferred asset was jointly owned with any remaining member of the ~~training, education, employment, and management~~ household, the disqualification period must continue as initially calculated.

4. When an individual who caused a household's ineligibility due to a disqualifying transfer moves to a different ~~training, education, employment, and management~~ household, the new household may be disqualified from the receipt of benefits for a period beginning with the month in which the individual became a member of the new household and continuing for a number of months equal to the result of:
  - a. Reducing the individual's total equity value in the transferred asset by an amount equal to the number of months of disqualification imposed upon the previously disqualified household times the standard of need applicable to that household; and
  - b. Dividing that result by the standard of need applicable to the new ~~training, education, employment, and management~~ household.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-27. Social security numbers.** Before the needs of an individual may be included in the ~~training, education, employment, and management~~ benefit, the individual shall furnish a social security number or proof that one has been applied for. An individual may not be initially included in or added to a ~~training, education, employment, and management benefit~~ household, including newborn children, until the individual's social security number or proof of application has been received.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-28. Eligibility for aliens who arrived before August 22, 1996.**

1. Except as provided in subsection 3, an alien who arrived before August 22, 1996, and who is lawfully admitted for permanent residence under color of law is eligible for ~~training, education, employment, and management~~ benefits if all other requirements for eligibility are met.
2. An alien may be lawfully admitted for a temporary or specific period of time. Such aliens are not eligible for ~~training, education, employment, and management~~ benefits because they do not meet the requirement that residence be permanent. Examples include aliens with student visas, visitors, tourists, some workers, and diplomats.
3. a. A sponsored alien is ineligible for ~~training, education, employment, and management~~ benefits for a three-year period, beginning with the alien's entry into the United States, unless the sponsor:



- (1) No longer exists; or
  - (2) Is unable to meet the alien's financial needs.
- b. A sponsored alien who applies for ~~training, education, employment, and management~~ benefits within three years following entry into the United States shall, as a condition of eligibility, provide the county agency with information and verification sufficient to determine the portion of the sponsor's income and assets that may be deemed available to the alien.
  - c. The sponsor and the sponsored alien are both liable for the amount of any overpayment of ~~training, education, employment, and management~~ benefits that results from the failure of either to provide information and verification sufficient to allow the county agency to correctly determine the portion of the sponsor's income and assets that may be deemed available to the alien.
  - d. For purposes of this section:
    - (1) "Sponsor" means an individual, public organization, or private organization who executed an affidavit of support or similar agreement on behalf of an alien, who is not the child of the sponsor or the sponsor's spouse, as a condition of the alien's entry into the United States.
    - (2) "Sponsored alien" means an alien whose entry into the United States was conditioned on the execution of an affidavit of support or similar agreement by a sponsor who is not a parent or the spouse of a parent of the alien.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-28.1. Eligibility for aliens who arrived on or after August 22, 1996.**

- 1. This section applies only to immigrants who arrive in the United States on or after August 22, 1996.
- 2. Except as provided in subsection 3, no noncitizen immigrant is eligible for ~~training, education, employment, and management~~ benefits for the first five seven years of that immigrant's residence in the United States.
- 3. An otherwise eligible noncitizen immigrant may be provided ~~training, education, employment, and management~~ benefits:

- a. After that immigrant has resided in the United States for ~~five~~ seven years, provided that the income and assets of the immigrant's sponsor must be deemed available to the immigrant;
- b. After that immigrant has established forty quarters of work history for social security benefit purposes, without deeming of the income or assets of the immigrant's sponsor; or
- c. If the immigrant is:
  - (1) A refugee, asylee, victim of human trafficking, or has been granted withholding of deportation; or
  - (2) A veteran of United States military service, ~~a person an~~ individual on active military duty, or a spouse or dependent of such a veteran or person on active military duty; ~~or~~
  - (3) ~~A Cuban or Haitian~~ An entrant entitled to refugee and entrant assistance; ~~or~~
  - (4) Deportation withheld under section 243(h) of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]
  - (5) Cuban or Haitian entrants as defined in section 501(e) of the Refugee Education Assistance Act of 1980.
  - (6) Amerasian entrant.
  - (7) Conditional entrant under section 203(a)(7) of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] prior to April 1, 1980, if a veteran or on active duty in the United States armed forces or spouse or unmarried dependent child of a veteran or person on active duty.
  - (8) Hmong or highland Laotian if the individual was a member at the time the tribe rendered assistance to the United States during the Vietnam era from August 5, 1964, through May 7, 1975. A spouse or unmarried dependent child of Hmong or highland Laotian may be eligible if the person meets one of the following:
    - (i) Spouse remains married to the tribal member;
    - (ii) Was married to the member at the time of the member's death and has not remarried;



- (iii) An unmarried dependent child (biological or adopted) under the age of eighteen or if the person is a full-time student under the age of twenty-two. This also applies if the parent is deceased, provided that the child was dependent on the parent at the time of death; or
  - (iv) An unmarried disabled child, biological or adopted, age eighteen or older if the child was disabled and dependent on the parent prior to the child's eighteenth birthday.
- (9) Lawfully admitted for residence if lawfully residing in the United States on August 22, 1996, and if receiving benefits for blindness or disability; or was born on or before August 22, 1931; or is now under eighteen years of age; or if elderly, disabled; or child entered after August 22, 1996, and meet other alien eligibility criteria or ineligible.
- (10) Lawfully admitted for permanent residence, if meets forty quarter requirement, or veteran on active duty in United States armed forces or spouse or unmarried dependent child of veteran or person on active duty.
- (11) Parolee under section 212(d)(5) of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] and status is granted for at least one year if veteran or on active duty in United States armed forces or spouse or unmarried dependent child of veteran or person on active duty.
- (12) Battered spouse or child if veteran or on active duty in United States armed forces or spouse or unmarried dependent child of veteran or person on active duty and an alien who has been battered or subjected to cruelty in the United States by a spouse or a parent or by a member of the spouse or parents' family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered. The battered spouse or child cannot be living with the family who battered that person.
- (13) American Indian if born in Canada and who possesses at least fifty percent of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] apply or a member of an Indian tribe as defined in section 4(e) of the Indian Self Determination and Education Assistance Act [25 U.S.C. 450b(e)] which is recognized as eligible for the special programs and services provided by the United States Indians because of their status as Indians.

- d. ~~If this state is required by federal law to provide that immigrant benefits under its temporary assistance for needy families state plan.~~ Aliens may meet eligibility criteria if they have a past or current involvement with the United States armed forces and are lawfully admitted to the United States under immigration and naturalization service status. Spouses and unmarried dependent children of an individual with past or current United States military involvement may also meet eligibility criteria.
4. An otherwise eligible citizen immigrant may be provided training, education, employment, and management benefits.

**History:** Effective July 1, 1997; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-29. Ineligibility due to participation in strikes.**

1. ~~No filing unit of a training, education, employment, and management household is eligible for benefits under this chapter for any month in which any member of that training, education, employment, and management filing unit household participates in a strike. If it is discovered that a filing unit household member participated in a strike during a month in which a training, education, employment, and management benefit has already been paid for that month, the county agency shall consider that amount as an overpayment subject to recovery.~~
2. For purposes of this section:
  - a. "Participating in a strike" means actual refusal, in concert with others, to provide services to one's employer.
  - b. "Strike" means a work stoppage, including a work stoppage due to the expiration of a collective bargaining agreement or a deliberate slowdown or interruption of operations by a body of workers to enforce compliance with demands made on an employer.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02



**75-02-01.2-30. Limitation on benefits to pregnant women.**

1. A pregnant woman, not made ineligible by any other provision of this chapter, who is caretaker relative to no child, may receive temporary assistance for needy families based upon the standard of need for one adult, without consideration of any additional pregnancy-related needs, no earlier than the sixth month of pregnancy. In addition to medical verification of the pregnancy, the applicant shall verify and the approximate date on which the pregnant woman is expected to deliver must be provided.
2. The individual shall complete the ~~training, education, employment, and management case assessment process and a training, education, employment, and management~~ of the social contract within ~~two~~ four months of the beginning of ~~training, education, employment, and management~~ benefits.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01-8~~ 50-09-02. 50-09-25

**Law Implemented:** NDCC ~~50-06-01-8~~ 50-09-02

**75-02-01.2-30.1. Benefit cap.** Any household that includes a child born after June 30, 1998, may be subject to a benefit cap. If a parent was an adult during the probable month of conception and received assistance, or would have been eligible for assistance if not for a sanction or a disqualification, assistance will not be increased due to the birth of that child. The benefit cap does not apply if:

1. The parent disputes the probable month of conception and provides medical verification to substantiate the parent's claim;
2. The pregnancy is determined to be the result of rape or incest;
3. The case has been closed for more than twelve months; or
4. The benefit cap child resides with someone other than the parent who received assistance during the probable month of conception.

**History:** Effective January 1, 2003.

**General Authority:** NDCC 50-09-02. 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-31. Age of parent - Effect on eligibility.**

1. For purposes of this section:
  - a. "Adult ~~parent~~ caretaker" means a ~~parent~~ caretaker who is not a minor ~~parent~~ caretaker.

- b. "Minor ~~parent~~ caretaker" means an individual, under the age of eighteen years, who has never been married and who:
      - (1) Is the parent of a dependent child living in the same household; or
      - (2) Is eligible as a pregnant woman in the third trimester of her pregnancy who is a caretaker relative to no child.
  2. A minor ~~parent~~ caretaker who lives with the minor ~~parent's~~ caretaker's own parents (~~grandparents~~) is eligible only if eligibility may be established after consideration of the income, but not the assets, of the ~~grandparents, with whom the minor parent~~ parents with whom the minor caretaker lives, applying the following disregards:
    - a. The ~~first~~ greater of one hundred eighty dollars or twenty-seven percent of earned income of each employed grandparent parent of the minor caretaker, for work expenses.
    - b. An amount equal to the ~~temporary assistance for needy children portion of the training, education, employment, and management standard of need, not including special allowances, applicable to a household consisting of the grandparents minor caretaker's parents and any other individuals living in the household home, who are or could be claimed as dependents of the grandparents minor caretaker's parents for federal income tax purposes, but who are not members of the temporary assistance for needy families filing unit; household.~~
    - c. Amounts paid by the ~~grandparents minor caretaker's parents~~, to support individuals who are not members of the household ~~or the temporary assistance for needy families filing unit~~, who are or could be claimed as dependents of the ~~grandparents minor caretaker's parents~~ for federal income tax purposes;.
    - d. Amounts paid by the ~~grandparents, as minor caretaker's parents, for child support or spousal support, health insurance premiums, or child or adult dependent care costs related to employment or employment and education or training.~~ to individuals who are not members of the household ~~or the temporary assistance for needy families filing unit.~~
  3. An adult ~~parent~~ caretaker, who lives with the adult ~~parent's~~ caretaker's own parent (~~grandparent~~) or legal guardian, if eligible, is eligible without consideration of the income or assets of any ~~grandparent adult caretaker's parents~~ with whom the adult ~~parent~~ caretaker lives, except that regular contributions of money made by such ~~grandparent adult caretaker's parent~~ to any member of the ~~temporary assistance for needy families filing unit~~ household must be considered.



4. For purposes of this section, a minor ~~parent~~ caretaker who becomes an adult ~~parent~~ while living with the minor ~~parent's~~ caretaker's own parents or legal guardian is treated as an adult ~~parent~~ caretaker, effective the first day of the month in which the ~~minor-parent~~ caretaker reaches age eighteen.
5. For purposes of this section, a minor ~~parent~~ caretaker who ends residency with the minor ~~parent's~~ caretaker's own parent (~~grandparent~~) is treated as having ended residency on the first day of the month in which the minor ~~parent~~ caretaker left the ~~grandparent's~~ minor caretaker's parent's home.
6. For purposes of this section, a minor ~~parent~~ caretaker who resumes residency with the minor ~~parent's~~ caretaker's own parent (~~grandparent~~) is treated as having resumed that residency on the first day of the month after the month in which the minor ~~parent~~ caretaker resumed residency with the ~~grandparent~~ minor caretaker's parent.
7. A minor ~~parent~~ caretaker who does not live with either of the minor ~~parent's~~ caretaker's own parents (~~grandparents~~), if eligible, is eligible without consideration of the income or assets of the ~~grandparents~~ minor caretaker's parent except that regular contributions of money made by a ~~grandparent~~ minor caretaker's parent to any member of the ~~temporary assistance for needy families filing unit~~ household must be considered. The ~~grandparents~~ minor caretaker's parents remain legally responsible for the minor ~~parent's~~ caretaker's support. The matter must be referred to the child support agency for the purpose of securing support from the ~~grandparents for the minor-parent~~ minor caretaker's parents as well as for the purpose of securing support for the minor ~~parent's~~ caretaker's child from the child's absent parent.
8. ~~No temporary assistance for needy families filing unit household~~ may include the child of a minor ~~parent~~ caretaker, living with that minor ~~parent~~ caretaker, during any time when the minor ~~parent~~ caretaker is living in a foster home or child care institution and receiving a foster care maintenance benefit. Any amount reasonably necessary to the maintenance of such a child of the minor ~~parent~~ caretaker is included in the minor ~~parent's~~ caretaker's foster care maintenance benefit.
9. Except as provided in subsection 10, a minor ~~parent~~ caretaker must live in the home of the minor ~~parent's~~ caretaker's own parent (~~grandparent~~), legal guardian, or other adult relative, or in a state-approved adult supervised supported living arrangement.
10. A minor ~~parent~~ caretaker may show there is good cause to live in a place other than required in subsection 9. Good cause exists if, based on evidence provided to the county agency:
  - a. The minor ~~parent~~ caretaker has no living parent or legal guardian;

- b. No parent or legal guardian of the minor ~~parent~~ caretaker will allow the minor ~~parent~~ caretaker to live in the home of the parent or legal guardian;
- c. The physical or emotional health or safety of the minor ~~parent~~ caretaker or the minor ~~parent's~~ caretaker's child would be jeopardized if they lived with the minor ~~parent's~~ caretaker's parent or legal guardian;
- d. The minor ~~parent~~ caretaker lived apart from the ~~minor's~~ minor caretaker's parent or legal guardian for at least one year before the earlier of the birth of the dependent child or the minor ~~parent's~~ caretaker's application for temporary assistance for needy families;
- e. The minor ~~parent~~ caretaker has earned a high school diploma or general equivalency diploma and is participating in postsecondary education under an approved job opportunities and basic skills program employability plan; or
- f. After reasonable search, the whereabouts of the minor ~~parent's~~ caretaker's parents or legal guardian are unknown.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

#### **75-02-01.2-32. Value of benefit.**

- 1. The reasonable value of the physical and custodial care or support that has been furnished to the child or children of a noncustodial parent by the ~~training, education, employment, and management~~ program is, for each month such child or children are eligible, the amount of the ~~temporary assistance for needy families benefit~~ assistance received multiplied by the number of children of the noncustodial parent in the ~~temporary assistance for needy families filing unit~~ household and divided by the total number of children in the ~~temporary assistance for needy families filing unit~~ household.
- 2. Stepparents cannot be legally required to support their stepchildren; ~~but when they are able and willing to do so, should be encouraged to support to the extent of their ability.~~
- 3. ~~In cases where~~ If a stepparent is eligible to receive ~~training, education, employment, and management program benefits~~ assistance, the reasonable value of the physical and custodial care or support which has been furnished to the child or children of a noncustodial parent by the ~~training, education, employment, and management~~ program is, for each month such child or children are eligible, the amount of the



~~temporary assistance for needy families benefit~~ assistance received multiplied by the number of children of the noncustodial parent in the ~~temporary assistance for needy families filing unit~~ household and divided by one plus the total number of children in the ~~temporary assistance for needy families filing unit~~ household.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-33. Assignment of right to support.**

1. The child support agency must be notified, ~~no later than two working days after the mailing of the initial training, education, employment, and management benefit to a training, education, employment, and management household,~~ of any child, except a benefit cap child, who is a member of the ~~training, education, employment, and management household~~ and whose eligibility for ~~benefits~~ assistance is based on the continued absence of the child's parent from the home.
2. The applicant and, upon request, any member of the ~~training, education, employment, and management household~~ for whom temporary assistance for needy families is requested, as a condition of eligibility shall:
  - a. Execute all necessary documents to protect the right of any member of the ~~temporary assistance for needy families filing unit household,~~ and the agency, to child support from the absent parent of such member; and
  - b. Cooperate in obtaining support and in establishing paternity of any child in the ~~temporary assistance for needy families filing unit household~~ with respect to whom paternity has not been established.
3. The requirement for the assignment of rights to support from absent parents continues through the month in which the latest of the following occurs:
  - a. The child reaches age eighteen.
  - b. The child graduates from high school, provided that graduation does not occur after the month of the child's nineteenth birthday.
  - c. Child support obligations, imposed by a court for periods after the child reaches age eighteen, are terminated.
4. For purposes of this section:

- a. "Cooperate in obtaining support and in establishing paternity" includes:
    - (1) Appearing at a state or local office designated by the department or county agency to provide information or evidence relevant to the case;
    - (2) Appearing as a witness at a court or other proceeding;
    - (3) Providing credible information, or credibly attesting to lack of information;
    - (4) Paying to the department any support funds received that are covered by the assignment of rights; and
    - (5) Taking any other reasonable steps to assist in establishing paternity and securing child support.
  - b. A child support agency shall determine if the applicant, recipient, or any member of the ~~training, education, employment, and management~~ household, who is required to cooperate in obtaining support and establishing paternity, has done so. In making that determination, the child support agency shall consider if any information provided, or attestation to lack of information, is corroborated by relevant circumstances and is credible. Information provided, or an attestation to lack of information, is not presumed correct.
5. An individual shall cooperate in establishing paternity of a child born out of wedlock for whom the individual can legally assign rights, and obtaining child support and payments for the individual and any other individual for whom the individual can legally assign rights, unless cooperation is waived by the county agency for good cause.
  6. The custodian who refuses to cooperate in obtaining support, including establishing paternity, is ineligible to receive ~~training, education, employment, and management~~ assistance. If the custodian continues to refuse to cooperate, the entire household shall become ineligible for ~~training, education, employment, and management~~ assistance and may not reapply for one full benefit month following case closure.
- a. ~~The first time the custodian fails to cooperate, that individual's needs must be removed from the benefit calculation for a minimum period of one month. The sanctioned individual is ineligible for all training, education, employment, and management benefits. The sanctioned individual may cure the noncooperation and have benefits restored at any time after the minimum one-month period of ineligibility by participating as required under the terms of the training, education, employment, and management contract. If at~~



~~the end of six months of the sanction the sanctioned individual continues to refuse to cooperate, the entire training, education, employment, and management household is ineligible for training, education, employment, and management. A household found ineligible for training, education, employment, and management benefits as a result of a sanction may apply for food stamp, medicaid, child care assistance, or low income home energy assistance program benefits.~~

- b. ~~The second time the custodian fails to cooperate, that individual's needs must be removed from the benefit calculation for a minimum period of two months. The sanctioned individual shall lose eligibility for all training, education, employment, and management benefits. The sanctioned individual may cure the noncooperation and have benefits restored at any time after the minimum two-month period of ineligibility by participating as required under the terms of the training, education, employment, and management contract. If at the end of four months of the sanction the sanctioned individual continues to refuse to cooperate, the entire training, education, employment, and management household is ineligible for training, education, employment, and management. A household found ineligible for training, education, employment, and management benefits as a result of a sanction may apply for food stamp, medicaid, child care assistance, or low income home energy assistance program benefits.~~
- c. ~~The third and subsequent times the custodian fails to cooperate, that individual's needs must be removed from the benefit calculation for a minimum period of three months. The sanctioned individual shall lose eligibility for all training, education, employment, and management benefits. The sanctioned individual may cure the noncooperation and have benefits restored at any time after the minimum three-month period of ineligibility by participating as required under the terms of the training, education, employment, and management contract. If at the end of four months of the sanction the sanctioned individual continues to refuse to cooperate, the entire training, education, employment, and management household is ineligible for training, education, employment, and management. A household found ineligible for training, education, employment, and management benefits as a result of a sanction may apply for food stamp, medicaid, child care assistance, or low income home energy assistance program benefits.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

**75-02-01.2-34. Good cause for failure or refusal to cooperate in obtaining support or establishing paternity.**

1. The county agency, for good cause, may waive the requirement that an individual cooperate in obtaining support and establishing paternity if it determines that cooperation is against the best interests of the child. A county agency may determine that required cooperation is against the best interests of the child only if:
  - a. The individual's cooperation in establishing paternity or securing child support is reasonably anticipated to result in:
    - (1) Physical harm to the child for whom support is to be sought;
    - (2) Emotional harm to the child for whom support is to be sought;
    - (3) Physical harm to the parent or caretaker relative with whom the child is living which reduces that individual's capacity to care for the child adequately; or
    - (4) Emotional harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it reduces that individual's capacity to care for the child adequately; or
  - b. At least one of the following circumstances exists, and the county agency believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure child support would be detrimental to the child for whom support would be sought:
    - (1) The child for whom support is sought was conceived as a result of incest or forcible rape;
    - (2) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or
    - (3) The individual, otherwise required to cooperate, is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep or relinquish the child for adoption, and the discussions have not gone on for more than three months.
2. Physical harm and emotional harm must be of a serious nature in order to justify a waiver.
3. A waiver due to emotional harm may only be based on a demonstration of an emotional impairment that substantially impairs the individual's functioning. In determining a waiver, based in whole or in part upon the



anticipation of emotional harm to the child, the parent, or the caretaker relative, the county agency shall consider:

- a. The present emotional state of the individual subject to emotional harm;
  - b. The emotional health history of the individual subject to emotional harm;
  - c. Intensity and probable duration of the emotional impairment;
  - d. The degree of cooperation to be required; and
  - e. The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.
4. In all cases in which the county agency has determined that good cause exists based on a circumstance subject to change, a determination to grant a waiver must be reviewed no less frequently than every six months to determine if the circumstances which led to the waiver continue to exist.
5. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-35. Combined requirements.**

1. The department shall establish combined requirements for the ~~training, education, employment, and management~~ temporary assistance for needy families standard of need that represent amounts of income, by household size, necessary for a standard of living compatible with decency and health. The requirements represent one hundred percent of need.
2. The six basic items of need considered in the ~~training, education, employment, and management benefit~~ temporary assistance for needy families cash grant are: shelter; food; clothing; personal needs such as combs, toothbrushes, and toothpaste, razor blades, sanitary supplies, and haircuts; household supplies such as cooking utensils, laundry, beddings, and towels; and fuel and utilities.

3. ~~The department shall secure approval of training, education, employment, and management program waiver terms and conditions respecting combined requirements.~~

**History:** Effective December 9, 1996; amended effective January 1, 2003,

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-35.1. Time limit on certain benefits - Exceptions.** Except as otherwise provided in this section, no ~~temporary assistance for needy families filing unit household~~ may be provided ~~a training, education, employment, and management benefit that includes a temporary assistance for needy families benefit assistance~~ if that ~~filing unit household~~ includes an adult who has received assistance under a temporary assistance for needy families program provided by any state or Indian tribe for sixty months, whether or not consecutive, after the date that program commenced, or, in the case of such a ~~filing unit with an adult member who has resided in North Dakota less than twelve months, if that adult member formerly resided in a state, or received benefits under a tribal temporary assistance for needy families program, that imposes a limit of less than sixty months, such lesser number of months as provided for in the state or tribal service area in which that adult member formerly resided.~~

1. In determining the number of months an adult received temporary assistance for needy families, the ~~county agency department~~ shall disregard any month in which the:
  - a. The adult was a minor child and not, at the same time, a head of household or married to a head of household; or
  - b. No adult member of the household was included in the benefit.
2. In determining the number of months an adult received temporary assistance for needy families, the ~~county agency department~~ shall disregard any month in which the adult lived in Indian country if, during the month, at least fifty percent of the adults living in that Indian country were unemployed. The department shall determine the percentage of unemployed adults living in Indian country by any means the department determines to be appropriate and reliable, provided that the means chosen are consistent with requirements imposed under federal law.
3. This section may not be applied to preclude eligibility for members of a ~~temporary assistance for needy families filing unit household~~ if:
  - a. The eligible adult caretaker in the filing unit reaches the age of ~~sixty~~ sixty-five years on or before the sixty-first month in which that individual receives temporary assistance for needy families benefits;



- b. The eligible adult caretaker is determined to be incapacitated or has been determined to be disabled by the social security administration; or
  - c. ~~The filing-unit household~~ includes an individual who ~~has been battered or subject to extreme cruelty~~ is a victim of domestic violence. Domestic violence includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members; or
  - d. The condition of a child or a spouse precludes care by a child care provider, in-home care, or outside of home care and prevents the caretaker from employment.
4. For purposes of this section:
- a. An adult caretaker may be treated as "incapacitated" if the individual is incapacitated or treated as incapacitated under section 75-02-01.2-18; and
  - b. ~~An individual "has been battered or subjected to extreme cruelty" if the individual has been subjected to:~~
    - (1) ~~Physical acts that resulted in, or threatened to result in, physical injury to the individual;~~
    - (2) ~~Sexual abuse;~~
    - (3) ~~Sexual activity involving a dependent child;~~
    - (4) ~~Being forced, as the caretaker relative of a dependent child, to engage in nonconsensual sexual acts or activities;~~
    - (5) ~~Threats of, or attempts at, physical or sexual abuse;~~
    - (6) ~~Mental abuse; or~~
    - (7) ~~Neglect or deprivation of medical care; and~~
  - c. "Indian country" means:
    - (1) All lands within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation;

- (2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and
  - (3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.
- 5. The number of households that may be exempted from the temporary assistance for needy families lifetime limit may not exceed twenty percent of the average monthly number of households receiving temporary assistance for needy families assistance.
  - 6. If a household must submit a written request to the county social service agency requesting to be exempt from the sixty-month lifetime limit, the written request must explain the reason for the exemption and must include clear and convincing documentation from a professional service provider.
  - 7. During the exemption period from the lifetime limit, all temporary assistance for needy families, job opportunities, and basic skills program policies apply.
  - 8. Applicants and recipients that appeal the denial for an exemption from the lifetime limit may request in writing a fair hearing within the thirty days from the date of the denial or closure notice. Assistance is not continued pending the fair hearing.

**History:** Effective July 1, 1997; amended effective January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

**75-02-01.2-36. Determining membership in training, education, employment, and management household. Repealed effective January 1, 2003.** ~~The training, education, employment, and management household includes the members of a family and may include others who live under the same roof, provided at least one member is in receipt of temporary assistance for needy families. The training, education, employment, and management household includes all other household members who would be eligible for food stamp or low income home energy assistance program benefits, based on sections 75-02-01.2-38 and 75-02-01.2-39. The training, education, employment, and management benefit is a single cash payment for temporary assistance for needy families and low income home energy assistance program benefits. Temporary assistance for needy families eligibility and benefit amount is determined by counting the income and assets of those members of the household included in the temporary assistance for needy families filing unit, based on section 75-02-01.2-37. Low income home energy assistance program eligibility and benefit amounts are based on the income and assets of all persons who live~~



under the same roof. Food stamp eligibility and benefit amounts are based on the income and assets of all persons who are members of the food stamp filing unit.

1. ~~If the primary individual in the training, education, employment, and management household does not provide all pertinent data necessary for the county agency to make an eligibility determination, the entire household is ineligible for training, education, employment, and management.~~
2. ~~Individuals required to be members of the temporary assistance for needy families or low income home energy assistance program filing units within the training, education, employment, and management household, but whose needs are deleted from the unit because of a sanction, are not eligible for benefits otherwise available to members of those units. The income and assets of sanctioned household members must be considered in determining eligibility and benefits for the remaining members of the training, education, employment, and management household.~~
3. ~~If a household identified as a training, education, employment, and management household elects not to participate in training, education, employment, and management, the household may apply for food stamp, low income home energy assistance program, and child care assistance benefits, but may not apply for temporary assistance for needy families benefits.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997.

**General Authority:** NDCC 50-06-01.8

**Law Implemented:** NDCC 50-06-01.8

**75-02-01.2-37. Determining membership of the temporary assistance for needy families filing unit household.**

1. The temporary assistance for needy families filing unit household must include at least one eligible child unless:
  - a. The only child receives supplemental security income benefits; or
  - b. The temporary assistance for needy families filing unit household includes a pregnant woman in the last trimester of her pregnancy.
2. Any parent of a dependent child who resides in the home must be included in the temporary assistance for needy families filing unit household.
3. If the temporary assistance for needy families filing unit household includes a parent and a needy dependent child, any other child who resides in the home, for whom assistance is sought, and to whom the

parent is a relative by birth, marriage, or adoption, must be included in the ~~temporary assistance for needy families filing unit~~ household.

4. If the ~~training, education, employment, and management~~ household includes a parent and the parent's nonneedy dependent child or children, any other needy dependent child or children to whom the parent is a relative by birth, marriage, or adoption, must be included in a ~~temporary assistance for needy families filing unit~~ household which consists only of the needy dependent child or children.
5. If the ~~training, education, employment, and management~~ household includes a parent, the parent's needy dependent child or children, and other dependent children to whom the parent is a relative by birth, marriage, or adoption, a ~~temporary assistance for needy families filing unit~~ the household must include the parent and the parent's needy dependent child or children, and may include any needy dependent child or children to whom the parent is a relative by birth, marriage, or adoption, but exclude any nonneedy dependent child or children who is not the parent's child but to whom the parent is a relative by birth, marriage, or adoption, and who is not a brother or sister, whether by the whole or half-blood or by adoption, to a needy dependent child.
6. A minor parent who lives in the home of a parent of the minor parent is treated as a dependent child in a ~~temporary assistance for needy families filing unit~~ household that includes a parent of the minor parent unless:
  - a. The minor parent is married or formerly married and divorced, but not formerly married in an annulled marriage;
  - b. The minor parent has resided with the other parent of the minor parent's child; or
  - c. The minor parent has lived separately and apart from the minor parent's parent or lawful guardian, with the consent or acquiescence of the minor parent's parent or lawful guardian, while managing the minor's own financial affairs regardless of the source of income, so long as it is not from any activity declared to be a crime by the laws of North Dakota or the United States.
7. ~~Training, education, employment, and management~~ household Household members who are receiving supplemental security income benefits may not be included in the ~~temporary assistance for needy families filing unit~~ household.
8. ~~Training, education, employment, and management~~ household Household members who are ineligible for ~~temporary assistance for needy families benefits~~ assistance because of a sanction imposed under this chapter must be included in the ~~temporary assistance for~~



~~needy families filing unit household~~ for the purpose of consideration of income and assets of the sanctioned ~~training, education, employment, and management~~ household member.

9. ~~Training, education, employment, and management household~~ Household members who are ineligible for ~~temporary assistance~~ assistance because they do not meet citizenship or alienage requirements imposed under this chapter must be included in the ~~temporary assistance for needy families filing unit household~~ for the purpose of consideration of income and assets of those ~~training, education, employment, and management~~ household members.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-38. Determining membership of the food stamp filing unit.**

Repealed effective January 1, 2003.

1. ~~Training, education, employment, and management household members who are ineligible for food stamps because of a sanction or disqualification imposed under this chapter must be included in the food stamp filing unit for the purpose of considering the income and assets of the sanctioned training, education, employment, and management household member.~~
2. ~~Training, education, employment, and management household members who are ineligible for food stamps because they do not meet citizenship or alienage requirements imposed under this chapter must be included in the food stamp filing unit for the purpose of consideration of income and assets of those training, education, employment, and management household members.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997.

**General Authority:** NDCC ~~50-06-01.8~~

**Law Implemented:** NDCC ~~50-06-01.8~~

**75-02-01.2-39. Determining membership of the low income home energy assistance program filing unit. Repealed effective January 1, 2003.**

1. ~~The low income home energy assistance filing unit shall include all individuals residing in the training, education, employment, and management household unless the training, education, employment, and management household resides in housing subsidized by the federal government.~~

2. ~~Training, education, employment, and management household members who are ineligible for low income home energy assistance program benefits because of a sanction or disqualification imposed under this chapter must be included in the low income home energy assistance filing unit for the purpose of considering the income and assets of the sanctioned training, education, employment, and management household member.~~
3. ~~Training, education, employment, and management household members who are ineligible for low income home energy assistance program benefits because they do not meet citizenship or alienage requirements imposed under this chapter must be included in the low income home energy assistance program filing unit for the purpose of consideration of income and assets of those training, education, employment, and management household members.~~

**History:** Effective December 9, 1996.

**General Authority:** NDCC 50-06-01.8

**Law Implemented:** NDCC 50-06-01.8

**75-02-01.2-40. Combined supplemental security income and temporary assistance for needy families households.**

1. With respect to the same month, no individual may receive benefits assistance through both the supplemental security income program and the temporary assistance for needy families program.
2. An individual who is receiving supplemental security income benefits may be a member of a ~~training, education, employment, and management household that includes members who are also members of a temporary assistance for needy families filing unit, and may be as~~ an ineligible caretaker relative for a child in a temporary assistance for needy families filing unit the household.
3. Assets or income owned solely by the recipient of supplemental security income benefits, including that portion of income disregarded in determining eligibility for supplemental security income benefits, may not be considered available to the members of the temporary assistance for needy families filing unit household.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

**75-02-01.2-41. Recipients living out of state.** An individual who receives ~~training, education, employment, and management benefits~~ assistance is free to travel without a loss of eligibility so long as the individual remains a resident of the state. An individual living out of state who remains a resident of North Dakota



is subject to the same standards and procedures for eligibility determinations and budgeting as a similarly situated individual present in the state.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-42. Grant amount in whole dollars.** ~~Training, education, employment, and management benefits~~ Benefits are granted in whole dollar amounts. In calculating benefit amounts, numbers are rounded down to the nearest whole dollar.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-43. Benefits less than ~~one dollar~~ ten dollars.** No benefit payment may be issued if the calculated ~~training, education, employment, and management~~ benefit is less than ~~one dollar~~ ten dollars, but the ~~training, education, employment, and management~~ household must be treated for all other purposes of this chapter, including the application of the retrospective budgeting cycle, as a ~~training, education, employment, and management~~ household to which the department makes a benefit payment.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-44. Income described.**

1. All income that is actually available must be considered. Income is actually available when it is at the disposal of an applicant or recipient; when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make the sum available for support or maintenance; or when the applicant or recipient has the lawful power to make the income available or to cause the income to be made available. In specific circumstances, income available to persons other than the applicant or recipient is deemed available. This subsection does not supersede other provisions of this chapter which describe or require specific treatment of income, or which describe specific circumstances that require a particular treatment of income.
2. Income may be earned, unearned, or deemed. It may be received regularly, irregularly, or in lump sums. Income may be counted or excluded. It may be disregarded for some purposes, but not for others. Other sections of this chapter explain those treatments.
3. Each ~~training, education, employment, and management~~ program household member must accept any unemployment compensation

benefits to which entitled. Each ~~training, education, employment, and management program~~ household member must provide verification, from job service North Dakota, as to whether the ~~training, education, employment, and management program~~ household member is qualified for unemployment compensation benefits; and, if qualified, must make application for unemployment compensation benefits and secure such benefits if qualified.

4. Earned income includes:

- a. Wages, salaries, commissions, bonuses, or profits received as a result of holding a job or being self-employed;
- b. Earnings from on-the-job training provided by the Job Training Partnership Act or the job opportunities and basic skills program;
- c. Wages received as the result of participation in the mainstream and green thumb programs;
- d. Earnings of recipients employed by schools under title I of the Elementary and Secondary Schools Act [20 U.S.C. 236 et seq.];
- e. Wages received from sheltered workshop employment;
- f. Sick leave pay or loss-of-time private insurance paid for the loss of employment due to illness or injury;
- g. Compensation for jury duty;
- h. Tips;
- i. Income from boarders;
- j. Income from room rentals;
- k. Income from participation in job corps; and
- l. Income from internship or stipends.

5. Unearned income includes:

- a. Social security, veterans benefits of any kind, private pensions, pensions provided to former employees of public entities, workers' compensation, unemployment benefits, union compensation during strikes, and military allotments;



- b. Rents paid without an appreciable amount of personal involvement and effort provided as a service to the tenant, mineral lease rentals, bonus payments and royalties, dividends, and interest paid;
  - c. Cash contributions from relatives provided to ~~training, education, employment, and management~~ the household for living expenses;
  - d. Cash gifts;
  - e. Poor relief or general assistance payments made to any member of the ~~training, education, employment, and management~~ household by a county agency or the bureau of Indian affairs; and
  - f. ~~Refugee assistance payments;~~
  - ~~g. Early intervention program benefits; or~~
  - h. Any other form of income that is not earned income.
6. Deemed income includes:
- a. In the case of income deemed from a stepparent or alien parent, that stepparent's or alien parent's entire gross income less:
    - (1) The greater of one hundred eighty dollars or the twenty-seven percent standard employment expense allowance;
    - (2) An additional amount for the support of the stepparent or alien parent and any other individuals living in the home whose needs are not taken into account in making the eligibility determination and who are or could be claimed by the stepparent or alien parent as dependents for federal income tax purposes, but not including any sanctioned individuals or individuals who are required to be included in the ~~training, education, employment, and management~~ household, but have failed to cooperate, equal to the standard of need amount for a family group of the same composition and size as the stepparent or alien parent and those other individuals described in this paragraph;
    - (3) Spousal support and child support payments, health insurance premiums, and child or adult dependent care costs related to employment or employment and education or training actually being made to or on behalf of persons not living in the home; and
    - (4) Amounts actually being paid to individuals not living in the home who are or could be claimed by the stepparent or alien parent as dependents for federal income tax purposes.

- b. In the case of income deemed from the sponsor of a sponsored alien, the entire gross income of the sponsor and the sponsor's spouse, less:
- (1) ~~Twenty~~ The greater of one hundred eighty dollars or twenty-seven percent of the total monthly earned income of the sponsor and the sponsor's spouse ~~or one hundred seventy-five dollars, whichever is less;~~
  - (2) An amount equal to the ~~training, education, employment, and management~~ standard of need amount for a family group of the same composition and size as the sponsor and those other individuals living in the sponsor's household who are or could be claimed by the sponsor as dependents for federal income tax purposes, but whose needs are not taken into account in making an eligibility determination under this chapter;
  - (3) Spousal support and child support payments actually being made by the sponsor to or on behalf of individuals not living in the sponsor's household; and
  - (4) Amounts actually being paid by the sponsor to individuals not living in the sponsor's household who are or could be claimed by the sponsor as a dependent for federal income tax purposes.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

#### **75-02-01.2-45. Excluded income.**

1. The following income must be excluded in determining eligibility for ~~training, education, employment, and management benefits~~ assistance:
  - a. All earned income of any child, except a minor parent, attending elementary or high school full time;
  - b. Earned income of any child derived from a program carried out under the ~~Job Training Partnership Act, as enacted before August 22, 1996 [29 U.S.C. 1501 et seq.]~~ Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.];
  - c. Payments made to any member of the ~~training, education, employment, and management~~ household under title II of the Uniform Relocation Assistance and Real Property Acquisition



Policies Act of 1970, as amended [Pub. L. 91-646; 42 U.S.C. 4601 et seq.];

- d. Per capita payments made to members of Indian tribes under the Indian Tribal Judgment Funds Use and Distribution Act [25 U.S.C. 1407 et seq.], including all interest and investment income accrued on such funds while held in trust pursuant to a plan approved under the provisions of that Act pursuant to a plan approved by Congress prior to January 12, 1983, and any purchases made with such payments for so long as the payment is not commingled with other funds;
- e. Income derived from submarginal lands held in trust for Indians, to the extent required by Pub. L. 94-114 [25 U.S.C. 459e], for so long as the income is not commingled with other funds;
- f. Up to two thousand dollars per year of income received by an individual Indian derived from that Indian's interests in trust or restricted lands, as required by 25 U.S.C. 1408, for so long as the income is not commingled with other funds;
- g. A loan from any source that is subject to a written agreement requiring repayment by the recipient;
- h. Agent orange settlement payments;
- i. Payments made under the Radiation Exposure Compensation Act [Pub. L. 101-426; 104 Stat. 920; 42 U.S.C. 2210 (note) (1993 Supp.)], for so long as the payment is not commingled with other funds;
- j. The value of any supplemental food assistance received under the Child Nutrition Act of 1966, as amended [42 U.S.C. 1771 et seq.], and the special food service program for children provided under the National School Lunch Act, as amended [42 U.S.C. 1751 et seq.];
- k. Payments received by any member of the ~~training, education, employment, and management~~ household, from the child nutrition and food distribution unit of the North Dakota department of public instruction, in reimbursement of the cost of furnishing meals and snacks by any member of the ~~training, education, employment, and management~~ household who provides child care in the home, provided that the child care provider is licensed under North Dakota Century Code chapter 50-11.1, ~~and is sponsored by a public or nonprofit private organization~~;
- l. Income received as a housing allowance through any program sponsored by the United States department of housing and urban

development and rent supplements or utility payments provided through the housing assistance program;

- m. The value of surplus commodities provided through the United States department of agriculture;
- n. Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health ~~aids~~ aides or senior companions, or to individuals serving in the service corps of retired executives, active corps of executives, and any other programs under title II of the Domestic Volunteer Services Act of 1973 [Pub. L. 93-113; 42 U.S.C. 5001 et seq.];
- o. Payments made to volunteers in service to America under title I of the Domestic Volunteer Services Act of 1973 [Pub. L. 93-113; 42 U.S.C. 4951 et seq.];
- p. Any payment made as a result of the Alaska Native Claims Settlement Act, which is made tax exempt under Public Law 92-203 [43 U.S.C. 1601 et seq.];
- q. The value of benefits received under the supplemental food program for women, infants, and children [Pub. L. 94-105; 42 U.S.C. 1786];
- r. The value of general assistance benefits provided in voucher form by any county agency, tribe, or the bureau of Indian affairs;
- s. Assistance payments from other programs, agencies, or organizations that:
  - (1) Do not serve the same purposes as ~~training, education, employment, and management benefits~~ the temporary assistance for needy families cash grant; or
  - (2) Provide goods or services that are not included in the standard of need;
- t. Scholarships, grants, and awards for educational purposes, which are given because of need or achievement by the bureau of Indian affairs, other federal sources, state sources, civic, fraternal, and alumni organizations, or relatives, to undergraduate-level and graduate-level students;
- u. Workstudy program income earned by an undergraduate-level or graduate-level student;



- v. Family subsidy program payments made by the department;
  - w. Returned deposits from rentals and from utility companies;
  - x. Adoption assistance and subsidized adoption payments;
  - y. Foster care payments, subsidized guardianship payments, and payments received as a retainer for services as an emergency shelter foster home;
  - z. ~~Small irregular~~ Irregular cash, ~~contributions, or gifts~~, which total, in any month, less than ~~thirty five hundred~~ five hundred dollars per ~~training, education, employment, and management household received for a special occasion, such as Christmas, birthdays, or graduations;~~
  - aa. Any refund or federal income taxes received as an earned income tax credit pursuant to 26 U.S.C. 32, and any payments made by an employer as an advance payment of earned income tax credit pursuant to 26 U.S.C. 3507; and
  - bb. Payments of education award money and living allowance moneys to an individual enrolled in AmeriCorps under the National and Community Service Act, as amended [42 U.S.C. 12571 et seq.]; and
  - cc. Crime victim compensation.
2. For purposes of this section, "child" means an individual:
- a. Under age eighteen; or
  - b. Age eighteen and a full-time student in elementary or high school, or in an equivalent level of vocational or technical training, if, before attaining age nineteen, such student may reasonably be expected to complete the high school or vocational training curriculum.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

**75-02-01.2-46. Gross income test. Repealed effective January 1, 2003.**

- ~~1. When determining training, education, employment, and management eligibility for the initial two months only, the gross income, earned and unearned, of all members of the training, education, employment, and management household, exempting the earned income of dependent children attending elementary or high school full time, may not exceed one hundred six percent of the training, education,~~

~~employment, and management standard of need including special items of need. After eligibility is determined for the initial two months, the gross income eligibility test is not performed for training, education, employment, and management households on an ongoing monthly basis. Beginning the third benefit month, gross earnings less a standard employment expense allowance of twenty-seven percent and appropriate employment incentives plus all unearned income is tested against the training, education, employment, and management standard of need and special items of need for the appropriate household size.~~

- ~~2. The gross income test is performed for applicant training, education, employment, and management households as well as for new applicants added to an existing training, education, employment, and management household if that new applicant did not receive assistance for the previous month.~~

**History:** Effective December 9, 1996.

**General Authority:** NDCC 50-06-01.8

**Law Implemented:** NDCC 50-06-01.8

#### **75-02-01.2-47. Budgeting process.**

- ~~1. Budgeting is the process by which a training, education, employment, and management household's need is determined. Through the process available, income is matched against the training, education, employment, and management standard of need.~~
- ~~2. If nonexcluded income exceeds the training, education, employment, and management standard of need, the training, education, employment, and management household is not needy, for purposes of the training, education, employment, and management program, and the household is ineligible for program benefits assistance.~~
- ~~3. For training, education, employment, and management households that meet the gross income test, if nonexcluded income is less than the training, education, employment, and management standard of need, the household is subject to the net income test.~~

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

**75-02-01.2-48. Net income test.** ~~If the gross income test is passed, the~~ The applicant or applicant household is subject to a net income test. The net income test compares the training, education, employment, and management standard of need, personal needs allowance for out-of-home eligible individuals, and special items of need to the adjusted net income. If the adjusted net income is less than the training, education, employment, and management standard of need, personal



needs allowance, and special items of need, the household passes the net income test and the benefit cash grant amount is calculated.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-49. Income considerations.**

1. All income must be considered in establishing eligibility and in determining the ~~training, education, employment, and management benefit cash grant~~ amount.
2. Income must be reasonably evaluated. A determination that income is deemed available is a determination that the income is actually available.
3. Income from wages, or any other source, must be considered received in the month in which it was actually received or considered to be available. Wages held at the request of an employee must be considered income in the month in which the wages would otherwise have been paid by the employer.
4. A member of a ~~training, education, employment, and management~~ household who receives regular income, other than on a monthly basis, may occasionally receive an extra check which causes the unit to become ineligible in the month of receipt. If the receipt of additional income is anticipated to result in ineligibility for only one month, the case may be suspended, rather than closed.
  - a. If the additional income is received in the month of application, ~~(the first month of prospective budgeting)~~, the application must be denied.
  - b. If the additional income is received in the month after the month of application, ~~(the second month of prospective budgeting)~~, the case must be prospectively suspended, and all income, except income derived from the last check received in that month, from the source of regular income, must be retrospectively budgeted.
  - c. If the additional income is received in any month except the month of application or the month after the month of application, all income must be retrospectively budgeted.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 59-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

#### **75-02-01.2-50. Earned income considerations.**

1. Earned income must be verified and documented in the case record. Earned income may be received from a variety of sources.
2. Net earned income is determined by adding monthly net income from self-employment to other monthly earned income and subtracting the applicable deductions.
3. Except as provided in subsection 4, "monthly net income from self-employment" means:
  - a. In the case of a self-employed individual whose business does not require the purchase of goods for sale or resale, seventy-five percent of gross monthly earnings from self-employment.
  - b. In the case of a self-employed individual whose business requires the purchase of goods for sale or resale, seventy-five percent of the result determined by subtracting cost of goods purchased from gross receipts, determined monthly.
  - c. In the case of a business that furnishes room and board, monthly gross receipts less one hundred dollars per room and board client.
  - d. In the case of a self-employed individual in a service business that requires the purchase of goods or parts for repair or replacement, twenty-five percent of gross monthly earnings from self-employment.
  - e. In the case of a self-employed individual who receives income other than monthly, if the most recently available federal income tax return accurately predicts income, twenty-five percent of gross annual income, plus the any net gain or ~~minus the loss~~ resulting from the sale of capital items, plus ordinary gains or minus ordinary losses, divided by twelve. If the most recent available federal income tax return does not accurately predict income because the business has been recently established, because the business has been terminated or subject to severe reversal, because the applicant or recipient makes a convincing showing that actual net income is substantially less than twenty-five percent of gross profit, or because the county agency determines for any reason that actual net profits are substantially greater than twenty-five percent of gross profit, an amount determined by the county agency to represent the best estimate of monthly net income from self-employment must be used. A self-employed individual shall provide, on a monthly basis, the best information available on income and cost of goods. Income statements, when available, must be used as a basis for computation. If the business is farming



or any other seasonal business, the annual net income, divided by twelve, is the monthly net income.

4. ~~A self-employed individual who shows that gross income from self-employment, less the cost of purchased goods and building or equipment rental, is less than net income from self-employment, as calculated under subsection 3, may rely on the lesser amount. This calculation is not intended to recognize expenses that require no out-of-pocket payment, such as depreciation, which create an asset, such as equipment or property purchases or loan payments, or which are otherwise treated in this chapter, such as the personal employment expenses of payroll taxes, lunches, and transportation.~~
5. If earnings from more than one month are received in a lump sum payment, the payment must be divided by the number of months in which the income was earned, and the resulting monthly amounts are attributed to each of the months with respect to which the earnings were received.
6. 5. Income received on a contractual basis is allocated equally to each of the months covered by the contract, regardless of when the contract payments are actually received, and is deemed available to be received in the months to which income is allocated.
7. 6. The standard employment expense allowance recognizes all costs associated with employment, including transportation, uniforms, social security contributions, and income tax withholding. This standard allowance applies to adult household members and nonstudent dependent children who are employed either full time or part time.
8. 7. The standard employment expense allowance is the greater of one hundred eighty dollars or twenty-seven percent of gross earned income per month. This standard employment expense allowance applies to all individuals who receive an employment expenses allowance, including stepparents and parents of minor parents.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

#### **75-02-01.2-51. Disregarded income.**

1. The department shall establish an employment incentive, and an employment incentive limit, to reasonably encourage ~~training, education, employment, and management~~ household members to earn income.

2. If permitted under subsection 3, income must be disregarded, as an employment incentive, in determining the ~~training, education, employment, and management benefit~~ cash grant amount.
- a. ~~Twenty-seven~~ The greater of one hundred eighty dollars or twenty-seven percent of the household's monthly gross earned income, except earnings of any child who is a full-time elementary or high school student, is disregarded as a standard work expense. The amount remaining is net earned income.
- b. Any net earned income that exceeds the income incentive limit is treated as countable earned income.
- c. A portion of net earned income that is equal to or less than the income incentive limit may be disregarded, under this subdivision, in determining countable earned income.
- (1) If an applicant has earned income in the month of application or the month after the month of application, at least fifty percent of the net earned income ~~that is equal to or less than the income incentive limit~~ may be disregarded for ~~eight~~ six months beginning the month in which the earned income is first budgeted prospectively.
- (2) If a recipient has earned income, at least ~~fifty~~ thirty-five percent of the net earned income ~~that is equal to or less than the income incentive limit~~ may be disregarded for eight months seven through nine beginning the month earned income is first budgeted retrospectively.
- (3) If a recipient has earned income, at least ~~thirty~~ twenty-five percent of the net earned income ~~that is equal to or less than the income incentive limit~~ may be disregarded for the ~~ninth and tenth~~ months ten through thirteen after the month earned income is first budgeted retrospectively.
- (4) ~~If a recipient has earned income, at least ten percent of net earned income that is equal to or less than the income incentive limit may be disregarded for the eleventh and twelfth months after the month earned income is first budgeted retrospectively.~~
- (5) If a recipient has earned income, no net earned income may be disregarded under this subdivision after the ~~twelfth~~ thirteenth month after the month earned income is first budgeted retrospectively.
- (6) (5) ~~If a former training, education, employment, and management household member reapplies after receiving~~



~~no training, education, employment, and management benefits for at least twelve consecutive months, disregards under this section are determined in the same manner as for such a member who is first receiving training, education, employment, and management benefits. Individuals that have received a full thirteen months of the incentive known as the time-limited percentage will not be eligible for this incentive again.~~

- d. ~~An employed training, education, employment, and management household member who receives an employment incentive disregard for a period of at least four consecutive months is; provided employment incentive disregards of at least fifty percent for the first eight ~~six~~ months after the month in which the income is first budgeted, at least thirty ~~thirty-five~~ percent for months nine and ten ~~seven through nine~~, at least ten ~~twenty-five~~ percent for months eleven and twelve ~~ten through thirteen~~, and none thereafter.~~
  - e. ~~An employed training, education, employment, and management household member who receives an employment incentive disregard for a period of less than four consecutive months is, upon reemployment, provided the employment incentive disregards the member would have received if the first month of reemployment was the first month income is budgeted retrospectively.~~
  - f. ~~If an employed training, education, employment, and management household member, who is receiving the employment incentive disregard, voluntarily terminates employment and is unable to show good cause for failure or refusal to participate, the employment incentive disregard cycle continues as if the training, education, employment, and management household member was employed.~~
  - g. ~~If any nondisregarded income remains, a medicare health insurance premium, or paid child support or alimony, if applicable, may be disregarded.~~
  - h. ~~If any nondisregarded income remains, child and dependent care costs that are employment-related or a combination of employment-related and education or training-related may be disregarded ~~as follows:~~~~
    - ~~(1) For temporary assistance for needy families filing units, only employment-related child or adult dependent care costs; and~~
    - ~~(2) For low income home energy assistance program filing units, employment and school or training-related child and adult dependent care costs.~~
3. An income disregard is available only if:

- a. ~~The training, education, employment, and management household passes the gross income test without benefit of the income disregards; or~~
- b. ~~The the eligible employed individual previously received training, education, employment, and management benefits assistance, but has not completed the twelve-month earned income employment incentive disregard cycle, including months in which the earned income disregard was unavailable because:~~
  - (1) ~~a. No payment was made because the calculated training, education, employment, and management benefit cash grant was less than one dollar ten dollars;~~
  - (2) ~~b. The training, education, employment, and management household voluntarily requested termination of assistance for the primary purpose of avoiding completion of the earned income employment incentive disregard cycle or any part of that cycle;~~
  - (3) ~~c. The training, education, employment, and management household failed, without good cause, to file a signed and completed monthly report form by the fifteenth day of the month in which the report was due;~~
  - (4) ~~d. A member of the training, education, employment, and management household terminated or reduced employment, without good cause, in the thirty days preceding the month in which the earned income employment incentive disregard was unavailable; or~~
  - (5) ~~e. A member of the training, education, employment, and management household refused a bona fide job offer, or voluntarily quit a job, without good cause, in the thirty days preceding the month in which the earned income employment incentive disregard was unavailable.~~
- 4. If, in any month, additional income received from a recurring source causes the ~~training, education, employment, and management~~ household to be suspended as ineligible for one month, the month of suspension does not count as a month for purposes of this section.
- 5. Nonhousehold member deduction for stepparent and minor parent budgeting, if applicable, may be made.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02



**75-02-01.2-52. Voluntary quit or refusal of employment.** No ~~training, education, employment, and management~~ household member, except a dependent child, may refuse a bona fide offer of employment or training for employment, or terminate employment, without good cause, within thirty days before the date of application.

1. If an offer of employment or training was made through job service North Dakota, job service North Dakota shall determine if a bona fide offer was made and if there was good cause for refusing it.
2. If an offer of employment or training was made other than through job service North Dakota, the county agency shall determine if a bona fide offer was made and if there was good cause for refusing it, considering the following factors:
  - a. Whether there was a definite offer of employment at wages meeting any applicable minimum wage requirements and that are customary for such work in the community;
  - b. Whether there were any questions as to the physical or mental ability of the ~~training, education, employment, and management~~ household member to engage in the offered employment or training for employment;
  - c. Whether there were any questions of the working conditions such as risks to health, safety, or lack of workers' compensation protection;
  - d. Whether the ~~training, education, employment, and management~~ program household member had a way to get to or from the particular job, including evidence the ~~training, education, employment, and management~~ program household member reasonably attempted to arrange for transportation;
  - e. Whether, as a condition of being employed, the ~~training, education, employment, and management~~ program household member would be required to join a company union, or to resign or refrain from any bona fide labor organization, or would be denied the right to retain membership in and observe the lawful rules of any such organization;
  - f. Whether the position offered is vacant directly due to a strike, lockout, or other labor dispute;
  - g. Whether the work is at an unreasonable distance from the ~~training, education, employment, and management~~ program household member's residence, provided one-way traveltime of one hour or less may not be treated as an unreasonable distance;

- h. Whether gross wages are less than the allowable employment expense and child care or adult dependent care; and
  - i. Whether an individual's substantially continuous presence in the household is necessary to care for another individual in the household to whom the individual owes a legal duty to provide care, who has a condition, verified by reliable medical evidence, which does not permit self-care or care by another household member; and
  - j. Whether the individual is a victim of domestic violence.
3. If it is determined that a household member voluntarily quit employment or a bona fide offer of employment or training was refused by a training, education, employment, and management program household member, without good cause:
- a. In the case of a recipient ~~training, education, employment, and management~~ household, the member who voluntarily quits a job or refuses a bona fide offer of employment or training for employment is ineligible for the benefit month in which the refusal occurred; and
  - b. In the case of an applicant ~~training, education, employment, and management~~ household, the filing unit containing the member entire household is ineligible ~~in each of~~ for the thirty days following the actual date of refusal or termination of employment.
4. If it is determined that a recipient ~~training, education, employment, and management~~ household member voluntarily quits employment without good cause, without prior approval from the household member's coordinator, that household member is ineligible in the benefit month in which the job quit occurred, and may not receive the twenty-seven percent standard employment expense allowance described in section 75-02-01.2-51, any employment incentive disregard, or any child or adult dependent care deduction, in the month the job quit occurred, and in the month the income is budgeted.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

#### **75-02-01.2-53. Deduction for dependent care.**

- 1. A deduction for a member of a ~~temporary assistance for needy families filing unit~~ household who is an employed caretaker relative or ~~for a caretaker relative of a low income home energy assistance program filing unit who is employed or~~ attending school or training may be made for the cost of necessary care of a child or incapacitated adult who is



a member of the ~~training, education, employment, and management~~ household, living in the home, and receiving ~~benefits~~ assistance.

2. The deduction may not be made for the cost of dependent care provided by the caretaker relative's child or stepchild who is under twenty-one years of age, unless:
  - a. The provider of dependent care does not live in the home occupied by the ~~training, education, employment, and management~~ household;
  - b. The provider of dependent care is at least eighteen years of age;
  - c. The provider of dependent care was not claimed as a dependent on the most recent federal income tax return filed by the caretaker relative;
  - d. A bona fide relationship of employer and employee exists between the caretaker relative and the provider of dependent care; and
  - e. The provider of dependent care is not a member of the caretaker relative's ~~training, education, employment, and management~~ household.
3. The deduction may not be made for the cost of dependent care provided to a child by that child's stepparent or parent who lives in the home occupied by the ~~training, education, employment, and management~~ household.
4. The deduction is for the lesser of the actual cost of care limited to: or limits established under the child care assistance program based on the age of the child.
  - ~~a. In the case of a child under age two, two hundred dollars per month;~~
  - ~~b. In the case of an incapacitated adult, two hundred dollars per month; or~~
  - ~~c. In the case of a child two years of age or older, one hundred seventy-five dollars per month.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

**75-02-01.2-54. Unearned income considerations.**

1. Unearned income must be verified and documented in the case record.
2. All unearned income must be treated as available in the month in which the income is received unless the income is disregarded. Unearned income must be applied to determine eligibility for, and the ~~monthly benefit of, training, education, employment, and management~~ amount of, the household's monthly cash grant.
3. All nonexempt unearned income must be considered available in the month in which it is received. Unearned income is usually received at fixed intervals and at regularly scheduled dates. State or federal assistance payments such as supplemental security income or social security received on a recurring basis must be treated as received once per month, even if mailing cycles may cause two payments to be received in one month and none received in another month.
4. Unearned income received annually or received in regular annual totals, but in irregular intervals, must be considered available, in each month, in an amount equal to one-twelfth of the annual total. The twelve-month period may be a calendar year or other twelve-month fiscal period appropriate to the nature of the payment. Sources of income appropriate for this treatment include:
  - a. Nonexcluded lease payment income deposited in and disbursed through individual Indian moneys accounts maintained by individual Indians by the bureau of Indian affairs as proceeds from the lease of lands held by the federal government in trust for the Indian;
  - b. Lease payments made to persons for the use of lands occupied or owned by those persons unless the lease specifically provides for monthly payments or unless the lease is for a total term of less than one year; and
  - c. Mineral lease payments, however denominated, except initial leasing bonus payments.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

#### **75-02-01.2-55. Reinstatement following suspension or case closing.**

1. If ~~training, education, employment, and management benefits are~~ assistance is reinstated after a suspension of one month, all factors of eligibility must be considered to determine eligibility. If eligibility exists, the amount of the ~~training, education, employment, and management benefit~~ assistance is determined based on two-month retrospective budgeting.



2. If the ~~temporary assistance for needy families filing unit household~~ is for any reason ineligible in the month following the month of a suspension, the case must be closed.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-56. Computing payment for first and second months of eligibility.**

4. If an applicant ~~training, education, employment, and management household~~ has not received ~~temporary assistance for needy families benefits~~ assistance in the preceding calendar month:
  - a. 1. ~~Benefits~~ Assistance for the ~~temporary assistance for needy families filing unit household~~ must be prorated based on the date of request or the date of eligibility, whichever is later; and
  - b. 2. The county agency shall compute ~~benefits~~ the amount of the cash grant for the ~~temporary assistance for needy families filing unit household~~ for the initial month of eligibility and the month following using prospective budgeting. The county agency shall otherwise compute ~~benefits~~ for the ~~temporary assistance for needy families filing unit~~ amount of assistance provided to the household using retrospective budgeting.
2. If the ~~applicant training, education, employment, and management household~~ received aid to families with dependent children benefits in North Dakota in only the preceding calendar month the county agency shall compute ~~benefits for the temporary assistance for needy families filing unit for the initial month of eligibility using prospective budgeting and thereafter using retrospective budgeting.~~
3. If the ~~applicant training, education, employment, and management household~~ received aid to families with dependent children benefits in North Dakota in the preceding two or more calendar months, the county agency shall compute ~~benefits for the temporary assistance for needy families filing unit using retrospective budgeting.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-57. Computing payment for months following the second month of eligibility.** The county agency shall compute ~~training, education,~~

~~employment, and management benefits~~ assistance for months following the second month of eligibility through two-month retrospective budgeting.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-58. Computing payment where if individuals are added to the ~~training, education, employment, and management~~ household.**

1. If the individual being added to a ~~training, education, employment, and management~~ household did not receive ~~training, education, employment, and management benefits~~ assistance in the previous month, ~~benefits~~ assistance for the added individual ~~are is~~ based on the pro rata portion of the additional monthly ~~benefit~~ cash grant amount ~~increase~~ equal to the percentage of the month remaining after:
  - a. The date of birth of a newborn, provided that the request for the newborn is made within ten days of the date of birth and the newborn's social security number or application for social security number ~~is~~ and verification of birth are furnished within thirty days of the request; and
  - b. In all other cases, the later of the date of the request or the date the individual becomes eligible.
2. ~~If the individual being added to an existing training, education, employment, and management household has not received temporary assistance for needy families benefits or food stamp benefits in the preceding calendar month:~~
  - ~~a. The added individual's temporary assistance for needy families and food stamp benefits must be prorated based on the date of request or the date of eligibility, whichever is later; and~~
  - ~~b. The county agency shall compute the added individual's temporary assistance for needy families and food stamp benefits for the added individual for the initial month of eligibility and the month following using prospective budgeting.~~
3. If the individual being added to an existing ~~training, education, employment, and management~~ household received temporary assistance for needy families and food stamp benefits in a temporary assistance for needy families grant from another state in the preceding calendar month:
  - a. The added individual's ~~temporary assistance for needy families and food stamp benefits~~ cash grant must be determined effective



the first day of the month of request or prorated from the date of eligibility, whichever is later; and

- b. The county agency shall compute the added individual's ~~temporary assistance for needy families and food stamp benefits~~ cash grant for the initial month of eligibility and the month following using prospective budgeting.
4. 3. If the individual being added to an existing ~~training, education, employment, and management~~ household received ~~temporary assistance for needy families and food stamp benefits~~ a temporary assistance for needy families grant in North Dakota ~~in~~ during the preceding calendar month:
- a. The added individual's ~~temporary assistance for needy families and food stamp~~ benefits must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later; and
  - b. The county agency shall compute the added individual's ~~temporary assistance for needy families and food stamp benefits~~ cash grant for the initial month of eligibility and the month following by continuing the ~~temporary assistance for needy families~~ budget methodology which was used in the preceding month.
5. ~~If the individual being added to an existing training, education, employment, and management household received temporary assistance for needy families benefits, but did not receive food stamp benefits in another state in the preceding month:~~
- ~~a. The added individual's temporary assistance for needy families benefits must be determined effective the first day of the month of request or prorated from the date of eligibility, whichever is later, unless:~~
    - ~~(1) The other state pays temporary assistance for needy families benefits two times each month;~~
    - ~~(2) One-half of the temporary assistance for needy families benefit has been paid by the other state during the month of request; and~~
    - ~~(3) The added individual is determined eligible by the sixteenth day of the month;~~

~~In which case, temporary assistance for needy families benefits in North Dakota must be paid at a one-half pro rata share for the initial month of eligibility for the added individual; and~~

- ~~b. The added individual's food stamp benefits must be prorated based on the date of request or date of eligibility, whichever is later.~~
- ~~6. If the individual being added to an existing training, education, employment, and management household received food stamp benefits, but not temporary assistance for needy families benefits in another state in the preceding calendar month:~~
  - ~~a. The added individual's temporary assistance for needy families benefits must be prorated based on the date of request or the date of eligibility, whichever is later;~~
  - ~~b. The added individual's food stamp benefits must be determined effective the first day of the month of request or the date of eligibility, whichever is later; and~~
  - ~~c. The county agency shall compute the added individual's temporary assistance for needy families and food stamp benefits for the initial month of eligibility and the month following by using prospective budgeting.~~
- ~~7. If the individual being added to an existing training, education, employment, and management household received temporary assistance for needy families benefits, but not food stamp benefits in North Dakota in the preceding calendar month:~~
  - ~~a. The added individual's temporary assistance for needy families benefits must be determined effective the first day of the month of request or the date of eligibility, whichever is later;~~
  - ~~b. The added individual's food stamp benefits must be prorated based on the date of request or the date of eligibility, whichever is later; and~~
  - ~~c. The county agency shall compute the added individual's temporary assistance for needy families and food stamp benefits for the initial month of eligibility and the month following by continuing the temporary assistance for needy families budget methodology which was used in the preceding month.~~
- ~~8. If the individual being added to the existing training, education, employment, and management household received food stamp benefits, but not temporary assistance for needy families benefits in North Dakota in the preceding calendar month:~~
  - ~~a. The added individual's temporary assistance for needy families benefits must be prorated based on the date of request or date of eligibility, whichever is later;~~



- b. ~~The added individual's food stamp benefits must be determined effective the first day of the month of request or date of eligibility, whichever is later; and~~
- c. ~~The county agency shall compute the added individual's temporary assistance for needy families and food stamp benefits for the initial month of eligibility and the month following by using prospective budgeting.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-59. Computing payments ~~where~~ if individuals leave the training, education, employment, and management household.**

1. ~~If an individual who was a training, education, employment, and management household member leaves the household during a benefit month, the individual is included in the training, education, employment, and management household during that month.~~
2. ~~The county agency shall determine eligibility for the remaining members of the training, education, employment, and management household, in the month following the month in which the former training, education, employment household member left, through retrospective budgeting.~~

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-60. Computing payment ~~where~~ if stepparent or alien parent income is deemed.**

1. ~~The amount of a temporary assistance for needy families benefit household's cash grant must be reduced by the deemed income of a stepparent or an alien parent who lives in the home occupied by the temporary assistance for needy families filing unit, but who is not a member of the temporary assistance for needy families filing unit household.~~
2. ~~To encourage marriage among single-parent families and assist those families when the primary individual in a training, education, employment, and management household marries, the income of the stepparent whose needs were not previously included in the temporary assistance for needy families filing unit household must be disregarded in determining the temporary assistance for needy families portion of the training, education, employment, and management benefit cash grant for the first six months, effective the month of the marriage. The~~

~~stepparent's income is counted in determining the food stamp and low income home energy assistance program portion of the training, education, employment, and management benefit. This subsection applies to training, education, employment, and management recipients only, but not to applicants. No six-month disregard of stepparent income is allowed in situations where when a primary individual marries before receiving training, education, employment, and management benefits.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-61. Computing benefits when an individual's needs are deleted from the training, education, employment, and management benefit cash grant.** If an individual is subject to the sanction of deletion of, that individual's needs are removed from the training, education, employment, and management benefit, cash grant and that individual's income and assets must be considered in determining the eligibility and needs of the remaining members of the training, education, employment, and management household.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-62. Computing payment for a child in boarding school.**

1. If a child leaves the residence occupied by the ~~temporary assistance for needy families filing unit~~ household to attend boarding school, the child is treated as having left on the first day of the month following the month in which the child actually left.
2. If a child returns from boarding school to the residence occupied by the ~~temporary assistance for needy families filing unit~~ household and the caretaker relative notifies the county agency of the return or anticipated return by the fifth day of the month of actual return, the child is treated as having returned on the first day of the month of actual return, but is otherwise treated as having returned on the first day of the month following the month of actual return.
3. Payment for any month in which a child who is a member of the ~~temporary assistance for needy families filing unit~~ household is in boarding school, or is treated as in boarding school, is, with respect to that child, limited to an allowance for clothing and personal needs.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02



**75-02-01.2-63. Budgeting in unusual circumstances.**

1. Except as provided in subsection 3, if an eligible child lives in the home of a relative who is not the child's parent, the relative is ineligible if the relative's spouse also lives in the home.
2. If an eligible child lives in the home of a relative who is not the child's parent, and the spouse of that relative does not also live in the home, the relative:
  - a. Must be excluded from the ~~temporary assistance for needy families filing unit~~ household if the relative's income and assets would cause the ~~temporary assistance for needy families filing unit~~ household to be ineligible; and
  - b. May be included in the ~~temporary assistance for needy families filing unit~~ household if the relative requests inclusion in the ~~temporary assistance for needy families filing unit~~ and the relative's income and assets do not cause the ~~temporary assistance for needy families filing unit~~ household to be ineligible.
3. Except as provided in subsection 5, if an eligible child lives in the home of a relative who is not the child's parent, but who is, and could in the absence of that child be, a member of a ~~temporary assistance for needy families filing unit~~ household which includes the spouse of the relative, the eligible child must be added as a member of the ~~temporary assistance for needy families filing unit~~ household of the relative.
4. Except as provided in subsection 5, if two or more eligible children are living in the home of an ineligible relative who is not a parent of either child, all eligible children must be included in a single ~~temporary assistance for needy families filing unit~~ household.
5. An individual who is a caretaker relative in a ~~temporary assistance for needy families filing unit~~ household may act as a temporary payee for a child who is a member of another ~~temporary assistance for needy families filing unit~~ household and with respect to whom the individual is a relative, while that child lives temporarily with the individual, to preserve the child's usual living arrangement with that child's caretaker relative who is:
  - a. Hospitalized; or
  - b. Incarcerated for ninety days or less.
6. If two or more relatives, who are each eligible caretakers for one or more children but who are not married to each other and who have no children in common living in the household, live together, each caretaker and the child or children with respect to whom that caretaker is a relative must

be budgeted as a ~~temporary assistance for needy families filing unit~~ household.

7. If a child lives with a relative who receives supplemental security income benefits, budgeting is based on the number of eligible individuals in the ~~temporary assistance for needy families filing unit~~ household.
8. If a child lives with a parent whose needs are deleted from the ~~temporary assistance for needy families filing unit~~ household due to the parent's failure to cooperate in obtaining support and in establishing paternity or in the job opportunities and basic skills program, the parent's income and assets must be considered in determining eligibility for the remaining members of the ~~temporary assistance for needy families filing unit~~ household. The income of the parent is subject to any applicable income disregards.
9. If an eligible caretaker leaves a child in the care of another individual while the caretaker pursues an educational program in another community, budgeting for the ~~temporary assistance for needy families filing unit~~ household must be done as if the unit resided together.
10. a. If a member of a ~~training, education, employment, and management~~ household is hospitalized or residing in a halfway house, a drug and alcohol facility, the North Dakota state hospital, a nursing home, or a swing bed facility, and there is a medical plan that the individual may return to the ~~training, education, employment, and management~~ household:
  - (1) No benefit reduction in assistance may be made for the first three full months if the individual receives a ~~temporary assistance for needy families portion of the training, education, employment, and management benefit~~ cash grant, but the needs of the individual must be reduced thereafter to a forty-five dollar clothing and personal needs allowance; and
  - (2) ~~Effective the first day of the month following admission to a hospital or halfway house, the needs of an individual who receives only food stamps and the low income home energy assistance program portion of the training, education, employment, and management benefit must be reduced; and~~
  - (3) ~~Effective the first day of the month following the date of admittance to the institution, the needs of a training, education, employment, and management household member admitted to a veterans administration hospital, the North Dakota state hospital, or any other state institution other than the North Dakota state hospital must be deleted.~~



- b. If the needs of a primary individual are ~~reduced or deleted from the training, education, employment, and management household~~, the case must be closed and a new primary individual may reapply on behalf of the household.
- c. For periods when the needs of an individual must be reduced, the ~~patient's individual's share of the training, education, employment, and management benefit assistance~~ is limited to the amount ~~for~~ of the clothing and personal needs allowance, effective with the first month the ~~benefit~~ reduction may be made. This budgeting arrangement must continue as long as the medical plan calls for the individual to return to the ~~training, education, employment, and management household, but may not exceed nine months.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

#### **75-02-01.2-64. Essential services.**

1. The county agency may determine that a service, which the family cannot perform independently because of infirmity or illness, is essential to the well-being of the ~~temporary assistance for needy families filing unit household~~.
2. "Essential service" includes housekeeping services and child care during a caregiver's illness or hospitalization, attendant services, and extraordinary costs of accompanying a member of the family to a distant medical or rehabilitation facility, arising out of a special need or condition of a member of the ~~temporary assistance for needy families filing unit household~~ or an ineligible caretaker who is not a parent of a child in the ~~temporary assistance for needy families filing unit household~~ and who is not receiving supplemental security income benefits and may include other expenses and services, provided:
  - a. The need is unforeseen and due to no fault of the household;
  - b. The department is the payer of last resort; and
  - c. The household receives prior approval from the department.
3. The cost of essential services:
  - a. May be provided for in the ~~training, education, employment, and management benefit~~ cash grant only if the cost has been established through negotiations with the provider of the services; and

- b. Must be budgeted and paid retrospectively or by supplemental payments.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-65. Catastrophic events.** The county agency may authorize vendor payments for the replacement of food, clothing, furniture, household equipment, and supplies, at a level comparable to that maintained by the ~~temporary assistance for needy families filing unit~~ household prior to a flood, fire, storm, or other disaster, if:

1. The availability of replacements, at no or nominal cost to the ~~temporary assistance for needy families filing unit~~ household, from sources such as the American red cross, has been determined and assistance with replacements coordinated; and
2. The loss of items for which replacement is sought has been determined.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-66. Medical insurance premiums.**

1. The county agency may authorize payment for the cost of premiums for health insurance carried by the ~~temporary assistance for needy families filing unit~~ household. Payment may be made for only one policy of health insurance. If the policy covers individuals who are not members of the ~~temporary assistance for needy families filing unit~~ household, payment is limited to:
  - a. If the ~~temporary assistance for needy families filing unit~~ household or insurer provides information that describes the manner in which the insurance company allocates premium charges between the insureds, the allocation attributable to the members of the ~~temporary assistance for needy families filing unit~~ household; or, if that allocation is unavailable; and
  - b. The total premium amount, divided by the number of individuals covered, and then multiplied by the number of covered members of the ~~temporary assistance for needy families filing unit~~ household.
2. For purposes of this section, "premiums for health insurance" includes payments made for insurance, health care plans, or nonprofit health service plan contracts that provide benefits for hospital, surgical,



~~and medical care and dental or vision insurance~~, but do not include payments made for coverage that is:

- a. Limited to disability or income protection coverage;
  - b. Automobile medical payment coverage;
  - c. Supplemental to liability insurance;
  - d. Designed solely to provide payments on a per diem basis, daily indemnity, or nonexpense-incurred basis; or
  - e. Credit accident and health insurance; ~~or,~~
  - f. ~~Dental or vision insurance.~~
3. Payment for the cost of premiums for health insurance:
- a. May be provided in the ~~training, education, employment, and management benefit~~ cash grant only if the cost or pro rata cost has been established; and
  - b. Must be budgeted and paid in the month in which the county agency is informed of the insurance and receives verification of the cost.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-67. Child restraint systems.** The county agency may authorize payment for members of the ~~temporary assistance for needy families filing unit household~~ for the verified cost of an approved child restraint system designed to secure a child while riding in a passenger vehicle.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-68. ~~Presidential high~~ High school graduate or general equivalency diploma incentive payment.** The county agency may authorize a one-time payment of five hundred dollars to each ~~teen parent individual~~ in the ~~temporary assistance for needy families filing unit household~~ upon completion of high school or receipt of general education development diploma. ~~For purposes of~~

~~this section, a parent is a teen parent through the month of that parent's twentieth birthday.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-69. Unrestricted payment of benefits assistance - Exceptions.**

1. The usual method of providing benefits assistance under this chapter is through payments in cash, check, or warrant, immediately redeemable at par, made to the caretaker relative or legal guardian at regular intervals, with no restrictions on the use of the funds. This practice is followed because recipients of benefits assistance do not, by virtue of their need for benefits assistance, lose the capacity to select how or when the needs of the ~~training, education, employment, and management~~ household must be met. If the caretaker relative or other members of the household manage funds in a manner that is clearly detrimental to members of the ~~training, education, employment, and management~~ household, or if the caretaker relative is subject to sanction for nonconformance to program requirements, protective payments may be used to assist the ~~training, education, employment, and management~~ household in financial management.
2. a. A determination that there is a detrimental mismanagement of funds may be based on:
  - (1) Continued failure to plan for and make necessary expenditures during periods for which benefits are assistance is provided;
  - (2) Continued failure to provide children in the ~~temporary assistance for needy families filing unit household~~ with proper food, clothing, or housing so as to threaten the chances of those children for healthy growth and development;
  - (3) Persistent failure to pay the cost of rent, food, utilities, school supplies, or other essentials;
  - (4) Repeated loss of housing due to nonpayment of housing costs; or
  - (5) Repeated failure to pay debts that result in attachments of or levies against current income.
- b. The fact that debts are not paid on a timely basis may not be the sole basis for a determination that there is detrimental



mismanagement of funds unless relevant factors, including the following, have been considered:

- (1) Whether the family has experienced an emergency or extraordinary event that reasonably required the expenditure of funds ordinarily used to meet the needs of the ~~temporary assistance for needy families filing unit~~ household;
  - (2) Whether reasonable payments on necessarily incurred debt exceeds the family's income; or
  - (3) Whether the family has withheld payment on a debt as a part of a legitimate dispute concerning the amount of the debt or the terms or performance of a contract out of which the debt arises.
3. a. The county agency may select, appoint, and remove a protective payee to receive and manage ~~an assistance unit's benefits~~ a household's cash grant. In making a selection, the county agency shall consider any individual nominated by the caretaker relative.
- b. The protective payee is a fiduciary responsible for assuring that ~~the benefits are~~ cash grant is expended to achieve the maximum reasonable benefit for the assistance and for working cooperatively with the county agency.
- c. The protective payee may be furnished information about the ~~temporary assistance for needy families filing unit~~ household, from the county agency's records, sufficient to allow the protective payee's role to be carried out. The information furnished to the protective payee under this section remains confidential information subject to the provisions of North Dakota Century Code section 50-06-15.
- d. The status of a ~~training, education, employment, and management~~ household for which a protective payee has been appointed must be reviewed by the county agency as often as necessary, but no less often than every six months, to determine if:
- (1) The protective payee is performing satisfactorily;
  - (2) The ~~temporary assistance for needy families filing unit~~ household should be restored to unrestricted money payment status; and

- (3) Some other arrangement should be sought for the care of children who are members of the ~~temporary assistance for needy families filing unit~~ household.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-70. Payee.** Each ~~training, education, employment, and management~~ household shall have a designated payee who must be the primary individual unless there is a protective payee.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-71. Making payment - Correcting overpayments and underpayments.**

1. A payment of ~~training, education, employment, and management~~ benefits a cash grant is deemed to be complete as of 12:01 a.m. on the first day of the month for which it is issued.
2. Except as provided in subsection 3, a payment check must be endorsed by the payee, or an attorney-in-fact for the payee, with a signature, written in ink, in the same form as the indicated payee.
  - a. If the payee is a guardian, the endorsement must so indicate and must name the ward.
  - b. If the endorsement is by an attorney-in-fact of the payee, the endorsement must so indicate and must name the attorney-in-fact.
3. If the payee dies or becomes absent before a properly issued check has been endorsed, an endorsement may be made:
  - a. By the payee's spouse or surviving spouse, if that spouse has been living with the payee, and, if there is no such spouse;
  - b. By a temporary payee, and, if there is no such spouse or temporary payee; or
  - c. By the director of the county agency.
4. A payment check endorsed under subsection 3 must include, immediately below the endorsement, a statement of approval dated and signed by the director of the county agency.



5. A payment check may be issued to replace a lost, stolen, or destroyed payment check only if:
  - a. An indemnity bond is executed by the payee and delivered to the department's finance office; and
  - b. A stop-payment order is placed against the payment check alleged to be lost or destroyed.
6. Any overpayment, whether resulting from recipient or administrative error, or from assistance granted pending a decision on an appeal adverse to the appellant, and whenever made, is subject to recovery. Except as provided in subsection 7, an overpayment must be collected from any ~~training, education, employment, and management~~ household that includes a member who benefited from, or who was responsible for, the overpayment, by reducing the ~~training, education, employment, and management benefits~~ cash grant, to that ~~training, education, employment, and management~~ household, by an amount equal to ten percent of the standard of need.
7. If a court order, entered in a matter that considered the circumstances leading to the overpayment, requires restitution of an amount less than the amount of the overpayment, or requires periodic payments of restitution greater or less than the monthly amount determined under subsection 6, the amount of restitution and periodic payments so ordered must be used to calculate reduction, in the ~~training, education, employment, and management benefit~~ cash grant amount, used to recover an overpayment.
8. Unless the overpayment was the result of fraud, including fraud involving the crimes of theft and making false statements in a governmental matter, the county agency may suspend efforts to collect overpayments when no individual who benefited from, or was responsible for, the overpayment is a member of a ~~training, education, employment, and management~~ household:
  - a. If the amount of the overpayment is less than thirty-five dollars; or
  - b. When recovery is determined not to be cost effective after an effort to recover has failed, including, at a minimum, a written communication describing the amount and basis for the overpayment, and requesting repayment.
9. The county agency shall promptly correct any underpayment for a current member of a ~~training, education, employment, and management~~ household, or to an individual who would be a current member of a

~~training, education, employment, and management~~ household but for the error that led to the underpayment.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-72. Intentional program violation - Disqualification penalties.**

1. For purposes of this section:
  - a. "Intentional program violation" means an individual's intentional action or failure to act which consists of:
    - (1) Making a false or misleading statement or misrepresenting, concealing, or withholding facts; ~~or~~
    - (2) Violating provisions of North Dakota Century Code chapter 50-09, this chapter, or any state statute relating to the acquisition or use of ~~benefits~~ assistance provided under North Dakota Century Code chapter 50-09 or this chapter; ~~and or~~
    - (3) Being convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two or more states; and
  - b. An individual intends all results reasonably foreseeable from the actions the individual takes or fails to take.
2. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court must be subject to the penalties provided in this section.
3. An individual who waives the individual's right to appear at an intentional program violation hearing must be subject to the penalties provided in this section.
4. During any period of disqualification:
  - a. The individual's needs may not be taken into account when determining the ~~training, education, employment, and management~~ household's need and amount of assistance;



- b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the ~~training, education, employment, and management~~ household;
  - c. Income disregards may be provided for the disqualified individual when determining if the remaining household members are eligible; and
  - d. The overpayment is recovered through a reduction, at the rate of twenty percent of the ~~training, education, employment, and management~~ standard of need, ~~including~~ excluding special items of need.
- 5. The duration of the penalty described in this section must be:
  - a. One year for the first offense;
  - b. Two years for the second offense; and
  - c. Permanent for the third and any subsequent offense; and
  - d. Ten years for individuals who fraudulently misrepresented residence.
- 6. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction, but in no event may the duration of the period for which the penalty was imposed be subject to review.
- 7. In cases ~~where~~ when a disqualification penalty and other sanctions or penalties apply:
  - a. The disqualification penalties in this section must be in addition to, and may not be substituted for, any other sanctions or penalties that may be imposed for the same offense; and
  - b. The disqualification penalties imposed under this section affect only the individual concerned and cannot substitute for other sanctions imposed under this chapter.
- 8. A disqualification penalty imposed on an individual by another state may be continued in this state and may be used to determine the appropriate duration of a disqualification penalty imposed under this section.
- 9. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.

10. The department shall issue a written notice informing the individual of the period of disqualification and the amount of assistance the ~~training, education, employment, and management~~ household may receive during the disqualification period.
11. Overpayments must be recovered from the assistance unit which was overpaid, any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or any individual members of the overpaid assistance unit whether or not currently a recipient.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-72.1. Denial of assistance for fugitive felons, probation and parole violators, and certain convicted drug offenders.**

1. An individual may not be included in the cash grant if the individual is:
  - a. Fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of such state;
  - b. Violating a condition of probation or parole imposed under federal or state law; or
  - c. Convicted of a felony offense for an act which occurred after August 22, 1996, involving the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)]. The disqualification does not apply to alcohol-related convictions.
2. During any period of disqualification:
  - a. The individual's needs may not be taken into account when determining the household's need and amount of assistance;
  - b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the household; and



- c. Income disregards may be provided for the disqualified individual when determining if the remaining household members are eligible.

**History:** Effective January 1, 2003.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-73. Health tracks.**

1. All members of a ~~training, education, employment, and management~~ household, under age twenty-one, must participate in health tracks screening services at the time of application and at least annually thereafter, unless excepted under subsection 2. Failure to participate results in a seven percent reduction in the net ~~training, education, employment, and management benefit cash grant~~ after recoupments have been calculated. This reduction in ~~benefits~~ is effective the first month after the month the failure to participate is determined and remains in effect until health tracks requirements in the ~~training, education, employment, and management~~ contract are met. All household members required to receive a health tracks screening who complete the screening are eligible for a twenty-five dollar payment.
2. An eligible member need not participate in the health tracks requirements if the member:
  - a. Is a caretaker under age twenty-one who is at least age twenty years, ten months;
  - b. Is an individual who has received a complete screening within the last twelve months performed by an enrolled health tracks provider; or
  - c. Establishes good cause for not participating in health tracks.
3. Good cause for failure or refusal to participate in health tracks exists if:
  - a. The child and the child's caretaker are believers in a faith with a clergy-verified doctrinal opposition to participation in health tracks; or
  - b. The child or the child's caretaker suffers from a medically verified acute illness.
4. Good cause for not participating in health tracks screening must be the responsibility of the health tracks program service manager. The health tracks program service manager must be responsible to determine good

cause, must set the end dates for good cause, and must be responsible for conciliation.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-74. Assessment and case plan.** Assessment is an ongoing process in the ~~training, education, employment, and management~~ program. The primary tool used in ~~assessment~~ is the ~~knowledge-based assessment~~ instrument that ~~all training, education, employment, and management households complete with the training, education, employment, and management program manager.~~ The assessment may result in goals for the household. The ~~training, education, employment, and management~~ program case manager and household prioritize the goals to develop a case plan. This case plan identifies issues to be resolved, tasks for completing the goals, and times to complete the tasks. Agencies or services that can assist in reaching goals are identified and referrals to agencies are made when the case plan is formalized. ~~The case plan is the basis for the training, education, employment, and management contract developed with the training, education, employment, and management household.~~

**History:** Effective December 9, 1996; ~~amended effective January 1, 2003.~~

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-75. ~~Training, education, employment, and management~~ Temporary assistance for needy families social contract.** The ~~training, education, employment, and management~~ temporary assistance for needy families social contract is an agreement, signed by the ~~training, education, employment, and management~~ household, that documents the goals and tasks identified in the assessment, the mandatory requirements on the application for benefits, and records times for the completion of those tasks. The ~~training, education, employment, and management~~ social contract is negotiated between the ~~training, education, employment, and management~~ program case manager and the ~~training, education, employment, and management~~ household. Each ~~training, education, employment, and management~~ household must develop and sign a contract, by the end of the ~~second~~ fourth benefit month, as a condition of continued eligibility. The ~~training, education, employment, and management~~ household must comply with the terms of the social contract. The ~~training, education, employment, and management~~ social contract is subject to change as conditions warrant. It must be reviewed and updated with the ~~training, education, employment, and management~~ household on at least an annual basis. A ~~training, education, employment, and management~~ temporary assistance for needy families social contract must:

1. Address immediate health and safety needs that are mutually identified by the ~~training, education, employment, and management~~ household



and ~~training, education, employment, and management~~ program case manager;

2. Specify what the responsibilities of the ~~training, education, employment, and management~~ household and the ~~training, education, employment, and management~~ program case manager may be;
3. Establish realistic goals, reflective of the ~~training, education, employment, and management~~ household's capabilities and the resources available to assist in meeting goals;
4. Clearly identify tasks required for continued ~~training, education, employment, and management~~ participation;
5. Establish specific times for the accomplishment of tasks; ~~and~~
6. Provide a means to evaluate progress ~~towards~~ toward meeting identified goals and tasks; ~~and~~
7. Unless an exemption or good cause is determined, require compliance with the mandatory requirements, which include:
  - a. Child support enforcement when appropriate deprivation reasons exist;
  - b. Health tracks program; and
  - c. Job opportunities and basic skills program.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

#### **75-02-01.2-76. Initial social contract.**

1. The initial ~~training, education, employment, and management~~ contract assessment must be completed and social contract signed by the end of the fourth benefit month. The social contract must be signed by the primary individual in the ~~training, education, employment, and management~~ household and the ~~training, education, employment, and management~~ program case manager. Ten days before the end of the fourth benefit month, a written statement must be sent reminding the ~~training, education, employment, and management~~ household that the household is ineligible for a fifth month's benefits assistance if a ~~training, education, employment, and management~~ the social contract is not signed.
2. If a ~~training, education, employment, and management~~ household becomes ineligible under subsection 1 because the assessment is not

~~completed and the social contract is not signed, and the household reapplies within a one-year period from their its original training, education, employment, and management application date, a training, education, employment, and management cash benefit grant may not be issued until the household completes a training, education, employment, and management an assessment and signs a training, education, employment, and management social contract.~~

3. For purposes of this section:

- a. ~~If a training, education, employment, and management household becomes ineligible under subsection 1 because the contract is not signed and reapplies more than one year after the household's last training, education, employment, and management application date, the reapplication may be treated as a new application; and~~
- b. ~~If a training, education, employment, and management household becomes ineligible for a reason other than failure to sign a social contract as required under subsection 1, the reapplication may be treated as a new application.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-77. Annual reassessment.** ~~The training, education, employment, and management social contract must be reviewed and updated annually based on a reassessment of the household. A reassessment may be made when there has been a significant change to the training, education, employment, and management household. Addition or deletion of an adult family member is a significant change.~~

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-78. Mandatory contract requirements.** Repealed effective January 1, 2003. ~~Unless an exemption or good cause is determined, the training, education, employment, and management contract must require:~~

- ~~1. Cooperation with child support enforcement when appropriate deprivation reasons exist;~~
- ~~2. Cooperation with the health tracks program;~~
- ~~3. Cooperation with job opportunities and basic skills program for targeted members of the temporary assistance for needy families filing unit; and~~



4. ~~Cooperation with work registration for eligible training, education, employment, and management household members not a part of the temporary assistance for needy families filing unit.~~

~~History: Effective December 9, 1996; amended effective July 1, 1997.~~

~~General Authority: NDCC 50-06-01.8~~

~~Law Implemented: NDCC 50-06-01.8~~

**75-02-01.2-79. Sanctions under the training, education, employment, and management program contract for noncompliance with temporary assistance for needy families program requirements.**

1. ~~Training, education, employment, and management Temporary assistance for needy families participants must sign and who fail or refuse to comply with a training, education, employment, and management contract as a condition of eligibility program requirements, without good cause, may be sanctioned. Each household member may be required to comply with certain requirements under the contract. Failure Actions or failures to comply or cooperate with the requirements of the contract that may result in a sanction being applied against the responsible individual. sanctions include:~~
  - a. ~~All sanctions under the training, education, employment, and management contract are first imposed against the responsible individual. If the individual does not cure the sanction, the sanction may progress to include the entire training, education, employment, and management household. Failure or refusal to participate in the job opportunities and basic skills program:~~
  - b. ~~Except as provided in subdivision c, if the individual sanction progresses to the training, education, employment, and management household, the household is ineligible for training, education, employment, and management until the responsible individual cures the sanction. Failure or refusal to cooperate in obtaining child support or establishing paternity:~~
  - c. ~~If the sanction is imposed due to noncooperation with the health tracks program requirement, the household may be eligible for, but subject to a seven percent reduction in, the net training, education, employment, and management benefit until the requirements are met. Not completing a social contract:~~
  - d. ~~Not signing a social contract:~~
  - e. ~~Not completing the goals or tasks listed on a social contract: and~~
  - f. ~~Not cooperating with an agency providing services to meet goals or tasks listed in the social contract, including goals identified~~

as mandatory or nonmandatory referrals and goals that are nonmandatory and identified in the assessment.

2. ~~A household found ineligible for training, education, employment, and management may apply for regular food stamps, low income home energy assistance program benefits, medicaid, or child care assistance, but is ineligible for temporary assistance for needy families. All sanctions are first imposed against the responsible individual and will result in removal of the individual's financial needs from the household's temporary assistance for needy families grant, for a period of one month.~~
3. ~~Training, education, employment, and management household members who fail, without good cause, to comply with the terms of the training, education, employment, and management contract, are subject to the sanctions described in this subsection.~~
  - a. ~~For the first sanction, the individual who has not cooperated is ineligible for a period of one month for all training, education, employment, and management benefits. After this required period of ineligibility, the sanctioned individual may cure the sanction. If at the end of the sixth month of the sanction the individual continues to refuse to cooperate, the entire training, education, employment, and management household becomes ineligible for training, education, employment, and management.~~
  - b. ~~For the second sanction, the individual who has not cooperated is ineligible for all training, education, employment, and management benefits for a minimum of two months. After this required period of ineligibility, the sanctioned individual may cure the sanction. If at the end of the fourth month of the sanction the individual continues to refuse to cooperate, the entire training, education, employment, and management household becomes ineligible for training, education, employment, and management.~~
  - c. ~~For the third and subsequent sanctions, the individual who has not cooperated is ineligible for all training, education, employment, and management benefits for a minimum of three months. After this required period of ineligibility, the sanctioned individual may cure the sanction. If at the end of the fourth month of the sanction the individual continues to refuse to cooperate, the entire training, education, employment, and management household becomes ineligible for training, education, employment, and management.~~
  - d. ~~If a sanctioned individual cures a sanction during a minimum sanction period, the individual is eligible for training, education, employment, and management, provided all other factors of eligibility are met, effective the first day of the benefit month following the minimum sanction period.~~



- e. ~~If a sanctioned individual cures a sanction at any time following a minimum sanction period, but before the sanction has progressed to household ineligibility, the individual is eligible for training, education, employment, and management, provided all other factors of eligibility are met effective the first day of the month of the cure.~~

If the sanctioned individual does not cure the sanction prior to the end of the sanction penalty month, the sanction may progress to closure of the entire temporary assistance for needy families case.

- a. A sanction penalty month runs from the effective date of a sanction through the last day of that month.
  - b. If a sanction, based on noncooperation with the job opportunities and basic skills program leads to closure of the entire temporary assistance for needy families case, the household shall, at a minimum, be ineligible for assistance in the month following the sanction penalty month, and until the responsible individual cures the sanction.
  - c. If a sanction, based on noncooperation with child support enforcement leads to closure of the entire temporary assistance for needy families case, the household shall be ineligible for assistance in the month following the sanction penalty month.
4. A job opportunities and basic skills program sanction may be imposed for no more than twelve months. The An otherwise eligible individual whose noncooperation caused the job opportunities and basic skills program sanction may demonstrate cooperation within twelve months from the sanction start date to regain training, education, employment, and management eligibility for the household. After twelve months, a reapplication for training, education, employment, and management benefits assistance made on behalf of the household is treated as a new application.
5. Sanctions under training, education, employment, and management temporary assistance for needy families follow a noncooperating individual who moves from one training, education, employment, and management county to another training, education, employment, and management county. The sanction remains in effect for the specified sanction period or until cured by the responsible individual. Job opportunities and basic skills program sanctions may not follow a sanctioned individual from a training, education, employment, and management county to an aid to families with dependent children county or from an aid to families with dependent children county to a training, education, employment, and management county, but the progressive sanction number must be counted.

6. A job opportunities and basic skills program sanction is cured only when the responsible individual demonstrates, to the satisfaction of the county agency, that the failure to cooperate or participate, as required ~~under the contract~~, has been corrected for at least ten consecutive days.
7. A child support enforcement sanction will be considered cured upon such notification from the child support enforcement agency to the program case manager.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

**75-02-01.2-80. ~~Conciliation~~ Good cause determination.**

1. ~~Conciliation is a process used to intervene in situations in which individuals in training, education, employment, and management households may be sanctioned. Actions or failures to act that may result in sanctions include:~~
  - a. ~~Not completing a training, education, employment, and management contract;~~
  - b. ~~Not signing a training, education, employment, and management contract;~~
  - c. ~~Not completing the goals on a training, education, employment, and management contract; and~~
  - d. ~~Not cooperating with an agency providing services to meet goals identified on the training, education, employment, and management contract, including goals identified as mandatory referrals and goals that are nonmandatory and identified in the assessment.~~
2. Except with respect to a sanction imposed for failure to ~~cooperate~~ in obtaining obtain child support, or establishing establish paternity, ~~conciliation must be offered before sanctions are imposed. During conciliation, there must be a continuing effort to resolve the dispute with the effort coordinated by the training, education, employment, and management program manager~~ an individual shall be provided an opportunity to present the good cause reason for a failure or refusal to cooperate prior to the imposition of a sanction.
  - a. ~~If the individual refuses to complete the training, education, employment, and management contract or refuses to sign the training, education, employment, and management contract,~~



~~the training, education, employment, and management program manager and the individual must participate in the conciliation.~~

- ~~b. If the individual is not cooperating with a service agency, a representative of that agency may be included in the conciliation effort, along with the training, education, employment, and management program manager and the individual.~~

2. The program case manager or the individual's job opportunities and basic skills coordinator may oversee the good cause determination process.

- a. If the individual refuses to complete the social contract, refuses to sign the social contract, or refuses to comply with a referral to a service agency, the program case manager is responsible to oversee the good cause determination process.

- b. If the individual is not cooperating with the job opportunities and basic skills program, the coordinator is responsible to oversee the good cause determination process and must inform both the individual and the program case manager of the outcome of the good cause determination process.

3. Within ten days following the date of a failure or a refusal to participate that may result in a sanction, the training, education, employment, and management ~~comply~~, the program case manager or appropriate provider coordinator, as appropriate, shall send a written notice to the individual to offer and schedule a conciliation appointment. ~~an~~ opportunity to show good cause. A good cause determination must state that:

- a. An initial conciliation notice must state: The individual is responsible to call or meet with the coordinator or case manager within seven days, from the print date of the notice, to show good cause; and

- ~~(1) The time and place for conciliation;~~
- ~~(2) The responsibility of the individual to participate in conciliation;~~
- ~~(3) The consequences, including sanctions, which may be imposed if the individual fails or refuses to participate in the training, education, employment, and management program; and~~
- ~~(4) The requirements the individual shall meet to show good cause for a failure or refusal to participate in that program.~~

b. ~~A second and any subsequent conciliation notice may be made in any manner that effectively communicates with the individual, including verbal notice given in person or telephonically, and must state:~~

- ~~(1) The time and place for conciliation;~~
- ~~(2) The responsibility of the individual to participate in conciliation;~~
- ~~(3) The consequences, including sanctions, which may be imposed if the individual fails or refuses to participate in the training, education, employment, and management program; and~~
- ~~(4) The requirements the individual shall meet to show good cause for a failure or refusal to participate in that program.~~

A sanction will be imposed if the individual does not contact the coordinator or program case manager, as appropriate, within the required time or does not show good cause for the individual's failure or refusal to comply.

4. ~~If a training, education, employment, and management an individual fails or refuses to participate in conciliation without the good cause determination process, or if the conciliation is unsuccessful, the training, education, employment, and management it is determined that the individual did not show good cause for the initial failure or refusal to participate as required in the temporary assistance for needy families program, the program case manager shall notify the individual of the sanction.~~

5. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

**75-02-01.2-81. Good cause for failure to complete training, education, employment, and management program temporary assistance for needy families social contract.** ~~Failure of the primary individual to sign or cooperate in the development of the training, education, employment, and management contract, without good cause, by the last day of the second benefit month of training, education, employment, and management eligibility may result in case closure. An individual who has good cause for not signing or cooperating in the development of the training, education, employment, and management social contract may continue to receive training, education, employment, and management benefits assistance after the initial two months if all other factors~~



of eligibility are met. The individual shall complete the ~~training, education, employment, and management~~ social contract as soon as the good cause reason is no longer applicable. Good cause for not completing the development of, or for not signing, the ~~training, education, employment, and management~~ social contract exists only if the individual:

1. Has a medical condition that precludes the individual from leaving home as verified by a ~~licensed physician's statement~~ reliable medical evidence; or
2. Is hospitalized or institutionalized.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-82. Job opportunities and basic skills program - Definitions.**

For purposes of the job opportunities and basic skills program:

1. "Coordinator" means the job opportunities and basic skills program staff person responsible for directing and monitoring a participant's planning and activities that relate to the job opportunities and basic skills program. The coordinator ~~functions as a case manager~~ assists the participant in the development and execution of an employability plan and oversees the participant's involvement in the job opportunities and basic skills program.
2. "Minimum required hours" means the number of hours per week during which a participant must be engaged in ~~an allowed~~ approved work activity ~~which must be twenty hours per week for periods before October 1, 1998, twenty-five hours per week for periods beginning October 1, 1998, and ending September 30, 1999, and thirty hours per week for periods beginning after September 30, 1999.~~
3. "Participant" means a member of a ~~temporary assistance for needy families filing unit~~ household who is not exempt from participating in the job opportunities and basic skills program or who, if exempt, has volunteered to participate in that program.
4. "Satisfactory progress" in any postsecondary education or training program means the participant is maintaining ~~the greater of a 2.5 grade point average or~~ progress minimally sufficient to allow continuation of

the course of study or training under the standards of the education or training facility.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-83. Job opportunities and basic skills program and work registration - Basic requirements.** To the extent resources permit, all nonexempt ~~adult members of a training, education, employment, and management household who are members of a temporary assistance for needy families filing unit adults, and all children age sixteen or older, who have completed high school or received a general equivalency diploma, or who have neither completed high school nor received a general equivalency diploma and are not attending school~~ shall participate in the job opportunities and basic skills program. ~~All nonexempt adult members of a training, education, employment, and management household who are not members of a temporary assistance for needy families filing unit shall participate in work registration.~~ The program combines education, training, and employment components. Its purpose is to ~~place~~ enable participants in ~~nonsubsidized employment as soon as possible to become self-sufficient.~~ The ~~training, education, employment, and management program case manager~~ shall:

1. Determine eligibility for ~~training, education, employment, and management benefits~~ assistance and determine whether each person is a member of ~~a temporary assistance for needy families filing unit within the training, education, employment, and management the~~ household;
2. Determine whether the each recipient is exempt from participating in the job opportunities and basic skills program ~~or work registration~~; and
3. Refer nonexempt members of the ~~temporary assistance for needy families filing unit household~~ to the job opportunities and basic skills program and ~~refer nonexempt training, education, employment, and management household members not in a temporary assistance for needy families filing unit to work registration.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-84. Job opportunities and basic skills program - Satisfactory participation.**

1. Except as otherwise provided in this section, ~~each eligible caretaker, and each child age sixteen and older who has not completed high school or received a general equivalency diploma and who is~~ all



eligible nonexempt adults and all eligible children, age sixteen or older, who have completed high school or received a general equivalency diploma, or who have neither completed high school nor received a general equivalency diploma and are not currently attending school, shall comply with work requirements no fewer than the minimum required hours each week. Work activity may be required in addition to the minimum required hours in an ~~allowable~~ approved work activity.

2. A parent or other eligible caretaker relative of a child under age six, who ~~does not reside with the other parent of any of the first parent's children,~~ is personally caring for that child full time, is deemed to comply with subsection 1 if engaged in an allowable work activity an average of at least the minimum required hours per week during each month.
3. A ~~custodial parent~~ single head of household, under twenty years of age, who has not earned a high school diploma or its equivalent, but who ~~attends and makes satisfactory progress~~ maintains satisfactory attendance in school, is deemed to comply with subsection 1.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-05.1, 50-09

**75-02-01.2-85. Job opportunities and basic skills program - Work requirements.**

1. The work activities of the job opportunities and basic skills program include:
  - a. Unsubsidized employment;
  - b. Subsidized public or private sector employment;
  - c. On-the-job training;
  - d. Public or private work experience;
  - e. Job search and job readiness activities;
  - f. Community service;
  - g. Vocational training;
  - h. Education directly related to employment for a participant who has not completed high school or received a general equivalency diploma;

- i. ~~Secondary~~ Satisfactory attendance at secondary school or in a course of study leading to a general equivalency diploma;
  - j. Provision of child care services to another participant engaged in a community service program; and
  - k. Job skills training directly related to employment; ~~and~~
  - l. ~~Work readiness activities.~~
2. Work requirements include participation in work activities for periods of time necessary to allow a participant to complete tasks that will move the participant directly into employment; ~~but no less than the minimum required hours.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-86. Job opportunities and basic skills program - Tribal native employment works program.** Tribal native employment works programs are available to enrolled or enrollable members of tribes who live in that tribe's service area, who receive a temporary assistance for needy families benefits cash grant, and who reside in a county within which there is a tribal native employment works program. An individual who participates in a tribal native employment works program shall meet all work requirements described in this chapter. The county agency shall:

- 1. Refer nonexempt eligible individuals to the tribal native employment works program based on referral criteria established by agreement a memorandum of understanding between the tribe and the department;
- 2. Provide child care payments to authorized tribal native employment works program participants, for activities which may be approved under the state child care and development fund plan submitted under the Child Care and Development Block Grant Act of 1996 [42 U.S.C. 9858], based on information furnished by the tribal program; and
- 3. Upon notification from the tribal program, consider sanctioning individuals for failure or refusal to participate in the program without good cause.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02



**75-02-01.2-87. Job opportunities and basic skills program - Exemptions from participation.** An individual is exempt from participation in the job opportunities and basic skills program ~~and work registration~~ if the individual is:

1. A parent or other eligible caretaker relative age ~~sixty~~ sixty-five or older;
2. A dependent child who is under age sixteen or a dependent child who is age sixteen or over and who is enrolled or has been accepted for enrollment as a full-time student for the next school term in an elementary or secondary school or in a vocational or technical school that is equivalent to secondary school and will graduate by the child's nineteenth birthday, unless the dependent child is a ~~eustodial-teen parent~~ single head of household; or
3. A parent or other eligible caretaker relative of a child under age four months who is personally caring for the child full time.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-88. Job opportunities and basic skills program - Referral.**

1. Any individual not exempt from the job opportunities and basic skills program and anyone who volunteers must be referred to the program. Referrals may be made only after the individual is determined otherwise eligible for ~~training, education, employment, and management benefits as a member of a temporary assistance for needy families filing unit or as an applicant member of such a filing unit while in applicant diversion assistance.~~
2. The referred individual shall contact the ~~coordinator~~ job opportunities and basic skills program within ~~seven days~~ five workdays from the print date of the referral ~~date~~ to set up an appointment for program orientation, assessment, and employability planning and shall make a good-faith effort to complete program orientation, initial assessment, and employability planning within thirty days of the referral date.
3. ~~Upon referral, the county agency may authorize supportive services solely for the first thirty days after the referral date.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-89. Job opportunities and basic skills program - Orientation, assessment, and employability planning.** The coordinator shall complete a general program orientation. The coordinator shall, in consultation with the participant, make an initial assessment of work skills ~~and~~, work experience, and potential barriers to employment and, on the basis of that assessment, develop a plan that, to the greatest extent possible, is designed to move the participant into ~~whatever employment the participant is capable of handling as quickly as possible~~ allowable work activities that match the individual's capabilities and will help move the individual toward self-sufficiency. The cooperation, assistance, and consultation of the participant is important to the accuracy of the assessment and the appropriateness of the plan, but is not required if the participant seeks to use participation as a means of blocking or delaying entry into the workforce. ~~No employability plan is effective unless approved by the department.~~

1. The initial assessment of employability is based on:
  - a. The participant's work skills;
  - b. The participant's prior work experience;
  - c. The participant's mental and physical limitations affecting employability; and
  - d. Other factors that may affect the participant's potential for employment.
2. The employability plan must:
  - a. Contain an employment goal to move the participant immediately into employment approved work activities that match the participant's capabilities;
  - b. Describe any reasonable accommodations needed to enable the participant to comply with program requirements;
  - c. Describe the supportive services to be provided to enable the participant to ~~obtain and maintain employment~~ comply with program requirements; and
  - e. d. Describe the steps to be taken by the participant to achieve employment self-sufficiency.
3. The employability plan is not a contract and may not be so interpreted, considered, or applied.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02



**75-02-01.2-90. Job opportunities and basic skills program - Supportive services and transitional supportive services.**

1. Within the limits described in this section, supportive services may be made available to a participant who, but for supportive service, would be unable to enter into or remain in an allowable work activity. No supportive service may be provided ~~with respect to an activity that is not approved or on behalf of anyone who is not participating satisfactorily in the program~~ without approval from the coordinator or program case manager.
2. ~~Supportive~~ Transitional supportive services may be provided ~~for up to three months after termination of~~ to assist employed former temporary assistance for needy families benefits due to employment recipients to succeed in the workforce and avoid the need to receive further temporary assistance for needy families benefits.
3. Supportive services may include only:
  - a. Relocation assistance provided to a job opportunities and basic skills participant ~~with moving expenses in order to achieve permanent employment with earnings sufficient to preclude temporary assistance for needy families eligibility, provided that the participant demonstrates that the most economical reasonably available means of relocation was used if:~~
    - (1) The individual has a bona fide offer of employment, verified by the coordinator, which will increase the individual's potential for increased earnings, job advancement, or permanent employment; or
    - (2) The individual requests and receives approval from the coordinator to move from an area of the state with few employment opportunities to another area of the state with greater employment opportunities.
  - b. A monthly transportation allowance provided to participants in an approved work activity, if necessary for continued participation.
  - c. Child care expense reimbursement in amounts consistent with the provisions of the state child care and development fund plan submitted under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9858].
  - d. Assistance in the purchase of care for an incapacitated or disabled adult member of the participant's household, to whom the participant owes a legal duty to provide care, provided:

- (1) There is no other person in the household who can provide the care; and
  - (2) The incapacitated or disabled adult household member cannot provide self-care.
- e. Assistance in the purchase of employment-related clothing or personal needs determined by the coordinator to be reasonable and necessary for the participant to enter employment.
  - f. Assistance in the purchase of tools or equipment determined by the coordinator to be required for the participant to accept employment.
  - g. Assistance in the cost of repairs determined by the coordinator to be reasonable and necessary to return a participant's vehicle to operable condition, provided:
    - (1) The vehicle is registered to a member of the ~~training, education, employment, and management~~ household; and
    - (2) The vehicle is needed by the participant to get to work or another approved work activity; and
    - (3) The general condition and value of the vehicle justifies repairs.
  - h. Assistance for defraying the cost of books, tuition, and fees associated with an allowable work activity, provided:
    - (1) Other educational fund sources have been explored and are exhausted; and
    - (2) The participant is a member of a ~~temporary assistance for needy families filing unit~~ household and eligible for ~~training, education, employment, and management benefits assistance~~ at the time funds are paid or obligated.
  - i. Assistance with payment for professional license fees and professional examination fees, ~~where~~ if there is no other available source of funding, including fee waivers, and the professional license or examination is necessary to achieve an employment-related goal.
  - j. Assistance with expenses determined by the coordinator to be reasonable and necessary for employment interviews, including transportation, lodging, grooming, and clothing.
- 5- ~~4.~~ The maximum expenditures permitted for supportive services, ~~or for any type of supportive services, under any employability plan, and~~



~~transitional supportive services~~ are limited to amounts identified in the approved state plan established under title IV-F of the Social Security Act [42 U.S.C. 681, et seq.] in effect on June 30, 1997, or such greater amounts and availability as the department may by order determine.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-91. Job opportunities and basic skills program - Educational activities related to secondary education, basic and remedial education, or education in English proficiency.**

1. ~~If a custodial parent, age twenty or older participant, irrespective of the participant's age, has not earned a high school diploma or its equivalent, the employability plan must include activities under this section unless, based on assessment, it is determined that the individual demonstrates a basic literacy level above the 8.9 grade level participant does not have the functional capability to complete high school or receive a general equivalency diploma within a reasonable time, the participant does not have access to such activities within a reasonable distance from the participant's home, or completion of such activities may not be reasonably expected to substantially increase the participant's marketability or earnings potential.~~
2. ~~If a custodial parent, under twenty years of age, has not earned a high school diploma or its equivalent, the employability plan must include high school attendance unless, after assessment by the educational institution, the individual is determined to not have the potential to secure a general equivalency diploma or high school diploma, or to make a significant improvement in reading skills, in a reasonable length of time.~~
3. For purposes of this section:
  - a. "Activities under this section" include high school, alternative high school, adult learning center programs, general equivalency diploma programs, education in English proficiency, and basic or remedial education programs;
  - b. "Reasonable distance" means a distance that requires less than a one-hour commute from the individual's home to the educational institution; and
  - c. A "reasonable length of time" means a time determined by the coordinator, based on recommendations of an individual's instructors, for completion of education activities while consistently participating in those activities on a regular basis as a full-time

student in a high school program or as a part-time student in a high school program if the coordinator determines that circumstances beyond the individual's control limits attendance to less than full time; and.

b. ~~"Activities under this section" include high school, alternative high school, adult learning center programs, general equivalency diploma programs, and basic or remedial education programs.~~

4. ~~If the employability plan of a custodial parent, under age twenty who does not have a high school diploma or general equivalency diploma, does not include high school attendance, it must include alternative educational activities or training activities.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-92. Job opportunities and basic skills program - ~~Jobs~~ Job skills training directly related to employment.** Job skills training includes paid or unpaid activities that enhance skills for employment or training. Job skills training directly related to employment includes apprenticeships and the development of basic job skills through adult basic education in English proficiency, basic computer skills, communication and computational skills, or ~~Phoenix~~ vocational preparation. ~~A custodial parent, age twenty or older,~~ An individual who participates in job skills training directly related to employment ~~shall~~ may be required, in addition to this activity, to participate in allowable another approved work activity for the minimum number of hours required under section 75-02-01.2-84.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-94. Job opportunities and basic skills program - Job search and job readiness.**

1. Participants engaged in job search are required to make, and verify, a predetermined number of job contacts per week as prescribed by the coordinator. The number of job search contacts required will be consistent with the available job opportunities in that area of the state.
2. Job readiness activities are intended to prepare a participant for work. Job readiness activities may include alcohol and other drug evaluation and treatment, psychological assessment and counseling, vocational rehabilitation assessment and counseling, or work preparation workshops.



3. Participants may be required by the coordinator to ~~make an individual work~~ participate in job search or job readiness activities for up to four consecutive weeks or six nonconsecutive weeks in each twelve months of continuous eligibility for ~~training, education, employment, and management benefits~~ a temporary assistance for needy families cash grant.
- 2- 4. In periods after a participant has engaged in job search and job readiness activities for the maximum time permitted under subsection 4 3, the coordinator may require the participant to engage in extended job search or job readiness activities in addition to engaging in the minimum required hours in other ~~allowable~~ approved work activities.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

**75-02-01.2-96. Job opportunities and basic skills program - Vocational education.** ~~Vocational education may be approved as an allowable work activity.~~ Vocational education offers an organized sequence of coursework directly related to preparation of the participant for employment in a current or emerging occupation.

1. Vocational education may be approved as an allowable work activity only if the participant demonstrates:
  - a. A lack of marketable job skills that may reasonably be expected to enable the participant to become employed in a current or emerging occupation that has the potential to provide a wage great enough to enable the participant and the participant's family to become self-sufficient;
  - b. That the training will result in a marketable skill that may reasonably be expected to enable the participant to become employed in a current or emerging occupation that has the potential to provide a wage great enough to enable the participant and the participant's family to become self-sufficient;
  - c. The functional capacity and ability to complete the vocational education and become employed in a job applying that vocational education; and
  - d. An understanding of the requirements of the job for which the vocational training is intended to prepare the participant and a willingness to meet those requirements, including, ~~where~~ if applicable:
    - (1) Shift work;

- (2) Relocation;
  - (3) Work-related travel;
  - (4) Licensure or certification; and
  - (5) Prevailing wage rates.
2. A participant in the job opportunities and basic skills program, who has made the demonstration required under subsection 1, may undertake vocational education as an exclusive approved work activity if:
- a. The employability plan ~~identifies~~ outlines a clearly identified goal of employment in a specific occupation that may reasonably be expected to enable the participant to become employed in a current or emerging occupation that has the potential to provide a wage great enough to enable the participant and the participant's family to become self-sufficient;
  - b. The curriculum is recognized by a statutorily sanctioned education authority as leading to qualification for employment in the specific occupation identified in the employability plan;
  - c. The participant does not already possess a bachelor's degree or has not previously completed a course in vocational education, unless:
    - (1) The participant, by reason of incapacity or substantiated lack of employment, ~~in North Dakota~~, in the field for which the participant was prepared, cannot be employed in North Dakota; and
    - (2) The department, exercising its reasonable discretion, approves the employability plan;
  - d. ~~The participant is a full-time student~~;
  - e. The selection of a course of study is guided by demand in specific occupations or, upon approval by the coordinator, a course of study in another occupation for which the participant provides substantial justification of demand;
  - f. ~~e.~~ The participant applies for a Pell grant and all other reasonably available sources of grants and scholarships, which become the first source of payments for books, tuition, and fees;
  - g. ~~f.~~ The participant verifies that the participant is maintaining satisfactory progress, and taking classes required by the employability plan, through class schedules and grade reports ~~that~~



~~demonstrate the participant will conclude the curriculum before the end of the employability plan or within twenty-four months from the approval of the employability plan, whichever is sooner;~~

- ~~h. g.~~ During any participant's lifetime, no employability plan beginning on or after July 1, 1997, and no combination of such plans, may include more than ~~twelve~~ twenty-four months, which need not be consecutive months, during which vocational education may be the participant's exclusive, approved work activity, ~~and no more than twelve additional months, which need not be consecutive, during which the participant engages in another work activity, in addition to vocational education, for at least the minimum participation hours unless:~~
    - (1) The participant, by reason of incapacity or substantiated lack of employment, ~~in North Dakota~~, in the field for which the participant was prepared, cannot be employed in North Dakota; and
    - (2) The department, exercising its reasonable discretion, approves the employability plan; and
  - ~~h.~~ The participant who engages in vocational education as an exclusive, approved work activity attends vocational education on a full-time basis.
  - ~~i.~~ The employability plan is reviewed and, if necessary, revised at the beginning of each school term.
- 3. A participant approved for vocational education may receive any supportive service for which a need can be demonstrated.
  - 4. Recipients Applicants for or recipients of temporary assistance for needy families enrolled as full-time students in any course of vocational education study at the time they become participants may seek approval of an employability plan which continues that course of study if the course of study can reasonably be expected to increase the participant's employability or earnings potential. Approval beyond the current school term may not be granted if the participant is presently qualified for available full-time employment. ~~Any approved employability plan is subject to review. Nonapproved educational activities in which the participant participates may not interfere with the approved work activity. Upon review, approval of the employability plan may be terminated, and the participant may be required to seek employment with the potential to provide a wage great enough to allow the participant and the participant's family to become self-sufficient.~~
  - 5. A participant who, in addition to meeting the minimum required hours in another approved work activity, is enrolled in an approved a self-initiated

course of vocational education may receive any supportive service for which a need can be demonstrated, ~~except payment for defraying the cost of books, tuition, or fees~~ if the vocational education course may reasonably be expected to increase the participant's employability or earnings potential. A participant's approved work activities must take priority over self-initiated vocational education activities. A participant who refuses to seek employment or reduces involvement in approved work activities to accommodate self-initiated vocational education may be sanctioned.

5. ~~6.~~ A coordinator shall consider, in ~~When~~ determining whether to approve or support a participant's proposed employability plan that meets all other requirements of this section for vocational education, whether the vocational education may be completed as an exclusive work activity or as a self-initiated activity, the coordinator shall also consider:
- a. The graduation and job placement rates of the education or training facility;
  - b. The cost of the education or training facility services, combined with the cost of necessary supportive services, as compared to other education or training facilities offering a similar course of study; and
  - c. The anticipated length of time to complete training as compared to other education or training facilities offering a similar course of study.
7. Employed participants who are approved for vocational education as their exclusive, approved work activity shall not be subjected to the job-quit penalty described in section 75-02-01.2-52, if the coordinator or tribal native employment works program coordinator provides prior approval for the individual to quit or reduce the individual's hours of employment to focus on vocational education. Prior approval must be documented in the individual's employability development plan.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-05.1, 50-09

**75-02-01.2-97. Job opportunities and basic skills program - Provision of child care services to another participant engaged in a community service program.** A participant may provide child care services to another participant to allow that other participant to engage in a community service program if the participant providing child care:

- ~~1. Is adequately trained in providing child care;~~
- ~~2. Is determined competent to provide child care;~~



3. ~~is~~ is licensed or registered as an early childhood services provider, as required or permitted by North Dakota Century Code chapter 50-11.1, and rules adopted thereunder; ~~and~~.
4. ~~Assures that child care will be provided in a safe environment.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-98. Job opportunities and basic skills program - Work experience and community service program.**

1. ~~Work experience and community service offers work, based on a forty-hour workweek, that includes work expectations found in unsubsidized employment. Work experience and community service is provided for the minimum required hours per week. Job search activities may be required in addition to work experience and community service. The goal of work experience and community service is to improve a participant's employability through supervised work in order to enable the participant to obtain permanent, unsubsidized employment. A participant does not receive a wage for participating in work experience and or community service.~~
2. Work experience and community service worksites are usually those provided by public or private, nonprofit public service organizations, tribal governments, nursing homes, and hospitals, or at projects that serve a useful public purpose and provide appropriate working conditions.
3. A worksite placement must be designed to provide a participant with a basic understanding of work and productive work habits, establish positive work references, provide training to a work experience participant, and otherwise encourage the participant to become economically self-sufficient.
4. Workers' compensation coverage must be provided for community work experience and community service program participants.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-99. Job opportunities and basic skills program - Work readiness activities.** Repealed effective January 1, 2003. ~~Work readiness activities include activities intended to prepare a participant for work that are determined necessary by the coordinator in conjunction with the participant.~~

~~Work readiness activities include alcohol and drug evaluation and treatment, psychological assessment and counseling, vocational rehabilitation assessment and counseling, and up to thirty days of work preparation workshop.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997.

**General Authority:** NDCC 50-06-01.8

**Law Implemented:** NDCC 50-06-01.8

**75-02-01.2-100. Job opportunities and basic skills program - On-the-job training.** On-the-job training provides, through a negotiated agreement, payment to an employer for the costs of training and lower productivity normally associated with a new employee. The agreement is intended to place a participant in an occupational position that requires training. The training is intended to lead to permanent employment with that employer or one that is similar in its training requirements.

1. The agreement must be for a fixed price that does not exceed fifty percent of the average wage paid by the employer to the participant during the training period.
2. The starting wage of an on-the-job training participant must be at least equal to the federal minimum wage rate.
3. On-the-job training participants must be compensated at the same rates, and receive the same benefits, as other individuals similarly employed by the employer.
4. Wages paid to an on-the-job training participant must be treated as earned income for purposes of this chapter.
5. ~~If an on-the-job training participant becomes ineligible for training, education, employment, and management benefits because of earned income, that person shall remain a participant for the duration of the on-the-job training and may be eligible for those supportive services available to other similarly situated participants.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC 50-06-01.8 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-06-01.8 50-09-02

**75-02-01.2-101. Job opportunities and basic skills program - Subsidized public or private sector employment.** Subsidized public or private sector employment includes employment in which the employer is paid provides a cash subsidy for a portion of the wages paid to a participant. The cash subsidy is provided for a specified period of time for the purpose of assisting the participant to obtain employment. Subsidized employment may include work supplementation.



1. ~~The payment~~ Under work supplementation the cash subsidy is diverted from the ~~temporary assistance for needy families portion of the participant's training, education, employment, and management benefit temporary assistance for needy families cash grant~~ and is limited to a negotiated amount that cannot exceed the lesser of three hundred dollars or fifty percent of the temporary assistance for needy families ~~portion of the training, education, employment, and management benefit~~ cash grant. A work supplementation program participant must be considered a regular employee, and receive benefits and enjoy working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.
2. Work supplementation program payments may be made only pursuant to a contract signed by the employer, the work supplementation program participant, the program case manager, and the coordinator.
3. The length of the contract is limited to the training time required for the recipient to learn the necessary job skills and may not exceed six months.
4. ~~If a work supplementation participant becomes ineligible for training, education, employment, and management benefits because of earned income, that person shall remain a participant for the duration of the work supplementation contract and may be eligible for those supportive services available to other similarly situated participants.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-102. Job opportunities and basic skills program - Failure or refusal to participate.** A failure or refusal to participate in the job opportunities and basic skills program occurs any time the participant:

1. Misses a scheduled appointment for any program activity;
2. Is absent from a worksite when scheduled to be there;
3. States an unwillingness to participate in any program activity or worksite activity;
4. Fails to contact the coordinator, within ~~seven days of~~ five workdays from the print date of the referral, to set up an appointment for program orientation;
5. Refuses, despite apparent ability, to maintain satisfactory progress in any program activity; or

6. Fails to ~~conform to~~ comply with the requirements of the participant's employability plan.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-103. Job opportunities and basic skills program - ~~Work registration-~~ Good cause for failure or refusal to comply with a referral to, or participate in, the job opportunities and basic skills program.**

1. All nonexempt training, education, employment, and management household members must participate in the job opportunities and basic skills program ~~or work registration~~ unless good cause is granted by the training, education, employment, and management program team case manager. Good cause for failure or refusal to participate in the job opportunities and basic skills program ~~and work registration~~ exists when:
  - a. The household member is incapacitated with a physical or mental impairment verified by reliable medical evidence which, by itself or in conjunction with age, prevents the individual from working or participating in any job opportunities and basic skills program or work activity;
  - b. ~~A person~~ An individual whose substantially continuous presence in the household is necessary to care for another member of the household, to whom the individual seeking ~~exemption~~ good cause for nonparticipation owes a legal duty to provide care, who has a condition, verified by reliable medical evidence, which does not permit self-care, care by another household member, or care provided as supportive services;
  - c. ~~A person~~ An individual has an illness or injury, verified by reliable medical evidence and reviewed every thirty days, which is serious enough to temporarily prevent entry into employment or participation in any job opportunities and basic skills program ~~or work registration~~ activity; ~~and or~~
  - d. In the case of a parent ~~or other eligible caretaker relative~~ of a child under age six, who ~~does not reside with the other parent of any of the first parent's children, the first parent is personally caring for the child full time and who~~ demonstrates an inability to obtain needed child care for one or more of the following reasons:
    - (1) Child care is unobtainable at a location such that the usual commuting time from the parent's home to the location at



which child care is provided, and on to the parent's worksite, is one hour or less;

- (2) Suitable child care is unobtainable either from a relative, from ~~a~~ an approved child care provider licensed or registered under North Dakota Century Code chapter 50-11.1, or from a child care provider not required to be licensed or registered under North Dakota Century Code chapter 50-11.1; or
  - (3) Child care is unobtainable, from a child care provider licensed or registered under North Dakota Century Code chapter 50-11.1, at a rate equal to or less than 1.1 times ~~the market survey average rate for child care provided to children of the age of the parent's child in the region in which the parent lives~~ maximum allowable amount as determined by the child care assistance program.
2. The department may also authorize temporary assistance for needy families case managers to grant good cause for nonparticipation to individuals whenever it becomes necessary to administratively limit the number of individuals being referred to, or participating in, the job opportunities and basic skills program.
  3. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02

**75-02-01.2-104. County administration ~~and share of assistance cost.~~**

1. Except as provided in subsection 2, the county agency of the county where the ~~training, education, employment, and management~~ household is physically present must be responsible for the administration of the program with respect to that ~~unit~~ household.
2. ~~Where~~ If a family-unit household receiving assistance moves from one county to another, the outgoing county continues to be responsible for the administration of the program with respect to that ~~unit~~ household until the last day of the month after the month in which the ~~unit~~ household assumes physical residence in an incoming county.
3. ~~For purposes of apportioning each county's share of assistance costs in the aid to families with dependent children program, a fraction must be formed for each county. Each county's assistance expenses, in the year ending June 30, 1983, is the numerator, and the total of all county's assistance expenses, in that year, is the denominator. For~~

~~periods beginning July 1, 1984, and ending December 31, 1997, each county's share of the amount expended, statewide, for aid to dependent children, must be determined by multiplying that county's fraction times the total of all county's assistance expenses.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.

**General Authority:** NDCC ~~50-06-01.8~~ 50-09-02, 50-09-25

**Law Implemented:** NDCC ~~50-06-01.8~~ 50-09-02





**FEBRUARY 2003**

**CHAPTER 75-02-06**

**75-02-06-01. Definitions.** In this chapter, unless the context or subject matter requires otherwise:

1. "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 in the period when incurred, regardless of when they are paid.
2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.
3. "Adjustment factor" means the appropriate composite economic change index.
4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.
5. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by medical assistance regulations.
6. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's-length transaction. It does not include:
  - a. A purchase of shares in a corporation that owns, operates, or controls a facility except as provided under subsection 3 of section 75-02-06-07;
  - b. A sale and leaseback to the same licensee;
  - c. A transfer of an interest to a trust;
  - d. Gifts or other transfers for nominal or no consideration;
  - e. A merger of two or more related organizations;



- f. A change in the legal form of doing business;
  - g. The addition or deletion of a partner, owner, or shareholder; or
  - h. A sale, merger, reorganization, or any other transfer of interest between related organizations.
7. "Building" means the physical plant, including building components and building services equipment, licensed as a facility, and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings located on the site used directly for resident care.
8. "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 directly for resident care.
9. "Certified nurse aide" means:
- a. An individual who has satisfactorily completed a nurse aide training and competency evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154 and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or who has been deemed or determined competent as provided in 42 CFR 483.151(a) and (b) and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or
  - b. An individual who has worked less than four months as a nurse aide and is enrolled in a training and evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154.
- ~~10.~~ 11. "Chain organization" means a group of two or more health care facilities owned, leased, or, through any other device, controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to health care.
- ~~11.~~ 12. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.
- ~~12.~~ 13. "Community contribution" means a contribution to a civic organization or sponsorship of community activities. It does not include a donation to a charity.

- ~~42.~~ 13. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, the determination of cost limitations, and determination of rates.
- ~~43.~~ 14. "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 facility are divided for purposes of cost assignment and allocations.
- ~~44.~~ 15. "Cost report" means the department approved form for reporting costs, statistical data, and other relevant information of the facility.
- ~~45.~~ 16. "Department" means the department of human services.
- ~~46.~~ 17. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.
- ~~47.~~ 18. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
- ~~48.~~ 19. "Depreciation guidelines" means the American hospital association's guidelines as published by American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 1998 edition.
- ~~49.~~ 20. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.
- ~~20.~~ 21. "Direct care costs" means the cost category for allowable nursing and therapy costs.
- ~~21.~~ 22. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
- ~~22.~~ 23. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the nursing facility premises.
- ~~23.~~ 24. "Employment benefits" means fringe benefits, other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, employee child care benefits, and payroll taxes.
- ~~24.~~ 25. "Established rate" means the rate paid for services.
- ~~25.~~ 26. "Facility" means a nursing facility not owned or administered by state government or a nursing facility, owned or administered by state government, which agrees to accept a rate established under this



chapter. It does not mean an intermediate care facility for the mentally retarded.

- ~~26-~~ 27. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
- ~~27-~~ 28. "Final decision rate" means the amount, if any, determined on a per day basis, by which a rate otherwise set under this chapter is increased as a result of a request for reconsideration, a request for an administrative appeal, or a request for judicial appeal taken from a decision on an administrative appeal.
- ~~28-~~ 29. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.
- ~~29-~~ 30. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.
- ~~30-~~ 31. "Freestanding facility" means a nursing facility which does not share basic services with a hospital-based provider.
- ~~31-~~ 32. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, uniform allowances, and medical services furnished at nursing facility expense.
- ~~32-~~ 33. "Highest market-driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.
- ~~33-~~ 34. "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.
- ~~34-~~ 35. "Hospice general inpatient care" means short-term inpatient care necessary for pain control or acute or chronic symptom management that cannot feasibly be provided in other settings. It does not mean care provided to an individual residing in a nursing facility.
- ~~35-~~ 36. "Hospice inpatient respite care" means short-term inpatient care provided to an individual when necessary to relieve family members or other persons caring for the individual at home. Care may be provided for no more than five consecutive days. For purposes of the definition, home does not include nursing facility.

- ~~36.~~ 37. "Hospital leave day" means any day that a resident is not in the facility, but is in an acute care setting as an inpatient or has been identified in a resident assessment instrument as "discharged anticipated to return".
- ~~37.~~ 38. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
- ~~38.~~ 39. "In-house resident day" for nursing facilities means a day that a resident was actually residing in the facility and was not on therapeutic leave or in the hospital. "In-house resident day" for hospitals means an inpatient day.
- ~~39.~~ 40. "Institutional leave day" means any day that a resident is not in the facility, but is in another nursing facility, intermediate care facility for the mentally retarded, or basic care facility.
- ~~40.~~ 41. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
- ~~41.~~ 42. "Limit rate" means the rate established as the maximum allowable rate for a cost category.
- ~~42.~~ 43. "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence decisions made by the legislative council, and is required to register as a lobbyist.
- ~~43.~~ 44. "Managed care organization" means a medicaid managed care organization as that term is defined in section 1903(m) of the Social Security Act [42 U.S.C. 1396b(m)].
- ~~44.~~ 45. "Medical assistance program" means the program which pays the cost of health care provided to eligible recipients pursuant to North Dakota Century Code chapter 50-24.1.
- ~~45.~~ 46. "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been discharged from the facility. It does not include maintenance of medical records for in-house residents.
- ~~46.~~ 47. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.
- ~~47.~~ 48. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.



- ~~48-~~ 49. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act (FICA) taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
- ~~49-~~ 50. "Pending decision rate" means the amount, determined on a per day basis, by which a rate otherwise set under this chapter would increase if a facility prevails on a request for reconsideration, on a request for an administrative appeal, or on a request for a judicial appeal taken from a decision on an administrative appeal; however, the amount may not cause any component of the rate to exceed rate limits established under this chapter.
- ~~50-~~ 51. "Private-pay resident" means a nursing facility resident on whose behalf the facility is not receiving medical assistance payments and whose payment rate is not established by any governmental entity with ratesetting authority, including veterans' administration or medicare, or whose payment rate is not negotiated by any managed care organization contracting with a facility to provide services to the resident.
- ~~51-~~ 52. "Private room" means a room equipped for use by only one resident.
- ~~52-~~ 53. "Property costs" means the cost category for allowable real property costs and other costs which are passed through.
- ~~53-~~ 54. "Provider" means the organization or individual who has executed a provider agreement with the department.
- ~~54-~~ 55. "Rate year" means the calendar year from January first through December thirty-first.
- ~~55-~~ 56. "Reasonable resident-related 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. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.
- ~~56-~~ 57. "Related organization" means a close relative or person or an organization which a provider 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. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or provider.

- ~~57-~~ 58. "Report year" means the fiscal year from July first through June thirtieth of the year immediately preceding the rate year.
- ~~58-~~ 59. "Resident" means a person who has been admitted to the facility, but not discharged.
- ~~59-~~ 60. "Resident day" in a nursing facility means all days for which service is provided or for which payment is ordinarily sought, including hospital leave days and therapeutic leave days. The day of admission and the day of death are resident days. The day of discharge is not a resident day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought.
- ~~60-~~ 61. "Respite care" means short-term care provided to an individual when necessary to relieve family members or other persons caring for the individual at home.
- ~~61-~~ 62. "Routine hair care" means hair hygiene which includes grooming, shampooing, cutting, and setting.
- ~~62-~~ 63. "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater; but does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds, and does not mean an increase in a nursing facility's licensed capacity resulting from converting beds formerly licensed as basic care beds.
- ~~63-~~ 64. "Standardized resident day" means a resident day times the classification weight for the resident.
- ~~64-~~ 65. "Therapeutic leave day" means any day that a resident is not in the facility, another nursing facility, an intermediate care facility for the mentally retarded, a basic care facility, or an acute care setting, or, if not in an institutional setting, is not receiving home and community-based waived services.
- ~~65-~~ 66. "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.
- ~~66-~~ 67. "Working capital debt" means debt incurred to finance nursing facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

**History:** Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985; September 1, 1987; January 1, 1990; January 1, 1992; November 22,



1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; July 2, 2002.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

**75-02-06-02.2. Direct care costs.** Direct care costs include only those costs identified in this section.

**1. Therapies.**

- a. Salary and employment benefits for speech, occupational, and physical therapists, or for personnel, who are not reported in subsection 2, performing therapy under the direction of a licensed therapist.
- b. The cost of noncapitalized therapy equipment or supplies used to directly provide therapy.
- c. Training required to maintain licensure, certification, or professional standards, and the related travel costs.

**2. Nursing.**

- a. Salary and employment benefits for the director of nursing, nursing supervisors, inservice trainers for nursing staff, registered nurses, licensed practical nurses, quality assurance personnel, certified nurse aides, orderlies, individuals providing assistance with activities of daily living identified in subdivision a of subsection 5 of section 75-02-06-17, and ward clerks.
- b. Routine nursing care supplies including items furnished routinely and relatively uniformly to all residents; items stocked at nursing stations or on the floor in gross supply and distributed or used individually in small quantities; and items used by individual residents that are reusable, vary by the needs of an individual, and are expected to be available in the facility.
- c. Training required to maintain licensure, certification, or professional standards requirements, and the related travel costs.
- d. Routine hair care.
- e. The cost of noncapitalized wheelchairs.

**History:** Effective January 1, 1990; amended effective January 1, 1992; November 22, 1993; January 1, 1996; January 1, 2000; July 2, 2002.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

**75-02-06-14. Resident days.**

1. A resident day is any day for which service is provided or for which payment is ordinarily sought for use of a bed. The amount of remuneration has no bearing on whether a day should be counted.
2. Adequate census records must be prepared and maintained on a daily basis by the facility to allow for proper audit of the census data. The daily census records must include:
  - a. Identification of the resident;
  - b. Entries for all days, and not just by exception;
  - c. Identification of type of day, i.e., hospital, in-house;
  - d. Identification of the resident's classification; and
  - e. Monthly totals by resident, by classifications for all residents, and by type of day.
3. A maximum of fifteen days per occurrence may be allowed for payment by the medical assistance program for hospital leave. The payment rate for allowed hospital leave days may not exceed the established rate for group PA1 under the reduced physical functioning category. Hospital days in excess of fifteen consecutive days not billable to the medical assistance program are not resident days unless any payment is sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.
4. A maximum of twenty-four therapeutic leave days per individual per rate year may be allowed for payment by the medical assistance program. The payment rate for allowed therapeutic leave days may not exceed the established rate for group PA1 under the reduced physical functioning category. Therapeutic leave days in excess of twenty-four per year are not resident days unless any payment is sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.
5. Institutional leave days are not billable to the department and are not resident days unless any payment is sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.
6. Hospital and therapeutic leave days, occurring immediately following a period when a resident was receiving medicare part A benefits in the facility, are not billable to the department and are not resident days unless any payment is sought as provided for in subdivision c of subsection 1 of section 75-02-06-22.



7. Residents admitted to the facility through a hospice program or electing hospice benefits while in a facility must be identified as hospice residents for census and billing purposes.

**History:** Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987; January 1, 1990; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; July 2, 2002.

**General Authority:** NDCC 50-24.1-04, 50-24.4-02

**Law Implemented:** NDCC 50-24.4; 42 USC 1396a(a)(13)

## CHAPTER 75-02-07.1

**75-02-07.1-21. Adjustment factors for direct care, indirect care, and food and plant costs.** The Adjustment factors shall be applied to adjust historical allowable costs. The adjustment factor applied shall not exceed the lesser of the inflation factor allowed by the legislative assembly or the increase, if any, in the consumer price index, urban wage earners and clerical workers, all items, United States city average, must be used to adjust historical allowable costs. The increase in the consumer price index means the percentage by which that consumer price index for the month of March, as prepared by the United States department of labor, exceeds that index for the month of March of the preceding year. ~~The increase in consumer price index~~ adjustment factor must be used to adjust direct care, indirect care, and food and plant costs. Costs reported for a period other than twelve months ended December thirty-first of a report year must be adjusted to December thirty-first of a report year using the increase, if any, in the consumer price index, urban wage earners and clerical workers, all items, United States city average, over the period ending December thirty-first of the report year, and beginning at the end of the month within which the report period ends.

**History:** Effective July 1, 1996; amended effective July 1, 2001; July 2, 2002.

**General Authority:** NDCC 50-06-16, 50-24.5-02(3)

**Law Implemented:** NDCC 50-24.5-02(3)





**MARCH 2003**

**CHAPTER 75-03-15**

**75-03-15-04. Ratesetting.**

1. The method of determining the reimbursement rate per day must be through the use of the prospective ratesetting system. The ratesetting system requires that the rate be established during the six months following the facility's previous fiscal year and be effective the first day of the seventh month following the end of the facility's fiscal year.
2. The determination of a prospective rate for all accommodations begins with the actual cost of the facility's operations for the previous fiscal year. Once the reasonable resident-related costs from the previous year are determined, adjustments are applied to the historical cost to determine the prospective rate. Reasonable resident-related costs must be determined with reference to instructions issued by the department.
3. The historical costs combined with the adjustments take into consideration the economic conditions and trends during the period to be covered by the rate. Rate adjustments to provide appropriate compensation may be requested if major unforeseeable expenses are incurred. A request for rate adjustment may be made to the department, which shall determine if the expense is resident related and beyond the control of those responsible for the management of the facilities. The following adjustment methods must be used:
  - a. ~~Salary and fringe benefits must be adjusted using the unadjusted annual percentage increase, if any, in the consumer price index for urban wage earners and clerical workers, nonfood expenditure categories, the United States city average, as of the ending day of the fiscal year of the facility reflected in the cost report under consideration.~~
  - b. ~~Property costs must be included in the rate at the historical amount, unless adjusted in accordance with these rules.~~



- e. ~~The other costs of the facility must be projected, based upon the historical cost, plus the annual percent of increase, if any, in the "all items" index of the consumer price index, for the United States city average, as of the facility's fiscal yearend.~~

#### 4. Limitations.

- a. The department may accumulate and analyze statistics on costs incurred by the facilities. These statistics may be used to establish cost ceilings and incentives for efficiency and economy, based on a reasonable determination of the standards of operations necessary for efficient delivery of needed services. These limitations and incentives may be established on the basis of the cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations.
- b. When federal regulations establish a ceiling on foster care rates for these facilities, that ceiling must also be considered the maximum payment under title IV-E of the Social Security Act, [42 U.S.C. section 670; et seq.].
- c. A facility is expected to maintain an average annual occupancy rate of seventy-five percent. The computed resident days apply only to the following areas:
  - (1) Administrative costs;
  - (2) Plant operation costs; and
  - (3) Property costs.

A reserved paid bed is counted as an occupied bed. A waiver of the minimum bed occupancy allowance may be made for new facilities or existing facilities at the discretion of the department.

- d. Administrative cost must be limited to the percent of total allowable costs exclusive of administrative costs, authorized by the department.

#### 5. Rate adjustments.

- a. ~~Rate adjustments may be made to correct departmental errors subsequently determined.~~ Adjustment factors may be applied to adjust historical costs. The department shall annually determine an appropriate adjustment factor to be applied to allowable costs exclusive of property costs.

- b. ~~An adjustment must be made for those facilities which have terminated participation in the program, disposed of depreciable assets, or changed ownership. Rate adjustments may be made to correct departmental errors subsequently determined.~~
- c. An adjustment must be made for those facilities which have terminated participation in the program, disposed of depreciable assets, or changed ownership.

**History:** Effective November 1, 1985; amended effective July 1, 1993; amended effective March 1, 1999; August 1, 2002.

**General Authority:** NDCC 50-06-16, 50-11-03

**Law Implemented:** NDCC 50-06-05.1, 50-11-03.2





**APRIL 2003**

**CHAPTER 75-02-02**

**75-02-02-08. Amount, duration, and scope of medical assistance.**

1. Within any limitations which may be established by rule, regulation, or statute and within the limits of legislative appropriations, eligible recipients may obtain the medically necessary medical and remedial care and services which are described in the approved state plan for medical assistance in effect at the time the service is rendered and which may include:
  - a. Inpatient hospital services (other than services in an institution for mental diseases). "Inpatient hospital services" means those items and services ordinarily furnished by the hospital for the care and treatment of inpatients provided under the direction of a physician or dentist in an institution maintained primarily for treatment and care of patients with disorders other than tuberculosis or mental diseases and which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation; and which has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under title XIX of the Act.
  - b. Outpatient hospital services. "Outpatient hospital services" means those preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an outpatient by an institution which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation and emergency hospital services which are necessary to prevent the death or serious impairment of the health of the individual and which, because of the threat to the life or health of



the individual, necessitate the use of the most accessible hospital available which is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act.

- c. Other laboratory and x-ray services. "Other laboratory and x-ray services" means professional and technical laboratory and radiological services ordered by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and provided to a patient by, or under the direction of, a physician or licensed practitioner, in an office or similar facility other than a hospital outpatient department or a clinic, and provided to a patient by a laboratory that is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
- d. Nursing facility services (other than services in an institution for mental diseases). "Nursing facility services" means those items and services furnished by a licensed and otherwise eligible nursing facility or swing-bed hospital maintained primarily for the care and treatment which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for individuals who need or needed on a daily basis nursing care, provided directly or requiring the supervision of nursing personnel, or other rehabilitation services which, as a practical matter, may only be provided in a nursing facility on an inpatient basis.
- e. Intermediate care facility for the mentally retarded services. "Intermediate care" means those items and services which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. "Intermediate care facility for the mentally retarded" has the same meaning as provided in chapter 75-04-01.
- f. Early and periodic screening and diagnosis of individuals under twenty-one years of age and treatment of conditions found. Early and periodic screening and diagnosis of individuals under the age of twenty-one who are eligible under the plan to ascertain their physical or mental defects, and provide health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Federal financial participation is available for any item of medical or remedial care and services included under this subsection for individuals under the age of twenty-one. Such care and services may be provided under the plan to individuals under the age of twenty-one, even if such care

and services are not provided, or are provided in lesser amount, duration, or scope to individuals twenty-one years of age or older.

- g. Physician's services, whether furnished in the office, the patient's home, a hospital, nursing facility, or elsewhere. "Physician's services" means those services provided, within the scope of practice of the physician's profession as defined by state law, by or under the personal supervision of an individual licensed under state law to practice medicine or osteopathy.
- h. Medical care and any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law. This term means any medical or remedial care or services other than physicians' services, provided within the scope of practice as defined by state law, by an individual licensed as a practitioner under state law.
- i. Home health care services. "Home health care services", in addition to the services of physicians, dentists, physical therapists, and other services and items available to patients in their homes and described elsewhere in these definitions, means any of the following items and services when they are provided, based on certification of need and a written plan of care by a licensed physician, to a patient in the patient's place of residence, but not including as a residence a hospital or a skilled nursing facility:
  - (1) Intermittent or part-time skilled nursing services furnished by a home health agency;
  - (2) Intermittent or part-time nursing services of a registered nurse, or a licensed practical nurse, or which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law or under the supervision of a registered nurse, when no home health agency is available to provide nursing services;
  - (3) Medical supplies, equipment, and appliances ordered or prescribed by the physician as required in the care of the patient and suitable for use in the home; and
  - (4) Services of a home health aide provided to a patient in accordance with the plan of treatment outlined for the patient by the attending physician and in collaboration with the home health agency.
- j. Hospice care. "Hospice care" means the care described in 42 U.S.C. 1395x(dd)(1) furnished by a "hospice program", as that term is defined in 42 U.S.C. 1395x(dd)(2), to a terminally ill individual



who has voluntarily elected to have hospice care. Hospice care may be provided to an individual while the individual is a resident of a nursing facility, but only the hospice care payment may be made. An individual's voluntary election must be made in accordance with procedures established by the department which are consistent with procedures established under 42 U.S.C. 1395d(d)(2), for such periods of time as the department may establish, and may be revoked at any time.

- k. Private duty nursing services. "Private duty nursing services" means nursing services provided, based on certification of need and a written plan of care which is provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and by a registered nurse or a licensed practical nurse under the supervision of a registered nurse to a patient in the patient's own home.
- l. Dental services. "Dental services" means any diagnostic, preventive, or corrective procedures administered by or under the supervision of a dentist in the practice of the dentist's profession and not excluded from coverage. Dental services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual, ~~including fitting, supplying, and repairing dentures. "Dentures" means artificial structures prescribed by a dentist to replace a full or partial set of teeth and made by, or according to the directions of, a dentist. "Dentures" does not mean those artificial structures, commonly referred to as "fixed bridgework", which involve the use of crowns and bridgework materials in concert with one another. Any procedure related to the preparation of "fixed bridgework" which involves the use of crowns and bridgework materials in concert with one another, but not including single crowns, is excluded from coverage unless a prior treatment authorization request, submitted by the attending dentist and approved by the department's dental consultant, describes a condition or combination of conditions which render the use of dentures impracticable or which may be more economically ameliorated by fixed bridgework than by dentures.~~
- m. Physical therapy. "Physical therapy" means those services prescribed by a physician and provided to a patient by or under the supervision of a qualified physical therapist.
- n. Occupational therapy. "Occupational therapy" means those services prescribed by a physician and provided to a patient and given by or under the supervision of a qualified occupational therapist.

- o. Services for individuals with speech, hearing, and language disorders. "Services for individuals with speech, hearing, and language disorders" means those diagnostic, screening, preventive, or corrective services provided by or under the supervision of a speech pathologist or audiologist in the scope of practice of the speech pathologist's or audiologist's profession for which a patient is referred by a physician.
- p. Prescribed drugs. "Prescribed drugs" means any simple or compounded substance or mixture of substances prescribed as such or in other acceptable dosage forms for the cure, mitigation, or prevention of disease, or for health maintenance, by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's professional practice as defined and limited by federal and state law.
- q. Durable medical equipment and supplies. "Durable medical equipment and supplies" means those medically necessary items suitable for use in the home and used to treat disease, to promote healing, to restore bodily functioning to as near normal as possible, or to prevent further deterioration, debilitation, or injury which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. Durable medical equipment includes prosthetic and orthotic devices, eyeglasses, and hearing aids. For purposes of this subdivision:
  - (1) "Eyeglasses" means lenses, including frames when necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye, or by an optometrist, whichever the patient may select, to aid or improve vision;
  - (2) "Hearing aid" means a specialized orthotic device individually fitted to correct or ameliorate a hearing disorder; and
  - (3) "Prosthetic and orthotic devices" means replacement, corrective, or supportive devices prescribed for a patient by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for the purpose of artificially replacing a missing portion of the body, or to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.
- r. Other diagnostic, screening, preventive, and rehabilitative services.
  - (1) "Diagnostic services", other than those for which provision is made elsewhere in these definitions, includes any medical



procedures or supplies recommended for a patient by the patient's physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, as necessary to enable the physician or practitioner to identify the existence, nature, or extent of illness, injury, or other health deviation in the patient.

- (2) "Preventive services" means those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability, and other health deviations or their progression, prolong life, and promote physical and mental health and efficiency.
  - (3) "Rehabilitative services", in addition to those for which provision is made elsewhere in these definitions, includes any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.
  - (4) "Screening services" consists of the use of standardized tests performed under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations or to identify suspects for more definitive studies.
- s. Inpatient psychiatric services for individuals under age twenty-one, as defined in 42 CFR 440.160, provided consistent with the requirements of 42 CFR part 441 and section 75-02-02-10.
  - t. Services provided to persons age sixty-five and older in an institution for mental diseases, as defined in 42 U.S.C. 1396d(i).
  - u. Any other medical care and any other type of remedial care recognized under state law and specified by the secretary, including:
    - (1) Transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the department to be medically necessary.
    - (2) Family planning services, including drugs, supplies, and devices, when such services are under the medical direction

of a physician. There must be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals may choose in accordance with the dictates of their consciences.

- (3) Whole blood, including items and services required in collection, storage, and administration, when it has been recommended by a physician and when it is not available to the patient from other sources.

2. The following limitations apply to medical and remedial care and services covered or provided under the medical assistance program:

- a. Coverage may not be extended and payment may not be made for diet remedies prescribed for eligible recipients.
- b. Coverage may not be extended and payment may not be made for alcoholic beverages prescribed for eligible recipients.
- c. Coverage may not be extended and payment may not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.
- d. Coverage and payment for eye examinations and eyeglasses for eligible recipients are limited to examinations and eyeglass replacements necessitated because of visual impairment. Coverage and payment for eyeglass frames are available for a reasonable number of frames, and in a reasonable amount, not to exceed limits set by the department. No coverage exists, and no payment may be made, for eyeglass frames which exceed the limits.
- e. Coverage and payment for home health care services and private duty nursing services are limited to a monthly amount determined by taking the monthly charge, to the medical assistance program, for the most intensive level of nursing care in the most expensive nursing facility in the state and subtracting therefrom the cost, in that month, of all medical and remedial services furnished to the recipient (except physician services and prescribed drugs). For the purposes of determining this limit, remedial services include home and community-based services, service payments to the elderly and disabled, homemaker and home health aide services, and rehabilitative services, regardless of the source of payment for such services. This limit may be exceeded, in unusual and complex cases, if the provider has submitted a prior treatment authorization request describing each medical and remedial service to be received by the recipient, stating the cost of that service, describing the medical necessity for the provision of the home health care services or private duty nursing services, and



explaining why less costly alternative treatment does not afford necessary medical care, and has had the request approved.

- f. Coverage may not be extended and payment may not be made for transportation services except as provided in sections 75-02-02-13.1 and 75-02-02-13.2.
- 9. Coverage may not be extended and payment may not be made for any abortion except when necessary to save the life of the mother or when the pregnancy is the result of an act of rape or incest.
- h. Coverage may not be extended and payment may not be made for ambulance services that are not medically necessary, as determined by the department, and provided in response to a medical emergency.
- i. Coverage may not be extended and payment may not be made for emergency room services that are not medically necessary, as determined by the department under section 75-02-02-12, and provided in response to a medical emergency.
- j. Coverage may not be extended and payment may not be made for medically necessary chiropractic services exceeding twenty-four treatments for spinal manipulation services and eight radiologic examinations per year, per recipient, unless the provider requests and receives prior authorization from the department.
- 3. a. Except as provided in subdivision b, remedial services are covered services.
- b. Remedial services provided by residential facilities such as licensed basic care facilities, licensed foster care homes or facilities, and specialized facilities are not covered services, but expenses incurred in securing such services must be deducted from countable income in determining financial eligibility.
- 4. a. The department may refuse payment for any covered service or procedure for which a prior treatment authorization request is required but not secured.
- b. The department may consider making payment if the provider demonstrates good cause for the failure to secure the required prior treatment authorization request within twelve months of the time the services or procedures were furnished.
- 5. A provider of medical services who provides a covered service, but fails to receive payment due to the operation of subsection 4, and who attempts to collect from the eligible recipient or the eligible recipient's responsible relatives any amounts which would have been paid by

the department but for the operation of subsection 4, has by so doing breached the agreement referred to in subsection 4 of section 75-02-02-10.

6. a. Effective January 1, 1994, and for so long thereafter as the department may have in effect a waiver (issued pursuant to 42 U.S.C. 1396n(b)(1)) of requirements imposed pursuant to 42 U.S.C. chapter 7, subchapter XIX, no payment may be made, except as provided in this subsection, for otherwise covered services provided to otherwise eligible recipients:
  - (1) Who are required by this subsection to select, or have selected on their behalf, a primary care physician, but who have not selected, or have not had selected on their behalf, a primary care physician; or
  - (2) By a provider who is not the primary care physician selected by or on behalf of the recipient or who has not received a referral of such a recipient from the primary care physician.
- b. A primary care physician must be selected by or on behalf of the members of a medical assistance unit which includes:
  - (1) Persons who are members of the section 1931 group.
  - (2) Families who were in the section 1931 group in at least three of the six months immediately preceding the month in which they became ineligible as a result (wholly or partly) of the collection or increased collection of child or spousal support, and continue to be eligible for medicaid for four calendar months following the last month of section 1931 group eligibility.
  - (3) Families who were in the section 1931 group in at least three of the six months immediately preceding the month in which the family became ineligible solely because of hours of, or income from, employment of the caretaker relative; or which became ineligible because a member of the family lost the time-limited disregards (the percentage disregard of earned income).
  - (4) Children born to eligible pregnant women who have applied for and been found eligible for medicaid on or before the day of the child's birth, for sixty days after the day of the child's birth and for the remaining days of the month in which the sixtieth day falls.
  - (5) Eligible caretaker relatives and individuals under the age of twenty-one who qualify for and require medical services on



the basis of insufficient income and assets, but who do not qualify as categorically needy, but not including children in foster care.

- (6) Pregnant women whose pregnancies have been medically verified and who, except for income and assets, would be eligible as categorically needy.
  - (7) Pregnant women whose pregnancies have been medically verified and who qualify on the basis of financial eligibility.
  - (8) Pregnant women whose pregnancies have been medically verified and who meet the nonfinancial and asset requirements of the medicaid program and whose family incomes are at or below one hundred thirty-three percent of the poverty level.
  - (9) Eligible women, who applied for medicaid during pregnancy, for sixty days after the day each pregnancy ends, and for the remaining days of the month in which the sixtieth day falls.
  - (10) Children under the age of six who meet the nonfinancial and asset requirements of the medicaid program and whose family incomes are at or below one hundred thirty-three percent of the poverty level.
  - (11) Children, age six through eighteen, who meet the nonfinancial and asset requirements of the medicaid program and whose family incomes are at or below one hundred percent of the poverty level.
- c. Physicians practicing in the following specialties, practices, or locations may be selected as primary care physicians:
- (1) Family practice;
  - (2) Internal medicine;
  - (3) Obstetrics;
  - (4) Pediatrics;
  - (5) Osteopathy;
  - (6) General practice;
  - (7) Rural health clinics;
  - (8) Federally qualified health centers; and

- (9) Indian health clinics.
- d. A recipient identified in subdivision b need not select, or have selected on the recipient's behalf, a primary care physician if:
  - (1) Aged, blind, or disabled;
  - (2) The period for which benefits are sought is prior to the date of application;
  - (3) Receiving foster care or subsidized adoption benefits; or
  - (4) Receiving home and community-based services.
- e. Payment may be made for the following medically necessary covered services whether or not provided by, or upon referral from, a primary care physician:
  - (1) Certified family nurse practitioner services;
  - (2) Certified pediatric nurse practitioner services;
  - (3) Early and periodic screening, diagnosis, and treatment of recipients under twenty-one years of age;
  - (4) Family planning services;
  - (5) Certified nurse midwife services;
  - (6) Podiatric services;
  - (7) Optometric services;
  - (8) Chiropractic services;
  - (9) Clinic services;
  - (10) Dental services, including orthodontic services only upon referral from early and periodic screening, diagnosis, and treatment;
  - (11) Intermediate care facility services for the mentally retarded;
  - (12) Emergency services;
  - (13) Transportation services;
  - (14) Case management services;



- (15) Home and community-based services;
  - (16) Nursing facility services;
  - (17) Prescribed drugs;
  - (18) Psychiatric services;
  - (19) Ophthalmic services;
  - (20) Obstetrical services;
  - (21) Psychological services;
  - (22) Ambulance services;
  - (23) Immunizations;
  - (24) Independent laboratory and radiology services; and
  - (25) Public health unit services.
- f. Except as provided in subdivision d, and if the department exempts the recipient, a primary care physician must be selected for each recipient.
- g. Primary care physicians may be changed at any time within ninety days after the recipient is informed of the requirements of this subsection, at redetermination of eligibility, and once every six months with good cause. Good cause for changing primary care physicians less than six months after a previous selection of a primary care physician exists if:
- (1) The recipient relocates;
  - (2) Significant changes in the recipient's health require the selection of a primary care physician with a different specialty;
  - (3) The primary care physician relocates or is reassigned;
  - (4) The selected physician refuses to act as a primary care physician or refuses to continue to act as a primary care physician; or
  - (5) The department, or its agents, determine, in the exercise of sound discretion, that a change of primary care physician is necessary.

7. Covered medical or remedial services or supplies are medically necessary when determined so by the medical provider unless the department has:
  - a. Required a prior treatment authorization request that was not granted;
  - b. Imposed a limit that is exceeded;
  - c. Imposed a condition that was not met;
  - d. Specifically reserved authority to make determinations of medical necessity; or
  - e. Upon review, determined that the service or supplies are not medically necessary.

**History:** Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986; November 1, 1986; November 1, 1987; January 1, 1991; July 1, 1993; January 1, 1994; January 1, 1996; July 1, 1996; January 1, 1997; May 1, 2000; amendments partially voided by the Administrative Rules Committee effective June 5, 2000; November 8, 2002.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04; 42 USC 1396n(b)(1); 42 CFR 431.53; 42 CFR 431.110; 42 CFR 435.1009; 42 CFR Part 440; 42 CFR Part 441, subparts A, B, D

#### **75-02-02-09.1. Cost sharing.**

1. Copayments provided for in this section may be imposed unless:
  - a. The recipient receiving the service:
    - (1) Lives in a nursing facility, intermediate care facility for the mentally retarded, or the state hospital;
    - (2) Receives swing-bed services in a hospital;
    - (3) Has not reached the age of twenty-one years;
    - (4) Is pregnant; or
    - (5) Is entitled to have a portion of the cost of the visit paid for by medicare; or
  - b. The service is:
    - (1) Emergency room services; or



(2) Family planning services.

2. Copayments are:

- a. Fifty dollars for each inpatient hospital admission except admissions to hospitals paid as psychiatric, rehabilitative, or long-term hospitals;
- b. Three dollars for the first monthly nonemergency outpatient visit to a hospital, except visits to hospitals paid as psychiatric, rehabilitative, or long-term hospitals;
- c. Three dollars for each nonemergency service provided in a hospital emergency room;
- d. Two dollars for each physician visit;
- e. Two dollars for each office visit to a rural health clinic or federally qualified health center;
- f. One dollar for each chiropractic visit; ~~and~~
- g. Two dollars for each preventive dental office visit; and
- h. Three dollars for each brand name prescription filled.

**History:** Effective January 1, 1997; amended effective November 8, 2002.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04

**75-02-02-10. Limitations on inpatient psychiatric services.**

- 1. Inpatient psychiatric services for individuals under age twenty-one must be provided:
  - a. Under the direction of a physician;
  - b. By a psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the joint commission on accreditation of health care organizations, or by a psychiatric facility which is accredited by the joint commission on accreditation of health care organizations; and
  - c. Before the individual reaches age twenty-one, or, if the individual was receiving inpatient psychiatric services immediately before reaching age twenty-one, before the earlier of:

- (1) The date the individual no longer requires inpatient psychiatric services; or
  - (2) The date the individual reaches age twenty-two.
2. A psychiatric facility or program providing inpatient psychiatric services to individuals under age twenty-one must:
  - a. Except as provided in subdivision c, obtain a certification of need from an independent review team qualified under subsection 3 prior to admitting an individual who is eligible for medical assistance;
  - b. Obtain a certification of need from a team responsible for developing a plan of care under 42 CFR 441.156 for an individual who applies for medical assistance while in the facility or program covering any period for which claims are made; or
  - c. Obtain a certification of need from a team responsible for developing a plan of care under 42 CFR 441.156 for an emergency admission of an individual, within fourteen days after the admission, covering any period prior to the certification for which claims are made.
3.
  - a. An independent review team must:
    - (1) Be composed of individuals who have no business or personal relationship with the inpatient psychiatric facility or program requesting a certification of need;
    - (2) Include a physician;
    - (3) Have competence in diagnosis and treatment of mental illness; and
    - (4) Have adequate knowledge of the situation of the individual for whom the certification of need is requested.
  - b. Before issuing a certification of need, an independent review team must use professional judgment and standards approved by the department and consistent with the requirements of 42 CFR part 441, subpart D, to demonstrate:
    - (1) Ambulatory care resources available in the community do not meet the treatment needs of the individual;
    - (2) Proper treatment of the individual's psychiatric condition requires services on an inpatient basis under the direction of a physician; and



- (3) The requested services can reasonably be expected to improve the individual's condition or prevent further regression so services may no longer be needed.
4. No payment will be made for inpatient psychiatric services provided to recipients an individual, other than those described in subsection 1, in a distinct part unit of a hospital except for the first twenty-one days of each admission. Payment may not be made for inpatient psychiatric services exceeding forty-five days per calendar year per individual.

**History:** Amended effective January 1, 1997; November 1, 2001; November 8, 2002.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04; 42 CFR Part 441, subpart D

**75-02-02-10.2. Limitations on ambulatory behavioral health care.**

1. For purposes of this section:
  - a. "Ambulatory behavioral health care" means ambulatory services provided to an individual with a significant impairment resulting from a psychiatric, emotional, behavioral, or addictive disorder which are provided by a multidisciplinary team of health care professionals and are designed to stabilize the health of the individual with the intent to avert inpatient hospitalization or to reduce the length of a hospital stay.
  - b. "Level A ambulatory behavioral health care" means an intense level of ambulatory behavioral health care which provides treatment for an individual by at least three licensed health care professionals under the supervision of a licensed physician for at least four hours and no more than eleven hours per day for at least three days per week.
  - c. "Level B ambulatory behavioral health care" means an intermediate level of ambulatory behavioral health care that provides treatment for an individual by at least three licensed health care professionals under the supervision of a licensed physician for three hours per day for at least two days per week.
  - d. "Level C ambulatory behavioral health care" means a low level of ambulatory behavioral health care that provides chemical dependency treatment for an individual by at least one licensed health care professional under the supervision of a licensed physician for less than three hours per day and no more than three days per week.
2. No payment for ambulatory behavioral health care will be made unless the provider requests authorization from the department within three

days of providing such services and the department approves such request. A provider must submit a written request for authorization to the department on forms prescribed by the department.

**3. Limitations.**

- a. Payment may not be made for level A ambulatory behavioral health care services exceeding thirty days per calendar year per individual.**
- b. Payment may not be made for level B ambulatory behavioral health care services exceeding fifteen days per calendar year per individual.**
- c. Payment may not be made for level C ambulatory behavioral health care services exceeding twenty days per calendar year per individual.**

**History:** Effective November 8, 2002.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04; 42 CFR Part 441





JULY 2003

CHAPTER 75-02-02.1

**75-02-02.1-01. Definitions.** For the purposes of this chapter:

1. "Agency" means the North Dakota department of human services.
2. ~~"Aid to families with dependent children" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.].~~
3. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.
4. ~~3.~~ "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program determining blindness for title II or XVI of the Act.
5. ~~4.~~ "Child" means a person, under twenty-one, or, if blind or disabled, under age eighteen, who is not living independently.
6. ~~5.~~ "Contiguous" means real property which is not separated by other real property owned by others. Roads and other public rights of way which run through the property, even if owned by others, do not affect the property's contiguity.
7. ~~6.~~ "County agency" means the county social service board.
8. ~~7.~~ "Department" means the North Dakota department of human services.
8. "Deprived child" means a child who is deprived of parental support or care because one or both parents are deceased, incapacitated, disabled, aged, or maintains and resides in a separate verified residence for reasons other than employment, education, training, medical care, or uniformed service.



9. "Disabled" has the same meaning as the term has when used by the social security administration in ~~the supplemental security income program~~ determining disability for title II or XVI of the Act.
10. "Disabled adult child" means a disabled or blind person over the age of twenty-one who became blind or disabled before age twenty-two.
11. ~~"Earned income" means income which is currently received as wages, salaries, commissions, or profits from activities in which an individual or family is engaged through either employment or self-employment. There must be an appreciable amount of personal involvement and effort, on the part of the individual or family, for income to be considered "earned".~~
42. "Full calendar month" means the period which begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration.
43. ~~12.~~ "Good-faith effort to sell" means an honest effort to sell in a manner which is reasonably calculated to induce a willing buyer to believe that the property offered for sale is actually for sale at a fair price. A good-faith effort to sell includes, at a minimum, making the offer at ~~a stated minimum price equal to seventy-five percent of price based on an appraisal, a market analysis by a realtor, or another method which produces an accurate reflection of fair market value (sixty-six and two-thirds percent of fair market value or,~~ a determination of qualified disabled and working individual benefits under section 75-02-02.1-23), sixty-six and two-thirds percent of fair market value, in the following manner:
- a. To any coowner, joint owner, possessor, or occupier of the property, and, if no buyer is thereby secured;
  - b. To the regular market for such property, if any regular market exists, or, if no regular market exists;
  - c. By public advertisement for sale in a newspaper of general circulation, the circulation area of which includes the location of any property resource offered for sale, which advertisement was published successively for two weeks if the newspaper is a weekly publication and for one week if the newspaper is a daily publication, and which includes a plain and accurate description of the property and the name, address, and telephone number of a person who will answer inquiries and receive offers.
13. "Healthy steps" means an insurance program, for children up to age nineteen, administered under North Dakota Century Code chapter 50-29 and title XXI of the Act.

14. "Home" includes, when used in the phrase "the home occupied by the medicaid unit", the land on which the home is located, provided that the acreage [hectarage] does not exceed one hundred sixty contiguous acres [64.75 hectares] if rural or two acres [.81 hectares] if located within the established boundaries of a city.
15. "Home and community-based services" means services, provided under a waiver secured from the United States department of health and human services, which are:
- a. Not otherwise available under medicaid; and
  - b. Furnished only to individuals who, but for the provision of such services, would require the level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded.
16. "Institutionalized person" or "institutionalized individual" means a person an individual who is an inpatient in a nursing facility, an intermediate care facility for the mentally retarded, the state hospital, an accredited a residential treatment center for children facility accredited by the joint commission on accreditation of healthcare organizations, or the Anne Carlsen school-hospital facility, or who receives swing-bed care in a hospital.
- ~~46.~~ 17. "Living independently" means, in reference to a child single individual under the age of twenty-one or, if blind or disabled, under the age of eighteen, a status which arises in any of the following circumstances:
- a. The ~~applicant or recipient~~ individual has served a tour of active duty with the armed services of the United States and lives separately and apart from the parent.
  - b. The ~~applicant or recipient~~ individual has married, even though that marriage may have been dissolved or annulled in a court of law ended through divorce or separation. A marriage ended by legal annulment is treated as if the marriage never occurred.
  - c. The ~~applicant or recipient~~ individual has lived separately and apart from both parents for at least six consecutive full calendar months after the date the ~~applicant or recipient~~ individual left a parental home, continues to live separately and apart from both parents, and has received no support or assistance from either parent while living separately and apart. For purposes of this ~~subdivision,~~ periods subsection:
    - (1) Periods when the applicant or recipient individual is attending an educational or training facility, receiving care in a specialized facility, or is an institutionalized person individual



are deemed to be periods when the ~~applicant or recipient~~  
~~was individual~~ is living with a parent unless the individual first  
established that the individual was living independently; and

(2) Health insurance coverage and court-ordered child support  
payments are not "assistance or support".

d. ~~Both parents from whom support could ordinarily be sought, and~~  
~~the property of such parents, is outside the jurisdiction of the courts~~  
~~of the United States or any of the United States. The individual~~  
is a former foster care recipient who has established a living  
arrangement separate and apart from either parent and received  
no support or assistance from either parent.

e. The individual lives separately and apart from both parents due to  
incest and receives no support or assistance from either parent.

~~47- 18. "Medicaid" means a program implemented pursuant to North Dakota~~  
~~Century Code chapter 50-24.1 and title XIX of the Act [42 U.S.C.~~  
~~1396 et seq. to furnish medical assistance, as defined in 42 U.S.C.~~  
~~1396d(a), to persons determined eligible for medically necessary,~~  
~~covered medical, and remedial services].~~

~~18. "Medicaid unit" means an individual, a married couple, or a family with~~  
~~children under twenty-one years of age (or, with respect to a blind or~~  
~~disabled child, under eighteen years of age), whose income and assets~~  
~~are considered in determining eligibility for any member of that unit,~~  
~~without regard to whether the members of the unit all physically reside~~  
~~in the same location.~~

19. "Medicare cost sharing" means the following costs:

a. (1) Medicare part A premiums; and

(2) Medicare part B premiums;

b. Medicare coinsurance;

c. Medicare deductibles; and

d. Twenty percent of the allowed cost for medicare covered services  
where medicare covers only eighty percent of the allowed costs.

20. "Occupied" means, when used in the phrase "the home occupied  
by the medicaid unit", the home the medicaid unit is living in or, if  
temporarily absent from, possessed with an intention to return and the  
capability of returning within a reasonable length of time. Property is  
not occupied if the right to occupy has been given up through a rental  
or lease agreement, whether or not that rental or lease agreement is

written. Property is not occupied by an individual in long-term care or the state hospital, with no spouse, disabled adult child, or child under age twenty-one at home, unless a physician has certified that the individual is likely to return home within six months.

21. ~~"Persons deemed to be receiving aid to families with dependent children" means those persons who are not receiving an aid to families with dependent children money payment, but who must be treated as recipients of such benefits because federal law or regulations so provides.~~
22. ~~"Pre-need funeral service contract" has the same meaning provided for in subsection 2 of North Dakota Century Code section 43-10.1-01. "Poverty level" means the income official poverty line, as defined by the United States office of management and budget, and as revised annually in accordance with 42 U.S.C. 9902(2).~~
23. 22. "Property which is essential to earning a livelihood" means property ~~which the applicant or recipient~~ that a member of a medicaid unit owns, and which the ~~applicant or recipient~~ medicaid unit is actively engaged in using to earn income, and where the total benefit of such income is derived for the ~~applicant or recipient's~~ medicaid unit's needs. ~~An applicant or recipient~~ A member of a medicaid unit is actively engaged in using the property of ~~that individual~~ if a member of the unit contributes significant current personal labor in using the property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active use of the property. ~~Property from which an applicant or recipient is merely receiving rental or lease income is not essential to earning a livelihood. With respect to determination of qualified medicare beneficiary benefits under section 75-02-02.1-22, qualified disabled and working individual benefits under section 75-02-02.1-23, and benefits determined by applying section 75-02-02.1-24, concerning spousal impoverishment prevention, liquid assets may be included as property essential to earning a livelihood. The amount of a liquid asset used exclusively in a trade or business, which is essential to earning a livelihood, is limited to an amount reasonably necessary for the continuation of the business. Liquid assets may not otherwise be treated as property essential to earning a livelihood.~~
24. 23. "Property which is not saleable without working an undue hardship" means property which the owner has made a good-faith effort to sell which has produced no buyer willing to pay an amount equaling or exceeding seventy-five percent of the property's fair market value ~~(, or sixty-six and two-thirds percent of the property's fair market value with respect to determination of qualified disabled and working individual benefits under section 75-02-02.1-23),~~ and which is continuously for sale. Property may not be included within this definition at any time



earlier than the first day of the first month in which a good-faith effort to sell is begun.

- ~~25-~~ 24. "Regulation", as used in 42 CFR 431.210, 431.244, and 435.912, includes any written statement of federal or state law or policy, including, but not limited to, federal and state constitutions, statutes, regulations, rules, policy manuals or directives, policy letters or instructions, and relevant controlling decisions of federal or state courts.
- ~~26-~~ 25. "Remedial services" means those services, provided in specialized facilities, which produce the maximum reduction of physical or mental disability and restoration of the facilities' residents to the residents' best possible level of functioning.
- ~~27-~~ 26. "Residing in the home" refers to individuals who are physically present, individuals who are temporarily absent, or individuals attending educational facilities, ~~individuals receiving acute medical care, and individuals receiving services in a specialized facility.~~
- ~~28-~~ 27. "Specialized facility" means a residential facility, including a basic care facility, a licensed family foster care home for children or adults, a licensed group foster care home for children or adults, a transitional living facility, a facility established to provide quarters to clients of a sheltered workshop, and any other facility determined by the department to be a provider of remedial services, but does not mean an acute care facility or a nursing facility.
- ~~29-~~ 28. "State agency" means the North Dakota department of human services.
- ~~30-~~ 29. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
30. "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Act [42 U.S.C. 601 et seq.].
31. "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].
32. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].
33. ~~"Title IV-A" means title IV-A of the Social Security Act [42 U.S.C. 601 et seq.].~~
34. ~~"Title IV-D" means title IV-D of the Social Security Act [42 U.S.C. 651 et seq.].~~
35. "Title IV-E" means title IV-E of the Social Security Act [42 U.S.C. 670 et seq.].

36. ~~Title XVI" means title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].~~

37. ~~34. "Unearned income" means income which is not earned income. "Title XIX" means title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].~~

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; October 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

## **75-02-02.1-02. Application and redetermination.**

### **1. Application.**

- a. All individuals wishing to make application for medicaid must have the opportunity to do so, without delay.
- b. An application is a written request made by ~~a person~~ an individual desiring assistance under the medicaid program, or by ~~a proper person~~ an individual seeking such assistance on behalf of another ~~person~~ individual, to a county ~~social service board~~ agency, the department, a disproportionate share hospital, as defined in section 1923(a)(3)(A) of the Act [42 U.S.C. 1396r-4(a)(1)(A)], or a federally qualified health center, as described in section 1905(1)(2)(B) of the Act [42 U.S.C. 1396d(1)(2)(B)]. ~~A proper person means any person of sufficient maturity and understanding to act responsibly on behalf of the applicant.~~
- c. ~~An application must be in writing and signed on a prescribed application form.~~
- d. A prescribed application form must be signed by the applicant ~~if the applicant is physically and mentally able to do so. An application made on behalf of an applicant adjudged incompetent by a court must be signed by the guardian or by someone acting responsibly for an incapacitated applicant.~~
- e. d. Information concerning eligibility requirements, available services, and the rights and responsibilities of ~~applicant~~ applicants and recipients must be furnished to all who require it.
- f. e. A relative or other interested party may file an application in behalf of a deceased ~~person~~ individual to cover medical costs incurred prior to the deceased ~~person's~~ individual's death.
- g. f. The date of application is the date an application, signed by an appropriate ~~person~~ individual, is received at a county ~~social service~~



~~board office agency, the department,~~ a disproportionate share hospital, or a federally qualified health center.

2. **Redetermination.** A redetermination must be ~~made~~ completed within thirty days after a county agency has received information indicating a possible change in eligibility status, when ~~a recipient enters a nursing facility~~ eligibility is lost under a category, and in any event, no less than annually. A recipient ~~or recipient's guardian~~ has the same responsibility to furnish information during a redetermination as an applicant ~~or an applicant's guardian~~ has during an application.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-02.1. ~~Applicant's or guardian's duty~~ Duty to establish eligibility.** It is the responsibility of the applicant or ~~guardian of the applicant for~~ recipient to provide information sufficient to establish the eligibility of each individual for whom assistance is requested, including, ~~but not limited to, the~~ furnishing of a social security number, and ~~the establishment of~~ establishing age, identity, residence, citizenship, blindness, disability, and financial eligibility in each of the months in which medicaid benefits are ~~sought~~ requested.

**History:** Effective December 1, 1991; amended effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-03. Decision and notice.**

1. A decision as to eligibility will be made promptly on applications, within forty-five days, or within ninety days in ~~disability cases~~ with a disability determination pending, except in unusual circumstances.
2. ~~A decision as to eligibility on redeterminations will be made within thirty days.~~
3. ~~Immediately upon an eligibility determination, whether eligibility can be found, ineligibility can be found, or eligibility cannot be determined, medicaid applicants or recipients must be notified by the county agency. A notice must be sent in advance of any decision terminating or reducing medicaid benefits. Following a determination of eligibility or ineligibility, an applicant must be notified of either approval or denial of medicaid.~~
- 4- 3. Notice must be sent at the time, and in the manner, required by 42 CFR 431.210 through 431.214.

- 5- 4. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for an applicant or recipient who is adversely affected.

**History:** Effective December 1, 1991; amended effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-04. Screening of recipients of certain services.** All applicants or recipients who seek services in nursing facilities ~~(including swing-bed facilities), institutions for mental disease,~~ or intermediate care facilities for the mentally retarded, or who seek home and community-based services, must demonstrate a medical necessity for the service sought on or prior to admission to a facility, upon application for medicaid while in a facility, or upon request for home and community-based services. That demonstration must be based on a screening provided by the department.

**History:** Effective December 1, 1991; amended effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-04.1. Certification of need for children in an institution for mental disease.**

1. Children under age twenty-one who seek services in an institution for mental disease must obtain certification of need in order to be eligible for medicaid.
2. For an individual who attains age twenty-one while receiving treatment and continues to receive treatment as an inpatient, eligibility may continue through the month the individual attains the age of twenty-two.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-05. Covered Coverage groups.** Within the limits of legislative appropriation, ~~four broad coverage groups are included under the medicaid program~~ the department may provide medicaid benefits to coverage groups described in the approved medicaid state plan in effect at the time those benefits are sought. ~~Within each coverage group, one or more aid categories is established.~~ These coverage groups do not define eligibility for medicaid benefits. Any person who is within a coverage group must also demonstrate that all other eligibility criteria are met.

1. Categorically ~~The categorically needy groups include~~ coverage group includes:



- a. ~~Persons who are receiving cash assistance payments through aid to families with dependent children.~~
- b. ~~Persons who are deemed to be recipients of aid to families with dependent children including:~~
  - (1) ~~Individuals denied an aid to families with dependent children payment solely because the amount would be less than ten dollars;~~
  - (2) ~~Individuals whose aid to families with dependent children payments are reduced to zero by reason of recovery of overpayment of aid to families with dependent children funds;~~
  - (3) ~~Families who were receiving aid to families with dependent children cash assistance payments in at least three of the six months immediately preceding the month in which they became ineligible as a result (wholly or partly) of the collection or increased collection of child or spousal support and are deemed to be recipients of aid to families with dependent children, and continue eligible for medicaid for four calendar months following the month for which the final cash payment was made;~~
  - (4) ~~Children for whom adoption assistance maintenance payments are made under title IV-E;~~
- (5) b. Children for whom foster care maintenance payments are made under title IV-E;
- (6) c. Children who are living in North Dakota and are receiving title IV-E adoption assistance payments from another state; and
- (7) d. Children in a foster care placement in North Dakota and receiving a title IV-E foster care payment from another state.;
- e. Caretakers, pregnant women, and children who meet the family coverage eligibility criteria;
- e. f. ~~Families which received aid to families with dependent children payments who were eligible under the family coverage group in at least three of the six months immediately preceding the month in which the family became ineligible for aid to families with dependent children solely because of increased hours of, or income from, employment of the caretaker relative; or which became ineligible for aid to families with dependent children solely because a member of the family lost one of the time-limited aid to families with dependent children earned income disregards~~

~~(the thirty dollar earned income disregard and the disregard of one-third of earned income);~~ because of the caretaker relative's earned income or because a member of the unit has a reduction in the time-limited earned income disregard;

- d. ~~Pregnant women whose pregnancy has been medically verified and who would be eligible for an aid to families with dependent children cash payment on the basis of the income and asset requirements of the state approved aid to families with dependent children plan.~~
- g. Families who were eligible under the family coverage group in at least three of the six months immediately preceding the month in which they became ineligible as a result, wholly or partly, of the collection or increased collection of child or spousal support continue eligible for medicaid for four calendar months;
- e. h. Eligible pregnant women who applied for and were eligible for medicaid as categorically needy during pregnancy continue to be eligible, as though they were pregnant, for sixty days after the day each pregnancy ends beginning on the last day of the pregnancy, and for the remaining days of the month in which the sixtieth day falls;
- f. i. Children born to categorically needy eligible pregnant women who have applied for and been were found eligible for medicaid on or before the day of the child's birth, for sixty days after beginning on the day of the child's birth and for the remaining days of the month in which the sixtieth day falls;
- g. j. Aged, blind, or disabled individuals who are receiving supplemental security income payments or who appear on the state data exchange as zero payment as a result of supplemental security income's recovery of an overpayment or who are suspended because the individuals do not have a protective payee, provided that the more restrictive medicaid criteria is met; and
- h. k. Individuals who meet the more restrictive requirements of the medicaid program and qualify for supplemental security income benefits under section 1619(a) or 1619(b) of the Act [42 U.S.C. 1382h(a) or 1382h(b)].
- i. ~~Essential spouses of, or persons essential to, individuals who received benefits, in December 1973 under the state's approved plan for title XVI of the Social Security Act (repealed), who were grandfathered into the supplemental security income program and who have continuously received benefits under the supplemental security income program and the medicaid program since the inception of the supplemental security income program, but only~~



~~if the essential spouse of, or person essential to, the individual continues to reside with the individual.~~

- ~~j. Members of families who would be eligible for aid to families with dependent children if that program did not limit, under 42 U.S.C. 607(b)(2)(B)(i), the number of months with respect to which a family receives such aid.~~

2. ~~Optional~~ The optional categorically needy groups include coverage group includes:

- ~~a. All individuals~~ Individuals under age twenty-one who ~~are not receiving aid to families with dependent children, but whose income and assets are at or below the aid to families with dependent children program limits.~~ is within the family coverage group levels, but who are not otherwise eligible under the family coverage group.
- ~~b. All individuals~~ Individuals under age twenty-one who are residing in adoptive homes and who have been determined under the state-subsidized adoption program to be eligible as provided in state law and in accordance with the requirements of the department.; and
- ~~c. All individuals under age twenty-one who qualify on the basis of financial eligibility for medicaid and who are residing in foster homes or private child care institutions licensed or approved by the department, irrespective of financial arrangements, including children in a "free" foster home placement. Uninsured women under age sixty-five, who are not otherwise eligible for medicaid, who have been screened for breast and cervical cancer under the centers for disease control and prevention breast and cervical cancer early detection program, and who need treatment for breast or cervical cancer, including a precancerous condition of the breast or cervix.~~

3. ~~Medically~~ The medically needy groups include coverage group includes:

- ~~a. Eligible caretaker relatives and individuals under age twenty-one in aid to families with dependent~~ deprived children families who do not meet financial or certain technical aid to families with dependent children requirements (i.e., work requirements) for a cash payment income or age family coverage group requirements, but meet medically needy income and asset standards.;
- ~~b. All individuals~~ Individuals under the age of twenty-one who qualify for and require medical services on the basis of insufficient income ~~and assets~~, but who do not qualify as categorically needy, including children in common in stepparent families who are ineligible for aid

~~to families with dependent children or children in non-IV-E foster care; under the family coverage group and foster care children who do not qualify as categorically needy;~~

- ~~c. Pregnant women whose pregnancy has been medically verified and who, except for income and assets, would be eligible as categorically needy.~~
  - ~~d. Pregnant women whose pregnancy has been medically verified and who qualify on the basis of financial eligibility;.~~
  - e. ~~d. Eligible pregnant women who applied for medicaid during pregnancy, and for whom recipient liability for the month was met no later than on the date each pregnancy ends, continue to be eligible, as though pregnant, for sixty days after the day each pregnancy ends, beginning on the last day of pregnancy and for the remaining days of the month in which the sixtieth day falls;.~~
  - e. Children born to eligible pregnant women who have applied for and been found eligible for medicaid on or before the day of the child's birth, for sixty days, beginning on the day of the child's birth, and for the remaining days of the month in which the sixtieth day falls;
  - f. ~~Aged, blind, or disabled individuals who would be eligible for are not in receipt of supplemental security income benefits or certain state supplemental payments, but who have not applied for cash assistance or have sufficient income or assets to meet their maintenance needs; and~~
  - g. ~~Individuals under age twenty-one (who have been certified as needing the service), or age sixty-five and over in the state hospital who qualify on the basis of financial eligibility.~~
4. ~~Poverty The poverty level groups include~~ coverage group includes:
- a. ~~Pregnant women whose pregnancy has been medically verified and who meet the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level;.~~
  - b. Eligible pregnant women who applied for and were poverty level eligible for medicaid during their pregnancy who continue to be eligible for sixty days after the day each pregnancy ends beginning on the last day of pregnancy, and for the remaining days of the month in which the sixtieth day falls;.



- c. Children under the age of six who meet the nonfinancial ~~and asset~~ requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level-;
- d. Children, age six ~~or older, who have not reached age eighteen to nineteen,~~ who meet the nonfinancial ~~and asset~~ requirements of the medicaid program and whose family income is at or below one hundred percent of the poverty level-;
- e. Qualified medicare beneficiaries who are aged, blind, or disabled individuals ~~who are~~ entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, have assets no greater than twice the supplemental security income resource standards, and have income at or below one hundred percent of the poverty level-;
- f. Qualified disabled and working individuals who are individuals entitled to enroll in medicare part A under section 1818a of the Social Security Act [42 U.S.C. 1395i-2(a)], who have income no greater than two hundred percent of the federal poverty level; ~~have and~~ assets no greater than twice the supplemental security income resource standard, and who are not eligible for medicaid under any other provision. ~~The supplemental security income program income and asset methodologies must be used and none of the more restrictive 200b criteria may be applied-;~~
- g. Special low-income medicare beneficiaries who are aged, blind, or disabled individuals ~~who are~~ entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, have assets no greater than twice the supplemental security income resource standards, and have income above one hundred percent of the poverty level, but not in excess of ~~one hundred ten percent of the poverty level until January 1, 1995, and thereafter, not in excess of~~ one hundred twenty percent of the poverty level-; and
- h. Qualifying individuals who are aged, blind, or disabled individuals entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, have assets no greater than twice the supplemental security income resource standards, have income above one hundred twenty percent of the poverty level, but not in excess of one hundred thirty-five percent of the poverty level, and are not eligible for medicaid under any other provision.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; January 1, 1994; January 1, 1997; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02



**75-02-02.1-06. Applicant's choice of aid category.** ~~A person~~ An individual who could establish eligibility under more than one aid category may have eligibility determined under the aid category the ~~person~~ individual selects. Except with respect to for qualified medicare beneficiaries and special low-income medicare beneficiaries, who may also establish eligibility as aged, blind, or disabled, ~~a person~~ an individual may establish eligibility under only one aid category.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-08. ~~Selecting-medicaid~~ Medicaid unit members.** A medicaid unit may be one individual, a married couple, or a family with children under twenty-one years of age or, if blind or disabled child, under age eighteen, whose income and assets are considered in determining eligibility for any member of that unit, without regard to whether the members of the unit all physically reside in the same location. An applicant or recipient who is also a caretaker of children under twenty-one years of age may select the children who will be included in the medicaid unit. Anyone whose needs are included in the unit for any month is subject to all medicaid requirements which may affect the unit. The financial responsibility of relatives must be considered with respect to all members of the assistance unit.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-08.1. Caretaker relatives.**

1. A caretaker relative who is not a child's parent may be eligible for medicaid as a caretaker relative only if:
  - a. Age sixteen or older;
  - b. Actually living in the same home as the dependent child;
  - c. Unmarried, or married and not residing with the spouse; and
  - d. The dependent child is not only temporarily absent from the home of the child's parent.
2. An individual may be a caretaker relative only if the individual is the dependent child's parent, stepparent, grandparent, brother, sister, stepbrother, stepsister, great-grandparent, aunt, uncle, niece, nephew, great-great-grandparent, great-aunt, great-uncle, first cousin, grandniece, grandnephew, great-great-great-grandparent, great-great-aunt, great-great-uncle, second cousin (a great-aunt's or



great-uncle's child), first cousin once removed (an aunt's or uncle's grandchild), great-grandniece, or great-grandnephew, whether by birth or adoption, and whether by whole or half-blood.

3. A child is considered to be living with a caretaker relative when away at school or when otherwise temporarily absent from the home. A child is not considered to be living with a caretaker relative when residing in a nursing care facility, an intermediate care facility for the mentally retarded, or a specialized facility.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-09. Assignment of rights to recover medical costs payments and benefits.**

1. ~~The applicant and each individual for whom assistance is requested must, as a condition of eligibility, execute all necessary documents to protect his or the agency's~~ assign rights to payment or benefits ~~from any third party or private insurer, including, but not limited to, the execution of assignments provided for under North Dakota Century Code sections 50-24.1-02 and 50-24.1-02.1, for medical care and services included under this plan, the need for which arises out of injury, disease, or disability of the applicant or recipient for medicaid; assign rights to medical support from any absent parent when a child is deprived of parental support or care due to the absence of one or both parents; and cooperate with the department and county agency in obtaining payment and medical support and establishing paternity of a child in the medicaid unit with respect to whom paternity has not been established. The requirement for the assignment of rights to medical support from absent parents continues through the month in which the latest of the following occurs:~~ and cooperate in obtaining medical payments and benefits. This assignment of rights to payment or benefits is automatic under North Dakota Century Code sections 50-24.1-02 and 50-24.1-02.1. As a condition of eligibility, the applicant or recipient may be required to execute a written assignment whenever appropriate to facilitate establishment of liability of a third party or private insurer.
  - a. ~~The child reaches age eighteen. The department and county agency shall take reasonable measures to obtain, from an applicant or recipient, health coverage information and other necessary information to determine the liability of third parties and private insurers.~~
  - b. ~~The child graduates from high school, provided that graduation does not occur after the month of the child's nineteenth birthday.~~

- ~~c. Child support obligations, imposed by a court for periods after the child reaches age eighteen, are terminated.~~
- 2. b. For purposes of this section subsection:
  - ~~a. "Cooperate in obtaining payment and medical support" includes:~~
    - ~~(1) Appearing at a state or local office designated by the department or county agency to provide information or evidence relevant to the case;~~
    - ~~(2) Appearing as a witness at a court or other proceeding;~~
    - ~~(3) Providing information, or attesting to lack of information, under penalty of perjury;~~
    - ~~(4) Paying to the department any support or medical care funds received that are covered by the assignment of rights; and~~
    - ~~(5) Taking any other reasonable steps to assist in establishing paternity and securing medical support and payments.~~
  - ~~b. "Deprived of parental support or care due to the absence of one or both parents" means a situation which occurs when all of the following factors are present:~~
    - ~~(1) The parent is physically absent from the home;~~
    - ~~(2) The nature of the parent's absence is such as to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and~~
    - ~~(3) The known or indefinite duration of the absence precludes relying on the parent to perform the parent's functions in planning for the present support or care of the child.~~
  - e. (1) "Private insurer" includes any commercial insurance company offering health or casualty insurance to individuals or groups, including both experience-related insurance contract and indemnity contracts; any profit or nonprofit prepaid plan offering either medical services or full or partial payment for services covered by the medicaid program; and any organization administering health or casualty insurance plans for professional associations, employer-employee benefit plans, or any similar organization offering these payments or services, including self-insured and self-funded plans.



- d. (2) "Third party" means any individual, entity, or program that is or may be liable to pay all or a part of the expenditures for services furnished under medicaid, including a parent or other person who owes a duty to provide medical support to or on behalf of a child for whom medicaid benefits are sought.
- 3. ~~The department or the county agency may take any action or impose any requirement upon an applicant or recipient as may be reasonably necessary to determine the liability of third parties and private insurers. Any action which may be taken, and any requirement which may be imposed under 42 CFR 433.138, as necessary to determine such liability, may be required of an applicant or recipient as a condition of eligibility.~~
  - 4. ~~The assignment of rights to benefits, except medical support benefits, is automatic under North Dakota Century Code section 50-24.1-02.1. However, as a condition of eligibility, the applicant or recipient may be required to execute a written assignment whenever appropriate to facilitate establishment of liability of a third party or private insurer.~~
  - 5. ~~An individual must cooperate in establishing paternity of a child born out of wedlock for whom he or she can legally assign rights, and obtaining medical support and payments for himself, herself, and any other individual for whom he or she can legally assign rights, unless:~~
    - a. ~~The individual is a pregnant woman whose pregnancy has been medically verified;~~
    - b. ~~The individual was an eligible pregnant woman who applied for medicaid during her pregnancy who continues to be eligible for sixty days after her pregnancy ends, and for the remaining days of the month in which the sixtieth day falls; or~~
    - c. ~~Cooperation is waived by the county agency for good cause.~~
- 2. Except as provided in this subsection, each applicant and each individual for whom assistance is requested must, as a condition of eligibility, assign rights to medical support from any absent parent of a deprived child, and cooperate with the department and county agency in obtaining medical support and establishing paternity of a child in the medicaid unit with respect to whom paternity has not been legally established. This assignment of rights is automatic under North Dakota Century Code sections 50-09-0-6.1 and 50-24.1-02.1. The requirement for the assignment of rights to medical support from absent parents continues through the month in which the child reaches age eighteen.
    - a. A pregnant woman is not required to cooperate in establishing paternity and obtaining medical support and payments from, or derived from, the father of the child born out of wedlock, while

pregnant, for sixty days beginning on the date the pregnancy ends, and for the remaining days of the month in which the sixtieth day falls.

b. Recipients of transitional or extended medicaid benefits are not required to cooperate in obtaining medical support and establishing paternity.

6. c. The county agency may waive the ~~requirements of subsection 5~~ requirement to cooperate in obtaining medical support and establishing paternity for good cause if it determines that cooperation is against the best interests of the child. A county agency may determine that cooperation ~~required under subsection 5~~ is against the best interests of the child only if:

a. (1) The applicant's or recipient's cooperation in establishing paternity or securing medical support is reasonably anticipated to result in:

(1) (a) Physical harm to the child for whom support is to be sought;

(2) (b) Emotional harm to the child for whom support is to be sought;

(3) (c) Physical harm to the parent or caretaker relative with whom the child is living which reduces such person's capacity to care for the child adequately; or

(4) (d) Emotional harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it reduces such person's capacity to care for the child adequately; or

b. (2) At least one of the following circumstances exists, and the county agency believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure medical support would be detrimental to the child for whom support would be sought.

(1) (a) The child for whom support is sought was conceived as a result of incest or forcible rape;

(2) (b) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or

(3) (c) The applicant or recipient is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep or relinquish the child for



adoption, and the discussions have not gone on for more than three months.

- 7. d. Physical harm and emotional harm must be of a serious nature in order to justify a waiver ~~under subsection 6~~ of the requirement to cooperate under this subsection.
  - 8. e. A waiver ~~under subsection 6~~ of the requirement to cooperate under this subsection due to emotional harm may only be based on a demonstration of an emotional impairment that substantially impairs the individual's functioning. In determining a waiver ~~under subsection 6~~ of the requirement to cooperate under this subsection, based in whole or in part upon the anticipation of emotional harm to the child, the parent, or the caretaker relative, the county agency must consider:
    - a. (1) The present emotional state of the individual subject to emotional harm;
    - b. (2) The emotional health history of the individual subject to emotional harm;
    - c. (3) Intensity and probable duration of the emotional impairment;
    - d. (4) The degree of cooperation to be required; and
    - e. (5) The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.
  - 9. f. A determination to grant a waiver ~~under subsection 6~~ of the requirement to cooperate under this subsection must be reviewed no less frequently than every ~~six~~ twelve months to determine if the circumstances which led to the waiver continue to exist.
3. For purposes of this section, "cooperate in obtaining medical support and establishing paternity" and "cooperate in obtaining medical payments and benefits" includes:
- a. Appearing at a state or local office designated by the department or county agency to provide information or evidence relevant to the case;
  - b. Appearing as a witness at a court or other proceeding;
  - c. Providing credible information, or credibly attesting to lack of information;

- d. Paying to the department any support or medical care funds received that are covered by the assignment of rights; and
- e. Taking any other reasonable steps to assist in establishing paternity and securing medical support and medical payments and benefits.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-10. Eligibility - Current and retroactive.**

1. ~~Except for qualified medicare beneficiaries, current~~ Current eligibility may be established from the first day of the month in which the application was received, ~~and for periods after that day until a redetermination is required, based upon information in the completed application and any necessary verification.~~ This subsection does not apply to qualified medicare beneficiaries.
2. ~~Except for qualified medicare beneficiaries, retroactive~~ Retroactive eligibility may be established for as many as three calendar months prior to the month in which the application was received, ~~if eligibility.~~ Eligibility can be established in each of those months for which benefits are sought and if all factors of eligibility are met during each such month of retroactive benefits sought, ~~except that the assets which would have been allowed for an ineligible community spouse are not treated as exceeding the asset limit of an institutionalized spouse.~~ If a previous application has been taken and denied in the same month, eligibility for that entire month may be established based on the current application. Retroactive eligibility may be established even if there is no eligibility in the month of application. This subsection does not apply to qualified medicare beneficiaries.
3. An ~~applicant or recipient~~ individual determined eligible for part of a month is eligible for the entire calendar month unless a specific factor prevents eligibility during part of that month. ~~Examples of specific~~ Specific factors include:
  - a. An ~~applicant~~ individual is born in the month, in which case the date of birth is the first date of eligibility;
  - b. An individual who is not receiving medicaid benefits from another state enters the state, in which case the earliest date of entry ~~is the first date of eligibility unless the~~ is the date the individual entered the state;
  - c. An individual was who is receiving medicaid benefits from another state enters the state, in which case the later of the date of entry



or the day after the last day of eligibility under the other state's medicaid program is the first date of eligibility; and

- e. d. An individual is discharged from a public institution, in which case the date of eligibility is the date of discharge.
- 4. Eligibility for qualified medicare beneficiaries begins in the month following the month in which the eligibility determination is made.
- 5. An individual cannot be eligible as a qualifying individual and be eligible under any other medicaid coverage for the same period of time.
- 6. A child cannot be eligible for medicaid for the same period of time the child is covered under the healthy steps program.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-11. Need.** Need is a factor of eligibility. Need in this sense is not to be confused with the necessity for a particular medical service.

- 1. Need is established for individuals who are determined to be categorically needy, optionally categorically needy, or poverty level eligible.
- 2. For a medically needy applicant or recipient, need is established when there is no recipient liability or when the applicant or recipient has incurred current medical expenses that equal or exceed the current recipient liability. If there is no need, there is no eligibility, and the application must be denied or the case must be closed.

**History:** Effective December 1, 1991; amended effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-12. ~~Limitation on conditions of eligibility~~ Age and identity.**  
~~No age, residence, citizenship, or other requirement that is prohibited by title XIX of the Social Security Act will be imposed as a condition of eligibility.~~

- 1. An eligible categorically or medically needy aged applicant or recipient is eligible for medicaid for the entire calendar month in which that individual reaches age sixty-five.
- 2. Except as provided in subsection 3, an individual who is eligible upon reaching age twenty-one remains eligible for medicaid through the month in which the individual reaches that age.

3. An individual who attains age twenty-one while receiving treatment and continues to receive treatment as an inpatient in an institution for mental diseases remains eligible through the month the individual reaches age twenty-two.
4. Blind individuals and disabled individuals are not subject to any age requirements for purposes of medicaid eligibility.
5. The identity of each applicant must be verified.

**History:** Effective December 1, 1991; amended effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-12.1. ~~Payment of health insurance premiums, coinsurance, and deductibles~~ Cost-effective health insurance coverage.**

1. For purposes of this section:
  - a. "Cost effective" means that medicaid payments for a set of medicaid-covered services are likely to exceed the cost of paying the health plan premium, coinsurance charges, and deductibles for those services.
  - b. ~~"Employer group health plan" means any plan of an employer or contributed to by an employer (including a self-insurance plan) to pay for health care provided to the employer's employees, former employees, or families of employees or former employees.~~
  - c. "Health plan" means any plan under which a third party is obligated by contract to pay for health care provided to an applicant for or recipient of medicaid. ~~"Health plan" includes "employer group health plan".~~
2. ~~Except as provided in this subsection, a recipient of medicaid is eligible only if he or she enrolls in, remains enrolled in, and cooperates with the requirements of, any cost-effective employer group health plan, and any cost-effective optional coverage under the plan in which he or she is eligible to be enrolled.~~
  - a. ~~A child may not be found ineligible as a result of a parent's failure to enroll the child or maintain the child's enrollment in a cost-effective employer group health plan.~~
  - b. ~~A spouse may not be found ineligible as a result of his or her spouse's failure to enroll the spouse or maintain the spouse's enrollment in a cost-effective employer group health plan unless, under the terms of the plan, either spouse is allowed to execute the enrollment.~~



- ~~c. An individual may not be found ineligible, while waiting for an open enrollment period or for the conclusion of a waiting period, if the individual is not, under the terms of the plan, permitted to enroll until the open enrollment period or the conclusion of a waiting period unless the individual has, after applying for medicaid benefits, failed to enroll during an available open enrollment period or disenrolled.~~
- 3. ~~An individual determined ineligible under subsection 2 remains ineligible until:~~
  - ~~a. The individual becomes enrolled in the plan (even if the individual is not permitted to enroll until an open enrollment period or the conclusion of a waiting period); or~~
  - ~~b. The plan is no longer considered to be cost effective.~~
- 4. ~~If an applicant for or recipient of medicaid benefits is eligible for enrollment, but is not enrolled in medicare part B, enrollment in an employer group health plan will not be considered to be cost effective.~~
- 5. Any recipient of medicaid benefits who is enrolled in a cost-effective health plan may have the health plan premiums, coinsurance, and deductibles premium paid by medicaid.
- 6. 3. Applicants for ~~or~~ and recipients of medicaid benefits must provide the information necessary to determine if ~~an employer group~~ a health plan is cost effective ~~and may provide information necessary to determine if any other health plan is cost effective.~~
- 7. 4. Recipients with a health plan the department has determined is cost effective must cooperate with all of the conditions and requirements of the health plan. Applicants and recipients must take any optional coverage provided through the plan when it is cost effective to do so. Failure to enroll, continue enrollment, enroll in a cost-effective optional coverage, or cooperate with plan requirements, or to select cost-effective options of the plan, will:
  - ~~a. In the case of an individual who may be determined ineligible under subsection 2, result in a loss of medicaid eligibility;~~
  - ~~b. Result in termination of payments for health plan premiums, coinsurance, and deductibles; and~~
  - e. b. Result in nonpayment for services, by medicaid, which the health plan would pay, or would have paid, had the recipient conformed to the requirements of the health plan.

5. If an applicant for or recipient of medicaid benefits is eligible for enrollment, but is not enrolled in medicare part B, enrollment in any other health plan is not considered cost effective.
- 8- 6. The department shall determine, using information provided by or at the direction of a medicaid applicant or recipient, guidelines established by the department, and other information at its disposal, whether a health plan is cost effective. The department may make determinations under this subsection on a case-by-case basis, on a plan-by-plan basis, or both.

**History:** Effective July 1, 1993; amended effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02; ~~42 USC 1396b(a)(1); 42 USC 1396d(a); 42 USC 1396e~~

**75-02-02.1-13. Social security numbers.** A social security number must be furnished as a condition of eligibility, for each individual for whom medicaid benefits are sought, except for:

1. A newborn child for ~~the first~~ sixty days after the date of birth beginning on the date of birth and for the remaining days of the month in which the sixtieth day falls;
2. ~~With respect to Coverage of emergency benefits services provided to illegal aliens who are not lawfully admitted;~~ and
3. ~~For individuals~~ Individuals who have applied for, but not yet received, social security numbers.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-14. Blindness and disability.**

1. In any instance in which a determination is to be made as to whether any individual is disabled, each medical report form and social history ~~will~~ shall be reviewed by a review team consisting of technically competent persons individuals, not less than a physician and ~~a social worker~~ an individual qualified by professional training and pertinent experience, acting cooperatively, who ~~are responsible for the department's decision that shall determine if the applicant does or does not meet~~ meets the appropriate definitions of disability.
2. In any instance in which a determination is to be made whether an individual is blind, ~~there will be an examination~~ the individual shall be examined by a physician skilled in the diseases of the eye, or by an



optometrist, whichever the individual may select, who shall prepare and submit an eye examination report. ~~Each eye examination report will be reviewed by the state supervising ophthalmologist who is responsible for comparing~~ The state review team shall review and compare that report with the state's definition of blindness and for determining determine:

- a. Whether the individual meets the definition of blindness; and
  - b. Whether and when reexaminations are necessary for periodic redeterminations of eligibility.
3. The ~~agency~~ state review team shall decline to determine blindness or disability ~~when such a determination is made pursuant to the processing of a~~ for a period of time that such a determination is made for supplemental security income benefit application or an old-age and survivors' insurance benefit payments application or title II disability benefits by the social security administration, ~~or its contractee, for that purpose.~~
  4. The agency may not make an independent determination of disability if the social security administration has made a disability determination or will make a disability determination within ninety days after the date of application for medicaid.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02; 42 CFR Part 435

**75-02-02.1-16. State of residence.** A resident of the state is ~~a person~~ an individual who is living in the state voluntarily and not for a temporary purpose. Temporary absences from the state with subsequent returns to the state, or intent to return when the purpose of the absence has been accomplished, do not interrupt continuity of residence. Residence is retained until abandoned or established in another state.

1. For ~~persons~~ individuals entering the state, the earliest date of eligibility is the date of entry. Residence may not be established for ~~persons~~ individuals who are receiving medicaid benefits from, or claiming residence in, another state.
2. Individuals under age twenty-one.
  - a. For any individual under age twenty-one who is living independently from ~~his or her~~ the individual's parents or who is married and capable of indicating intent, the state of residence is the state where the individual is living with the intention to remain there permanently or for an indefinite period.



- b. For any individual who is receiving foster care or adoption assistance payments, under title IV-E, from another state and is living in North Dakota, North Dakota is the state of residence for medicaid purposes.
  - c. For any individual under age twenty-one not residing in an institution, whose medicaid eligibility is based on blindness or disability, the state of residence is the state in which the individual is living.
  - d. For any other noninstitutionalized individual under age twenty-one, the state of residence is ~~determined by the rules governing residence under the aid to families with dependent children program~~ the state in which the caretaker is a resident. A child who comes to North Dakota to receive an education, special training, or services in a facility such as the Anne Carlsen facility, a maternity home, or a vocational training center is normally regarded as living temporarily in the state if the intent is to return to the child's home state upon completion of the education or service. A child placed by an out-of-state placement authority, including a court, into the home of relatives or foster parents in North Dakota is living in the state for a temporary purpose and remains a legal resident of the state of origin. A resident of North Dakota who leaves the state temporarily to pursue educational goals (including any child participating in job corps) or other specialized services (including a child placed by a North Dakota placement authority, including a court, into the home of out-of-state relatives or foster parents) does not lose residence in the state.
  - e. For any institutionalized individual, under age twenty-one, who is neither married nor living independently, residence is that of the parents or legal guardian at the time of placement. Only if the parental rights have been terminated, and a guardian or custodian appointed, may the residence of the guardian or custodian be used. If the individual has been abandoned by ~~his or her~~ the individual's parents and does not have a guardian, the individual is a resident of the state in which ~~he or she~~ the individual lives.
3. Individuals age twenty-one and over:
- a. For any individual not residing in an institution, the state of residence is the state where the individual is living with the intention to remain there permanently or for an indefinite period or is entering the state with a job commitment or seeking employment. The state of residence, for medicaid purposes, of a migrant or seasonal farm worker is the state in which the individual is employed or seeking employment.
  - b. ~~Institutionalized individuals age twenty-one and older.~~



- (1) Except as provided in ~~paragraph 2 subdivision c~~, the state of residence of an institutionalized individual is the state where the individual is living with the intention to remain there permanently or for an indefinite period.
- (2) c. For an institutionalized individual who became incapable of indicating intent before age twenty-one, the state of residence is that of the parent or guardian making application, at the time of placement or, if the individual is institutionalized in that state, at the time of application. If the individual has no guardian, the application is not made by either parent, and the placement was not made by another state, the state of residence is the state in which the individual is physically present.
4. ~~Terms used in this subsection have the meaning given in subsection 3 of section 75-02-02.1-19 and, for~~ For purposes of this subsection, a "person":  
a. "Individual incapable of indicating intent" means one who:  
a. (1) Has an intelligence quotient of forty-nine or less, or a mental age of seven or less, based upon tests acceptable to the division of mental health of the department of human services;  
b. (2) Has been found by a court of competent jurisdiction to be an incapacitated person as defined in subsection 4 2 of North Dakota Century Code section ~~30.1-20-04~~ 30.1-26-01;  
c. (3) Has been found by a court of competent jurisdiction to be legally incompetent; or  
d. (4) Is found incapable of indicating intent based on medical documentation obtained from a physician or surgeon, clinical psychologist, or other person licensed by the state in the field of mental retardation; and  
b. "Institution" means an establishment that furnishes, in single or multiple facilities, food, shelter, and some treatment or services to four or more individuals unrelated to the proprietor.
5. Notwithstanding any other provision of this section except subsections 6 through 9, individuals placed in out-of-state institutions by a state retain residence in that state regardless of the individual's indicated intent or ability to indicate intent. The application of this subsection ends when a person capable of indicating intent leaves an institution in which the person was placed by this state. Providing information about another state's medicaid program or about the availability of health care services

and facilities in another state, or assisting an individual in locating an institution in another state, does not constitute a state placement.

6. For any individual receiving a state supplemental payment, the state of residence is the state making the payment.
7. For any individual on whose behalf payments for regular foster care or state adoption assistance are made, the state of residence is the state making the payment.
8. If an interstate reciprocal residency agreement has been entered into between this state and another state pursuant to 42 CFR 435.403(k), the state of residence of an affected individual is the state determined under that agreement.
9. When two or more states cannot agree which state is the individual's state of residence, the state of residence is the state in which the individual is physically present.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02; 42 CFR Part 435

#### **75-02-02.1-17. Application for other benefits.**

1. Applicants and recipients must take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which they are entitled, unless they can show good cause for not doing so. Annuities, pensions, retirement, and disability benefits include; ~~but are not limited to;~~ veterans' compensation and pensions; old age, survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation, but do not include needs-based payments.
2. Good cause under this ~~subsection~~ section exists if:
  1. ~~Receipt~~ receipt of the annuity, pension, retirement, or disability benefit would result in a net loss of cash income; or
  2. ~~The benefit is supplemental security income or aid to families with dependent children~~ health insurance coverage.

**History:** Effective December 1, 1991; amended effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

#### **75-02-02.1-18. ~~Coverage for aliens~~ Citizenship and alienage.**



1. ~~Aliens lawfully admitted for permanent residence. An alien who is lawfully admitted for permanent residence under color of law is eligible for medicaid if all other requirements for eligibility are met.~~
2. ~~Aliens lawfully admitted for a temporary or specific period. An alien may be lawfully admitted for a temporary or specific period of time. Such aliens are not eligible for medicaid because they do not meet the requirement that residence be permanent. Examples include aliens with student visas, visitors, tourists, some workers, and diplomats.~~
3. ~~Aliens not lawfully admitted. Aliens not lawfully admitted for permanent residence are eligible for emergency services if, and only if:~~
  - a. ~~The alien has a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:~~
    - (1) ~~Placing health in serious jeopardy;~~
    - (2) ~~Serious impairment to bodily functions; or~~
    - (3) ~~Serious dysfunction of any bodily organ or part; and~~
  - b. ~~The alien's need for emergency service continues.~~
4. ~~The alien who meets the medical criteria in subdivision a of subsection 3 must also meet all other eligibility requirements for medicaid except the requirements concerning furnishing social security numbers and verification of alien status. Eligibility for medicaid ends when the emergency service has been provided.~~
5. ~~Aliens who apply for legalization under the Immigration Reform and Control Act of 1986 [Pub. L. 99-603; title II, section 201(a)(1); 8 U.S.C. section 1255a] are not eligible for five years after the date of application for permanent residence, regardless of the date of entry into the county. An applicant or recipient must be a United States citizen or an alien lawfully admitted for permanent residence.~~
2. For purposes of qualifying as a United States citizen, the United States includes the fifty states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands. Nationals from American Samoa or Swain's Island are also regarded as United States citizens for purposes of medicaid.
3. In the absence of evidence that an individual is a citizen or lawfully admitted alien, an individual may be presumed to be lawfully admitted if the individual provides proof, documented and entered in the case file,

that the individual has resided in the United States continuously since January 1, 1972.

4. American Indians born in Canada, who may freely enter and reside in the United States, are considered to be lawfully admitted for permanent residence if at least one-half American Indian blood. A spouse or child of such an Indian, or a noncitizen individual whose membership in an Indian tribe or family is created by adoption, may not be considered to be lawfully admitted under this subsection unless the individual is of at least one-half American Indian blood by birth.
5. The following categories of aliens, while lawfully admitted for a temporary or specified period of time, are not eligible for medicaid because of the temporary nature of their admission status:
  - a. Foreign government representatives on official business and their families and services;
  - b. Visitors for business or pleasure, including exchange visitors;
  - c. Aliens in travel status while traveling directly through the United States;
  - d. Crewmen on shore leave;
  - e. Treaty traders and investors and their families;
  - f. Foreign students;
  - g. International organization representatives and personnel and their families and servants;
  - h. Temporary workers, including agricultural contract workers; and
  - i. Members of foreign press, radio, film, or other information media and their families.
6. Aliens who are not lawfully admitted for permanent residence in the United States are not eligible for medicaid, except for emergency services.
7. Aliens who lawfully entered the United States for permanent residence before August 22, 1996, and who meet all other medicaid criteria may be eligible for medicaid.
8. The following categories of aliens who entered the United States for permanent residence on or after August 22, 1996, and who meet all other medicaid criteria may be eligible for medicaid as qualified aliens:



- a. Honorably discharged veterans, aliens on active duty in the United States armed forces, and the spouse or unmarried dependent children of such individuals may be eligible at any time;
  - b. Refugees and asylees for seven years from the date they entered the United States, and thereafter, other than for emergency services, only if the individual has been credited with forty qualifying quarters of social security coverage;
  - c. Aliens whose deportation was withheld under section 243(h) of the Immigration and Naturalization Act for seven years from the date they were granted withholding, and thereafter, other than for emergency services, only if the individual has been credited with forty qualifying quarters of social security coverage; and
  - d. All other aliens, other than for emergency services, only after five years from the date they entered the United States, and then only if the individual is a lawful permanent resident who has been credited with forty qualifying quarters of social security coverage.
9. An alien who is not eligible for medicaid because of the time limitations or lack of forty qualifying quarters of social security coverage may be eligible to receive emergency services that are not related to an organ transplant procedure if:
- a. The alien has a medical condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:
    - (1) Placing health in serious jeopardy;
    - (2) Serious impairment to bodily functions; or
    - (3) Serious dysfunction of any bodily organ or part;
  - b. The alien meets all other eligibility requirements for medicaid except the requirements concerning furnishing social security numbers and verification of alien status; and
  - c. The alien's need for the emergency service continues.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-19. Inmates of public institutions not covered—Exceptions.**

An inmate of a public institution is not eligible for medicaid unless the inmate



individual is over age sixty-five and a patient in an institution for mental diseases or is under age twenty-one ~~(, or, with respect to a patient who is eligible for medicaid and is receiving services in the institution when the patient reaches age twenty-one, inpatient psychiatric services under 42 CFR 440.160 may continue until age twenty-two), and is~~ a patient in an institution for mental diseases, and receiving inpatient psychiatric services consistent with the requirements of 42 CFR 440.160 and 42 CFR part 441, subpart D.

1. The period of ineligibility under this section begins the day after the day of entry ~~of the individual as an inmate of a public institution or a patient in an institution for tuberculosis or mental diseases,~~ and ends the day before the day of discharge of the individual from such an institution.
2. An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in that institution. However, such an individual who is under age twenty-two and has been receiving inpatient psychiatric services under 42 CFR 440.160 is considered to be a patient in the institution until unconditionally released or, if earlier, the last day of the month in which the patient reaches age twenty-two.
3. For purposes of this section:
  - a. ~~"Child-care institution" means a nonprofit, private child-care institution or a public child-care institution that accommodates no more than twenty-five children, which is licensed by the state in which it is situated, or has been approved by the agency of the state responsible for licensing or approval of institutions of this type, as meeting the standards established for licensing. The term does not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.~~
  - b. ~~"In an institution" refers to an individual who is admitted to live there and receive treatment or services provided there that are appropriate to his requirements.~~
  - c. ~~"Definite leave", as used by the state hospital, means conditional release. "Individual on conditional release" means an individual who is away from the institution, for trial placement in another setting or for other approved leave, but who is not discharged. An individual on "definite leave" from the state hospital is an individual on conditional release.~~
  - d. b. "Inmate of a public institution" means a person who is living in a public institution has been sentenced, placed, committed, admitted, or otherwise required or allowed to live in the institution, and who has not subsequently been unconditionally released or discharged from the institution. An individual is not considered an inmate if:



- (1) The individual is in a public educational or vocational training institution for purposes of securing education or vocational training;
- (2) The individual is in a public institution for a temporary period pending other arrangements appropriate to his the individual's needs; or
- (3) The individual has been unconditionally released from the institution; or
- (4) The individual is receiving long-term care services in a public institution.

~~e.~~ "Inpatient" means a patient who has been admitted to a medical institution as an inpatient on recommendation of a physician or dentist and who receives room, board, and professional services in the institution for a twenty-four-hour period or longer.

~~f.~~ c. "Institution" means an establishment that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more persons unrelated to the proprietor.

~~g.~~ d. "Institution for mental diseases" means an institution that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. Whether an institution is an institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such. An institution for the mentally retarded is not an institution for mental diseases.

~~h.~~ "Institution for the mentally retarded or persons with related conditions" means an institution (or distinct part of an institution) that:

- (1) ~~is primarily for the diagnosis, treatment, or rehabilitation of the mentally retarded or persons with related conditions; and~~
- (2) ~~Provides, in a protected residential setting, ongoing evaluation, planning, twenty-four-hour supervision, coordination, and integration of health or rehabilitative services to help each individual function at his greatest ability.~~

~~i.~~ "Living in a public institution" refers to an individual who has been sentenced, placed, committed, admitted, or otherwise required or

~~allowed to live in the institution, and who has not subsequently been unconditionally released or discharged from the institution.~~

j. ~~"Patient" means an individual who is receiving needed professional services that are directed by a licensed practitioner of the healing arts toward maintenance, improvement, or protection of health, or lessening of illness, disability, or pain.~~

k. e. "Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. The term "public institution" does not include:

(1) A medical institution as defined in 42 CFR ~~43.1009~~ 435.1009;

(2) A nursing facility as defined in 42 U.S.C. 1396r(a); or

(3) A publicly operated community residence that serves no more than sixteen residents, as defined in 20 CFR 416.231(b)(6)(i); or

~~(4) A child-care institution as defined in this section with respect to:~~

~~(a) Children for whom foster care maintenance payments are made under title IV-E of the Act; and~~

~~(b) Children receiving aid to families with dependent children foster care under title IV-A of the Act.~~

~~l. "Publicly operated community residence that serves no more than sixteen residents" has the same meaning given in 20 CFR 416.231(b)(6)(i). A summary of that definition follows:~~

~~(1) In general, a publicly operated community residence means:~~

~~(a) It is publicly operated as defined in 20 CFR 416.231(b)(2).~~

~~(b) It is designed or has been changed to serve no more than sixteen residents and it is serving no more than sixteen; and~~

~~(c) It provides some services beyond food and shelter such as social services, help with personal living activities, or training in socialization and life skills. Occasional medical or remedial care may also be provided as defined in 45 CFR 228.1; and~~



~~(2) A publicly operated community residence does not include the following facilities, even though they accommodate sixteen or fewer residents:~~

~~(a) Residential facilities located on the grounds of, or immediately adjacent to, any large institution or multiple purpose complex.~~

~~(b) Educational or vocational training institutions that primarily provide an approved, accredited, or recognized program to individuals residing there.~~

~~(c) Correctional or holding facilities for individuals who are prisoners, have been arrested or detained pending disposition of charges, or are held under court order as material witnesses or juveniles.~~

~~(d) Hospitals and nursing facilities.~~

m. f. "Unconditionally released" means released, discharged, or otherwise allowed or required to leave the institution under circumstances ~~where~~ such that a return to the institution cannot be required by the operator of the institution.

**History:** Effective December 1, 1991; amended effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02, 50-24.1-06; 42 CFR 435.1008; 42 CFR 4009 435.1009

**75-02-02.1-19.1. Family coverage group.**

1. Caretakers, pregnant women, and children who meet the medically needy technical requirements and the requirements of this section are eligible under the family coverage group.

2. Families eligible under the family coverage group must include a child, who may be an unborn child, who is deprived of a biological or adoptive parent's support or care.

a. The child described in this subsection must be:

(1) Living with a caretaker relative; and

(2) Under age eighteen, or age eighteen and a full-time or part-time student in high school or an equivalent level of vocational or technical training if the student can reasonably be expected to complete the high school, general equivalency diploma, or vocational curriculum prior to or during the month the student turns age nineteen. A child who does not

meet this age requirement is not included in any eligibility determinations for the family coverage group.

- b. The parents of a caretaker who is at least age eighteen, or if under age eighteen is married or is not residing with the parents, may not be included in the same family unit as the caretaker.
  - c. If the only deprived child, including a disabled child in receipt of supplemental security income benefits, is age eighteen and is a student anticipated to graduate prior to or during the month of the child's nineteenth birthday, the parent remains eligible under the family coverage group if all other criteria are met.
  - d. An individual in receipt of social security or supplemental security income disability or retirement benefits may choose to be eligible as a disabled or aged individual under the medically needy coverage group, or may choose to be considered a caretaker, or child, under the family coverage group. These individuals are included in the unit as follows:
    - (1) An individual in receipt of social security disability or retirement benefits is included in the family unit for determining income eligibility regardless of whether the disabled individual chooses medicaid eligibility under the medically needy coverage group or the family coverage group.
    - (2) A supplemental security income recipient who chooses to be eligible as aged, blind, or disabled is not eligible for coverage under the family coverage group. The supplemental security income recipient is considered part of the family unit.
      - (a) A caretaker receiving supplemental security income benefits is included in the family unit for budget purposes due to the caretaker's financial responsibility for spouse and children; and
      - (b) A child receiving supplemental security income benefits is not included in the family unit for budget purposes.
    - (3) A supplemental security income recipient who chooses to be eligible as a caretaker or child may be eligible under the family coverage group, and the individual's supplemental security income is considered other unearned income.
3. A family may establish deprivation, for purposes of the family coverage group, if the family's countable income is within the family coverage income levels and the caretaker who is the primary wage earner is:



- a. Employed less than one hundred hours per month; or
  - b. Employed more than one hundred hours in the current month, but was employed less than one hundred hours in the previous month and is expected to be employed less than one hundred hours in the following month.
4. The primary wage earner is the caretaker with greater current income unless the family or the agency establishes that the other caretaker had the greater total earnings in the twenty-four-month period ending immediately before the month the family establishes eligibility for the family coverage group. A primary wage earner, once established, remains the primary wage earner as long as the family remains eligible.
5. Except as specifically provided in this section, sections 75-02-02.1-34, 75-02-02.1-36, 75-02-02.1-37, 75-02-02.1-38, 75-02-02.1-39, 75-02-02.1-40, and 75-02-02.1-41.2 apply to the family coverage group.
6. When a caretaker does not live with the caretaker's parents, the parents' income is not considered.
7. a. The following deductions are not allowed:
- (1) The training allowance of up to thirty dollars per week provided under section 75-02-02.1-36; and
  - (2) Any earned income deduction available to applicants or recipients who are not aged, blind, or disabled.
- b. The following disregards and deductions are allowed from earned income:
- (1) An employment expense allowance equal to the greater of one hundred eighty dollars or twenty-seven percent of earned income is deducted from the gross earned income of each employed member of the medicaid unit.
  - (2) For each employed member of the unit, a time-limited disregard equal to fifty percent of the balance of earned income, after deducting the employment expense allowance, is disregarded for six consecutive months. Then, for each of the next additional three months, thirty-five percent of the balance of earned income is disregarded.
  - (3) An earned income disregard of twenty-five percent of the balance of earned income, after deducting the employment expense allowance, is allowed for any employed member of

the unit who does not receive one of the time-limited income disregards.

- c. (1) If the employed individual does not receive the fifty percent disregard for four consecutive months, the six-month period starts over with the next month in which the individual has earnings to which the disregard may be applied.
- (2) Once the employed individual has received at least four consecutive months of the fifty percent disregard, the remaining months of the fifty percent disregard and the months of the thirty-five percent disregard continue to count regardless of earnings or whether the individual remains eligible for medicaid.
- (3) Once an individual has received these time-limited income disregards, the individual may not receive them again regardless of whether the individual remains on assistance or reapplies at a later date.
- (4) An applicant who has not previously received at least four consecutive months of the fifty percent disregard, and who has earned income in the three prior months, may receive the fifty percent disregard in each of the prior months and the prior months do not count as one of the four or six consecutive months. An applicant who has previously received the four consecutive months and is reapplying for medicaid may receive the time-limited disregard only if still within the time-limited period.
- (5) To count as one of the first four consecutive months, there must be earnings remaining after deducting the one hundred eighty dollar employment expense allowance.

d. The following deductions are allowed from earned or unearned income:

- (1) The cost of an essential service considered necessary for the well-being of a family is allowed as a deduction as needed. The service must be of such nature that the family, because of infirmity, illness, or other extenuating circumstance, may not perform independently. An essential service is intended to refer to such needs as housekeeping duties or child care during a parent's illness or hospitalization, attendant services, and extraordinary costs of accompanying a member of the family unit to a distant medical or rehabilitation facility.
- (2) When the family includes a stepparent who is not eligible, or when a caretaker who is under age eighteen lives at home



with both parents and the parents are not eligible under the family coverage group, a deduction is allowed for amounts actually being paid by the stepparent or parents to any other persons not living in the home who are, or could be, claimed by the stepparent or parents as dependents for federal income tax purposes.

**History:** Effective January 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 42 USC 1396u-1

**75-02-02.1-20. Extended Transitional and extended medicaid benefits** ~~to certain families who cease receipt of aid to families with dependent children benefits.~~ Families who that ~~cease receipt of aid to families with dependent children benefits, and who continue to cooperate in obtaining payment and medical support, to be eligible under the family coverage group and who meet the requirements of this section may~~ continue to be eligible for medicaid benefits without making further application for medicaid ~~benefits in certain circumstances.~~

1. a. ~~In the case of families who received aid to families with dependent children benefits in~~ Families that include at least one individual who was eligible under the family coverage group in at least three of the six months immediately preceding the month in which the family became ineligible ~~solely because of the hours of, or income from, employment of the caretaker relative in the family unit; relative's earned income~~ or because a member of the family unit loses the aid to families with dependent children ~~disregard of thirty dollars of earned income; or the aid to families with dependent children disregard of one-third of earned income, medicaid benefits has a reduction in the time-limited earned income disregard,~~ may continue to be eligible for medicaid benefits for up to twelve months if:

~~a.~~ (1) In the first six-month period, ~~the caretaker relative:~~

- ~~(1)~~ (a) ~~Has~~ The family has a dependent child residing living in the home who meets the family coverage group age requirements; and
- ~~(2)~~ (b) ~~Remains~~ The caretaker relative remains a resident of the state; or

~~b.~~ (2) In the second six-month period, ~~the caretaker relative:~~

- ~~(1)~~ (a) ~~Has~~ The family has a dependent child residing living in the home who meets the family coverage group age requirements;

~~(2)~~ (b) ~~Remains~~ The caretaker relative remains a resident of the state;

~~(3)~~ (c) ~~Remains~~ The caretaker relative remains employed (in cases where aid to families with dependent children ineligibility resulted from increases in hours of, or income from, employment of the caretaker relative) or shows good cause for not being employed if family coverage ineligibility resulted from the caretaker relative's earned income; and

~~(4)~~ (d) ~~Has~~ The gross earned income, less child care expenses the caretaker relative is responsible for, which, in either of the three-month periods consisting of the fourth, fifth, and sixth months or the seventh, eighth, and ninth months, when totaled and divided by three, ~~do~~ does not exceed one hundred eighty-five percent of the poverty level.

b. Families eligible for transitional medicaid benefits include:

(1) Children who are born, adopted, or who enter the home of a caretaker relative during the first or second six-month period; and

(2) Parents who were absent from the family when the family became ineligible under the family coverage group, but who return during either period.

2. c. A recipient who seeks eligibility under this subsection 4 ~~of this section~~ must report and verify income and child care expenses for the fourth, fifth, and sixth months by the twenty-first day of the seventh month, and for the seventh, eighth, and ninth months by the twenty-first day of the tenth month. Failure to report income in the seventh month and the tenth month, or receipt of income in excess of one hundred eighty-five percent of the poverty level, causes ineligibility effective on the last day, respectively, of the seventh month or the tenth month.

3. 2. ~~In the case of families who received aid to families with dependent children benefits~~ Families that include at least one individual who was eligible under the family coverage group in at least three of the six months immediately preceding the month in which the family becomes ~~became~~ ineligible solely wholly or partly as a result of the collection or increased collection of child or spousal support; continue to be eligible for medicaid benefits may continue for four calendar months following the month for which the final aid to families with dependent children benefit was paid if the caretaker relative:



- a. ~~Has~~ The family has a dependent child residing living in the home who meets the family coverage group age requirements; and
  - b. ~~Remains~~ The caretaker relative remains a resident of the state.
4. ~~3.~~ A family ~~which that~~ seeks to demonstrate ~~the receipt of aid to families with dependent children benefits~~ eligibility in at least three of the six months immediately preceding the month in which the ~~former aid to families with dependent children recipient~~ family became ineligible; must have been receiving ~~aid to families with dependent children benefits~~ eligible in this state in the month immediately preceding the month in which the family became ineligible.
5. ~~Benefits provided under this section may not be continued after the described period of eligibility even if the decision to close the case is appealed.~~
4. Children who no longer meet the age requirements under the family coverage group are not eligible for transitional or extended medicaid benefits.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-21. Continuous eligibility for pregnant women and newborns.** ~~Notwithstanding the coverage group, if~~ When a pregnant woman, whose pregnancy has been medically verified, becomes eligible for medicaid, she continues eligible, without regard to any increase in income of the medicaid unit, while pregnant, for sixty days after beginning on the last day her of pregnancy ends, and for the remaining days of the month in which the sixtieth day fell falls. A child born to a woman who is eligible on the day of the child's birth is eligible and continues to be eligible for medicaid, without regard to the child's income or assets, for sixty days after beginning on the day of birth, and for the remaining days of the month in which the sixtieth day fell falls.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-22. ~~Eligibility of qualified medicare beneficiaries and special low-income medicare beneficiaries~~ Medicare savings programs.**

1. Qualified medicare beneficiaries are entitled only to medicare cost-sharing benefits described in subsection 19 of section 75-02-02.1-01, beginning in the month following the month in which the eligibility determination is made.



2. Special low-income medicare beneficiaries are entitled only to medicare cost-sharing benefits described in paragraph 2 of subdivision a of subsection 19 of section 75-02-02.1-01. Eligibility may be established for as many as three calendar months prior to the month in which the application was received.
3. ~~Asset limits. The following asset limits apply to eligibility determinations for qualified medicare beneficiaries and special low-income medicare beneficiaries. No person may be found to be a qualified medicare beneficiary or a special low-income medicare beneficiary unless the total value of all assets, not described in subsection 5, does not exceed:~~
  - ~~a. Four thousand dollars for a one-person unit; or~~
  - ~~b. Six thousand dollars for a two-person unit. Qualifying individuals are entitled only to medicare cost-sharing benefits described in paragraph 2 of subdivision a of subsection 19 of section 75-02-02.1-01. Eligibility may be established for as many as three calendar months prior to the month in which the application was received unless the individual was in receipt of any other medicaid benefits for the same period. Eligibility shall be established on a first-come, first-served basis to the extent of funding allocated for coverage of this group under section 1933 of the Act [42 U.S.C. 1396u-3].~~
4. All medically needy technical eligibility factors apply to the medicare savings programs except as identified in this section.
5. No person may be found eligible for the medicare savings programs unless the total value of all nonexcluded assets does not exceed:
  - a. Four thousand dollars for a one-person unit; or
  - b. Six thousand dollars for a two-person unit.
4. 6. Provision Provisions of this chapter governing asset considerations ( at section 75-02-02.1-25), valuation of assets ( at section 75-02-02.1-32), excluded assets at section 75-02-02.1-28.1, and forms of asset ownership ( at section 75-02-02.1-29) apply to eligibility determinations for ~~qualified medicare beneficiaries and special low-income medicare beneficiaries~~ medicare savings programs except:
  - a. Half of a liquid asset held in common with another ~~qualified medicare beneficiary or special low-income medicare beneficiary~~ savings program is presumed available;
  - b. Assets owned by a child, under age twenty-one, in the unit are not considered available in determining ~~qualified medicare beneficiary eligibility or special low-income medicare beneficiary~~ eligibility for



the child's parent, except that all liquid assets held in common by the child and the parent are considered available to the parent; and

- c. Assets owned by a spouse who is not residing with an applicant for or recipient of ~~qualified medicare beneficiary benefits or special low-income medicare beneficiary benefits~~ are not considered available in determining qualified medicare beneficiary eligibility or special low-income medicare beneficiary eligibility unless the assets are liquid assets held in common.

5. ~~Excluded assets for purposes of this section:~~

- a. ~~The assets described in subsections 2 through 5 of section 75-02-02.1-27 and a residence occupied by the person, the person's spouse, or the person's dependent relative are excluded. Terms used in this section have the following meanings:~~

- (1) ~~"Residence" includes all contiguous lands, including mineral interests, upon which it is located. The residence may include a mobile home suitable for use, and being used, as a principal place of residence. Rural property contiguous to the residence is excluded, even if rented or leased to a third party. The residence is excluded during the temporary institutionalization or other absence of the individual from the residence, so long as the individual intends to return. However, a six-month absence due to institutionalization ends the exclusion.~~
- (2) ~~"Relative" means a child, stepchild, grandchild, parent, stepparent, grandparent, aunt, uncle, niece, nephew, brother, sister, stepbrother, stepsister, half brother, half sister, first cousin, or in-law.~~
- (3) ~~"Dependency" includes financial, medical, and other forms of dependency. Financial dependency exists with respect to someone whom a taxpayer is able to claim a deduction on a federal income tax return.~~

- b. ~~Property which is excluded under subsections 1, 2, 4 through 10, and 12 of section 75-02-02.1-28 is excluded for purposes of this section.~~

- c. ~~Burial funds of up to one thousand five hundred dollars each, plus earnings on excluded burial funds earned after July 1, 1987, held for the individual and for the individual's spouse are excluded. Burial funds may consist of revocable burial contracts; revocable burial trusts; other revocable burial arrangements, including the value of installment sales contracts for burial spaces; cash; financial accounts such as savings or checking accounts;~~

~~or other financial instruments with a definite cash value, such as stocks, bonds, and certificates of deposit. The fund must be unencumbered and available for conversion to cash on very short notice. The fund may not be commingled with nonburial-related assets and must be identified as a burial fund by title of account or a signed statement. Term burial insurance, irrevocable trusts, or any other irrevocable arrangement for burial must be considered at face value for meeting the burial fund exclusion. Combined face value of an individual's life insurance policies, which have any cash surrender value, with a total face value of one thousand five hundred dollars or less must be considered toward this exclusion. Cash surrender value of an individual's life insurance with a total face value in excess of one thousand five hundred dollars may be applied towards the burial fund exclusion.~~

d. ~~A burial space or agreement which represents the purchase of a burial space held for the individual, the individual's spouse, or any other member of the individual's immediate family is excluded. The burial space exclusion is in addition to the burial fund exclusion set forth in subdivision c. Only one item intended to serve a particular burial purpose, per individual, may be excluded. For purposes of this subdivision:~~

(1) ~~"Burial space" means a burial plot, gravesite, crypt, or mausoleum; a casket, urn, niche, or other repository customarily and traditionally used for a deceased's bodily remains; a vault or burial container; a headstone, marker, or plaque; and prepaid arrangements for the opening and closing of the gravesite or for care and maintenance of the gravesite.~~

(2) ~~"Held for" means the individual currently has title to or possesses a burial space intended for the individual's use or has a contract with a funeral service company for specified burial spaces for the individual's burial, such as an agreement which represents the individual's current right to use of the items at the amount shown.~~

(3) ~~"Other member of the individual's immediate family" means the individual's parents, minor or adult children, siblings, and the spouses of those persons, whether the relationship is established by birth, adoption, or marriage, except that a relationship established by marriage ends if the marriage ends.~~

e. ~~At the option of individual, and in lieu of (but not in addition to), the burial fund described in subdivision c and the burial space or agreement described in subdivision d, any prepayments or deposits which total three thousand dollars or less, and the interest~~



accrued thereon after July 1, 1987, made under a pre-need funeral service contract. The individual must verify that the deposit is made in a manner such that the individual may obtain the deposit within five days after making a request directly to the financial institution, and without furnishing documents maintained by the funeral establishment or waiting for the financial establishment to secure permission from the funeral establishment.

f. ~~Property essential to self-support is excluded.~~

(1) ~~"Property essential to self-support" means:~~

(a) ~~Property which the applicant or recipient owns, up to an equity value of six thousand dollars, which produces annual income at least equal to six percent of the excluded amount, and with respect to which the applicant or recipient is not actively engaged in using to produce income. Two or more properties may be excluded if each such property produces at least a six percent return and the combined equity value does not exceed six thousand dollars. Equity in such property is a countable asset to the extent that equity exceeds six thousand dollars and is a countable asset if it produces an annual return of less than six percent of equity. The property must be in current use, or, if not in current use, there must be a reasonable expectation that the use will resume, and the annual return test will be met within twelve months of the last use or, if the nonuse is due to the disabling condition of the applicant or recipient, within twenty-four months of the last use. If the property produces less than a six percent return, the property may nonetheless be excluded, for a period of no more than twenty-four months, beginning with the first day of the tax year following the one in which the return dropped below six percent, only if the lower return is for reasons beyond the control of the applicant or recipient and there is a reasonable expectation that the property will again produce a six percent return.~~

(b) ~~Nonbusiness property which the applicant or recipient owns, up to an equity value of six thousand dollars, when used to produce goods or services essential to daily activities, or, for instance, when used to grow produce or livestock solely for consumption in the individual's household. Equity in such property is a countable asset to the extent that equity exceeds six thousand dollars. The property must be in current use or, if not in current use, the asset must have been in such use and there must be a reasonable expectation~~



~~that the use will resume within twelve months of the last use or, if the nonuse is due to the disabling condition of the applicant or recipient, within twenty-four months of the last use.~~

- ~~(c) Property which is essential to earning a livelihood. Such property may be excluded only during months when it is in current use or, if not in current use, when the asset has been in such use and there is a reasonable expectation that the use will resume within twelve months of the last use or, if the non-use is due to the disabling condition of the applicant or recipient, within twenty-four months of the last use. Liquid assets used in the operation of a trade or business excluded under this subparagraph are also excluded provided that those liquid assets are exclusively so used and are not commingled with any liquid asset not so used.~~

~~(2) Except as provided in subparagraph c of paragraph 1, liquid assets are not property essential to self-support.~~

- ~~g. Lump sum payments of title II or supplemental security income benefits for six consecutive months following the month of receipt.~~
- ~~h. Real property, the sale of which would cause undue hardship to a coowner, is excluded for so long as the coowner uses the property as a principal residence, would have to move if the property were sold, and has no other readily available housing.~~
- ~~i. Life insurance or burial insurance that generates a cash surrender value if the face value of all such life insurance or burial insurance policies on the life of that person total one thousand five hundred dollars or less.~~
- ~~j. The value of assistance, paid with respect to a dwelling unit occupied by the applicant or recipient, or by the applicant's or recipient's spouse, under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965, title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or section 202(h) of the Housing Act of 1959 [12 U.S.C. 1701q(h)].~~
- ~~k. For the nine-month period beginning with the month in which received, any amount received by the applicant or recipient, or the applicant's or recipient's spouse, from a fund established by a state to aid victims of crime, to the extent that the applicant or recipient, or the applicant's or recipient's spouse, demonstrates that such amount was paid in compensation for expenses incurred or losses suffered as a result of a crime.~~



- l. ~~For the nine-month period beginning after the month in which received, relocation assistance provided by a state or local government to an applicant or recipient, or to the applicant's or recipient's spouse, comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 [42 U.S.C. 4621 et seq.] which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636].~~
  - m. ~~For the month of receipt and the following month, any refund of federal income taxes made to an applicant or recipient, or to the applicant's or recipient's spouse, by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit) and any payment made to an applicant or recipient, or to the applicant's or recipient's spouse, by an employer under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit).~~
6. Assets excluded under subsection 5 must be identifiable to be excluded:
- 7. a. Income calculations to determine qualified medicare beneficiary or ~~special low income medicare beneficiary eligibility~~ must consider income in the manner provided for in section 75-02-02.1-34, income considerations; ~~section 75-02-02.1-36, disregarded income;~~ section 75-02-02.1-37, unearned income; section 75-02-02.1-38, earned income; section 75-02-02.1-38.2, disregarded income; and section 75-02-02.1-39, income deductions; except:
    - (1) Married individuals living separate and apart from a spouse are treated as single individuals.
    - (2) Income disregards ~~under subsection 1 of in section 75-02-02.1-36~~ 75-02-02.1-38.2 are available ~~even if the person resides in a nursing facility, the state hospital, the Anne Carlsen school hospital, or receives swing bed care in a hospital~~ allowed regardless of the individual's living arrangement.
    - (3) The deductions described in ~~subdivisions a, b, d, and h of subsection 1~~ subsections 2, 3, 5, 8, and 9 of section 75-02-02.1-39, income deductions, are not allowed.
    - (4) The deductions described in ~~subdivision i of subsection 4~~ 10 and ~~subdivision e of subsection 2~~ 11 of section 75-02-02.1-39, income deductions, are allowed ~~even if the person receives swing bed care in a hospital or resides in a nursing facility, the state hospital, or the Anne Carlsen school hospital~~ regardless of the individual's living arrangement.

- (5) ~~The deduction described in subdivision f of subsection 2 of section 75-01-02.1-39, income deductions, is not allowed.~~
- (6) Where a blind or disabled ~~(, but not an aged)~~, supplemental security income recipient has a plan for achieving self-support which has been approved by the secretary of the United States department of health and human services, amounts of income necessary to and actually contributed to the plan are deducted.
- (6) Annual title II cost of living allowances effective in January shall be disregarded when determining eligibility for medicare savings programs for January, February, and March.
- b. A qualified medicare beneficiary ~~applicant~~ is eligible if countable income is equal to or less than one hundred percent of the ~~official~~ poverty line, ~~as defined by the United States office of management and budget, and as revised annually in accordance with 42 U.S.C. 9902(2), level~~ applicable to a family of the size involved, and if ~~he or she~~ the individual meets all of the requirements described in this section.
- c. A special low-income medicare beneficiary is eligible if countable income is more than one hundred percent but equal to or less than one hundred ten percent, or, after January 1, 1995, less than one hundred twenty percent of the ~~official~~ poverty line, ~~as defined by the United States office of management and budget, and as revised annually in accordance with 42 U.S.C. 9902(2), level~~ applicable to a family of the size involved, and if ~~he or she~~ the individual meets all of the requirements described in this section.
- d. A qualifying individual is income eligible if countable income is more than one hundred twenty percent, but equal to or less than one hundred thirty-five percent of the poverty level applicable to a family of the size involved, and if the individual meets all of the requirements described in this section.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

#### **75-02-02.1-23. Eligibility of qualified disabled and working individuals.**

1. Qualified disabled and working individuals are entitled only to medicare cost-sharing benefits described in paragraph 1 of subdivision a of subsection 19 of section 75-02-02.1-01.



2. ~~Asset limits. The following asset limits apply to qualified disabled and working individual eligibility determinations. No person may be found to be a qualified disabled and working individual unless the total value of all assets not described in subsection 4 does not exceed:~~
  - a. Four thousand dollars for a one-person unit; or
  - b. Six thousand dollars for a two-person unit.
3. Provisions of this chapter governing asset considerations { at section 75-02-02.1-25}, valuation of assets { at section 75-02-02.1-32}, excluded assets at section 75-02-02.1-28.1, and forms of asset ownership { at section 75-02-02.1-29} apply to qualified disabled and working individual eligibility determinations except:
  - a. Half of a liquid asset held in common with another qualified disabled and working individual is presumed available;
  - b. Assets owned by a child, under age twenty-one, in the unit are not considered available in determining ~~qualified disabled and working individual~~ eligibility for the child's parent except that all liquid assets held in common by the child and the parent are considered available to the parent; and
  - c. Assets owned by a spouse who is not residing with an applicant for or recipient of ~~qualified disabled and working individual benefits~~ are not considered available in ~~determining qualified disabled and working individual eligibility~~ unless they are liquid assets held in common.
4. a. Excluded assets for purposes of this section.
  - a. ~~The assets described in subsections 2 through 5 of section 75-02-02.1-27 and a residence occupied by the person, the person's spouse, or the person's dependent relative are excluded from consideration in determining qualified disabled and working individual eligibility. Terms used in this section have the following meaning:~~
    - (1) ~~"Residence" includes all contiguous lands, including mineral interests, upon which it is located. The residence may include a mobile home suitable for use, and being used, as a principal place of residence. Rural property contiguous to the residence is exempt, even if rented or leased to a third party. The residence remains exempt during the temporary institutionalization or other absence of the individual from the residence, so long as the individual intends to return. However, a six-month absence due to institutionalization ends the exemption.~~

- (2) ~~"Relative" means a child, stepchild, grandchild, parent, stepparent, grandparent, aunt, uncle, niece, nephew, brother, sister, stepbrother, stepsister, half brother, half sister, first cousin, or in-law.~~
- (3) ~~"Dependency" includes financial, medical, and other forms of dependency. Financial dependency exists with respect to someone whom a taxpayer is able to claim a deduction on a federal income tax return.~~
- b. ~~Property which is excluded under subsections 1, 2, 4 through 10, and 12 of section 75-02-02.1-28 is excluded for purposes of this section.~~
- c. ~~Burial funds of up to one thousand five hundred dollars each, plus earnings on excluded burial funds in and after the month of application, held for the individual and the individual's spouse are excluded. Burial funds may consist of revocable burial contracts; revocable burial trusts; other revocable burial arrangements, including the value of installment sales contracts for burial spaces; cash; financial accounts such as savings or checking accounts; or other financial instruments with a definite cash value, such as stocks, bonds, and certificates of deposit. The fund must be unencumbered and available for conversion to cash on very short notice. The fund may not be commingled with nonburial-related assets and must be identified as a burial fund by title of account or by a signed statement. Term burial insurance, irrevocable trusts, or any other irrevocable arrangement for burial must be considered at face value for meeting the burial fund exclusion. Combined face value of an individual's life insurance policies, which have any cash surrender value, with a total face value of one thousand five hundred dollars or less must be considered toward this exclusion. Cash values of an individual's life insurance with a total face value in excess of one thousand five hundred dollars may be applied towards the burial fund exclusion.~~
- d. ~~A burial space or agreement which represents the purchase of a burial space held for the individual, the individual's spouse, or any other member of the individual's immediate family is excluded. The burial space exclusion is in addition to the burial fund exclusion set forth in subdivision c. Only one item intended to serve a burial particular purpose, per individual, may be excluded. For purposes of this subdivision:~~
- (1) ~~"Burial space" means a burial plot, gravesite, crypt, or mausoleum; a casket, urn, niche, or other repository customarily and traditionally used for a deceased's bodily remains; a vault or burial container; a headstone, marker, or plaque; and prepaid arrangements for the opening and~~



~~closing of the gravesite or for care and maintenance of the gravesite.~~

- (2) ~~"Held for" means the individual currently has title to or possesses a burial space intended for the individual's use or has a contract with a funeral service company for specified burial spaces for the individual's burial, such as an agreement which represents the individual's current right to use of the items at the amount shown; but does not mean any arrangement where the individual does not currently own the space, or does not currently have the right to use the space, or where the seller is not currently obligated to provide the space.~~
- (3) ~~"Other members of the individual's immediate family" means the individual's parents, minor or adult children, siblings, and the spouses of those persons, whether the relationship is established by birth, adoption, or marriage, except that a relationship established by marriage ends if the marriage ends.~~

~~e. Property essential to self-support is excluded.~~

- (1) ~~"Property essential to self-support" means:~~
  - (a) ~~Property which the applicant or recipient owns, up to an equity value of six thousand dollars, which produces annual income at least equal to six percent of the excluded amount, and with respect to which the applicant or recipient is not actively engaged in using to produce income. Two or more properties may be excluded if each such property produces at least a six percent return and the combined equity value does not exceed six thousand dollars. Equity in such property is a countable asset to the extent that equity exceeds six thousand dollars and is a countable asset if it produces an annual return of less than six percent of equity. The property must be in current use, or, if not in current use, there must be a reasonable expectation that the use will resume, and the annual return test will be met within twelve months of the last use or, if the nonuse is due to the disabling condition of the applicant or recipient, within twenty-four months of the last use. If the property produces less than a six percent return, the property may nonetheless be excluded, for a period of no more than twenty-four months, beginning with the first day of the tax year following the one in which the return dropped below six percent, only if the lower return is for reasons beyond the control of the applicant~~

or recipient and there is a reasonable expectation that the property will again produce a six percent return.

(b) ~~Nonbusiness property which the applicant or recipient owns, up to an equity value of six thousand dollars, when used to produce goods or services essential to daily activities, or, for instance, when used to grow produce or livestock solely for consumption in the individual's households. Equity in such property is a countable asset to the extent that equity exceeds six thousand dollars. The property must be in current use or, if not in current use, the asset must have been in such use and there must be a reasonable expectation that the use will resume within twelve months of the last use or, if the nonuse is due to the disabling condition of the applicant or recipient, within twenty-four months of the last use.~~

(c) ~~Property which is essential to earning a livelihood. Such property may be excluded only during months when it is in current use or, if not in current use, when the asset has been in such use and there is a reasonable expectation that the use will resume within twelve months of the last use or, if the nonuse is due to the disabling condition of the applicant or recipient, within twenty-four months of the last use. Liquid assets used in the operation of a trade or business excluded under this subparagraph are also excluded provided that those liquid assets are exclusively so used and not commingled with any liquid assets not so used.~~

(2) ~~Except as provided in subparagraph c of paragraph 1, liquid assets are not property essential to self-support except when used as part of a trade or business.~~

- f. ~~Lump sum payments of title II or supplemental security income benefits are excluded for six consecutive months following the month of receipt.~~
- g. ~~Real property, the sale of which would cause undue hardship to a coowner, is excluded for so long as the coowner uses the property as a principal residence, would have to move if the property were sold, and has no other readily available housing.~~
- h. ~~Life insurance or burial insurance that generates a cash surrender value is excluded if the face value of all such life insurance or burial insurance policies of that person total one thousand five hundred dollars or less.~~



- i. ~~The value of assistance, paid with respect to a dwelling unit occupied by the applicant or recipient, or by the applicant's or recipient's spouse, under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965, title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or section 202(h) of the Housing Act of 1959 [12 U.S.C. 1701q(h)].~~
  - j. ~~For the nine-month period beginning with the month in which received, any amount received by the applicant or recipient, or the applicant's or recipient's spouse, from a fund established by a state to aid victims of crime, to the extent that the applicant or recipient, or the applicant's or recipient's spouse, demonstrates that such amount was paid in compensation for expenses incurred or losses suffered as a result of a crime.~~
  - k. ~~For the nine-month period beginning after the month in which received, relocation assistance provided by a state or local government to an applicant or recipient, or to the applicant's or recipient's spouse, comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 [42 U.S.C. 4621 et seq.] which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636].~~
  - l. ~~For the month of receipt and the following month, any refund of federal income taxes made to an applicant or recipient, or to the applicant's or recipient's spouse, by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit) and any payment made to an applicant or recipient, or to the applicant's or recipient's spouse, by an employer under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit).~~
5. ~~Assets excluded under subsection 4 must be identifiable to be excluded.~~
6. a. ~~Income calculations to determine qualified disabled and working individual eligibility must consider income in the manner provided for in section 75-02-02.1-34, income considerations; section 75-02-02.1-36, disregarded income; section 75-02-02.1-37, unearned income; section 75-02-02.1-38, earned income, and section 75-02-02.1-39, income deductions, except:~~
- (1) ~~Married individuals living separate and apart from a spouse are treated as single individuals; and~~
  - (2) ~~The deductions described in subdivisions a, b, d, and h of subsection 1 of section 75-02-02.1-39, income deductions, are not allowed.~~

- (3) ~~Where a blind or disabled (but not an aged) supplemental security income recipient has a plan for achieving self-support which has been approved by the secretary of the United States department of health and human services, amounts of income necessary to, and actually contributed to, the plan are excluded. Income methodologies used in the supplemental security income program shall be used in determining income eligibility.~~
- b. Annual title II cost of living allowances effective in January shall be disregarded when determining qualified disabled and working individual eligibility for January, February, and March.
- c. A qualified disabled and working individual ~~applicant~~ is eligible if countable income is equal to or less than two hundred percent of the ~~official~~ poverty line, ~~as defined by the United States office of management and budget, and as revised annually in accordance with 42 U.S.C. 9902(2);~~ level applicable to a family of the size involved, and if ~~he or she~~ the individual meets all of the requirements described in this section; but is otherwise ineligible for medicaid.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

#### **75-02-02.1-24. Spousal impoverishment prevention.**

**1. Definitions:** For purposes of this section:

- a. "Community spouse" means the spouse of an institutionalized spouse or the spouse of a home and community-based services spouse.
- b. "Family member" means only minor or dependent children, dependent parents, or dependent siblings of the institutionalized spouse, home and community-based services spouse, or community spouse who are residing with the community spouse. For purposes of applying this definition, a family member is dependent only if ~~he or she~~ that family member is, and may properly be, claimed as a dependent on the federal income tax return filed by the institutionalized spouse or home and community-based services spouse, or the community spouse, or filed jointly by both.
- c. "Home and community-based services spouse" means an individual who:



(1) Requires care of the type provided in a nursing facility, but chooses to receive home and community-based services in the community; and

(2) Is married to a spouse who resides in the community at least one day of each month.

d. "Institutionalized spouse" means an individual who:

(1) ~~Is receiving~~ Requires care in a medical institution, a nursing facility, a swing bed care in a hospital or is in, or the state hospital or a nursing facility and, at the beginning of his or her the individual's institutionalization, is was likely to be in the facility for at least thirty consecutive days (even though he or she the individual does not actually remain in the facility for thirty consecutive days); and

(2) Is married to a spouse who is not receiving swing-bed care in a hospital or care in the state hospital or a nursing facility.

d. e. "Monthly maintenance needs allowance" means for a community spouse, the ~~maximum~~ greater of two thousand two hundred sixty-seven dollars per month or the minimum amount permitted under 42 U.S.C. 1396r-5(d)(3)(C) section 1924(d)(3) of the Act [42 U.S.C. 1396r-5(d)(3)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].

2. a. **Treatment of countable assets:**

a. **Assessment:** At the request of an institutionalized spouse, a home and community-based services spouse, or a community spouse, at the beginning of the first continuous period of institutionalization of the institutionalized spouse, or the beginning of the first continuous period of receipt of home and community-based services by a home and community-based services spouse, and upon receipt of relevant documentation of ~~resources~~ assets, the total value described in subdivision b shall be assessed and documented.

b. **Total joint countable assets:** There shall be computed, as of the beginning of the first continuous period of institutionalization of the institutionalized spouse, or as of the beginning of the first continuous period of receipt of home and community-based services by a home and community-based services spouse:

(1) The total value of the countable assets to the extent either the institutionalized spouse or the community spouse, or the home and community-based services spouse and the community spouse, has an ownership interest; and

- (2) A spousal share, which is equal to one-half of all countable assets up to, but not less than the minimum amount permitted under section 1924(f)(2)(A)(i) of the Act [42 U.S.C. 1396r-5(f)(2)(A)(i)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)], and not more than the maximum amount permitted under section 1924(f)(2)(A)(ii)(II) of the Act [42 U.S.C. 1396r-5(f)(2)(A)(ii)(II)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].
- c. In determining the assets of the institutionalized spouse at the time of application, all countable assets held by the institutionalized spouse, the community spouse, or both, must be considered available to the institutionalized spouse to the extent they exceed the community spouse countable asset allowance.
  - d. In determining the assets of the home and community-based services spouse at the time of application, all countable assets held by the home and community-based services spouse, the community spouse, or both, must be considered available to the home and community-based services spouse to the extent they exceed the community spouse asset allowance.
  - e. During the continuous period in which ~~an institutionalized the~~ spouse is in an institution or receiving home and community-based services, and after the month in which an institutionalized spouse or a home and community-based services spouse is determined to be eligible for benefits under this chapter, no countable assets of the community spouse may be deemed available to the institutionalized spouse or home and community-based services spouse. Assets owned by the community spouse are not considered available to the institutionalized spouse or home and community-based services spouse during this continuous period of eligibility. A transfer of assets or income by the community spouse for less than fair market value is governed by section 75-02-02.1-33.1 and shall be considered in determining continuing eligibility of the institutionalized spouse or home and community-based services spouse.
  - e- f. The institutionalized spouse or home and community-based services spouse is not ineligible by reason of assets determined under subdivision c or d to be available for the cost of care ~~where~~ if:
    - (1) The institutionalized spouse or the home and community-based services spouse has assigned to the state any rights to support from the community spouse; or



(2) It is determined that a denial of eligibility would work an undue hardship because the presumption described in subsection 4 3 of section 75-02-02.1-25 has been rebutted.

~~f. g.~~ An institutionalized spouse or home and community-based services spouse is allowed the medically needy asset limit of three thousand dollars.

~~g. h.~~ An institutionalized spouse or a home and community-based services spouse is asset eligible if the total value of all countable assets ~~of the community spouse and the institutionalized spouse owned by both spouses~~ is less than the total of the community spouse asset limit allowance and the institutionalized spouse asset limit or home and community-based services asset limit, as applicable. The assets may be owned by either spouse provided that the ~~institutionalized spouse complies with the requirements of subdivision h i~~ are complied with.

~~h. i.~~ ~~Permitting transfer of assets to community spouse. Transfers~~ Within the limits provided by this subdivision, transfers from an institutionalized spouse or a home and community-based services spouse to a community spouse do not disqualify an applicant the institutionalized spouse or home and community-based services spouse from receipt of medicaid benefits. In order to facilitate such transfers from an institutionalized spouse to a community spouse, where necessary to maximize the community spouse asset allowance, a brief period of time is permitted for such transfers after the institutionalized spouse is determined eligible for medicaid. Such transfers, when made by an individual who has otherwise qualified for medicaid benefits, must be completed before the next regularly scheduled redetermination of eligibility. During this period, such assets are not counted as available to the institutionalized spouse even though the assets are not yet transferred.

(1) An institutionalized spouse or a home and community-based services spouse may transfer an amount equal to the community spouse countable asset allowance, but only to the extent the assets of the institutionalized spouse are transferred to, or for the sole benefit of, the community spouse.

(2) ~~A transfer under paragraph 1 must be made by the end of the third calendar month after the month in which the eligibility decision is made.~~

~~(3)~~ When an eligible institutionalized spouse or home and community-based services spouse exceeds the asset limits due to an increase in the value of assets or the receipt of

assets not previously owned, ~~an the~~ institutionalized spouse or home and community-based services spouse may transfer additional assets to the community spouse equal to no more than the current ~~maximum~~ community spouse countable asset allowance less the total value of assets transferred to, or for the sole benefit of, the community spouse, under paragraph 1 or previously transferred under this paragraph.

~~(4)~~ A transfer under paragraph 3 must be made by the end of the third calendar month of a period which begins with the month in which the institutionalized spouse exceeded the asset limit.

~~(5)~~ (3) If a transfer made under paragraph 1 or ~~3~~ 2 causes the total value of all assets owned by the community spouse immediately prior to the transfer under paragraph 1, plus the value of all assets transferred under paragraph 1, plus the value of all assets transferred under paragraph ~~3~~ 2, ~~equals or exceeds to equal or exceed~~ the current maximum community spouse asset allowance, no further transfer may be made under paragraph ~~3~~ 2.

~~(6)~~ (4) If a court has entered an order against an institutionalized spouse for the support of a community spouse, assets required by such order to be transferred, by the institutionalized spouse to the community spouse, may not be counted as available to the institutionalized spouse even though the assets are not yet transferred.

3. ~~Community spouse countable asset allowance.~~ A community spouse may retain or receive assets, which do not exceed the community spouse countable asset allowance, for purposes of determining the medicaid eligibility of the institutionalized spouse. The community spouse countable asset allowance means the spousal share determined under paragraph 2 of subdivision b of subsection 2, plus:

- a. Any additional amount transferred under a court order in the manner and for the purpose described in paragraph ~~5~~ 4 of subdivision ~~h~~ i of subsection 2; or
- b. Any additional amount established through a fair hearing conducted under subsection ~~7~~ 6.

4. ~~Countable and excluded assets.~~ Countable assets include all assets which that are not specifically excluded. ~~Excluded assets are:~~

- ~~a. A residence occupied by the community spouse. For purposes of this subdivision, "residence" includes all contiguous lands, including mineral interests, upon which it is located. The residence~~



~~may include a mobile home suitable for use, and being used, as a principal place of residence. Rural property contiguous to the residence is excluded, even if rented or leased to a third party. The residence is excluded during temporary absence of the community spouse from the residence, so long as the community spouse intends to return.~~

- ~~b. Household goods, personal effects, and an automobile or other vehicle primarily used for personal transportation.~~
- ~~c. A burial fund of up to one thousand five hundred dollars, plus earnings on excluded burial funds earned after July 1, 1987. Burial funds may consist of revocable burial contracts; revocable burial trusts; other revocable burial arrangements, including the value of installment sales contracts for burial spaces; cash; financial accounts such as savings or checking accounts; or other financial instruments with a definite cash value, such as stocks, bonds, and certificates of deposit. The fund must be unencumbered and available for conversion to cash on very short notice. The fund may not be commingled with nonburial-related assets and must be identified as a burial fund by title of account or signed statement. Term burial insurance, irrevocable trusts, or any other irrevocable arrangement for burial must be considered at face value for meeting the burial fund exclusion. Combined face value of an individual's life insurance policies, which have any cash surrender value, with a total face value of one thousand five hundred dollars or less must be considered toward this exclusion. Cash surrender value of an individual's life insurance with a total face value in excess of one thousand five hundred dollars may be applied towards the burial fund exclusion.~~
- ~~d. A burial space or agreement which represents the purchase of a burial space held for the individual, the individual's spouse, or any other member of the individual's immediate family. The burial space exclusion is in addition to the burial fund exclusion set forth in subdivision c. Only one item intended to serve a particular burial purpose, per individual, may be excluded. For purposes of this subdivision:
  - ~~(1) "Burial space" means a burial plot, gravesite, crypt, or mausoleum; a casket, urn, niche, or other repository customarily and traditionally used for a deceased's bodily remains; a vault or burial container; a headstone, marker, or plaque; and prepaid arrangements for the opening and closing of the gravesite or for care and maintenance of the gravesite.~~
  - ~~(2) "Held for" means the individual currently has title to or possesses a burial space intended for the individual's use or~~~~



~~has a contract with a funeral service company for specified burial spaces for the individual's burial, such as an agreement which represents the individual's current right to use of the items at the amount shown.~~

(3) ~~"Other members of the individual's immediate family" means the individual's parents, minor or adult children, siblings, and the spouses of those persons, whether the relationship is established by birth, adoption, or marriage, except that a relationship established by marriage ends if the marriage ends.~~

e. ~~At the option of the institutionalized spouse, and in lieu of (but not in addition to) the burial fund described in subdivision c and the burial space or agreement described in subdivision d, any prepayments or deposits which total three thousand dollars or less, and the interest accrued thereon after July 1, 1987, made under a pre-need funeral service contract for the institutionalized spouse. The institutionalized spouse must verify that the deposit is made in a manner such that the institutionalized spouse may obtain the deposit within five days after making a request directly to the financial institution, and without furnishing documents maintained by the funeral establishment or writing for the financial institution to secure permission from the funeral establishment.~~

f. ~~Property essential to self-support.~~

(1) ~~"Property essential to self-support" means:~~

(a) ~~Property which the community spouse or the institutionalized spouse owns, with an equity value not exceeding six thousand dollars, which produces annual income at least equal to six percent of equity value, and which neither spouse is actively engaged in using to produce income. Two or more properties may be excluded if each such property produces at least a six percent return and the combined equity value does not exceed six thousand dollars. Equity in such property is a countable asset to the extent that equity exceeds six thousand dollars and is a countable asset if it produces an annual return of less than six percent of equity. The property must be in current use, or, if not in current use, there must be a reasonable expectation that the use will resume, and the annual return test will be met within twelve months of the last use or, if the nonuse is due to the disabling condition of the community spouse or the institutionalized spouse, within twenty-four months of the last use. If the property produces less than a six percent return, the property~~



may nonetheless be excluded, for a period of no more than twenty-four months, beginning with the first day of the tax year following the one in which the return dropped below six percent, only if the lower return is for reasons beyond the control of the community spouse or institutionalized spouse and there is a reasonable expectation that the property will again produce a six percent return.

- (b) ~~Nonbusiness property which the community spouse or the institutionalized spouse owns, up to an equity value of six thousand dollars, when used to produce goods or services essential to daily activities, or, for instance, when used to grow produce or livestock solely for consumption in the community spouse's household. Equity in such property is a countable asset to the extent that equity exceeds six thousand dollars. The property must be in current use or, if not in current use, the asset must have been in such use and there must be a reasonable expectation that the use will resume within twelve months of the last use or, if the nonuse is due to the disabling condition of the community spouse or institutionalized spouse, within twenty-four months of the last use.~~
  - (c) ~~Property which is essential to earning a livelihood. Such property may be excluded only during months when it is in current use or, if not in current use, when the asset has been in such use and there is a reasonable expectation that the use will resume within twelve months of the last use or, if the nonuse is due to the disabling condition of the applicant or recipient, within twenty-four months of the last use. Liquid assets used in the operation of a trade or business excluded under this subparagraph are also excluded provided that those liquid assets are exclusively so used and are not commingled with any liquid asset not so used.~~
- (2) ~~Except as provided in subparagraph c of paragraph 1, liquid assets are not property essential to self-support.~~
- g. ~~Stock in regional or village corporations held by natives of Alaska during the twenty-year period in which the stock is inalienable pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1606(h) and 1606(c)].~~
  - h. ~~Assistance received under the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.] or other assistance provided pursuant to a federal statute on account of a catastrophe~~

~~which is declared to be a major disaster by the president, and interest received on such assistance for a nine-month period beginning on the date such funds are received. When retained, this asset must be identifiable and not commingled with other assets.~~

- ~~i. Any amounts received from the United States which are attributable to underpayments of benefits due for one or more prior months, under title II or title XVI of the Act [42 U.S.C. 401 et seq. and 1381 et seq.] for a six-month period beginning on the date such amounts are received.~~
- ~~j. The value of assistance, paid with respect to a dwelling unit occupied by the community spouse, under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965, title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or section 202(h) of the Housing Act of 1959 [12 U.S.C. 1701q(h)].~~
- ~~k. For the nine-month period beginning with the month in which received, any amount received by the applicant or recipient, or the community spouse, from a fund established by a state to aid victims of crime, to the extent that the applicant or recipient, or the community spouse, demonstrates that such amount was paid in compensation for expenses incurred or losses suffered as a result of a crime.~~
- ~~l. For the nine-month period beginning after the month in which received, relocation assistance provided by a state or local government to an applicant or recipient, or to a community spouse, comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 [42 U.S.C. 4621 et seq.] which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636].~~
- ~~m. For the month of receipt and the following month, any refund of federal income taxes made to an applicant or recipient, or to the community spouse, by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit) and any payment made to an applicant or recipient, or to the community spouse, by an employer under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit).~~
- ~~n. Life insurance or burial insurance that generates a cash surrender value, if the face value of all such life insurance or burial insurance policies on the life of that person total one thousand five hundred dollars or less.~~



- ~~6. Property which is excluded under subsections 1, 2, 4, 6 through 10, and 12 of section 75-02-02.1-28. The provisions of section 75-02-02.1-28.1 governing asset exclusions apply to this section.~~
5. **a. Treatment of income.**
- ~~a. Income calculations to determine medicaid eligibility for an institutionalized spouse must consider income in the manner provided for in section 75-02-02.1-34, income considerations; sections 75-02-02.1-36, disregarded income; section 75-02-02.1-37, unearned income; section 75-02-02.1-38, earned income; and, section 75-02-02.1-38.2, disregarded income, section 75-02-02.1-39, income deductions, and section 75-02-02.1-40, income levels, except:~~
- ~~a. No no income of the community spouse may be deemed available to the an institutionalized spouse during any month in which an institutionalized spouse is in the institution, or to a home and community-based services spouse during any month in which that spouse receives home and community-based services.~~
- b. After an institutionalized spouse is determined or redetermined to be eligible for medicaid, in determining the amount of the institutionalized spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the institutionalized spouse's monthly income the following amounts in the following order:
- (1) A personal needs allowance;
  - (2) A community spouse monthly income allowance, but only to the extent income of the institutionalized spouse is made available to ~~the~~ or for the benefit of, the community spouse; and
  - (3) A family allowance, for each family member, equal to one-third of an amount, determined in accordance with section 1924(d)(3)(A)(i) of the Act [42 U.S.C. 1396r-5(d)(3)(A)(i)], less the monthly income of that family member.
  - ~~(4) Amounts for incurred expenses for medical or remedial care for the institutionalized spouse.~~
6. **Medicaid eligibility application.** The provisions of this section describing the treatment of income and assets for the community spouse do not describe that treatment for the purposes of determining medicaid eligibility for the community spouse or for children of the community spouse.

7. a. ~~Notice and fair hearing.~~

- ~~a.~~ Notice must be provided of the amount of the community spouse income allowance, of the amount of any family allowances, of the method of computing the amount of the community spouse countable asset allowance, and of the right to a fair hearing respecting ownership or availability of income and assets, and the determination of the community spouse monthly income or countable asset allowance. The notice must be provided, upon a determination of medicaid eligibility of an institutionalized spouse, to both spouses, and upon a subsequent request by either spouse or a representative acting on behalf of either spouse, to the spouse making the request.
- b. ~~Fair hearing.~~ A community spouse, or an institutionalized spouse or a home and community-based services spouse, is entitled to a fair hearing under chapter 75-01-03 if application for medicaid has been made on behalf of the institutionalized spouse or home and community-based services spouse and either spouse is dissatisfied with a determination of:
  - (1) The community spouse monthly income allowance;
  - (2) The amount of monthly income otherwise available to the community spouse as determined in calculating the community spouse monthly income allowance;
  - (3) The computation of the spousal share of countable assets;
  - (4) The attribution of countable assets; or
  - (5) The determination of the community spouse countable asset allowance.
- c. Any hearing respecting the determination of the community spouse countable asset allowance must be held within thirty days of the request for the hearing.
- d. If either spouse establishes that the community spouse needs income, above the level provided by the monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, the monthly maintenance needs allowance for that spouse must be increased to an amount adequate to provide necessary additional income.
- e. (1) If either spouse establishes that the assets included within the community spouse countable asset allowance generate an amount of income inadequate to raise the community spouse's income to the monthly maintenance



needs allowance, to the extent that total assets permit, the community spouse countable asset allowance for that spouse must be increased to an amount adequate to provide such a monthly maintenance needs allowance.

- (2) To establish a need for an increased asset allowance under this subdivision, the applicant ~~or~~ recipient, or the community spouse must:
    - (a) ~~Provide~~ provide verification of all income and assets of the community spouse; ~~and~~
    - (b) ~~Provide three estimates of the cost of the annuity described in paragraph 3.~~
  - (3) The amount of assets adequate to provide a monthly maintenance needs allowance for the community spouse must be based on the cost of a single premium lifetime annuity selected by the department that provides monthly payments equal to the difference between the monthly maintenance needs allowance and other income of both spouses not generated by either spouse's ~~nonexempt~~ countable assets.
  - (4) The monthly maintenance needs allowance amount upon which calculations under this subdivision are made must be the amount in effect upon filing of the appeal.
  - (5) ~~An average of the estimates~~ The estimate of the cost of an annuity described in paragraph 3 must be substituted for the amount of assets attributed to the community spouse if the amount of assets previously determined is less than the ~~average of the estimates~~ estimate. If the amount of assets attributed to the community spouse prior to the hearing is greater than the ~~average of the estimates~~ estimate of the cost of an annuity described in paragraph 3, the attribution of assets to the community spouse made prior to the hearing must be affirmed.
  - (6) No applicant, recipient, or community spouse is required to purchase an annuity as a condition of the applicant or recipient's eligibility for medicaid benefits.
8. Any transfer of an asset or income is a disqualifying transfer under section ~~75-02-02.1-33~~ or 75-02-02.1-33.1, whether made by a community spouse, a home and community-based services spouse, or an institutionalized spouse, unless specifically authorized by this section. The income that may be received by or deemed provided to an ineligible community spouse, and the asset amounts that an ineligible

community spouse may retain, are intended to allow that community spouse to avoid impoverishment. They are not intended to allow the community spouse to make transfers of assets or income, for less than adequate consideration, which would disqualify the institutionalized spouse or home and community-based services spouse, if made by the institutionalized spouse or home and community-based services spouse.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; October 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02; 42 USC 1396r-5

**75-02-02.1-24.1. Breast and cervical cancer early detection program.**

The breast and cervical cancer early detection group consists of women under age sixty-five who:

1. Are uninsured and not otherwise eligible for medicaid;
2. Have been screened for breast and cervical cancer through women's way under the centers for disease control and prevention's breast and cervical cancer early detection program and have been found to require treatment for breast cancer, cervical cancer, or a precancerous condition relating to breast cancer or cervical cancer;
3. Meet the requirements of section 75-02-02.1-16, relating to residence, section 75-02-02.1-18, relating to citizenship, and section 75-02-02.1-19, relating to inmates of public institutions; and
4. Become eligible on the first day of the later of the month of diagnosis or the first month of retroactive eligibility, as provided in section 75-02-02.1-10, and continue to be eligible until they no longer require treatment for breast or cervical cancer or no longer meet the requirements of this subsection.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-17

**75-02-02.1-25. Asset considerations.** Except as otherwise provided in this chapter, this section applies to all aged, blind, and disabled applicants and recipients of medicaid.

1. All actually available assets must be considered in establishing eligibility for medicaid.
2. ~~Only such assets as are actually available will be considered.~~ Assets are actually available when at the disposal of an applicant, recipient, or responsible relative; when the applicant, recipient, or responsible



relative has a legal interest in a liquidated sum and has the legal ability to make the sum available for support, maintenance, or medical care; or when the applicant, recipient, or responsible relative has the lawful power to make the asset available, or to cause the asset to be made available. ~~Assets will be reasonably evaluated. A determination that an asset is deemed available is a determination that the asset is actually available. An asset may be sold or exchanged for another asset. An asset acquired in an exchange or with the proceeds from a sale continues to be treated as an asset subject to the asset limits, exemptions, and exclusions applicable to the type of asset which was acquired.~~ This subsection does not supersede other provisions of this chapter which describe or require specific treatment of assets, or which describe specific circumstances which require a particular treatment of assets.

3. 2. The financial responsibility of any individual for any applicant or recipient of medicaid is limited to the responsibility of spouse for spouse and parents for a disabled child under age ~~twenty-one or, if blind or disabled, under age~~ eighteen. Such responsibility is imposed upon applicants or recipients as a condition of eligibility for medicaid. Except as otherwise provided in this section, the assets of the spouse and ~~of the parents of a child under age twenty-one or, if blind or disabled, under age eighteen;~~ are deemed considered available to an applicant or recipient, even if those assets are not actually contributed. For purposes of this subsection, biological and adoptive parents, but not stepparents, are treated as parents.
4. 3. It is presumed that all spousal assets are actually available ~~where financial responsibility is imposed pursuant to subsection 3.~~ In order to rebut this presumption, the applicant or recipient must demonstrate that the spousal assets are unavailable despite reasonable and diligent efforts to access such assets. ~~The rebuttal of this presumption does not preclude the department from exercising the powers granted to it by North Dakota Century Code section 50-24.1-02.1. Except as provided in subdivisions a, b, c, and d, no~~ No applicant or recipient who has a statutory or common-law cause of action for support out of the assets of a spouse, but who has failed to diligently pursue that cause of action, may rebut the presumption. Any applicant or recipient who documents any of the following circumstances will have rebutted the presumption without further proof:
  - a. A court order, entered following a contested case, determines the amounts of support that a spouse must pay to the applicant or recipient;
  - b. The spouse from whom support could ordinarily be sought, and the property of such spouse, is outside the jurisdiction of the courts of the United States or any of the United States;



- c. ~~In cases where section 75-02-02.1-24 does not apply, the~~ The applicant or recipient has been subject to marital separation, with or without court order, and the parties have not separated for the purpose of securing medicaid benefits; ~~and the spouse of the applicant or recipient has refused to furnish information about the spouse's assets sufficient to determine eligibility; or~~
  - d. In cases where section 75-02-02.1-24 applies, the assets are those properly treated as belonging to the community spouse.
5. ~~4.~~ ~~It is presumed that all~~ All parental assets are considered actually available to a disabled child ~~under age twenty-one or, if blind or disabled, under age eighteen, where financial responsibility is imposed pursuant to subsection 3. This presumption may be rebutted by a showing that the child under age twenty-one or, if blind or disabled, under age eighteen, unless the child is living:~~
- a. ~~Living independently~~ Independently; or
  - b. ~~A child for whom adoption assistance maintenance payments are made under title IV-E;~~
  - c. ~~A child for whom foster care maintenance payments are made under title IV-E;~~
  - d. ~~A child, living in North Dakota, receiving title IV-E adoption assistance payments from another state;~~
  - e. ~~A child, in a foster care placement in North Dakota, receiving a title IV-E foster care payment from another state; or~~
  - f. ~~Living with~~ With a parent who is separated from the child's other parent, with or without court order, if the parents did not separate for the purpose of securing medicaid benefits; ~~and the parent with whom the child is not living has refused to furnish information about that parent's assets sufficient to determine eligibility.~~

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-26. Asset limits.** ~~The following property provisions must be applied in determining medicaid eligibility. In all instances, including determinations of equity, property must be realistically evaluated in accord with current fair market value. Any reasonable costs which may be associated with liquidation of excess property must be taken into account. Except for those persons found eligible for medicare cost sharing as qualified medicare beneficiaries or special low-income medicare beneficiaries pursuant to section 75-02-02.1-22 or as qualified disabled~~



~~and working individuals pursuant to section 75-02-02.1-23, no person~~ No one subject to an asset limit may be found eligible for medicaid unless the total combined equity value of the medicaid unit's assets, ~~in addition to assets of whatever nature, not otherwise~~ exempted pursuant to section 75-02-02.1-27, or excluded pursuant to section 75-02-02.1-28 or section 75-02-02.1-28.1, do not exceed:

1. For individuals who seek benefits as members of the categorically needy or medically needy aged, blind, and disabled groups:
  - a. Three thousand dollars for a one-person unit;
  - 2- b. Six thousand dollars for a two-person unit; and
  - 3- c. An additional amount of twenty-five dollars for each member of the unit in excess of two;
2. For individuals who seek benefits as qualified medicare beneficiaries, qualifying individuals, or special low-income medicare beneficiaries pursuant to section 75-02-02.1-22, the asset limits provided in that section; or
3. For individuals who seek benefits as qualified disabled and working individuals pursuant to section 75-02-02.1-23, the asset limits provided in that section.

**History:** Effective December 1, 1991; amended effective July 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-27. Exempt assets.** ~~Except as provided in sections 75-02-02.1-22 and 75-02-02.1-23, the~~ The following assets are exempt from consideration in determining medicaid eligibility:

1. The home occupied by the medicaid unit, including trailer homes being used as living quarters;
2. Personal effects, wearing apparel, household goods, and furniture;
3. One motor vehicle if the primary purpose of the vehicle is to serve the needs of members of the medicaid unit;
4. Indian trust or restricted lands and the proceeds from the sale thereof, so long as those proceeds are impressed with the original trust; and
5. Indian per capita funds and judgments funds awarded by either the Indian claims commission or the court of claims after October 19, 1973, interest and investment income accrued on such Indian per capita or judgment funds while held in trust, and purchases made using interest or

investment income accrued on such funds while held in trust. The funds must be identifiable and distinguishable from other funds. Commingling of per capita funds, judgment funds, and interest and investment income earned on those funds, with other funds, results in loss of the exemption.

6. ~~Funds distributed under the provisions of the Old Age Assistance Claims Settlement Act, as amended [25 U.S.C. 2301 et seq.].~~

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-28. Excluded assets.** Except as provided in sections ~~75-02-02.1-22 and 75-02-02.1-23~~ section 75-02-02.1-28.1, the following types of ~~property interests~~ assets will be excluded in determining if the available assets of an applicant or recipient exceed asset limits:

1. Property which is essential to earning a livelihood. ~~Such property~~
  - a. Property may be excluded as essential to earning a livelihood only during months in which the applicant or recipient a member of the medicaid unit is actively engaged in using the asset property to earn a livelihood. Assets which are used seasonably are excluded as long as continued seasonal use is reasonably anticipated, or during months when the medicaid unit is not actively engaged in using the property to earn a livelihood, if the medicaid unit shows that the property has been in such use and there is a reasonable expectation that the use will resume:
    - (1) Within twelve months of the last use; or
    - (2) If the nonuse is due to the disabling condition of a member of the medicaid unit, within twenty-four months of the last use.
  - b. Property consisting of an ownership interest in a business entity that employs anyone whose assets are used to determine eligibility may be excluded as property essential to earning a livelihood if:
    - (1) The individual's employment is contingent upon ownership of the property; or
    - (2) There is no ready market for the property.
  - c. A ready market for property consisting of an ownership interest in a business entity exists if the interest may be publicly traded. A ready market does not exist if there are unreasonable limitations on the sale of the interest, such as a requirement that the interest be sold



at a price substantially below its actual value or a requirement that effectively precludes competition among potential buyers.

- d. Property currently enrolled in the conservation reserve program is considered to be property essential to earning a livelihood.
  - e. Property from which a medicaid unit is receiving only rental or lease income is not essential to earning a livelihood.
  - f. Liquid assets, to the extent reasonably necessary for the operation of a trade or business, are considered to be property essential to earning a livelihood. Liquid assets may not otherwise be treated as essential to earning a livelihood.
2. Property which is not saleable without working an undue hardship. Such property may ~~not~~ be excluded no earlier than the first day of the month in which good-faith attempts to sell are begun, and continues to be excluded only for so long as the asset continues to be for sale.
- a. Persons seeking to establish retroactive eligibility must demonstrate that good-faith ~~attempts~~ efforts to sell were begun and continued in each of the months for which retroactive eligibility is sought. Information concerning attempts to sell, which demonstrate that an asset is not saleable without working an undue hardship, are relevant to establishing eligibility in the month in which the good-faith ~~attempts~~ efforts to sell are begun, but are not relevant to months prior to that month and do not relate back to prior months.
  - b. Property may not be shown to be not saleable without working an undue hardship if the owner of the property fails to take action to collect amounts due and unpaid with respect to the property or otherwise fails to assure the receipt of regular and timely payments due with respect to the property.
3. a. Any prepayments or deposits which total three thousand dollars or less, and the interest accrued thereon after July 1, 1987, made under a pre-need funeral service contract for each applicant or recipient in the medicaid unit. The applicant or recipient must verify that the deposit is made in a manner such that the applicant or recipient may obtain the deposit within five days after making a request directly to the financial institution, and without furnishing documents maintained by the funeral establishment or waiting for the financial institution to secure permission from the funeral establishment which are designated and maintained by an applicant for the applicant's burial. Earnings accrued on the total amount of the designated burial fund are excluded.



- (1) The burial fund must be identifiable and may not be commingled with other funds. Checking accounts are considered to be commingled.
- (2) The value of an irrevocable burial arrangement shall be considered toward the burial exclusion.
- (3) The prepayments on a whole life insurance policy or annuity are the premiums that have been paid.
- (4) At the time of application, the value of a designated burial fund shall be determined by identifying the value of the prepayments which are subject to the burial exclusion and asset limit amounts.
- (5) Designated burial funds which have been decreased prior to application for medicaid shall be considered redesignated as the date of last withdrawal. The balance at that point shall be considered the prepayment amount and earnings from that date forward shall be disregarded.
- (6) Reductions made in a designated burial fund after eligibility is established must first reduce the amount of earnings.
- (7) An applicant shall be determined eligible for the three-month prior period when a burial fund is established at the time of application if the value of all assets are within the medicaid burial fund exclusion and asset limit amounts for each of the three prior months. Future earnings on the newly established burial fund must be excluded.

b. A burial plot for each family member.

4. Home replacement funds, derived from the sale of an excluded home, and if intended for the purchase of another excluded home, until the last day of the third month following the month in which the proceeds from the sale are received. ~~When retained, this~~ This asset must be identifiable and not commingled with other assets.
5. Unspent assistance, and interest earned on unspent assistance, received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288] or some other federal statute, because of a presidentially declared major disaster, ~~for nine months after receipt, and for up to an additional nine months, if circumstances beyond the person's control prevent the repair or replacement of the damaged, or destroyed property, and keep the person from contracting for such repair or replacement. When retained, this~~ and comparable disaster assistance received from a state or local government, or from a



disaster assistance organization. This asset must be identifiable and not commingled with other assets.

6. Payments, interest earned on the payments, and in-kind items received for the repair or replacement of lost, damaged, or stolen exempt or excluded assets are excluded for nine months after receipt, and for up to, and may be excluded for an additional nine twenty-one months, if circumstances beyond the person's control prevent the repair or replacement of the lost, damaged, or stolen assets, and keep the person from contracting for such repair or replacement. When retained, this This asset must be identifiable and not commingled with other assets.
7. ~~Agent orange payments. When retained, this asset must be identifiable and not commingled with other assets.~~ For nine months, beginning with the month of receipt, unspent assistance received from a fund established by a state to aid victims of crime, to the extent that the applicant or recipient demonstrates that such amount was paid in compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.
8. ~~Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [Pub. L. 100-383]. When retained, this asset must be identifiable and not commingled with other assets.~~ Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.
9. ~~German reparation payments to survivors of the holocaust, and reparation payments made under sections 500 through 506 of the Austrian General Social Insurance Act, which have been retained and not commingled with other assets.~~ Payments made pursuant to the Confederate Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, [Pub. L. 103-436; 108 Stat. 4577 et seq.]. This asset must be identifiable and not commingled with other assets.
10. Stock in regional or village corporations held by natives of Alaska issued pursuant to section 7 of the Alaska Native Claims Settlement Act, [Pub. L. 92-203; 42 U.S.C. 1606].
11. Unspent financial assistance provided for attendance costs to graduate and undergraduate students under programs in title IV of the Higher Education Act [20 U.S.C. 1071-1 et seq.] or for attendance costs under bureau of Indian affairs student assistance programs. When retained, this are excluded for the period of time they are intended to cover. This asset must be identifiable and not commingled with other assets.



- 44- 12. For the month following the month of receipt ~~and the following month~~, any refund of federal income taxes made to the applicant or recipient, by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit) and any payment made to an applicant or recipient by an employer under section 3507 of the Internal Revenue Code of 1986 (relating to the refund or any advance payment of earned income tax credit).
- 42- 13. Assets set aside, by a blind or disabled {, but not an aged}, supplemental security income recipient, as a part of a plan to achieve self-support which has been approved by the ~~secretary of the United States department of health and human services~~ social security administration.
14. The value of a life estate.
15. Allowances paid to children of Vietnam veterans who are born with spina bifida. This asset must be identifiable and not commingled with other assets.
16. The value of mineral acres.
17. Assets received from a decedent's estate, other than from the estate of a deceased spouse or from the estate of a deceased parent who was providing support, until the earlier of:
- a. The first day of the month after the month in which the assets are received; or
- b. The first day of the month beginning at least six months after the decedent's death.
18. Funds, including interest accruing, maintained in an individual development account established under title IV of the Assets for Independence Act, as amended [Pub. L. 105-285; 42 U.S.C. 604, note].

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02, 50-24.1-02.3

**75-02-02.1-28.1. Excluded assets for medicare savings programs, qualified disabled and working individuals, and spousal impoverishment prevention.**

1. An asset may be excluded for purposes of medicare savings programs, qualified disabled and working individuals, and spousal impoverishment prevention only if this section provides for the exclusion. An asset may be excluded under this section only if the asset is identified.



2. The assets described in subsections 2 through 5 of section 75-02-02.1-27 and subsections 1, 2, and 4 through 18 of section 75-02-02.1-28 are excluded.
3. A residence occupied by the individual, the individual's spouse, or the individual's dependent relative is excluded for medicare savings programs and qualified disabled and working individuals. A residence occupied by the community spouse is excluded for spousal impoverishment prevention cases. The residence may include a mobile home suitable for use, and being used, as a principal place of residence. The residence remains excluded during temporary absence of the individual from the residence so long as the individual intends to return. Renting or leasing part of the residence to a third party does not affect this definition. For purposes of this subsection:
  - a. "Dependent" means an individual who relies on another for medical, financial, and other forms of support, provided that an individual is financially dependent only when another individual may lawfully claim the financially dependent individual as a dependent for federal income tax purposes;
  - b. "Relative" means the parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, aunt, uncle, niece, nephew, or first cousin, whether by birth or adoption, and whether by whole or half-blood, of the individual or the individual's current or former spouse; and
  - c. "Residence" includes all contiguous lands, including mineral interests, upon which it is located.
4. Burial funds of up to one thousand five hundred dollars each, plus earnings on excluded burial funds, held for the individual and for the individual's spouse, are excluded from the date of application. Burial funds may consist of revocable burial accounts, revocable burial trusts, other revocable burial arrangements including the value of installment sales contracts for burial spaces, cash, financial accounts such as savings or checking accounts, or other financial instruments with definite cash value, such as stocks, bonds, or certificates of deposit. The fund must be unencumbered and available for conversion to cash on very short notice. The fund may not be commingled with non-burial-related assets, and must be identified as a burial fund by title of account or a signed statement. Life or burial insurance designated under subsection 10 must be considered at face value toward meeting the burial fund exclusion. Cash surrender value of an individual's life insurance not excluded under subsection 10 may be applied toward the burial fund exclusion.
5. A burial space or agreement which represents the purchase of a burial space, paid for in full, for the individual, the individual's spouse, or any



other member of the individual's immediate family is excluded. The burial space exclusion is in addition to the burial fund exclusion set forth in subsection 4. Only one item intended to serve a particular burial purpose, per individual, may be excluded. For purposes of this subsection:

- a. "Burial space" means a burial plot, gravesite, crypt, or mausoleum; a casket, urn, niche, or other repository customarily and traditionally used for a deceased's bodily remains; a vault or burial container; a headstone, marker, or plaque; and prepaid arrangements for the opening and closing of the gravesite or for care and maintenance of the gravesite; and
  - b. "Other member of the individual's immediate family" means the individual's parents, minor or adult children, siblings, and the spouses of those individuals, whether the relationship is established by birth, adoption, or marriage, except that a relationship established by marriage ends when the marriage ends.
6. At the option of the individual, and in lieu of, but not in addition to, the burial fund described in subsection 4 and the burial space described in subsection 5, the medicaid burial described in subsection 3 of section 75-02-02.1-28 may be excluded. This optional exclusion is not available to qualified disabled and working individuals or to community spouses.
7. Property essential to self-support is excluded.
- a. Up to six thousand dollars of the equity value of nonbusiness, income-producing property, which produces annual net income at least equal to six percent of the excluded amount, may be excluded. Two or more properties may be excluded if each property produces at least a six percent annual net return and the combined equity value does not exceed six thousand dollars. Equity in such property is a countable asset to the extent that equity exceeds six thousand dollars. Equity in such property is a countable asset if it produces an annual net income of less than six percent of equity.
  - b. Up to six thousand dollars of the equity value of nonbusiness property used to produce goods and services essential to daily activities is excluded. Such nonbusiness property is used to produce goods and services essential to daily activities when, for instance, it is used to grow produce or livestock solely for consumption in the individual's household. Equity in such property is a countable asset to the extent that equity exceeds six thousand dollars.



- c. To be excluded, property essential for self-support must be in current use, or, if not in current use, must have been in such use, and there must be a reasonable expectation that the use will resume, and, with respect to property described in subdivision a, the annual return test must be met:
- (1) Within twelve months of the last use;
  - (2) If the nonuse is due to the disabling condition of the applicant or recipient, or, with respect to spousal impoverishment prevent cases, the community spouse, within twenty-four months of the last use; or
  - (3) With respect to property described in subdivision a, if the property produces less than a six percent return for reasons beyond the control of the applicant or recipient, and there is a reasonable expectation that the property shall again produce a six percent return within twenty-four months of the tax year in which the return dropped below six percent.
- d. Liquid assets are not property essential to self-support.
8. Lump sum payments of title II or supplemental security income benefits are excluded for six consecutive months following the month of receipt.
  9. Real property, the sale of which would cause undue hardship to a co-owner, is excluded for so long as the co-owner uses the property as a principal residence, would have to move if the property were sold, and has no other readily available housing. This exclusion is not available in spousal impoverishment cases.
  10. Life or burial insurance that generates a cash surrender value is excluded if the face value of all such life and burial insurance policies on the life of that individual total one thousand five hundred dollars or less. This exclusion is not available for applicants or recipients who select the medicaid burial described in subsection 3 of section 75-02-02.1-28.
  11. The value of assistance is excluded if paid with respect to a dwelling unit occupied by the applicant or recipient, or by the applicant's or recipient's spouse, under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or section 202(h) of the Housing Act of 1959 [12 U.S.C. 1701q(h)].
  12. Relocation assistance is excluded if provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 [42 U.S.C. 4621 et seq.], which is subject to the treatment



required by section 216 of such Act [42 U.S.C. 4636]. Relocation assistance provided by a state or local government that is comparable to the described federal relocation assistance is excluded, but only for nine months following the month of receipt.

13. Agent orange payments are excluded.
14. Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [50 U.S.C. App. 1989 et seq.] are excluded.
15. German reparations payments to survivors of the holocaust, and reparations payments made under sections 500 through 506 of the Austrian General Social Insurance Act are excluded.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02, 50-24.1-02.3

#### **75-02-02.1-29. Forms of asset ownership.**

1. Ownership of real or personal property or ~~accounts~~ liquid assets can take various forms. The first basic consideration is the distinction between real and personal property. Real property relates to land and those things, such as houses, barns, and office buildings, which are more or less permanently attached to it. Personal property describes all other things which are subject to individual rights. ~~The distinction is really between movable objects, generally created by man, and the immovable earth. It is the permanency of the land, and the need for a permanent frame of reference governing the ownership of that land, that has led to most of the legal distinctions between real and personal property.~~ Personal property includes liquid assets, but liquid assets are distinguished from other personal property because liquid assets have a market at a price that may not ordinarily be negotiated between buyer and seller. Liquid assets include cash, accounts, publicly traded stocks, bonds, and other securities, and commodities for which there is an established market.
2. ~~The owner of property is not always an individual or a married couple.~~ Since the various types of property ownership may affect the valuation of the applicant's or recipient's assets, it is important to carefully record information relating to such property.
  - a. "Fee" or "fee simple" ownership is a term applied to real property in which the "owner" has the sole ownership interest. A fee simple interest will, in theory, last as long as the land. Even though one owner dies, that owner has the power to sell or to "will" the property. The resulting series of owners each has a fee simple. A



fee simple ownership interest is not changed when the property is mortgaged. The mortgage merely secures the owner's promise to repay a debt. If the debt is not paid, the owner may be obliged to forfeit the property. Fee simple ownership may be individual or may be shared.

- b. Shared ownership means that the ownership interest in the property is vested in more than one person. Shared ownership may be by "joint tenancy" or by "tenancy in common". Shared ownership occurs both with real property and with valuable personal property of a ~~semipermanent nature~~ (such as accounts, motor vehicles, and mobile homes).
  - (1) In joint tenancy, each of two or more joint tenants has an equal interest in the whole property. On the death of one of two joint tenants, the survivor becomes the sole owner. On the death of one of three or more joint tenants, the survivors remain joint tenants in the entire interest. ~~It is possible for any~~ Any joint tenant, acting independently, ~~to~~ may convert the joint tenancy to a tenancy in common by selling ~~his~~ that person's interest.
  - (2) In tenancy in common, two or more persons have an undivided fractional interest in the whole property. There is no "right of survivorship" in a tenancy in common. On the death of one of the tenants in a tenancy in common, the surviving tenants gain nothing, and the estate of the deceased tenant thereafter owns the deceased tenant's share.

c. Life estates and remainder interests.

- (1) Real property interests may be divided in terms of the time when the owner of the interest is entitled to possession of the property. The owner of a life estate, or life tenant, is entitled to possession of the real property for a period measured by the lifetime of a specific person or persons. A life tenant has the right to use the property and is entitled to any rents or profits from the property. A life tenant may sell the life estate, but such a sale does not change the identity of the person or persons whose lifetimes measure the duration of the life estate. A life estate may be referred to as a "life lease".
- (2) When a life estate is created, a right to possess the property after the death of the life tenant, must also be created. That right is called a "remainder interest", and the owner of that right is called a "remainderman". Upon the death of the life tenant, the remainderman owns the property. The remainderman is not entitled to possess or use the property



until the death of the life tenant. The remainderman does have the right to sell the remainder interest.

- (3) A life estate may be created in which the right to possess the property returns, upon the death of the life tenant, to the person or entity that created the life estate. The right to have possession of property returned after the end of a life estate is properly called a "reversion", but is treated as a remainder interest for purposes of valuation.

3. The effect of an interest in property, and not what that interest is called, governs the rules to be applied in its treatment for medicaid purposes.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

#### **75-02-02.1-30. Contractual rights to receive money payments.**

1. An applicant or recipient may own contractual rights to receive money payments. Such contractual rights are available assets subject to the asset limits. If the applicant or recipient has sold property and received in return a promise of payments of money at a later date, usually to be made periodically, and an attendant promise to return the property if the payments are not made, the arrangement is usually called a "contract for deed". The essential feature of such a contract is the right to receive future payments, usually coupled with a right to get the property back if the payments are not made. Contractual rights to receive money payments also arise out of other types of transactions. The valuable contract document may be called a promissory note, accounts receivable, annuity, mortgage, or by some other name.
2. There is a presumption that the holder's interest in contractual rights to receive money payments, including, but not limited to, the seller's interest in a long-term contract for the sale of real or personal property, promissory notes, trust deeds, mortgages, and accounts receivable, is saleable without working an undue hardship. This presumption may be rebutted by evidence demonstrating that the contractual rights are not saleable without working an undue hardship.

**History:** Effective December 1, 1991; amended effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

##### **75-02-02.1-30.1. Annuities.**

1. For purposes of this section:



- a. "Abusive annuity" means an annuity that by design or effect would shelter otherwise available assets from consideration in determining medicaid eligibility;
- b. "Actuarially sound" refers to an annuity that provides level monthly payments for a period equal to a reasonable estimate of the life expectancy of an annuitant at the time the annuity was annuitized;
- c. "Adequately secured" means subject to contractual obligations imposed on an issuing entity with the means to meet those obligations without regard to that entity's earnings on the consideration paid for the annuity;
- d. "Annuitized annuity" means an annuity subject to a contractually established schedule of payments to be made by the issuing entity, other than an immediate lump sum payment of all of the annuity's value;
- e. "Annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future for a fixed period of time;
- f. "Beneficiary" means a person entitled under the terms of an annuity to receive payment due from the annuity after the death of the annuitant;
- g. "Burial annuity" means an annuity designated as a burial fund under section 75-02-02.1-28 or 75-02-02.1-28.1;
- h. "Issuing entity" means the individual or entity that issues and undertakes a promise to make payments provided in an annuity;
- i. "Level monthly payments" means substantially equal monthly payments such that the total annual payment in any year varies by five percent or less from the total annual payment of the previous year and does not provide for a balloon or deferred payment of principal or interest;
- j. "Private annuity" means an annuity issued by an issuing entity not in the regular business of issuing annuities; and
- k. "Reasonable estimate of life expectancy" means the anticipated lifetimes of individuals of a given age and sex according to statistical tables of probability or, if an individual suffers from a condition likely to cause death at an unusually early age for that individual's age and sex, the period of time verified by a reliable medical statement that estimates the remaining duration of life.



2. This section shall be applied and interpreted liberally to defeat efforts of individuals acquiring abusive annuities to achieve medicaid eligibility. This section applies to any annuity except a burial annuity. Any annuity shall be considered to be an asset unless this section provides otherwise. An annuity may not be excluded from consideration as an asset on the basis that it is not saleable without working an undue hardship.
3. An individual who requires long-term care, who suffers from a condition that is anticipated to require long-term care within twelve months, or who has been diagnosed with a disease or condition likely to reduce the individual's life expectancy, is presumed to suffer from a condition that is likely to cause death at an unusually early age for that individual's age and sex, and may not rely upon statistical tables of probability applicable to the general population to establish a reasonable estimate of life expectancy.
4. An annuity that constitutes an employee benefit that qualifies for favorable tax treatment under the Internal Revenue Code or is a plan described in the Internal Revenue Code as a retirement plan under which contributions must end and withdrawals begin by age seventy and one-half is not an asset, but any payment derived from that annuity is income.
5. An annuity that may be surrendered or that provides an available lump sum settlement option to an applicant or recipient is an available liquid asset with fair market value equal to the total available proceeds from that surrender or settlement.
6. An annuitized annuity that is not described in subsection 4 or 5 is an irrevocably annuitized annuity.
7. An irrevocably annuitized annuity must be valued for purposes of completing an asset assessment or determination of a community spouse asset allowance under section 74-02-02.1-24 or if it is an abusive annuity. The value of an annuity is the highest amount offered by a buyer ready and able to complete the purchase.
8. The irrevocable annuitization of an abusive annuity constitutes a transfer with an uncompensated value equal to the proceeds that would have been available from the surrender of the annuity immediately before annuitization if the annuity was not immediately annuitized, or the purchase price if the annuity was immediately annuitized, reduced by the total of:
  - a. All payments made to members of the medicaid unit under the terms of the annuity to the time the calculation is made; and
  - b. The value of the annuity as of that time.



9. An irrevocably annuitized annuity shown not to be an abusive annuity may not be treated as an asset for purposes of this chapter except as provided in section 75-02-02.1-24, but any payment derived from that annuity is income.
10. The department shall consider the following factors in determining if an individual has met the burden of showing that an irrevocably annuitized annuity is not an abusive annuity:
  - a. Whether a private annuity is adequately secured, with inadequate security tending to demonstrate an abusive annuity;
  - b. Whether consideration paid for a private annuity was computed based on a reasonable estimate of life expectancy and a market rate of return to the issuing entity, with excessive consideration tending to demonstrate an abusive annuity;
  - c. Whether the annuity is actuarially sound, with absence of actuarial soundness tending to demonstrate an abusive annuity;
  - d. Whether the annuity provides level monthly payments, with absence of such a payment scheme tending to demonstrate an abusive annuity;
  - e. Whether the annuity was annuitized after the annuitant or the annuitant's spouse suffered from the condition for which the individual seeks medicaid benefits, with an annuitization after diagnosis or development of symptoms of that condition tending to demonstrate an abusive annuity; and
  - f. Whether the income produced by the annuity less the fees and costs associated with the annuity results in a net return less than the return generated by a thirty-six month certificate of deposit, insured by the federal deposit insurance corporation, available in the month the annuity was issued, with an annuity that produces less income tending to demonstrate an abusive annuity.
11. Before medicaid benefits may be provided to an otherwise eligible applicant, and before medicaid benefits may be continued for a recipient, each annuity owned by a recipient fifty-five years of age or older, or by the spouse of such an applicant or recipient, must irrevocably name the North Dakota department of human services, or the successor of that department, as first beneficiary for payment of an amount not to exceed the amount of medicaid benefits paid on behalf of the recipient after age fifty-five, provided that payments to the department as beneficiary need not be made for annuity payments due while the recipient, the recipient's spouse, or the recipient's minor



or permanently and totally disabled child survives and is the exclusive recipient of remaining annuity payments.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02; 42 USC 1396p(b)

#### **75-02-02.1-31. Trusts.**

1. A trust is an arrangement whereby a person { known as the "grantor" or "trustor" } gives property assets to another { person known as the "trustee" } with instructions to use the property assets for the benefit of a third person { known as the "beneficiary" }. The property assets placed in trust is are called the "principal" or "corpus". The positions of grantor, trustee, and beneficiary occur in all trusts, but it is not uncommon for a single trust to involve more than one grantor, trustee, or beneficiary. It is also not uncommon for a grantor to establish a trust where the grantor is also a beneficiary or where the trustee is also a beneficiary. Trusts are often very individualized arrangements, and generalizations about them can prove inaccurate. However, the "Trusts" includes escrow accounts, investment accounts, conservatorship accounts, and any other legal instruments, devices, or arrangements, whether or not written, managed by an individual or entity with fiduciary obligations. A trust may have an effect on eligibility whether the applicant is a grantor, trustee, or beneficiary.
2. Review of a trust as a part of an eligibility determination includes efforts to ascertain the intent of the grantor. The grantor has no authority or power to determine eligibility or to require a particular outcome in an eligibility determination, and a grantor's efforts to do so may be disregarded.
4. 3. **Revocable -- irrevocable.** Trusts may be categorized in many ways, but the revocability of a trust is a fundamental ~~one~~ characteristic. A revocable trust is ~~one where someone, usually a trust that the grantor, or someone acting at the request, direction, or influence of the grantor, has the power to revoke, remove the property from the trust, or otherwise end the trust.~~ An irrevocable trust is ~~one where that power does not exist a trust that may not be revoked in any way by the grantor or anyone acting at the request, direction, or influence of the grantor.~~ The determination of trust revocability is not based solely on a ~~trust declaration of irrevocability terms stating the trust is irrevocable.~~ A trust ~~where~~ is treated as revocable, regardless of its terms, if:
  - a. The trust reserves a power to amend is reserved to the grantor, or granted grants a power to amend to some other person, is treated as a revocable trust. Even a trust which, on its face, appears clearly to be irrevocable, may be revoked with the consent of the unless the power to amend is limited to authority to terminate the trust



for impossibility of administration, and the trust also provides for distribution of the trust assets to the primary beneficiary, free of trust:

- b. The grantor and the beneficiaries: consent to the revocation:
  - a. ~~c.~~ If the ~~The~~ grantor of a trust is also the sole beneficiary, trust assets are treated as the grantor's assets for medicaid purposes: of the trust:
  - b. ~~d.~~ If the ~~The~~ grantor of a trust and all trust beneficiaries are part of a medicaid unit, trust assets are treated as the grantor's assets for medicaid purposes:
  - ~~e.~~ Trust assets of a revocable trust are treated as the grantor's assets for medicaid purposes:
  - ~~d.~~ The amount from an actually irrevocable trust deemed available to a beneficiary of that trust is the greater of the amount which must be distributed to the beneficiary under the terms of the trust, whether or not that amount is actually distributed, and the amount which is actually distributed (unless the trust is a medicaid-qualifying trust or a support trust):
  - ~~e.~~ The grantor is a parent, and beneficiaries of the trust include only the grantor, the grantor's spouse, or the grantor's minor children:
  - ~~f.~~ The trust has been amended subsequent to its establishment:
  - ~~g.~~ The trust provides for termination and disbursement to the grantor upon conditions relating to the grantor during the grantor's lifetime: or
  - ~~h.~~ The trust provides for revocation or amendment only upon order of a court.
4. In the case of a revocable trust:
- a. The corpus of the trust shall be considered assets available to the grantor:
  - b. Payments from the trust to or for the benefit of grantor, the grantor's spouse, or the grantor's dependent child shall be considered income of the grantor:
  - c. Any other payments from the trust shall be considered income or assets disposed of by the grantor for purposes of section 75-02-02.1-33.1.

5. Once distributed or paid, a distribution or payment from a trust is not a trust asset, but is an asset of, or income to, the distributee or payee.

~~2. Medicaid-qualifying trusts.~~

6. a. For purposes of this subsection:

(1) "Medicaid-qualifying trust" means a trust established, other than by will, by an individual or the individual's spouse, under which the individual may be the beneficiary of all or part of the payments from the trust, and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual.

(2) "A trust established by an individual or the individual's spouse" includes trusts created or approved by courts or by the individual or the individual's spouse where the property placed in trust is intended to satisfy or settle a claim made by or on behalf of the individual or the individual's spouse against any third party.

- b. The amount from an irrevocable medicaid-qualifying trust deemed available to the grantor or the grantor's spouse is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the grantor, assuming the full exercise of discretion by the trustee or trustees for the distribution of the maximum amount to the grantor. For purposes of this subdivision, "grantor" means the individual referred to in paragraph 1 of subdivision a.

- c. This subsection applies:

(1) Even though the medicaid-qualifying trust is irrevocable or is established for purposes other than to enable a grantor to qualify for medicaid; and

(2) Whether or not the discretion described in paragraph 1 of subdivision a is actually exercised.

~~3. Support trust.~~

7. a. For purposes of this subsection, "support trust" means a trust which has, as a purpose, the provision of support or care to a beneficiary. The purpose of a support trust is indicated by language such as "to provide for the care, support, and maintenance of . . ."; "to provide as necessary for the support of . . ."; or "as my trustee may deem necessary for the support, maintenance, medical expenses, care, comfort, and general welfare". No particular language is



necessary, but words such as "care", "maintenance", "medical needs", or "support" are usually present. The term includes trusts which may also be called "discretionary support trusts" or ~~"discretionary trusts"~~, so long as support is a trust purpose and the trustee's discretion is not unfettered. This subsection applies without regard to:

- (1) Whether or not the support trust is irrevocable or is established for purposes other than to enable a beneficiary to qualify for medicaid or any other benefit program where availability of benefits requires the establishment of financial need; or
  - (2) Whether or not the discretion is actually exercised.
- b. Except as provided in subdivisions c and d, the amount from a support trust deemed available to the beneficiary, the beneficiary's spouse, and the beneficiary's children is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the beneficiary, assuming the full exercise of discretion by the trustee or trustees for the distribution of the maximum amount to the beneficiary.
- c. A beneficiary of a support trust, under which the distribution of payments to the beneficiary is determined by one or more trustees who are permitted to exercise any discretion with respect to that distribution, may show that the amounts deemed available under subdivision b are not actually available by:
- (1) Commencing proceedings against the trustee or trustees in a court of competent jurisdiction;
  - (2) Diligently and in good faith asserted in the proceeding that the trustee or trustees is required to provide support out of the trust; and
  - (3) Showing that the court has made a determination, not reasonably subject to appeal, that the trustee must pay some amount less than the amount determined under subdivision b.
- d. If the beneficiary makes the showing described in subdivision c, the amount deemed available from the trust is the amount determined by the court.
- e. Any action by a beneficiary or the beneficiary's representative, or by the trustee or the trustee's representative, in attempting a showing under subdivision c, to make the department, the state of North Dakota, or a county agency a party to the proceeding, or to show

to the court that medicaid benefits may be available if the court limits the amounts deemed available under the trust, precludes the showing of good faith required under subdivision c.

**4. Discretionary trusts:**

- a. ~~For purposes of this subsection, "discretionary trust" means any trust in which one or more trustees is permitted to exercise any discretion with respect to distribution to the beneficiary, but does not include any trust within the definition of a "support trust", as that term is defined in subsection 3.~~
- b. ~~The amounts from a discretionary trust deemed available to a beneficiary are the amounts actually distributed by the trustee or trustees. Distribution from a discretionary trust is treated as income in the month received and an asset thereafter.~~

**5. Other trusts:**

- 8. a. For purposes of this subsection, "other ~~trusts~~ trust" means any trust ~~which is not an "irrevocable trust", as that term is explained in subsection 1; a "medicaid-qualifying trust", as that term is defined in subsection 2; a "support trust", as that term is defined in subsection 3; or a "discretionary trust", as that term is defined in subsection 4 for which treatment is not otherwise described in this section or section 75-02-02.1-31.~~
- b. The amount from an "other trust" deemed available to a beneficiary of that trust is the greater of the amount which must be distributed to that beneficiary under the terms of the trust, whether or not that amount is actually distributed, and the amount which is actually distributed.

6. 9. **Applicant as trustee:** An applicant or recipient who is a trustee has the legal ownership of trust property and the legal powers to distribute income or trust assets which are described in the trust. However, those powers may be exercised only on behalf of trust beneficiaries. If the trustee or other members of the medicaid unit are not also beneficiaries or grantors to whom trust income or assets are treated as available ~~under subsection 1, 2, 3, 4, or 5~~, trust assets are not available to the trustee.

7. 10. **Trust terms:** Trusts may provide that trust benefits are intended only for a beneficiary's "special needs", and require the trustee to take into consideration the availability of public benefits and resources, including medicaid. Some trusts may provide that the trust is not to be used to supplant or replace public benefits, including medicaid benefits. Some trusts may contain terms which attempt to declare or make the determination of the availability of trusts assets for medicaid purposes.



If a ~~medicaid-qualifying trust or support~~ trust contains such terms, the amount available to the medicaid applicant or recipient is the amount provided in ~~subsection 2 or 3~~ this section, assuming, for the purposes of making that determination, that the applicant or recipient is ineligible for medicaid.

11. A trust is established, with respect to any asset that is a part of the trust corpus, on the date that asset is made subject to the trust by an effective transfer to the trustee.
- 8- 12. This section applies to any trust ~~not subject to the provisions of to which~~ section 75-02-02.1-31.1 does not apply. Subsections 1, 2, and 3 apply to trusts described in section 75-02-02.1-31.1.

**History:** Effective December 1, 1991; amended effective December 1, 1991; October 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02; 42 USC 1396a(k)

**75-02-02.1-31.1. Trusts established by applicants, recipients, or their spouses after August 10, 1993.**

1. For purposes of determining an individual's eligibility under this chapter, subject to subsection 4, this section ~~shall apply~~ applies to a trust established by ~~such the~~ individual after August 10, 1993. Subsections 1, 2, and 3 of section 75-02-02.1-31 apply to this section.
2. a. For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used, by someone with lawful authority over those assets, to form all or part of the corpus of the trust and if any of the following individuals established that trust other than by will:
  - (1) The individual;
  - (2) The individual's spouse;
  - (3) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
  - (4) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
- b. In the case of a trust the corpus of which includes assets of an individual ~~{, as determined under subdivision a}~~, and assets of any other person or persons, the provisions of this subsection shall

apply to the portion of the trust attributable to the assets of the individual.

c. Subject to subsection 4, this section shall apply without regard to:

- (1) The purposes for which a trust is established;
- (2) Whether the trustees have or exercise any discretion under the trust;
- (3) Any restrictions on when or whether distributions may be made from the trust; or
- (4) Any restrictions on the use of distributions from the trust.

3. a. In the case of a revocable trust:

- (1) The corpus of the trust shall be considered assets available to the individual;
- (2) Payments from the trust to or for the benefit of the individual shall be considered income of the individual; and
- (3) Any other payments from the trust shall be considered income or assets disposed of by the individual for purposes of section 75-02-02.1-33.1.

b. In the case of an irrevocable trust:

- (1) If there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered available to the individual, and payments from that portion of the corpus or income:
  - (a) To or for the benefit of the individual, shall be considered income of the individual; and
  - (b) For any other purpose, shall be considered a transfer of income or assets by the individual subject to section 75-02-02.1-33.1; and
- (2) Any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust ~~{, or, if later, the date on which payment to the individual was foreclosed}~~, to be income or assets disposed of by the individual for purposes



of section 75-02-02.1-33.1, and the value of the trust shall be determined for purposes of section 75-02-02.1-33.1 by including the amount of any payments made from such portion of the trust after such date.

4. This section shall not apply to:
  - a. A trust containing the assets of an individual under age sixty-five who is disabled and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court, to the extent the person establishing the trust has lawful authority over the individual's assets, and if, under the terms of the trust, the department will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medicaid benefits paid under North Dakota Century Code chapter 50-24.1 on behalf of the individual; or
  - b. A trust containing the assets of a disabled individual that meets the following conditions:
    - (1) The trust is established and managed by a qualified nonprofit association that acts as trustee;
    - (2) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts;
    - (3) Accounts in the trust are established solely for the benefit of a disabled individual by the parent, grandparent, or legal guardian of the individual, by the individual, or by a court; and
    - (4) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the department from such remaining amounts in the account an amount equal to the total amount of medicaid benefits paid under North Dakota Century Code chapter 50-24.1 on behalf of the beneficiary.
5. The department may waive application of this section as creating an undue hardship if the individual establishes that some other person, not currently receiving medicaid, food stamps, ~~aid to families with dependent children~~ temporary assistance for needy families benefits, or low-income home energy assistance program benefits, would become eligible for such benefits because of and upon application of this section, and that the cost of those benefits, provided to that other person, exceeds the cost of medicaid benefits available to the individual if application is waived.
6. For purposes of this section:

- a. ~~"Income income"~~ and "assets" include all income and assets of the individual and of the individual's spouse, including any income or assets that the individual or the individual's spouse is entitled to, but does not receive because of action:
- (1) a. By the individual or the individual's spouse;
- (2) b. By a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
- (3) c. By any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
- b. ~~"Trust" includes any legal instrument or device, whether or not written, which is similar to a trust.~~
- 7. A trust is established, with respect to any asset that is a part of the trust corpus, on the date that asset is made subject to the trust by an effective transfer to the trustee.
- 8. A nonprofit association is qualified to establish and manage a trust described in subdivision b of subsection 4 only if the nonprofit corporation:
  - a. Is organized and operated exclusively for other than profit-making purposes and distributes no part of the corporation's income to its members;
  - b. Is qualified to receive charitable donations for which a taxpayer may lawfully claim a deduction under the provisions of section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)];
  - c. Has a governing board that includes no more than twenty percent membership related to any one disabled individual with an account maintained in the trust:
    - (1) As a parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, nephew, great-great-grandparent, great-great-grandchild, great-aunt, great-uncle, first cousin, grandniece, or grandnephew, whether by birth or adoption, and whether by whole or half-blood, of the disabled individual or the disabled individual's current or former spouse; or
    - (2) As agent or fiduciary of any kind except with respect to the trust established and managed by the nonprofit association.



- d. Has no employee or agent whose compensation is in any way related to or conditioned upon the amount or nature of funds retained by the trust from the account of any deceased beneficiary;
- e. Complies with the provisions of North Dakota Century Code section 10-33-12, whether or not incorporated or doing business in North Dakota; and
- f. Retains funds from a deceased beneficiary's account only if:
  - (1) The retained funds are to compensate the trust for services rendered;
  - (2) The account is that of a beneficiary who was a disabled individual who did not receive benefits under this chapter; or
  - (3) The account does not contain the assets of a disabled individual.

**History:** Effective October 1, 1993; amended effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02; 42 USC 1396p(d)

**75-02-02.1-32. Valuation of assets.** It is not always possible to determine the value of assets with absolute certainty, but it is necessary to determine a value in order to determine eligibility. The valuation must be based on reasonably reliable information. It is the responsibility of the applicant or recipient, or the persons acting on behalf of the applicant or recipient, to furnish reasonably reliable information. ~~However, because~~ Because an applicant or recipient may not be knowledgeable of asset values, and particularly because that person may have a strong interest in the establishment of a particular value, whether or not that value is accurate, some verification of value must be obtained. If a valuation from a source offered by an applicant or recipient is greatly different from generally available or published sources, the applicant or recipient must provide a convincing explanation for the differences particularly if the applicant or recipient may be able to influence the person providing the valuation. If reasonably reliable information concerning the value of assets is not made available, eligibility may not be determined. Useful sources of verification include, ~~but are not limited to:~~

1. With respect to liquid assets: reliable account records ~~maintained by banking facilities.~~
2. With respect to personal property other than liquid assets:
  - a. Publicly traded stocks, bonds, and securities: stockbrokers.
  - b. Autos, trucks, mobile homes, boats, farm equipment, or any other property listed in published valuation guides accepted in the trade: the valuation guide.

- c. With respect to harvested grains or produce: grain buyers, grain elevator operators, produce buyers; and, for crops grown on contract: the contract.
  - d. With respect to stock in corporations not publicly traded: appraisers, accountants.
  - e. With respect to other personal property: dealers and buyers of that property.
3. Real property.
- a. With respect to mineral interests: appraisers, specializing in minerals, mineral buyers, geologists.
  - b. With respect to agricultural lands: appraisers, real estate agents dealing in the area, loan officers in local agricultural lending institutions, and other persons known to be knowledgeable of land sales in the area in which the lands are located, but not the "true and full" value from tax records.
  - c. With respect to real property other than mineral interests and agricultural lands: market value or "true and full" value from tax records, whichever represents a reasonable approximation of fair market value; real estate agents dealing in the area; and loan officers in local lending institutions. ~~If a valuation from a source offered by the applicant or recipient is greatly different from the true and full value established by tax records, an explanation for the difference must be made, particularly if the applicant or recipient may be able to influence the person furnishing the valuation.~~
4. Divided or partial interests. Divided or partial interests include assets held by the applicant or recipients; jointly or in common with persons who are not in the medicaid unit; assets where the applicant or recipient or other persons within the medicaid unit own only a partial share of what is usually regarded as the entire asset; and interests where the applicant or recipient owns only a life estate or remainder interest in the asset.
- a. Liquid assets. The value of a partial or shared interest in a liquid asset is equal to the total value of that asset.
  - b. Personal property other than liquid assets and real property other than life estates and remainder interests. The value of a partial or shared interest is a proportionate share of the total value of the asset equal to the proportionate share of the asset owned by the applicant or recipient.



c. Life estates and remainder interests.

- (1) ~~Real property interests may be divided in terms of the time when the owner of the interest is entitled to possession of the property. The owner of a life estate (life tenant) is entitled to possession of the real property for a period measured by the lifetime of a specific person or persons. A life tenant has the right to use the property and is entitled to any rents or profits from the property. A life tenant may sell the life estate, but such a sale does not change the identity of the person or persons whose lifetimes measure the duration of the life estate. A life estate may be referred to as a "life lease".~~
- (2) ~~When a life estate is created, a right to possess the property, after the death of the life tenant, must also be created. That right is called a "remainder interest", and the owner of that right is called a "remainderman". Upon the death of the life tenant, the remainderman owns the property. The remainderman is not entitled to possess or use the property until the death of the life tenant. The remainderman does have the right to sell the remainder interest.~~
- (3) ~~A life estate may be created where the right to possess the property returns, upon the death of the life tenant, to the person or entity which created the life estate. This rare form of ownership may arise when a legal entity which does not die a natural death (i.e., a trust or corporation) creates a life estate. The right to have possession of property returned after the end of a life estate is properly called a "reversion", but is treated as a remainder interest for purposes of valuation.~~
- (4) ~~Life~~ The life estate and remainder interest tables.—These tables must be used to determine the value of a life estate or remainder interest. In order to use the table, it is necessary to first know the age of the life tenant or, if there are more than one life tenants, the age of the youngest life tenant; and the fair market value of the property which is subject to the life estate or remainder interest. The value of a life estate is found by selecting the appropriate age in the table and multiplying the corresponding life estate decimal fraction times the fair market value of the property. The value of a remainder interest is found by selecting the appropriate age of the life tenant in the table and multiplying the corresponding remainder interest decimal fraction times the fair market value of the property.

Life Estate and Remainder Interest Table

<u>Age</u>	<u>Life Estate</u>	<u>Remainder Interest</u>
0	.97188	.02812
1	.98988	.01012
2	.99017	.00983
3	.99008	.00992
4	.98981	.01019
5	.98938	.01062
6	.98884	.01116
7	.98822	.01178
8	.98748	.01252
9	.98663	.01337
10	.98565	.01435
11	.98453	.01547
12	.98329	.01671
13	.98198	.01802
14	.98066	.01934
15	.97937	.02063
16	.97815	.02185
17	.97700	.02300
18	.97590	.02410
19	.97480	.02520
20	.97365	.02635
21	.97245	.02755
22	.97120	.02880
23	.96986	.03014
24	.96841	.03159
25	.96678	.03322
26	.96495	.03505
27	.96290	.03710
28	.96062	.03938



29	.95813	.04187
30	.95543	.04457
31	.95254	.04746
32	.94942	.05058
33	.94608	.05392
34	.94250	.05750
35	.93868	.06132
36	.93460	.06540
37	.93026	.06974
38	.92567	.07433
39	.92083	.07917
40	.91571	.08429
41	.91030	.08970
42	.90457	.09543
43	.89855	.10145
44	.89221	.10779
45	.88558	.11442
46	.87863	.12137
47	.87137	.12863
48	.86374	.13626
49	.85578	.14422
50	.84743	.15257
51	.83674	.16126
52	.82969	.17031
53	.82028	.17972
54	.81054	.18946
55	.80046	.19954
56	.79006	.20994
57	.77931	.22069
58	.76822	.23178

59	.75675	.24325
60	.74491	.25509
61	.73267	.26733
62	.72002	.27998
63	.70696	.29304
64	.69352	.30648
65	.67970	.32030
66	.66551	.33449
67	.65098	.34902
68	.63610	.36390
69	.62086	.37914
70	.60522	.39478
71	.58914	.41086
72	.57261	.42739
73	.55571	.44429
74	.53862	.46138
75	.52149	.47851
76	.50441	.49559
77	.48742	.51258
78	.47049	.52951
79	.45357	.54643
80	.43659	.56341
81	.41967	.58033
82	.40295	.59705
83	.38642	.61358
84	.36998	.63002
85	.35359	.64641
86	.33764	.66236
87	.32262	.67738



88	.30859	.69141
89	.29526	.70474
90	.28221	.71779
91	.26955	.73045
92	.25771	.74229
93	.24692	.75308
94	.23728	.76272
95	.22887	.77113
96	.22181	.77819
97	.21550	.78450
98	.21000	.79000
99	.20486	.79514
100	.19975	.80025
101	.19532	.80468
102	.19054	.80946
103	.18437	.81563
104	.17856	.82144
105	.16962	.83038
106	.15488	.84512
107	.13409	.86591
108	.10068	.89932
109	.04545	.95455

(5) (2) ~~In some cases, The life estate and remainder interest tables are based on the anticipated lifetimes of individuals of a given age according to statistical tables of probability. If the life tenant may suffer suffers from a condition which is likely to cause death at an unusually early age. That circumstance decreases, the value of the life estate decreases and increases the value of the remainder interest increases. The existence of such a condition must be verified by a An individual who requires long-term care, who suffers from a condition that is anticipated to require long-term care within twelve months, or who has been diagnosed with a disease or condition likely to reduce the individual's life expectancy~~

is presumed to suffer from a condition likely to cause death at an unusually early age, and may not rely upon statistical tables of probability applicable to the general population to establish the value of a life estate or remainder interest. If an individual is presumed to suffer from a condition likely to cause death at an unusually early age, an applicant or recipient whose eligibility depends upon establishing the value of a life estate or remainder interest must provide a reliable medical statement which that estimates the remaining duration of life in years. The estimated remaining duration of life may be used, in conjunction with a mortality life expectancy table, to determine the comparable age for application of the life estate and remainder interest table.

5. Contractual rights to receive money payments:

- a. ~~For various reasons, but usually because an applicant or recipient has sold property with a contract to receive a series of payments, rather than one payment, an applicant or recipient may own contractual rights to receive money payments. Such contractual rights are available assets subject to the asset limits. If the applicant or recipient has sold real property or a mobile home, and received in return a promise of payments of money at a later date, usually to be made periodically, and an attendant promise to return the property if the payments are not made, the arrangement is usually called a "contract for deed". The essential feature of the contract for deed is the right to receive future payments, usually coupled with a right to get the property back if the payments are not made. Contractual rights to receive money payments also arise out of other types of transactions. The valuable contract document may be called a note, accounts receivable, mortgage, or by some other name.~~
- b. The value of contracts contractual rights to receive money payments which provide interest at rates at or above the posted yields of the federal national mortgage association (Fannie Mae), as posted for standard conventional fixed rate mortgages, as published in the Wall Street Journal at its most recent publication of posted yields, is equal to the principal balance plus interest due to the time of valuation, provided that the contract is not in default.
- b. Some contracts may have been entered into when interest rates were lower, or a low interest rate or no interest may have been charged in a transaction between relatives. These contracts may not be saleable or negotiable at face value. That is not to say that such contractual rights have no value. A proper valuation may be made by a process called "discounting", which will take into account the changes in the interest rates. The discounted value may be determined by the applicant or recipient through the application of



~~paragraph 1 or by the legal services division of the state agency under paragraph 2.~~

- (1) The discounting process requires estimating the present value of the money payments described in the contract. The formula for present value is:

$$PV = S \frac{1}{(1+i)^n} \text{ or } \frac{S}{(1+i)^n} \text{ or } S(1+i)^{-n} \text{ where}$$

PV = present value of future sum of money

S = future sum of money

i = earnings rate for each compounding period

n = number of periods

The information to apply the formula is derived from the contract except for the factor "i". The earnings rate to be used for the factor "i" is the posted yields of the federal national mortgage association (~~Fannie Mae~~), as posted for standard conventional fixed rate mortgages, as published in the Wall Street Journal at its most recent publication of posted yields. The application of this formula will produce the highest reasonable determination of fair market value of the contractual rights to receive money payments.

- C. The applicant or recipient must provide a copy of the documents that established the contractual right to receive money payments, sufficient payment information to determine if the contractual applications are current or in default, and if in default, the amount and date of each payment actually made. In the event the contract is in default, and there is no reasonable expectation that payments on the contract will be brought current within one year's time, the factor "S" is equal to the total of all outstanding principal and interest due on the contract and the factor "n" equals one.

- ~~(2) A request for a valuation, accompanied by the contract documents, may be sent to the legal services division. The request must indicate if the payments on the contract are current. If the payments are not current, the request must indicate the amount of each payment made and time each such payment was made.~~

- e. d. In some cases, the price and terms of a contract for deed may, in combination, be extremely favorable to the ~~buyer~~ payer. If the sale is made with a minimal downpayment, low interest rates, a long payment period, or a combination of any of those factors, the effect may be a transfer for less than adequate consideration. In such cases, the valuation must also indicate the fair market value of the

property sold as of the date of sale and the value of the contractual rights immediately after the sale.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-33.1. Disqualifying transfers made after August 10, 1993.**

1. a. Except as provided in subsections 2 and 9 10, an individual is ineligible for nursing facility services, swing-bed services, and medicaid-waivered care services if the individual or the spouse of the individual disposes of assets or income for less than fair market value on or after the look-back date specified in subdivision b.
- b. The look-back date specified in this subdivision is a date that is ~~thirty-six~~ the number of months (or, in the case of payments from a trust or portions of a trust that are treated as income or assets disposed of by an individual, ~~sixty months~~) specified in paragraph 1 or 2 before the first date on which the individual is both an institutionalized individual receiving nursing care services and has applied for benefits under this chapter, without regard to the action taken on the application.
  - (1) Except as provided in paragraph 2, the number of months is thirty-six months.
  - (2) The number of months is sixty months:
    - (a) In the case of payments from a revocable trust that are treated as income or assets disposed of by an individual pursuant to paragraph 3 of subdivision a of subsection 3 of section 75-02-02.1-31.1;
    - (b) In the case of payments from an irrevocable trust that are treated as income or assets disposed of by an individual pursuant to subparagraph b of paragraph 1 of subdivision b of subsection 3 of section 75-02-02.1-31.1; and
    - (c) In the case of payments to an irrevocable trust that are treated as income or assets disposed of by an individual pursuant to paragraph 2 of subdivision b of subsection 3 of section 75-02-02.1-31.1.
- c. The period of ineligibility begins the first day ~~within the first month during or after~~ of the month in which income or assets have been transferred for less than fair market value ~~and which does not occur~~



in, or if that day is within any other periods period of ineligibility under this section or section 75-02-02.1-33, the first day thereafter that is not in such a period of ineligibility.

- d. The number of months of ineligibility ~~under this subdivision~~ for an individual shall be equal to the total, cumulative uncompensated value of all income and assets transferred by the individual ~~{, or individual's spouse}~~, on or after the look-back date specified in subdivision b, divided by the average monthly cost of nursing facility care in North Dakota at the time of application.
2. ~~An~~ Except as limited by subdivision e of subsection 2 of section 75-02-02.1-24, an individual shall not be ineligible for medicaid by reason of subsection 1 to the extent that:
    - a. The assets transferred were a home, and title to the home was transferred to:
      - (1) The individual's spouse;
      - (2) The individual's son or daughter who is under age twenty-one, blind, or disabled;
      - (3) The individual's brother or sister who has an equity interest in the individual's home and who was residing in the individual's home for a period of at least one year immediately before the date the individual became an institutionalized individual; or
      - (4) The individual's son or daughter ~~{, other than a child described in paragraph 2}~~, who was residing in the individual's home for a period of at least two years immediately before the date the individual ~~became an institutionalized individual~~ began receiving nursing care services, and who provided care to the individual which permitted the individual to ~~reside at home rather than in an institution or facility~~ avoid receiving nursing care services;
    - b. The income or assets:
      - (1) Were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse;
      - (2) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;
      - (3) Were transferred to, or to a trust established solely for the benefit of, the individual's child who is blind or disabled; or

- (4) Were transferred to a trust established solely for the benefit of an individual under sixty-five years of age who is disabled;
- c. The individual makes a satisfactory showing that:
  - (1) The individual intended to dispose of the income or assets, either at fair market value or other valuable consideration, and the individual had an objectively reasonable belief that fair market value or its equivalent was received;
  - (2) The income or assets were transferred exclusively for a purpose other than to qualify for medicaid; or
  - (3) For periods after the return, all income or assets transferred for less than fair market value have been returned to the individual; or
- d. ~~The individual shows that the total cumulative uncompensated value of all income and assets transferred for less than fair market value by the individual (or the individual's spouse) is less than the actual cost of those nursing facility services, swing-bed services, and medicaid-waivered services, provided after the transfer was made, for which payment has not been made and which are not subject to payment by any third party, provided that such a showing may only be made with respect to periods when the individual is otherwise eligible for medicaid; or~~
- e. The asset transferred was an asset excluded or exempted for medicaid purposes other than:
  - (1) ~~Household goods, personal effects, or an exempt motor vehicle;~~
  - (2) ~~A burial fund of up to one thousand five hundred dollars, plus earnings on the burial fund;~~
  - (3) ~~A burial space or agreement which represents the purchase of a burial space held for the transferor, the transferor's spouse, or any other member for the transferor's immediate family;~~
  - (4) ~~Property essential to self-support, which means property which the transferor owns, to the extent the equity value does not exceed six thousand dollars, which produces annual income at least equal to six percent of equity value, and which the transferor is not actively engaged in using to produce income; and nonbusiness property which the transferor owns, to the extent the equity value does not exceed six thousand dollars when used to produce goods~~



~~or services essential to daily activities or, for instance, when used to grow produce or livestock solely for consumption in the transferor's household; but which does not mean cash or any other liquid asset;~~

- ~~(5) Property that is essential to earning a livelihood;~~
- ~~(6) Assets set aside, by a blind or disabled (but not an aged) transferor, as a part of a plan approved by the social security administration, for the transferor to achieve self-support;~~
- ~~(7) Assistance received under the disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288], or other assistance provided pursuant to a federal statute on account of a catastrophe declared to be a major disaster by the president, and interest earned on that assistance, but only for nine months following receipt of that assistance;~~
- ~~(8) Any amounts received from the United States attributable to underpayments of benefits due from one or more prior months, under title II or title XVI of the Act [42 U.S.C. 401 et seq. and 1381 et seq.], but only for six months following receipt of those amounts;~~
- ~~(9) The value of assistance, paid with respect to a dwelling unit occupied by the transferor, under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965, title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or section 202(h) of the Housing Act of 1959 [12 U.S.C. 1701q(h)];~~
- ~~(10) Any amounts received by the transferor from a fund established by a state to aid victims of crime, to the extent that the transferor demonstrates that the amount was paid in compensation for expenses incurred or losses suffered as a result of a crime, but only for nine months following receipt of the amount; or~~
- ~~(11) Relocation assistance amounts provided by a state or local government to the transferor, comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 [42 U.S.C. 4621 et seq.], which are subject to the treatment required by section 216 of such Act [42 U.S.C. 4636], but only for nine months following receipt of the amounts. The home or residence of the individual or the individual's spouse;~~

- (2) Property that is not saleable without working an undue hardship;
  - (3) Excluded home replacement funds;
  - (4) Excluded payments, excluded interest on those payments, and excluded in-kind items received for the repair or replacement of lost, damaged, or stolen exempt or excluded assets;
  - (5) Life estate interests;
  - (6) Mineral interests; or
  - (7) An asset received from a decedent's estate during any period it is excluded under subdivision b of subsection 17 of section 75-02-02.1-28.
- 3. An individual shall not be ineligible for medicaid by reason of subsection 1 to the extent the individual makes a satisfactory showing that an undue hardship exists.
  - a. An undue hardship exists only if the total cumulative uncompensated value of all income and assets transferred for less than fair market value by the individual or the individual's spouse is less than the total of all unpaid nursing care bills for services:
    - (1) Provided after the last such transfer was made which are not subject to payment by any third party; and
    - (2) Incurred when the individual and the individual's spouse had no assets in excess of the appropriate asset levels.
  - b. If the individual shows that an undue hardship exists, the individual shall be subject to an alternative period of ineligibility that begins on the first day of the month in which the individual and the individual's spouse had no excess assets and continues for the number of months determined by dividing the total cumulative uncompensated value of all such transfers by the average monthly unpaid charges incurred by the individual for nursing care services provided after the beginning of the alternative period of ineligibility.
- ~~3.~~ 4. There is a presumption that a transfer for less than fair market value was made for purposes that include the purpose of qualifying for medicaid:
  - a. In any case in which the individual's assets (and the assets of the individual's spouse) remaining after the transfer produce income which, when added to other income available to the individual (and to the individual's spouse) totals an amount insufficient to meet



all living expenses and medical costs reasonably anticipated to be incurred by the individual (and by the individual's spouse) in the month of transfer and in the thirty-five months (~~or~~ fifty-nine months in the case of a transfer to a trust) from a revocable or irrevocable trust that is treated as assets or income disposed of by the individual (or the individual's spouse) or in the case of payments to an irrevocable trust that are treated as assets or income disposed of by the individual (or the individual's spouse)) following the month of transfer;

- b. In any case in which an inquiry about medicaid benefits was made, by or on behalf of the individual to any person, before the date of the transfer;
  - c. In any case ~~where~~ in which the individual or the individual's spouse was an applicant for or recipient of medicaid before the date of transfer;
  - d. In any case in which a transfer is made by or on behalf of the individual or the individual's spouse, if the value of the transferred income or asset, when added to the value of the individual's other countable assets, would exceed the asset limits at section 75-02-02.1-26; or
  - e. In any case ~~where~~ in which the transfer was made, on behalf of the individual or the individual's spouse, by a guardian, conservator, or attorney-in-fact, to the individual's relative, or to the guardian, conservator, or attorney-in-fact or to any spouse parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, or nephew, parent, or grandparent, whether by birth, adoption, or marriage and whether by whole or half-blood, of the guardian, conservator, or attorney-in-fact or the spouse or former spouse of the guardian, conservator, or attorney-in-fact.
4. 5. An applicant or recipient who claims that income or assets were transferred exclusively for a purpose other than to qualify for medicaid must show that a desire to receive medicaid benefits played no part in the decision to make the transfer and must rebut any presumption arising under subsection ~~3~~ 4. The fact, if it is a fact, that the individual would be eligible for the medicaid ~~benefits described in subdivision a of subsection 1~~ coverage for nursing care services, had the individual or the individual's spouse not transferred income or assets for less than fair market value, is not evidence that the income or assets were transferred exclusively for a purpose other than to qualify for medicaid.
5. 6. ~~In the case of~~ If a transfer by an individual's spouse which results in a period of ineligibility under this section for the an individual; receiving nursing care services, and if the individual's spouse otherwise becomes



~~an institutionalized spouse who is eligible for medicaid and requires nursing care services~~, the period of ineligibility shall be apportioned equally between the spouses. Any months remaining in the period of ineligibility must be assigned or reassigned to the spouse who ~~remains institutionalized~~ continues to receive nursing care services if one spouse dies or ~~is no longer institutionalized~~ stops receiving nursing care services.

6: ~~7.~~ 7. If the transferee of any ~~No~~ income or asset is the transferred to a parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, stepsister, stepbrother, great-grandparent, great-grandchild, aunt, uncle, niece, or nephew, parent, or grandparent of the individual or the individual's spouse, purportedly for services or assistance furnished by the transferee to the individual or the individual's spouse, may ~~not~~ be treated as consideration for the transferred income or asset unless the:

a. The transfer is made pursuant to a valid written contract entered into prior to rendering the services or assistance;

b. The contract was executed by the individual or the individual's fiduciary who is not a provider of services or assistance under the contract;

c. Compensation is consistent with rates paid in the open market for the services or assistance actually provided; and

d. The parties' course of dealing included paying compensation upon rendering services or assistance, or within thirty days thereafter.

7: ~~8.~~ 8. A transfer is complete when the individual (or the individual's spouse) making the transfer has no lawful means of undoing the transfer or requiring a restoration of ownership.

8: ~~9.~~ 9. For purposes of this section:

a. "Annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future, but does not mean an employee benefit that qualifies for favorable tax treatment under the Internal Revenue Code or a plan described in the Internal Revenue Code as a retirement plan under which contributions must end and withdrawals must begin by age seventy and one-half.

b. "Average daily monthly cost of nursing facility care" means the cost determined by the department under section 1917(c)(1)(E)(i)(II) of the Act [42 U.S.C. 1396p(c)(1)(E)(i)(II) or subdivision d of subsection 4].



b. c. "Fair market value is received " means:

- (1) In the case of an a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, ~~when~~ one hundred percent of apparent fair market value ~~is received~~;
- (2) In the case of ~~an asset~~ real or personal property that is subject to reasonable dispute concerning its value, ~~when:~~
  - (a) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or anyone acting on the individual's behalf, seventy-five percent of estimated fair market value is received; or
  - (b) If conveyed to someone in a confidential relationship with the individual or anyone acting on the individual's behalf, one hundred percent of estimated fair market value; and
- (3) In the case of income, ~~when~~ one hundred percent of apparent fair market value ~~is received~~.

e. d. "Major medical policy" includes any policy, certificate, or subscriber contract issued on a group or individual basis by any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization, which provides a plan of health insurance or health benefit coverage including medical, hospital, and surgical care, approved for issuance by the insurance regulatory body in the state of issuance, but does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance or automobile medical payment insurance, or a policy or certificate of specified disease, hospital confinement indemnity, or limited benefit health insurance.

d. e. "Medicare" means the Health Insurance for the Aged and Disabled Act, title XVIII of the Social Security Act of 1965, as amended [42 U.S.C. 1395, et seq.; Pub. L. 92-603; 86 Stat. 1370].

e. f. "Medicare supplement policy offering plan F benefits" means a policy, group, or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization or preferred provider organization, other than a policy issued pursuant to a contract under section 1876 or 1833 of the Social Security Act [42 U.S.C. 1395, et seq.] or an issued policy under a demonstration project authorized pursuant to amendments to the Social Security Act that:

- (1) Is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare;
- (2) Is not a policy or contract of one or more employers or labor organizations, or the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization;
- (3) Is approved for issuance by the insurance regulatory body in the state of issuance; and
- (4) Includes:
  - (a) Hospitalization benefits consisting of medicare part A coinsurance plus coverage for three hundred sixty-five additional days after medicare benefits end;
  - (b) Medical expense benefits consisting of medicare part B coinsurance;
  - (c) Blood provision consisting of the first three pints of blood each year;
  - (d) Skilled nursing coinsurance;
  - (e) Medicare part A deductible coverage;
  - (f) Medicare part B deductible coverage;
  - (g) Medicare part B excess benefits at one hundred percent coverage; and
  - (h) Foreign travel emergency coverage.

f. g. "Nursing care services" means nursing care provided in a medical institution, a nursing facility, a swing bed, the state hospital, or a home and community based services setting.

h. "Relative" means a parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, nephew, great-great-grandparent, great-great-grandchild, great-aunt, great-uncle, first cousin, grandniece, or grandnephew, whether by birth or adoption, and whether by whole or half-blood, of the individual or the individual's current or former spouse.



- i. "Someone in a confidential relationship" includes an individual's attorney-in-fact, guardian, conservator, legal custodian, caretaker, trustee, attorney, accountant, or agent, and may include a relative or other person with a close and trusted relationship to the individual.
  - j. "Uncompensated value" means the difference between fair market value and the value of any consideration received.
- 9- 10. ~~The provisions of this section may not be applied to deny, to qualified medicare beneficiaries, benefits available due to their status as qualified medicare beneficiaries~~ do not apply in determining eligibility for medicare savings programs.
10. ~~This section is applicable to all transfers made after August 10, 1993.~~
11. An individual disposes of assets or income when the individual, or anyone on behalf of the individual or at the request of the individual, acts or fails to act in a manner that effects a transfer, conveyance, assignment, renunciation, or disclaimer of any asset or income in which the individual had or was entitled to claim an interest of any kind.
12. An individual who disposes of assets or income to someone in a confidential relationship is presumed to have transferred the assets or income to an implied trust in which the individual is the beneficiary and which is subject to treatment under section 75-02-02.1-31.1. The presumption may be rebutted only if the individual shows:
- a. The compensation actually received by the individual for the assets or income disposed of was equal to at least one hundred percent of fair market value, in which case this section has no application; or
  - b. The individual, having capacity to contract, disposed of the assets or income with full knowledge of the motives of the transferee and all other facts concerning the transaction which might affect the individual's own decision and without the use of any influence on the part of the transferee, in which case the transaction is governed by this section.
13. ~~An individual is not ineligible for medicaid by reason of subsection 1~~ may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at least thirty-six consecutive months, beginning after August 1, 1995 on the date the asset was transferred, the individual has in force home care and long-term care coverage, purchased on or before July 31, 2003, with a daily benefit at least equal to 1.25 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1095 times that daily benefit, and:



- a. For each such month during which the individual is not eligible for medicare benefits, the individual has in force a major medical policy that provides a lifetime maximum benefit of one million dollars or more, an annual aggregate deductible of five thousand dollars or less, and an out-of-pocket maximum annual expenditure per qualifying individual of five thousand dollars or less; and
  - b. For each such month during which the individual is eligible for medicare benefits, the individual has in force a medicare supplement policy offering plan F benefits, or their equivalent.
14. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home health care coverage, assisted living coverage, basic care coverage, and skilled nursing facility coverage, purchased on or after August 1, 2003, with a daily benefit at least equal to 1.57 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1095 times that daily benefit, and:
- a. For each month during which the individual is not eligible for medicare benefits, the individual has in force a major medical policy that provides a lifetime maximum benefit of one million dollars or more, an annual aggregate deductible of five thousand dollars or less, and an out-of-pocket maximum annual expenditure per qualifying individual of five thousand dollars or less; and
  - b. For each such month during which the individual is eligible for medicare benefits, the individual has in force a medicare supplement policy offering plan F benefits, or their equivalent.
15. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid, if the asset was used to acquire an annuity, only if:
- a. The annuity is irrevocable and cannot be assigned to another person;
  - b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;
  - c. The annuity provides substantially equal monthly payments such that the total annual payment in any year varies by five percent or less from the total annual payment of the previous year and does not provide for a balloon or deferred payment of principal or interest;



- d. The annuity will return the full principal and interest within the purchaser's life expectancy as determined by the department; and
- e. The monthly payments from the annuity, unless specifically ordered otherwise by a court of competent jurisdiction, do not exceed the maximum monthly maintenance needs allowance provided under subsection 1 of section 75-02-02.1-24.

**History:** Effective October 1, 1993; amended effective December 1, 1996; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02; 42 USC 1396p(c)

#### **75-02-02.1-34. Income considerations.**

1. ~~All income must be considered in establishing eligibility and in determining a recipient's liability for the medical costs.~~
2. ~~Only such~~ All ~~income as that~~ income as that ~~is actually available will~~ shall ~~be~~ considered. Income is actually available when it is at the disposal of an applicant, recipient, or responsible relative; when the applicant, recipient, or responsible relative has a legal interest in a liquidated sum and has the legal ability to make the sum available for support, maintenance, or medical care; or when the applicant, recipient, or responsible relative has the lawful power to make the income available or to cause the income to be made available. ~~Income will~~ shall ~~be reasonably evaluated. A determination that income is deemed available is a determination that the income is actually available.~~ This subsection does not supersede other provisions of this chapter which describe or require specific treatment of income, or which describe specific circumstances which require a particular treatment of income.
3. ~~2.~~ The financial responsibility of any individual for any applicant or recipient of medicaid will be limited to the responsibility of spouse for spouse and parents for a child under age twenty-one ~~or, if blind or disabled, under age eighteen.~~ Such responsibility is imposed ~~upon applicants or recipients~~ as a condition of eligibility for medicaid. Except as otherwise provided in this section, the income of the spouse and ~~of the parents of a child under age twenty-one or, if blind or disabled, under age eighteen are deemed~~ is considered available to the applicant or recipient, even if that income is not actually contributed. ~~For purposes of this subsection, biological~~ Biological and adoptive parents, but not stepparents, are treated as parents.
- a. ~~3.~~ ~~It is presumed that all~~ All ~~spousal income is considered~~ actually available where financial responsibility is imposed pursuant to this subsection. In order to rebut this presumption, the applicant or recipient must demonstrate that the spousal income is unavailable despite reasonable and diligent efforts to access such income. The

~~rebuttal of this presumption does not preclude the department from exercising the powers granted to it by North Dakota Century Code section 50-24.1-02.1. Except as provided in paragraphs 1, 2, and 3, no applicant or recipient who has a statutory or common law cause of action for support from a spouse, but who has failed to diligently pursue that cause of action, may rebut the presumption. Any applicant or recipient who documents any of the following circumstances will have rebutted the presumption without further proof unless:~~

- ~~(1) a.~~ A court order, entered following a contested case, determines the amounts of support that a spouse must pay to the applicant or recipient;
  - ~~(2) b.~~ The spouse from whom support could ordinarily be sought, and the property of such spouse, is outside the jurisdiction of the courts of the United States or any of the United States; or
  - ~~(3) c.~~ In cases where section 75-02-02.1-24 does not apply, the ~~The~~ applicant or recipient ~~has been~~ is subject to marital separation, with or without court order, ~~the parties have not separated for the purpose of securing medicaid benefits, and the spouse of the and there has been no collusion between the~~ applicant or recipient has refused to furnish information about the spouse's income sufficient to determine eligibility and that person's spouse to render the applicant or family member eligible for medicaid.
  - ~~(4)~~ In cases where section 75-02-02.1-24 applies, income is that properly treated as belonging to the community spouse.
- b. ~~4.~~ It is presumed that all ~~All~~ parental income is considered actually available to a child under age twenty-one or, if blind or disabled, under age eighteen, where financial responsibility is imposed pursuant to this subsection. ~~This presumption may be rebutted by a showing that~~ unless the child is:
- a. Disabled and at least age eighteen;
  - ~~(1) b.~~ Living independently;
  - ~~(2)~~ A child for whom adoption assistance maintenance payments are made under title IV-E;
  - ~~(3)~~ A child for whom foster care maintenance payments are made under title IV-E;
  - ~~(4)~~ A child, living in North Dakota, receiving title IV-E adoption assistance payments from another state;



- (5) ~~A child, in foster care placement in North Dakota, receiving a title IV-E foster care payment from another state; or~~
- (6) c. Living with a parent who is separated from the child's other parent, with or without court order, if the parents did not separate for the purpose of securing medicaid benefits, ~~and the parent with whom the child is not living has refused to furnish information about that parent's income sufficient to determine eligibility.~~
4. 5. Income may be received weekly, biweekly, monthly, intermittently, or annually. However income is received, a monthly income amount must be computed. ~~Lump sum income will be attributed to an appropriate month as provided for in sections 75-02-02.1-37 and 75-02-02.1-38. All other income must be treated as received in the month in which it is normally received.~~
5. 6. Payments from any source, which are or may be received as a result of a medical expense or increased medical need, are not income, but are considered to be medical payments which must be applied toward the recipient's medical costs. These payments include health or long-term care insurance payments, veterans administration aid and attendance ~~and,~~ veterans administration reimbursements for unusual medical expenses, and veterans administration homebound benefits intended for medical expenses.
- a. Health or long-term care insurance payments must be considered as payments received in the months the benefit was intended to cover and must be applied to medical expenses incurred in those months.
- b. Veterans administration aid and attendance benefits must be considered as payments received in the months the benefit was intended to cover and must be applied to the medical expense incurred in those months; and
- b. c. Veterans administration reimbursements for unusual medical expenses must be considered as payments received in the months in which the increased medical expense occurred and must be applied to the medical expense incurred in those months; and
- d. Veterans administration homebound benefits intended for medical expenses must be considered as payments received in the months the benefit was intended to cover and must be applied to the medical expenses incurred in those months. This does not apply to homebound benefits which are not intended for medical expenses.
6. ~~Determining ownership of income.~~

- a. ~~For purposes of this subsection, "instrument" means any writing that evidences a right to the payment of money except that a check or money order is an instrument only if issued by a governmental agency, an employer of the payee, or an underwriter of life insurance.~~
- b. ~~In the case of income from a trust:~~
- (1) ~~Except as provided in paragraph 2, income must be attributed in accordance with this chapter, including section 75-02-02.1-31; or~~
- (2) ~~Income must be considered available to each spouse as provided in the trust or, in the absence of a specific provision in the trust, in accordance with subdivision d.~~
- e. 7. a. ~~In the case determining ownership of income from an instrument, subject to subdivision f a document, income must be considered available to each spouse individual as provided in the instrument document, or, in the absence of a specific provision in the instrument, in accordance with subdivision d.~~
- d. ~~In the case of income from a trust, or based on an instrument, which has no specific provision for payment to a spouse document:~~
- (1) ~~If payment of income is made solely to or in the name of the institutionalized spouse or the community spouse one individual, the income shall be considered available only to that respective spouse individual; and~~
- (2) ~~If payment of income is made to or in the names of both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and more than one individual.~~
- (3) ~~If payment of income is made to or in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse individual in proportion to the spouse's individual's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).~~
- e. b. ~~In the case of income not from a trust available to a couple in which there is no instrument document establishing ownership, subject to subdivision f, one-half of the income shall be considered to be available to the institutionalized spouse and one-half to the community each spouse.~~



- f. c. Except in the case of income from a trust, the rules for determining ownership of income are superseded to the extent that the institutionalized spouse applicant or recipient can establish that the ownership interests are otherwise than as provided in those rules.
- g. ~~In cases where neither spouse is institutionalized, or treated as being institutionalized, income considered available to either spouse is considered available to the other spouse as well.~~
8. Countable income from a business entity that employs anyone whose income is used to determine eligibility is:
- a. If the applicant or recipient and other members of the medicaid unit, in combination, own a controlling interest in the business entity, an amount determined as for a self-employed individual or family under section 75-02-02.1-38;
- b. If the applicant or recipient and other members of the medicaid unit, in combination, own less than a controlling interest, but more than a nominal interest, in the business entity, an amount determined by:
- (1) Subtracting any cost of goods for resale, repair, or replacement, and any wages, salaries, or guarantees (but not draws) paid to all owners of interests in the business entity who are actively engaged in the business to establish the business entity's adjusted gross income, from the business entity's gross income;
- (2) Establishing the applicant or recipient's share of the business entity's adjusted gross income, based on the medicaid unit's proportionate share of ownership of the business entity;
- (3) Adding any wages, salary, or guarantee paid to the applicant's or recipient's share of the business entity's adjusted gross income; and
- (4) Applying the disregards appropriate to the type of business as described in section 75-02-02.1-38; or
- c. If the applicant or recipient and other members of the medicaid unit, in combination, own a nominal interest in the business entity, and are not able to influence the nature or extent of employment by that business entity, the individual's earned income as an

employee of that business entity, plus any unearned income gained from ownership of the interest in the business entity.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-36. Disregarded income. Repealed effective July 1, 2003.**

- ~~4. The following types of income must be disregarded in determining medicaid eligibility for all persons except those residing in nursing facilities, the state hospital, the Anne Carlsen school hospital, accredited residential treatment centers for children, and intermediate care facilities for the mentally retarded, and those persons receiving swing bed care in hospitals:~~
  - ~~a. Money payments made by the department in connection with foster care or the subsidized adoption program;~~
  - ~~b. Occasional small gifts;~~
  - ~~c. County general assistance that may be issued on an intermittent basis to cover emergency type situations;~~
  - ~~d. Income received as a housing allowance by programs sponsored by the United States department of housing and urban development and rent supplements or utility payments provided through the housing assistance program;~~
  - ~~e. Income of an individual living in the parental home if the individual is not included in the medicaid unit;~~
  - ~~f. Mandatory and optional supplementation payments;~~
  - ~~g. Educational loans, scholarships, grants, awards, and work study received by an undergraduate student;~~
  - ~~h. In-kind income except in-kind income received in lieu of wages;~~
  - ~~i. Per capita judgment funds paid to members of any Indian tribe under Pub. L. 92-254 or Pub. L. 93-134;~~
  - ~~j. Compensation received by volunteers participating in the action program as stipulated in the Domestic Volunteer Service Act of 1973 [Pub. L. 93-113], including foster grandparents, older American community service program, retired senior volunteer program, service corps of retired executives, volunteers in service to America, and university year for action;~~



- k. ~~Benefits received through the low income home energy assistance program;~~
- t. ~~Training funds received from vocational rehabilitation;~~
- m. ~~Training allowances of up to thirty dollars per week provided through the tribal work experience program, basic employment skills training, or job search. Funds in excess of thirty dollars per week are treated as unearned income;~~
- fr. ~~Income tax refunds and earned income credits;~~
- o. ~~Needs-based payments, support services, and relocation expenses provided through programs established under the Job Training Partnership Act and through the job opportunities and basic skills program;~~
- p. ~~Income derived from submarginal lands, conveyed to Indian tribes and held in trust by the United States, as required by Pub. L. 94-114;~~
- q. ~~Income earned by a child, including income received through volunteers in service to America and Job Training Partnership Act; provided that the child is a full-time student or a part-time student who is not employed one hundred hours or more per month. A child retains status as a student during summer vacation if the child intends to return to school in the fall;~~
- f. ~~Payments from the family subsidy program;~~
- s. ~~The first fifty dollars per month of current child support received on behalf of children in the medicaid unit;~~
- t. ~~Payments made to recipients under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [Pub. L. 91-646];~~
- tr. ~~Tax-exempt portions of payments made as a result of the Alaska Native Claims Settlement Act [Pub. L. 92-203];~~
- v. ~~Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [Pub. L. 100-383];~~
- w. ~~Agent orange payments;~~

- ~~x: A loan from any source that is subject to a written agreement requiring repayment by the recipient;~~
  - ~~y: The medicare part B premium refunded by the social security administration;~~
  - ~~z: Crime Victims Reparation Act payments;~~
  - ~~aa: Lump sum supplemental security income benefits in the month in which the benefit is received;~~
  - ~~bb: German reparation payments made to survivors of the holocaust, and reparation payments made under sections 500 through 506 of the Austrian General Social Insurance Act; and~~
  - ~~cc: Assistance received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288] or some other federal statute, because of a presidentially declared major disaster, and interest earned on that assistance.~~
- ~~2. Only the following types of income may be disregarded in determining medicaid eligibility for persons residing in nursing facilities, the state hospital, the Anne Carlsen school hospital, accredited residential treatment centers for children, and intermediate care facilities for the mentally retarded, and for persons receiving swing bed care in hospitals:~~
- ~~a: Occasional small gifts; and~~
  - ~~b: For so long as 38 U.S.C. 32-03(f) remains effective, fifty dollars of veterans administration improved pensions paid to a veteran, or a surviving spouse of a veteran, who has neither spouse nor child and who resides in a medicaid approved nursing facility.~~
- ~~3. For purposes of this section:~~
- ~~a: "Full-time student" means a person who attends school on a schedule equal to a full curriculum.~~
  - ~~b: "Student" means a child under the age of twenty-one years who regularly attends and makes satisfactory progress in a course of elementary or secondary school, college, university, or vocational training.~~

**History:** ~~Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993.~~

**General Authority:** ~~NDCC 50-06-16, 50-24.1-04~~

**Law Implemented:** ~~NDCC 50-24.1-04~~



**75-02-02.1-37. Unearned income.** Unearned income is income that is not earned income.

1. ~~Gross income includes unearned~~ Unearned income which is received in a fixed amount each month, and unearned income received in a lump sum shall be applied in the month in which it is normally received.
2. 1. Recurring unearned lump sum payments are received after application for medicaid shall be prorated over the number of months the payment is intended to cover. When a payment is received and prorated in an ongoing case, or after a period of medicaid eligibility, and the case is closed and then reopened during the prorated period, or within the following proration period, the lump sum payment proration must continue. All other recurring unearned lump sum payments received before application for medicaid are considered income in the month received and are not prorated.
3. 2. All nonrecurring unearned lump sum payments, except health or long-term care insurance payments, veterans administration aid and attendance and, veterans administration reimbursements for unusual medical expenses, must and veterans administration homebound benefits intended for medical expenses shall be considered as income in the month received and assets thereafter.
4. 3. Interest and dividend income earned on a liquid asset that is paid directly to the applicant or recipient is income in the month received. Interest accrued but not paid is an asset and dividends earned but not paid are assets.
5. 4. The first two thousand dollars per year of lease payments deposited in individual Indian moneys accounts is disregarded as income for an applicant or recipient residing in the individual's own home or a specialized facility and in determining eligibility for the medicare savings programs. This disregard is not allowed in establishing the application of income to the cost of care for an individual residing in a nursing facility, the state hospital, the Anne Carlsen facility, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, or an intermediate care facility for the mentally retarded, or receiving swing-bed care in a hospital. One-twelfth of the annual amount of lease payments deposited in individual Indian moneys accounts by the bureau of Indian affairs is income in each month and may be determined:
  - a. By totaling all payments in the most recent full calendar year and dividing by twelve;
  - b. By totaling all payments in the twelve-month period ending with the previous month and dividing by twelve; or

- c. If the applicant or recipient demonstrates, by furnishing lease documents or reports, that the deposit amount will be substantially different than the annual amount which would be determined under subdivision a or b, by totaling all payments likely to be made in the twelve-month period beginning with the month in which the lease arrangement changed and dividing by twelve.
- 5. One-twelfth of annual conservation reserve program payments, less expenses, such as seeding and spraying, necessary to maintain the conservation reserve program land in accordance with that program's requirements, is unearned income in each month.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

#### 75-02-02.1-38. Earned income.

- 4. ~~Net earned~~ Earned income is determined by adding monthly net income from income which is currently received as wages, salaries, commissions, or profits from activities in which an individual or family is engaged through either employment or self-employment to other monthly earned income and subtracting the applicable deductions. Income is "earned" only if the individual or family contributes an appreciable amount of personal involvement and effort. Earned income shall be applied in the month in which it is normally received.
- 1. If earnings from more than one month are received in a single payment, the payment must be divided by the number of months in which the income was earned, and the resulting monthly amounts shall be attributed to each of the months with respect to which the earnings were received.
- 2. "Monthly net income from self-employment" means:
  - a. ~~In the case of~~ If a self-employed persons whose individual's business does not require the purchase of goods for sale or resale, net income from self-employment is seventy-five percent of gross monthly earnings from self-employment.
  - b. 3. ~~In the case of~~ If a self-employed persons whose individual's business requires the purchase of goods for sale or resale, net income from self-employment is seventy-five percent of the result determined by subtracting cost of goods purchased from gross receipts, ~~determined monthly.~~



- e. ~~4.~~ ~~In the case of a~~ If a self-employed individual's business which furnishes room and board, net income from self-employment is monthly gross receipts less one hundred dollars per room and board client.
- d. ~~5.~~ ~~In the case of~~ If a self-employed persons individual is in a service business which that requires the purchase of goods or parts for repair or replacement, net income from self-employment is twenty-five percent of the result determined by subtracting cost of goods or parts purchased from gross monthly earnings from self-employment.
- e. ~~6.~~ ~~In the case of~~ If a self-employed persons who receive individual receives income other than monthly, if and the most recently available federal income tax return will accurately predict predicts income, net income from self-employment is twenty-five percent of gross annual income, plus any net gain resulting from the sale of capital items, plus ordinary gains or minus ordinary losses, divided by twelve. If the most recent available federal income tax return will does not accurately predict income because the business has been recently established, because the business has been terminated or subject to a severe reversal, because the applicant or recipient makes a convincing showing that actual net income is substantially less than twenty-five percent of gross profit, or because the county agency determines for any reason that actual net profits are substantially greater than twenty-five percent of gross profit, change, such as a decrease or increase in the size of the operation, or an uninsured loss, net income from self-employment is an amount determined by the county agency to represent the best estimate of monthly net income from self-employment will be used. A self-employed individual must may be required to provide, on a monthly basis, the best information available on income and cost of goods. Income statements, when available, shall be used as a basis for computation. If the business is farming, or any other seasonal business, the annual net income, divided by twelve, is the monthly net income.
- ~~3.~~ ~~If earnings from more than one month are received in a lump sum payment, the payment must be divided by the number of months in which the income was earned, and the resulting monthly amounts are attributed to each of the months with respect to which the earnings were received.~~

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-38.1. Post-eligibility treatment of income.** This section prescribes specific financial requirements for determining the treatment of income and application of income to the cost of care for an individual screened as requiring nursing care services who resides in a nursing facility, the state hospital, the Anne

Carlsen facility, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, or an intermediate care facility for the mentally retarded, or who receives swing-bed care in a hospital.

1. The following types of income may be disregarded in determining medicaid eligibility:
  - a. Occasional small gifts:
  - b. For so long as 38 U.S.C. 5503 remains effective, ninety dollars of veterans administration improved pensions paid to a veteran, or a surviving spouse of a veteran, who has neither spouse nor child, and who resides in a medicaid-approved nursing facility:
  - c. Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [50 U.S.C. App. 1989 et seq.]:
  - d. Agent orange payments:
  - e. German reparation payments made to survivors of the holocaust, and reparation payments made under sections 500 through 506 of the Austrian General Social Insurance Act:
  - f. Netherlands reparation payments based on Nazi, but not Japanese, persecution during World War II [Pub. L. 103-286; 42 U.S.C. 1437a, note]; and
  - g. Radiation Exposure Compensation Act [Pub. L. 101-426; 42 U.S.C. 2210, note].
2. The mandatory payroll deductions under the Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.] and medicare are allowed from earned income.
3. In establishing the application of income to the cost of care, the following deductions are allowed in the following order:
  - a. The nursing care income level:
  - b. Amounts provided to a spouse or family member for maintenance needs; and
  - c. Medical expenses for necessary medical or remedial care that are each:



- (1) Documented in a manner which describes the service, the date of the service, the amount of cost incurred, and the name of the service provider;
- (2) Incurred in the month for which eligibility is being determined;
- (3) Provided by a medical practitioner licensed to furnish the care;
- (4) Not subject to payment by any third party, including medicaid and medicare;
- (5) Not incurred for nursing facility services, swing-bed services, or home and community-based services during a period of ineligibility because of a disqualifying transfer; and
- (6) Claimed.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

#### **75-02-02.1-38.2. Disregarded income.**

1. This section applies to an individual residing in the individual's own home or in a specialized facility, and to the medicare savings programs, but does not apply to transitional medicaid benefits or to an individual receiving nursing care services in a nursing facility, the state hospital, the Anne Carlsen facility, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, an intermediate care facility for the mentally retarded, or receiving swing-bed care in a hospital. The following types of income shall be disregarded in determining medicaid eligibility:
  - a. Money payments made by the department in connection with foster care, subsidized guardianship, or the subsidized adoption program;
  - b. Occasional small gifts;
  - c. County general assistance that may be issued on an intermittent basis to cover emergency-type situations;
  - d. Income received as a housing allowance by a program sponsored by the United States department of housing and urban development or rent supplements or utility payments provided through a housing assistance program;
  - e. Income of an individual living in the parental home if the individual is not included in the medicaid unit;

- f. Educational loans, scholarships, grants, awards, workers compensation, vocational rehabilitation payments, and work study received by a student;
- g. In-kind income except in-kind income received in lieu of wages;
- h. Per capita judgment funds paid to members of the Blackfeet Tribe and the Gross Ventre Tribe under Pub. L. 92-254, to any tribe to pay a judgment of the Indian claims commission or the court of claims under Pub. L. 93-134, or to the Turtle Mountain Band of Chippewa Indians, the Chippewa Cree Tribe of Rocky Boy's Reservation, the Minnesota Chippewa Tribe, or the Little Shell Tribe of Chippewa Indians of Montana under Pub. L. 97-403;
- i. Compensation received by volunteers participating in the action program as stipulated in the Domestic Volunteer Service Act of 1973 [Pub. L. 93-113; 42 U.S.C. 4950 et seq.], including foster grandparents, older American community service program, retired senior volunteer program, service corps of retired executives, volunteers in service to America, and university year for action;
- j. Benefits received through the low income home energy assistance program;
- k. Training funds received from vocational rehabilitation;
- l. Training allowances of up to thirty dollars per week provided through a tribal native employment works program, or the job opportunity and basic skills program;
- m. Income tax refunds and earned income credits;
- n. Needs-based payments, support services, and relocation expenses provided through programs established under the Workforce Investment Act [29 U.S.C. 2801 et seq.], and through the job opportunities and basic skills program;
- o. Income derived from submarginal lands, conveyed to Indian tribes and held in trust by the United States, as required by section 6 of Pub. L. 94-114 [42 U.S.C. 301, note];
- p. Income earned by a child who is a full-time student or a part-time student who is not employed one hundred hours or more per month;
- q. Payments from the family subsidy program;



- f. The first fifty dollars per month of current child support, received on behalf of children in the medicaid unit, from each budget unit that is budgeted with a separate income level;
- s. Payments made to recipients under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [Pub. L. 91-646, 42 U.S.C. 4621 et seq.];
- t. Payments made tax exempt as a result of section 21 of the Alaska Native Claims Settlement Act [Pub. L. 92-203];
- u. Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [Pub. L. 100-383; 50 U.S.C. App. 1989 et seq.];
- v. Agent orange payments;
- w. A loan from any source that is subject to a written agreement requiring repayment by the recipient;
- x. The medicare part B premium refunded by the social security administration;
- y. Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime;
- z. Temporary assistance for needy families benefit and support service payments;
- aa. Lump sum supplemental security income benefits in the month in which the benefit is received;
- bb. German reparation payments made to survivors of the holocaust and reparation payments made under sections 500 through 506 of the Austrian General Social Insurance Act;
- cc. Assistance received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288; 42 U.S.C. 5121 et seq.], or some other federal statute, because of a presidentially declared major disaster, and interest earned on that assistance;
- dd. Refugee cash assistance or grant payments;
- ee. Payments from the child and adult food program for meals and snacks to licensed families who provide day care in their home;

- ff. Extra checks consisting only of the third regular payroll check or unemployment benefit payment received in a month by an individual who is paid biweekly, and the fifth regular payroll check received in a month by an individual who is paid weekly;
  - gg. All income, allowances, and bonuses received as a result of participation in the job corps program;
  - hh. Payments received for the repair or replacement of lost, damaged, or stolen assets;
  - ii. Homestead tax credit;
  - jj. Training stipends provided to victims of domestic violence by private, charitable organizations for attending their educational programs;
  - kk. Allowances paid to children of Vietnam veterans who are born with spina bifida, or to children of women Vietnam veterans who are born with certain covered birth defects, under 38 U.S.C. 1805 or 38 U.S.C. 1815;
  - ll. Netherlands reparation payments based on Nazi, but not Japanese, persecution during World War II [Pub. L. 103-286; 42 U.S.C. 1437a, note]; and
  - mm. Radiation Exposure Compensation Act [Pub. L. 101-426; 42 U.S.C. 2210, note].
2. For purposes of this section:
- a. "Full-time student" means a person who attends school on a schedule equal to a full curriculum; and
  - b. "Student" means an individual who regularly attends and makes satisfactory progress in elementary or secondary school, general equivalency diploma classes, home school program recognized or supervised by the student's state or local school district, college, university, or vocational training, including summer vacation periods if the individual intends to return to school in the fall.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-39. Income deductions.** This section applies to an individual residing in the individual's own home or in a specialized facility and to the medicare savings programs, but does not apply to transitional medicaid benefits or to an individual receiving nursing care services in a nursing facility, the state hospital,



the Anne Carlsen facility, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, an intermediate care facility for the mentally retarded, or receiving swing-bed care in a hospital. No deduction not described in subsections 1 through 14 may be allowed in determining medicaid eligibility.

1. ~~The deductions described in this subsection must be allowed on either earned income or unearned income:~~
  - a. ~~The~~ Except in determining eligibility for the medicare savings programs, the cost of premiums for health insurance carried by an individual or family. This cost may be deducted from income in the month the premium is paid or may be prorated over and deducted from income in the months for which the premium affords coverage. Premium deductions may not be made in determining qualified medicare beneficiary, special low-income medicare beneficiary, and qualified disabled and working individual eligibility. For purposes of this deduction subsection, "premiums for health insurance" include payments made for insurance, health care plans, or nonprofit health service plan contracts which provide benefits for hospital, surgical, and medical care, but do not include payments made for coverage which is:
    - (1) a. Limited to disability or income protection coverage;
    - (2) b. Automobile medical payment coverage;
    - (3) c. Supplemental to liability insurance;
    - (4) d. Designed solely to provide payments on a per diem basis, daily indemnity, or nonexpense-incurred basis; or
    - (5) e. Credit accident and health insurance.
  - b. (1) 2. Medical Except in determining eligibility for the medicare savings programs, medical expenses for necessary medical or remedial care may be deducted only if the expense each is:
    - a. Documented in a manner which describes the service, the date of the service, the amount of the cost incurred, and the name of the service provider;
    - (a) b. Incurred by a member of a medicaid unit in the month for which eligibility is being determined;
    - (b) c. Provided by a medical practitioner licensed to furnish the care;
    - (e) d. Not subject to payment by any third party, including medicaid and medicare;

- (d) e. Not incurred for nursing facility services, swing-bed services, or ~~medicaid-waivered~~ home and community-based services during a period of ineligibility determined under section 75-02-02.1-33 75-02-02.1-33.1; and
- (e) f. Claimed.
  - (2) ~~Each medical or remedial care expense claimed for deduction must be documented by the applicant or recipient in a manner which describes the service, the date of the service, the amount of cost incurred, and the name of the service provider.~~
  - (3) ~~This deduction may not be made in determining qualified medicare beneficiary, special low-income medicare beneficiary, and qualified disabled and working individual eligibility.~~
- 3. Reasonable expenses such as food and veterinarian expenses necessary to maintain a service animal that is trained to detect seizures for a member of the medicaid unit.
- e. 4. ~~Court-ordered~~ Except for a support payment withheld from an extra check that is disregarded, nonvoluntary child and spousal support payments may be deducted if actually paid by a member of the medicaid unit on behalf of a person who is not a member of the medicaid unit.
- d. 5. The cost of premiums for nursing long-term care insurance carried by an individual or the individual's spouse. ~~The cost of a premium may be deducted from income in the month the premium is paid or may be prorated over and deducted from income the months for which the premium affords coverage. Premium deductions~~ No premium deduction may not be made in determining qualified eligibility for the medicare beneficiary, special low-income medicare beneficiary, and qualified disabled and working individual eligibility savings programs.
- e. 6. Reasonable child care expenses, not otherwise reimbursed, may be deducted to the extent necessary to engage in employment or permit a caretaker or a spouse to work or participate in training.
- f. 7. With respect to each individual in the medicaid unit who is employed or in training, but who is not aged, blind, or disabled, or a child, thirty dollars may be deducted as a work or training allowance, but only if the individual's income is counted in the eligibility determination.
- g. 8. Transportation ~~Except in determining eligibility for the medicare savings programs, transportation~~ expenses may be deducted if necessary to secure medical care provided for a member of the medicaid unit.



- h- 9. ~~The Except in determining eligibility for the medicare savings programs, the cost of remedial care for an individual residing in a specialized facility. This deduction is, limited to the difference between the recipient's cost of care at the facility rate and the regular medically needy income level, may be deducted. This deduction may not be made in determining qualified medicare beneficiary, special low-income medicare beneficiary, and qualified disabled and working individual eligibility.~~
- i- 10. ~~Except with respect to income from aid to families with dependent children, supplemental security income, aid and attendance veterans' benefits, housebound veterans' benefits, veterans' clothing allowance, and need-based veterans' pensions, all aged, blind, and disabled applicants or recipients other than those residing in a nursing facility, the state hospital, an accredited residential treatment center for children, or the Anne Carlsen school hospital, or receiving swing bed care in hospitals, twenty dollars, provided that A disregard of twenty dollars per month is deducted from any income, except income based on need, such as supplemental security income and need-based veterans' pensions. This deduction applies to all aged, blind, and disabled applicants or recipients, provided that:~~
- (1) a. ~~When more than one aged, blind, or disabled person lives together, no more than a total of twenty dollars may be deducted;~~
- (2) b. ~~When both earned and unearned income is available, this deduction must be made from unearned income; and~~
- (3) c. ~~When only earned income is available, this deduction must be made before deduction of sixty-five dollars plus one-half of the remaining monthly gross income made under subdivision e b of subsection 2 13.~~
11. Reasonable adult dependent car expenses for an incapacitated or disabled adult member of the medicaid unit may be deducted to the extent necessary to permit a caretaker or a spouse to work or participate in training.
12. The cost to purchase or rent a car safety seat for a child through age ten is allowed as a deduction if a seat is not otherwise reasonably available.
- 2- 13. The deductions described in this subsection may be allowed only on earned income.
- a. For all applicants or recipients individuals except for aged, blind, or disabled applicants or recipients, mandatory deduct:
- (1) Mandatory payroll deductions and union dues withheld, or ninety dollars, whichever is greater;

- b. (2) Mandatory retirement plan deductions;
  - e. (3) Union dues actually paid; and
  - d. (4) Expenses of a nondisabled blind person, reasonably attributable to earning income; and
  - e. b. For all aged, blind, or disabled applicants or recipients ~~other than those residing in a nursing facility, the state hospital, or the Anne Carlsen school hospital, or receiving swing bed care in a hospital,~~ deduct sixty-five dollars plus one-half of the remaining monthly gross earned income; and provided that, when more than one aged, blind, or disabled person lives together, no more than sixty-five dollars, plus one-half of the remaining combined earned income, may be deducted; and
  - f. ~~For all aged, blind, or disabled applicants or recipients residing in a nursing facility, the state hospital, an accredited residential treatment center for children, or the Anne Carlsen school hospital, or receiving swing bed care in a hospital, mandatory payroll deductions actually withheld.~~
3. 14. A deduction of payments may be made for the cost of services of a an applicant's or recipient's guardian or conservator ~~may be made~~, up to a maximum ~~deduction~~ equal to five percent of countable gross monthly income excluding nonrecurring lump sum payments.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

#### **75-02-02.1-40. Income levels.**

1. Levels of income for maintenance, ~~in total dollar amounts, will~~ shall be used as a basis for establishing financial eligibility for medicaid. The income levels applicable to individuals and units are:
  - a. Categorically needy income levels.
    - (1) ~~Categorically needy aid to families with dependent children recipients. The income level which establishes aid to families with dependent children eligibility. Eligibility for medicaid exists as a result of aid to families with dependent children eligibility.~~ For the family coverage group, the income level is equal to forty percent of the poverty level, applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.



- (2) ~~Categorically needy aged, blind, and disabled recipients~~—Except for individuals subject to the nursing care income level, the income level for categorically needy aged, blind, or disabled recipients is that which establishes supplemental security income eligibility.

b. Medically needy income levels.

- (1) ~~Regular income levels.~~ Regular Medically needy income levels established in the medicaid state plan are applied when a medicaid individual or unit resides in the individual's or the unit's own home or in a specialized facility, and when a medicaid individual has been screened as requiring nursing care, but elects to receive home and community-based services. The family size is increased for each unborn child when determining the appropriate family size.

<del>Number of</del> Persons	<del>Income Level</del> Monthly
1	369
2	428
3	465
4	556
5	625
6	684
7	721
8	760
9	783
10	810

~~For each person in the medicaid unit above ten, add twenty-one dollars to the monthly amount.~~

- (2) ~~Nursing care income level.~~ The nursing care income level ~~must~~ shall be fifty dollars per month and applied to residents a resident receiving care in a nursing facilities facility, an intermediate care facilities facility for the developmentally disabled mentally retarded, the state hospital, the Riversedge facility, or the Anne Carlsen school-hospital facility, a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, or receiving swing-bed care in a hospital. This income level is ~~forty dollars monthly.~~ This income level is effective for all full calendar months of nursing care for single individuals and for individuals with eligible family members at home. For institutionalized individuals with an ineligible community spouse, this income level is effective in the month of entry, during full calendar months, and in the month of discharge.

- (3) ~~Community spouse income level.~~ The community spouse income level for a medicaid eligible community spouse who is eligible for medicaid is subject to subdivision a, paragraph 1 of subdivision b, or subdivision c. The level for an ineligible community spouse is the maximum greater of two thousand two hundred sixty-seven dollars per month or the minimum amount permitted under section 1924(d)(3)(c) of the Act [44 U.S.C. 1396r-5(d)(3)(C)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].
- (4) ~~Family member income level.~~ Each additional The income level for each ineligible family member living with the community spouse is allowed an income level in a spousal impoverishment prevention case is equal to one-third of an amount determined in accordance with section 1924(d)(3)(A)(i) of the Act [42 U.S.C. 1396r-5(d)(3)(A)(i)], less the monthly income of that family member. For purposes of this paragraph, "family member" has the meaning given in ~~subdivision b of subsection 1 of section 75-02-02.1-24.~~

C. Poverty income level.

- (1) ~~Pregnant women and children under age six.~~ The income level for pregnant women and children under age six is equal to one hundred and thirty-three percent of the official poverty line, as defined by the United States office of management and budget, and as revised annually in accordance with 42 U.S.C. 9902(2), level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
- (2) ~~Qualified medicare beneficiaries.~~ Income levels will be ~~applied to individuals or family members living together whose family includes a member who is aged, blind, or disabled and who is entitled to part A benefits under medicare. These income levels apply regardless of living arrangements. Individuals living apart from other family members are allowed separate income levels.~~ The income level for qualified medicare beneficiaries is equal to one hundred percent of the official poverty line, as defined by the United States office of management and budget, and as revised annually in accordance with 42 U.S.C. 9902(2), level applicable to the family of the size involved. The income level applies regardless of living arrangement.
- (3) ~~Children born after September 30, 1983.~~ The income level for children aged six to nineteen is equal to one hundred percent of the official poverty line, as defined by the United States office of management and budget, and as revised annually



~~in accordance with 42 U.S.C. 9902(2), level applicable to a family of the size involved, with respect to individuals and families including individuals born after September 30, 1983, who have attained at least the age of six years. The family size is increased for each unborn child when determining the appropriate family size.~~

- (4) ~~Extended medicaid benefits: The income level for transitional medicaid benefits is equal to one hundred and eighty-five percent of the official poverty line, as defined by the United States office of management and budget, and as revised annually in accordance with 42 U.S.C. 9902(2), level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.~~
- (5) ~~Qualified disabled and working individuals: Income levels will be applied to individuals or family members living together whose family includes a member who is disabled and who is entitled to part A benefits under medicare. The income levels apply regardless of living arrangements. Individuals living apart from other family members are allowed separate income levels. The income level for qualified working and disabled individuals is equal to two hundred percent of the official poverty line, as defined by the United States office of management and budget, and as revised annually in accordance with 42 U.S.C. 9902(2), level applicable to the family of the size involved. The income level applies regardless of living arrangement.~~
- (6) ~~Special low-income medicare beneficiaries: Income levels will be applied to individuals or family members living together whose family includes a member who is aged, blind, or disabled and who is entitled to part A benefits under medicare. These income levels apply regardless of living arrangements. Individuals living apart from other family members are allowed separate income levels. The income level for specified low-income medicare beneficiaries is equal to one hundred ten percent, until January 1, 1995, and thereafter one hundred twenty percent, of the official poverty line, as defined by the United States office of management and budget, and as revised annually in accordance with 42 U.S.C. 9902(2), level applicable to the a family of the size involved. The income level applies regardless of living arrangement.~~
- (7) The income level for qualified individuals is equal to one hundred thirty-five percent of the poverty level applicable



to a family of the size involved. The income level applies regardless of living arrangement.

2. Determining the appropriate income level in special circumstances.

- a. ~~A child who is temporarily living out of the home of the child's parents, for the purpose of attending away at school; is not treated as living independently, but is~~ shall be ~~allowed the regular appropriate income level for one during all full calendar months. This is in addition to the income level applicable for the family unit remaining at home.~~
- b. A child who is living outside of the parental home, but who is not living independently, or a spouse who is temporarily living outside of the home to attend training or college, to secure medical treatment, because of temporary work relocation required by an employer, or for other reasons beyond the control of the spouse, shall be allowed a separate income level during all full calendar months during which the child or spouse lives outside the home. No separate income level is otherwise available.
- c. ~~During a month in which an individual with an eligible community spouse at home enters a nursing facility or leaves a nursing facility to return home, a month in which an individual enters a specialized facility or leaves a specialized facility to return home, or a month in which an individual elects to receive home and community-based services or terminates that election, the individual will~~ shall ~~be included in a the family unit which also includes persons remaining at in the home for the purpose of determining the family size and the application of the appropriate medically needy income level. An individual residing in a specialized facility shall be allowed the medically needy income level for one during all full calendar months in which the individual resides in the facility.~~
- d. ~~A child who is living outside of the parental home, but who is not living independently; or a spouse who is temporarily living outside of the home to attend training or college, to secure medical treatment, because of temporary work relocation required by an employer, or for other reasons beyond the control of the spouse; is allowed a separate income level during all full calendar months during which the child or spouse lives outside the home. During a month in which an individual with eligible family members in the home enters or leaves a nursing facility to return home, or elects to receive home and community-based services or terminates that election, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate medically needy income level. An individual in a nursing facility shall be allowed fifty dollars to meet maintenance needs during all full calendar months in which the individual resides~~



in the nursing facility. A recipient of home and community-based services shall be allowed the medically needy income level for one during all full calendar months in which the individual receives home and community-based services.

- e. For an institutionalized spouse with an ineligible community spouse, the fifty dollar income level is effective in the month of entry, during full calendar months, and in the month of discharge. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.
- f. For a spouse electing to receive home and community based services, who has an ineligible community spouse, the medically needy income level for one is effective in the month the home and community-based services begin, during full calendar months, and in the month the home and community-based services are terminated. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.
- ~~e. g.~~ An individual without dependents with no spouse, disabled adult child, or child under age twenty-one at home who enters a nursing facility may ~~continue at the regular~~ receive the medically needy income level for one if a physician certifies that the individual is likely to return to his or her the individual's home within six months. The six-month period begins with the first full calendar month the individual is in the nursing facility. If, at any time during the six-month period, the individual's status changes and the stay in the nursing facility is expected to exceed the six months, the individual may have only the nursing care income level beginning in the month following the month of the status change. An individual may receive the medically needy income level for only one six-month period per stay in a nursing facility. If an individual is discharged, then readmitted to a nursing facility, there must be a break of at least one full calendar month between the periods of institutionalization in order for the new stay to be considered a new period of institutionalization.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-41. Deeming of income.** ~~Except as otherwise provided in this section, one hundred percent of the income of the ineligible medicaid unit in the home which exceeds the appropriate medicaid income level will be deemed to be available to all individuals residing in the home.~~ Excess income is the amount of



net income remaining after allowing the appropriate disregards, deductions, and medicaid income level.

1. Twenty-five percent of the excess income of ~~that an~~ ineligible medicaid unit ~~which exceeds the appropriate medicaid income level will shall~~ be deemed available to during any full calendar month an eligible individual receiving member of the medicaid unit receives services in a specialized facility.
2. ~~None of the income of the medicaid unit in the home will be deemed available to an eligible individual who resides, or is treated as residing, outside of the home of the medicaid unit on other than a temporary basis. Individuals who reside in a facility which provides nursing care services to them are residing outside the home on other than a temporary basis. Individuals receiving home and community-based services are treated as residing outside the home on other than a temporary basis. No income may be deemed to a supplemental security income recipient in a specialized facility or receiving home and community-based services as such a recipient's maintenance needs are met by the supplemental security income grant.~~
3. ~~None of the income of the medicaid unit in the home will be deemed available to an eligible child under the age of twenty-one or, if blind or disabled, under age eighteen, who is:~~
  - ~~a. Living independently;~~
  - ~~b. A child for whom adoption assistance maintenance payments are made under title IV-E;~~
  - ~~c. A child for whom foster care maintenance payments are made under title IV-E;~~
  - ~~d. A child, living in North Dakota, receiving title IV-E adoption assistance payments from another state; or~~
  - ~~e. A child, in foster care placement in North Dakota, receiving a title IV-E foster care payment from another state. If subdivision a or b applies, the excess income of an individual in nursing care, an intermediate care facility for the mentally retarded, the state hospital, or the Anne Carlsen facility, receiving swing bed care in a hospital or receiving home and community-based services may be deemed to the individual's legal dependents to bring their income up to the appropriate medically needy or poverty level income level.~~
- a. The legal dependents who are also eligible for medicaid do not receive a temporary assistance for needy families payment or supplemental security income. In these circumstances, income



may be deemed only to the extent it raises the legal dependents' income to the appropriate medically needy or poverty level income level.

b. The legal dependents are ineligible for medicaid or choose not to be covered by medicaid. In these circumstances, income may be deemed only to the extent it raises the legal dependents' net income to the appropriate community spouse or family member income level.

(1) Income of the institutionalized or home and community-based spouse may be deemed to an ineligible community spouse only to the extent that income is made available to the community spouse.

(2) Excess income shall be deemed to family members in spousal impoverishment cases, up to the family members' income level.

4. The excess income of a spouse or parent may not be deemed to a recipient to meet medical expenses during any full calendar month in which the recipient receives nursing care services in a nursing facility, an intermediate care facility for the mentally retarded, the state hospital, the Anne Carlsen facility, or a residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, receives swing bed care in a hospital, or receives home and community-based services. Income of any eligible spouse or parent shall be deemed to an individual who is ineligible for supplemental security income, up to the appropriate income level.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-41.1. Recipient liability.** Recipient liability is the amount of monthly net income remaining after all appropriate deductions, disregards, and medicaid income levels have been allowed. All such income must be considered to be available for the payment of medical services provided to the eligible individual or family.

1. Expenses Up to fifteen dollars per month of expenses for necessary medical or remedial care, incurred by a member of the medicaid unit or spouse or child for whom that member is legally responsible, in a month prior to the month for which eligibility is being determined, may be subtracted from recipient liability other than recipient liability created as a result of medical care payments, to determine remaining recipient liability, provided that:

- a. The expense was incurred in a any month during which the member of the medicaid unit receiving individual who received the medical or remedial care was not a medicaid recipient or the expense was incurred in a month the individual was a medicaid recipient, but for a medical or remedial service not covered by medicaid;
  - b. The expense was not previously applied in determining eligibility for, or the amount of, medicaid benefits for any medicaid recipient;
  - c. The medical or remedial care was provided by a medical practitioner licensed to furnish the care;
  - d. The expense is not subject to payment by any third party, including medicaid and medicare;
  - e. The expense was not incurred for swing bed services provided in a hospital, nursing facility services, or ~~medicaid-waivered home and community-based~~ services during a period of ineligibility determined under section 75-02-02.1-33 75-02-02.1-33.1; and
  - f. Each expense claimed for subtraction is documented by the applicant or recipient in a manner which describes the service, the date of the service, the amount of the cost incurred, the amount of the cost remaining unpaid, the amount of the cost previously applied in determining medicaid benefits for any medicaid recipient, and the name of the service provider; and
  - g. The medicaid unit is still obligated to pay the provider of the medical or remedial service.
2. The medicaid unit must apply the remaining recipient liability to expenses of necessary medical care incurred by a member of the medicaid unit in the month for which eligibility is being determined. The medicaid unit is eligible for medicaid benefits to the extent the ~~current~~ expenses of necessary medical care incurred in the month for which eligibility is being determined exceed remaining recipient liability in that month.

**History:** Effective December 1, 1991; amended effective January 1, 2003.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01





**TITLE 89**  
**STATE WATER COMMISSION**





## **MARCH 2003**

### **CHAPTER 89-11-01**

#### **89-11-01-03. Applicant eligibility.**

1. The applicant must be a livestock producer with livestock water supply problems caused by drought.
2. The applicant must first apply for water cost-share assistance from the farm service agency formerly known as the agricultural stabilization conservation service and must have been denied ~~agricultural stabilization conservation service~~ such cost-share assistance.

**History:** Effective July 1, 1992; amended effective August 27, 2002.

**General Authority:** NDCC 28-32-02, 61-03-13, 61-34-03

**Law Implemented:** NDCC 61-34-02

#### **89-11-01-04. Funding - Priority - Eligible items.**

1. The state water commission shall provide funds for the program to the extent funding is available. Priority will be based on earliest date of application.
2. Cost-share assistance may only be used for water supply projects which will provide a long-term immediate solution to a drought-related water supply shortage.
3. All wells drilled with funds provided pursuant to this program must be drilled by a North Dakota certified water well contractor.
4. The applicant may receive up to fifty percent of the eligible costs of the project, but no more than ~~two~~ three thousand five hundred dollars.

**History:** Effective July 1, 1992; amended effective January 1, 1993; August 27, 2002.

**General Authority:** NDCC 28-32-02, 61-03-13, 61-34-03

**Law Implemented:** NDCC 61-34-02



**89-11-01-05. Noneligible items.** The following projects are not eligible for funding from the drought disaster livestock water supply project assistance program.

1. A rehabilitation of an existing well.
2. A water supply project on federal or state land.
3. A dry hole drilled in an attempt to construct a water well or to locate a water source.
4. A water supply project started ~~or completed prior to July 1, 1991.~~
5. ~~Water supply project started after December 31, 1992,~~ without prior approval of the state engineer.
- 6: 5. The construction of stock dams or dugouts dependent upon runoff.
- 7: 6. Projects that require repair as a result of failure to provide maintenance to an existing water source.
- 8: 7. Readily removable project features of water supply projects including electric pumps, stock watering tanks, or electrical hookups, or easements.

**History:** Effective July 1, 1992; amended effective January 1, 1993; August 27, 2002.

**General Authority:** NDCC 28-32-02, 61-03-13, 61-34-03

**Law Implemented:** NDCC 61-34-02

**89-11-01-06. Application procedure.**

1. Requests for assistance must be on a form provided by the state water commission and must include:
  - a. Written proof the applicant applied for cost-share assistance from the farm service agency formerly known as the agricultural stabilization conservation service ~~cost-share assistance~~ and was denied such assistance including the reason for the denial.
  - b. An area map indicating the location of the proposed water supply project.
  - c. A written estimate of the costs of the proposed water supply project.
  - d. Verification by the applicant that the applicant is a livestock producer.

2. The state engineer shall review applications and approve or deny them. The state engineer shall, within the limits of available funding, provide assistance to those persons whose applications are approved. The applicant must agree to:
  - a. Complete the project within sixty days of receiving notification of approval of funding of the water supply project.
  - b. Provide receipt of actual expenditures or an affidavit of work completed if work is done by the applicant, or both, if applicable.
  - c. Grant to the state water commission or anyone authorized by the state water commission the right to enter upon the land to inspect the completed water supply project after giving reasonable notice to the applicant.
  - d. Indemnify and hold harmless the state of North Dakota and the state water commission, its officers, agents, employees, and members, from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of the applicant or applicant's agents or employees under this agreement.
3. Application forms may be obtained by contacting:

North Dakota State Water Commission  
900 East Boulevard  
Bismarck, ND 58505  
(701) ~~224-2750~~ 328-2750

**History:** Effective July 1, 1992; amended effective August 27, 2002.

**General Authority:** NDCC 28-32-02, 61-03-13, 61-34-03

**Law Implemented:** NDCC 61-34-02





**TITLE 92**  
**WORKERS COMPENSATION BUREAU**





**MARCH 2003**

**CHAPTER 92-01-02**

**92-01-02-14. Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.**

1. The bureau shall bill each employer annually for premiums as provided by North Dakota Century Code chapter 65-04. If an employer has an open account with the bureau, the bureau shall send to the employer annually a form on which the employer shall report payroll expenditures from the preceding payroll year. An electronic report of payroll information in a format approved by the bureau is acceptable. The employer shall complete the report and send it to the bureau by the last day of the month following the expiration date of the employer's payroll period. The bureau shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report. The bureau shall send the first billing statement approximately fifteen days after the report is received by the bureau, to the employer by regular mail to the employer's last-known address. The first billing statement must identify the amount due from the employer and the payment due date. The statement must explain the installment payment option.
2. The payment due date for an employer's account is thirty days from the date of billing indicated on the premium billing statement.
3. If the bureau does not receive full payment or the minimum installment payment indicated on the premium billing statement, on or before the payment due date, the bureau shall send a second billing statement. This second statement must identify the amount due from the employer and the penalties to which the employer may be subjected under this section and North Dakota Century Code chapter 65-04.
4. If the minimum installment payment remains unpaid thirty days after the bureau sends the second billing statement to the employer, the bureau shall notify the employer by regular mail to the employer's last-known address that:



- a. ~~The employer is uninsured;~~
  - b. The employer is in default and may be assessed a penalty of two hundred fifty dollars plus two percent of the amount of premium, penalties, and interest in default; ~~and~~
  - e. b. The employer's account has been referred to the collections unit of the policyholder services department; and
  - c. The bureau may cancel the employer's account.
5. The bureau may extend coverage by written binder if the bureau and the employer have agreed in writing to a payment schedule on a delinquent account. If the employer is in default of the agreed payment schedule, however, that employer is not insured.
  6. If the employer's payroll report is not timely received by the bureau, the bureau shall notify the employer, by regular mail addressed to the last-known address of the employer, of the delinquency of the report and may assess a penalty of two thousand dollars against the employer's account.
  7. If the payroll report is not received within forty-five days following the expiration of the employer's payroll year, the bureau shall assess a penalty of fifty dollars. The bureau shall notify the employer by regular mail addressed to the employer's last-known address that the employer is uninsured.
  8. At any time after sixty days following the expiration of the employer's payroll year, when the employer has failed to submit a payroll report, the bureau may bill the employer at the wage cap per employee using the number of employees reported per rate classification from a previous year of actual or estimated payroll reported to the bureau. The bureau may also bill an employer account using data obtained from job service North Dakota to bill an employer who has failed to submit a payroll report. An employer whose premium has been calculated under this subsection may submit actual wages on an employer payroll report for the period billed and the bureau shall adjust the employer's account. The bureau may also cancel the employer's account.
  9. If the bureau receives an employer payroll report more than sixty days after the expiration of the employer's payroll period, the employer's premium billing due date is fifteen days following the expiration of the employer's payroll period. Any employer account billed without benefit of the employer payroll report has a premium billing due date which is fifteen days following the expiration of the employer payroll's payroll year.



10. If the employer does not have an open account with the bureau, the bureau shall select an employer account number and shall send the employer a payroll report form by regular mail. The bureau shall notify the employer of the penalties provided by North Dakota Century Code chapter 65-04 and this section.
11. The employer shall submit the completed payroll report within fifteen days of the bureau's request. The bureau shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report. If the payroll report is not timely received by the bureau, the bureau may assess a penalty of up to two thousand dollars and shall notify the employer that the employer is uninsured.

**History:** Effective June 1, 1990; amended effective January 1, 1994; January 1, 1996; May 1, 2002; March 1, 2003.

**General Authority:** NDCC 65-02-08, 65-04-33

**Law Implemented:** NDCC 65-04-33

**92-01-02-21. Employee service staffing arrangements.**

1. ~~As used in this section, "staffing service" means an employer under subsection 3 of section 65-01-08 which offers its services to the public, provides employees' services to more than one client company, and was not created for the purpose of hiring and leasing back the employees of specific client companies. As used in this section, "client company" means an employer under subsection 3 of North Dakota Century Code section 65-01-08 who, under written contract, enters into a relationship with a staffing service or leases any or all of its employees from a staffing service.~~
2. ~~As used in this section, "client company" means an employer under subsection 3 of North Dakota Century Code section 65-01-08 who hires a staffing service for the purpose of providing employees to work for the client company. As used in this section, "staffing service" means an employer under subsection 3 of section 65-01-08 which offers its services, under written contract, to client companies. The term "staffing service" includes professional employer organizations, staff leasing companies, employee leasing organizations, and temporary staffing companies. The term "staffing service" shall be broadly construed to encompass entities that offer services provided by professional employer organizations, staff leasing companies, employee leasing organizations, and temporary staffing companies regardless of the term used.~~

Within the meaning of staffing service as used in this section, "temporary staffing" or "temporary staffing service" means an arrangement by which an employer hires its own employees and assigns them to a client company to support or supplement the client company's workforce in a special work situation, including:



- a. An employee absence;
- b. A temporary skill shortage;
- c. A seasonal workload; or
- d. A special assignment or project with a targeted end date.

The term does not include arrangements in which the majority of the client company's workforce has been assigned by a temporary staffing service for a period of more than twelve consecutive months.

- 3. A staffing service which provides only temporary staffing services shall be the employee's employer. The temporary staffing service shall maintain a workers' compensation account in the temporary staffing service's name and report the wages for those workers annually to the bureau.
- 4. All other staffing service organizations shall:
  - a. Maintain individual North Dakota workers' compensation accounts for each of its North Dakota client companies.
  - b. On separate payroll reports supplied by the bureau, report annually the payroll detail for each North Dakota client company.
  - c. Maintain complete and separate records of the payroll of its client companies. Claims shall be separately identified by the staffing service for each client company.
  - d. Share employer responsibilities with the client company, including retention of the authority to hire, terminate, discipline, and reassign employees.
  - e. Notify the bureau of the client company's name, workers' compensation account number and the date the staffing service began providing services to the client company. The staffing service shall provide this information upon entering into an agreement with a client company, but no later than fifteen calendar days from the effective date of the written agreement.
  - f. Supply the bureau with a copy of the agreement between the staffing service and client company.
  - g. Notify the bureau upon termination of any agreement with a client company, but no later than fifteen calendar days from the effective date of termination.

- ### 4. 7. Determination of staffing service.
- a. The bureau shall determine whether an entity is a staffing service under this rule and North Dakota Century Code section 65-01-08. If the bureau determines an entity is a staffing service, the bureau may further determine if it is a temporary staffing service. In rendering either determination, the bureau may issue a decision pursuant to North Dakota Century Code section 65-04-32. If the
- ### 3. 5. Responsibility for payment of premium: A staffing service that handles both temporary and permanent employee arrangements is subject to the reporting requirements associated with the type of employee provided to the client company.
- h. If the contractual agreement between a staffing service and a client company is terminated, employees shall be the sole employees of the client company.
- i. Notify its client companies of an "uninsured" status for failure to pay workers' compensation premiums within fifteen days of notice by the bureau.
- ### 6. Experience rating and risk assessment.
- a. Rate classifications for employees provided by a staffing service must be those which would apply as if the work were performed by the employees of the client company.
- b. ~~The bureau shall apply the experience modifier of the staffing service to the premiums attributed to an employee service arrangement unless the bureau determines the entity is not a staffing service as defined by this rule. If a client company enters into an agreement with a staffing service, the client company shall retain its experience rate, if applicable.~~
- c. ~~For purposes of the payment of premium, a staffing company is considered a subcontractor and a client company is considered a general contractor pursuant to subdivision c of subsection 17 of North Dakota Century Code section 65-01-02. Both a staffing service and client company under this section are considered employers for purposes of North Dakota Century Code section 65-04-26.1. The client company has the ultimate responsibility for the filing of payroll reports and payment of premium.~~
- d. A staffing service that provides employees to a client company that has been determined to be uninsured or ineligible for coverage under North Dakota Century Code sections 65-04-27.1 and 65-04-33 may not secure workers' compensation coverage for those employees.



bureau determines an entity is not a staffing service, the client company is responsible for maintaining a workers' compensation account and paying the premium for coverage of the employees.

- b. The factors the bureau may consider when determining whether an entity is a staffing service under this rule include the number of client companies handled by the staffing service, the length of time the staffing service has been in existence, the extent to which the staffing service extends its services to the general public, the degree to which the client company and staffing service are separate and unrelated business entities, the repetition of officers or managers between the client company and staffing service, and the extent to which a client company has an ownership or other interest in the staffing service. The bureau may also consider the scope of the services provided by the staffing service, the relationship between the staffing service and the client company's workers, the written agreement between the staffing service and the client company, and any other factors deemed relevant by the bureau.
- c. The bureau may require information from any staffing service, including a list of current client company accounts, staffing assignments, payroll information, and rate classification information.
- d. A client company shall provide any information requested by the bureau regarding the identity of any staffing service with which it has contracted.

**History:** Effective July 1, 1991; amended effective January 1, 1992; April 1, 1997; August 1, 1998; May 1, 2000; May 1, 2002; March 1, 2003.

**General Authority:** NDCC 65-01-08, 65-02-08, ~~65-04-17~~ 65-04-13

**Law Implemented:** NDCC 65-01-08, ~~65-04-17~~

**92-01-02-34. Treatment requiring authorization, preservice review, and retrospective review.**

- 1. Certain treatment procedures require prior authorization or preservice review by the bureau or its managed care vendor. Requests for authorization or preservice review must include a statement of the condition diagnosed; their relationship to the compensable injury; the medical documentation supporting medical necessity, an outline of the proposed treatment program, its length and components, and expected prognosis.
- 2. Requesting prior authorization or preservice review is the responsibility of the medical service provider who provides or prescribes a service for which prior authorization or preservice review is required.

3. Medical service providers shall request prior authorization directly from the claims analyst for the items listed in this subsection. The claims analyst shall respond to requests within fourteen days.

a. Durable medical equipment.

- (1) The bureau will pay rental fees for equipment if the need for the equipment is for a short period of treatment during the acute phase of a compensable work injury. The bureau shall grant or deny authorization for reimbursement of equipment based on whether the claimant is eligible for coverage and whether the equipment prescribed is appropriate and medically necessary for treatment of the compensable injury. Rental extending beyond thirty days requires prior authorization from the claims analyst. If the equipment is needed on a long-term basis, the bureau may purchase the equipment. The claims analyst shall base its decision to purchase the equipment on a comparison of the projected rental costs of the equipment to its purchase price. The bureau shall purchase the equipment from the most cost-efficient source.
- (2) The claims analyst will authorize and pay for prosthetics and orthotics as needed by the claimant because of a compensable work injury when substantiated by the attending doctor. If those items are furnished by the attending doctor or another provider, the bureau will reimburse the doctor or the provider pursuant to its fee schedule. Providers and doctors shall supply the bureau with a copy of their original invoice showing actual cost of the item upon request of the bureau. The bureau will repair or replace originally provided damaged, broken, or worn-out prosthetics, orthotics, or special equipment devices upon documentation from the attending doctor that replacement or repair is needed. Prior authorization for replacements is required.
- (3) If submitted charges for supplies and implants exceed the usual and customary rates, charges will be reimbursed at the provider's purchase invoice plus twenty percent.
- (4) Equipment costing less than five hundred dollars does not require prior authorization. This includes crutches, cervical collars, lumbar and rib belts, and other commonly used orthotics, but specifically excludes ten units.

b. Biofeedback programs; pain clinics; psychotherapy; physical rehabilitation programs, including health club memberships and



work hardening programs; chronic pain management programs; and other programs designed to treat special problems.

- c. Concurrent care. In some cases, treatment by more than one medical service provider may be allowed. The claims analyst will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system or require specialty or multidisciplinary care. When requesting consideration for concurrent treatment, the attending doctor must provide the claims analyst with the name, address, discipline, and specialty of all other medical service providers assisting in the treatment of the claimant and with an outline of their responsibility in the case and an estimate of how long concurrent care is needed. When concurrent treatment is allowed, the bureau will recognize one primary attending doctor, who is responsible for prescribing all medications if the primary attending doctor is a physician authorized to prescribe medications; directing the overall treatment program; providing copies of all reports and other data received from the involved medical service providers; and, in time loss cases, providing adequate certification evidence of the claimant's ability to perform work. The claims analyst will approve concurrent care on a case-by-case basis. Except for emergency services, all treatments must be authorized by the claimant's attending doctor to be reimbursable.
  - d. Telemedicine. The bureau may pay for audio and video telecommunications instead of a face-to-face "hands on" appointment for the following appointments: office or other outpatient visits that fall within CPT codes 99241 through 99275, inclusive; new and established evaluation and management visits that fall within CPT codes 99201 through 99215, inclusive; individual psychotherapy visits that fall within CPT codes 90804 through 90809, inclusive; and pharmacologic management visits that fall within CPT code 90862. As a condition of payment, the patient must be present and participating in the telemedicine appointment. The professional fee payable is equal to the fee schedule amount for the service provided. The bureau may pay the originating site a facility fee, not to exceed twenty dollars.
- 4. Notwithstanding the requirements of subsection 5, the bureau may designate certain exemptions from preservice review requirements in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured workers and providers.
  - 5. Medical service providers shall request preservice review from the utilization review department for:
    - a. All nonemergent inpatient hospital admissions or nonemergent inpatient surgery and outpatient surgical procedures. For an



inpatient stay that exceeds fourteen days, the provider shall request, on or before the fifteenth day, additional review of medical necessity for a continued stay.

- b. All nonemergent major surgery. When the attending doctor or consulting doctor believes elective surgery is needed to treat a compensable injury, the attending doctor or the consulting doctor with the approval of the attending doctor, shall give the utilization review department actual notice at least twenty-four hours prior to the proposed surgery. Notice must give the medical information that substantiates the need for surgery, an estimate of the surgical date and the postsurgical recovery period, and the hospital where surgery is to be performed. When elective surgery is recommended, the utilization review department may require an independent consultation with a doctor of the bureau's choice. The bureau shall notify the doctor who requested approval of the elective surgery, whether or not a consultation is desired. When requested, the consultation must be completed within thirty days after notice to the attending doctor. Within seven days of the consultation, the bureau shall notify the surgeon of the consultant's findings. If the attending doctor and consultant disagree about the need for surgery, the bureau may request a third independent opinion pursuant to North Dakota Century Code section 65-05-28. If, after reviewing the third opinion, the bureau believes the proposed surgery is excessive, inappropriate, or ineffective and the bureau cannot resolve the dispute with the attending doctor, the requesting doctor may request binding dispute resolution in accordance with section 92-01-02-46.
- c. All imaging procedures, including CAT scan, magnetic resonance imaging, myelogram, discogram, bonescans, and arthrograms. Tomograms are subject to preservice review if requested in conjunction with one of the above imaging procedures. The bureau may waive preservice review requirements for these procedures when requested by a physician who is performing an independent medical examination or permanent partial impairment evaluation at the request of the bureau.
- d. Physical therapy and occupational therapy treatment beyond the first ten treatments or beyond thirty days after first prescribed, whichever occurs first. The bureau may waive this requirement in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers.
- e. Electrodiagnostic studies.
- f. Thermography.



- g. Vertebral axial decompression therapy (Vax-D treatment).
  - h. Intradiscal electrothermal annuloplasty (IDET).
  - i. Trigger point injections if more than three injections are required in a two-month period. No more than twenty injections may be paid over the life of a claim. If a trigger point injection is administered, the bureau may not pay for additional modalities such as cryotherapy and osteopathic manipulations performed in conjunction with the trigger point injection. For purposes of this paragraph, injections billed under CPT code 20552 or 20553 will count as a single injection. Only injections administered on or after May 1, 2002, will be applied toward the maximum number of injections allowed under this subdivision.
  - j. Facet joint injections.
  - k. Sacroiliac joint injections.
  - l. Facet nerve blocks.
  - m. Epidural steroid injections.
  - n. Nerve root blocks.
  - o. Peripheral nerve blocks.
  - p. Botox injections.
  - q. Stellate ganglion blocks.
  - r. Cryoablation.
  - s. Radio frequency lesioning.
  - t. Facet rhizotomy.
  - u. Prolotherapy.
  - v. Implantation of stimulators and pumps.
6. Chiropractic providers shall request preservice review from the bureau's chiropractic managed care vendor for chiropractic treatment beyond the first twelve treatments or beyond ninety days after the first treatment, whichever occurs first. The evaluation to determine a treatment plan is not subject to review. The bureau may waive this subsection in conjunction with programs designed to ensure the

ongoing evolution of managed care to meet the needs of injured claimants or providers.

7. Concurrent review of emergency admissions is required within twenty-four hours, or the next business day, of emergency admission.
8. The bureau may designate those diagnostic and surgical procedures that can be performed in other than a hospital inpatient setting.
9. The utilization review department or managed care vendor must respond orally to the medical service provider within twenty-four hours, or the next business day, of receiving the necessary information to complete a review and make a recommendation on the service. Within that time, the managed care vendor must either recommend approval or denial of the request, request additional information, request the claimant obtain a second opinion, or request an examination by the claimant's doctor. A recommendation to deny medical services must specify the reason for the denial.
10. Retrospective review is limited to those situations when the provider can prove, through a preponderance of the evidence, that the injured employee did not inform the provider, and the provider did not in fact know, that the condition was, or likely would be, covered under workers' compensation. All medical service providers are required to cooperate with the managed care vendor for retrospective review and are required to provide, without additional charge to the bureau or the managed care vendor, the medical information requested in relation to the reviewed service.
11. The bureau must notify provider associations of the review requirements of this section prior to the effective date of these rules.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; March 1, 2003.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07





**TITLE 101**

**REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD**





## **FEBRUARY 2003**

### **CHAPTER 101-02-01**

#### **101-02-01-03. Filing fees.**

1. The following annual fees must be charged:

a. Apprentice real property appraiser permit	\$225
b. Licensed real property appraiser permit	\$225
c. Certified general real property appraiser permit	\$225
d. Inactive status	\$ 50
e. Late filing fee (per month)	\$ 25

2. The following fees will be charged:

a. Initial real property appraiser licensure or certification permit	\$275
b. Real property appraiser permit status change	\$150
c. Temporary practice permit-per contract	\$150
d. Approval of prelicensing or precertification educational courses	\$100
e. Approval of continuing educational courses:	
(1) Courses two to eight hours in length	\$25
(2) Courses over eight hours in length	\$50
f. <u>Appraiser list on disk</u>	<u>\$20</u>
g. <u>Appraiser list on labels</u>	<u>\$20</u>



- h. Pocket card replacement \$20
- i. Wall certificate replacement \$20

**History:** Effective October 1, 1992; amended effective January 1, 1995; October 1, 1998; February 1, 2003.

**General Authority:** NDCC 43-23.3-20

**Law Implemented:** NDCC 43-23.3-05

**101-02-01-05. Replacement license or certificate fee.** Repealed effective February 1, 2003. ~~A licensee or certificate permittee may, by filing a prescribed form and paying a five dollar fee to the board, obtain a duplicate real estate appraiser license or certificate or pocket card to replace an original license certificate or pocket card which has been lost, damaged, or destroyed, or if the name of the licensee or certificate permittee has been lawfully changed.~~

**History:** ~~Effective October 1, 1992.~~

**General Authority:** ~~NDCC 43-23.3-03, 43-23.3-20~~

**Law Implemented:** ~~NDCC 43-23.3-20~~

## CHAPTER 101-02-02

### 101-02-02-03. Apprentice real property appraiser.

1. **Definition.** An apprentice real property appraiser permit must be issued to an individual who successfully meets all of the North Dakota appraisal requirements for such a permit.
2. **Property appraisal limitations.** An apprentice real property appraiser permit is considered the entry level (training ground level) for a North Dakota real property appraiser. The apprentice real property appraiser permittee shall assist either a licensed or a certified general real property appraiser in appraisal work, provided the licensed or certified general real property appraiser accepts full responsibility for the appraisal performed. The scope of practice for the apprentice real property appraiser is the appraisal of those properties that the supervising appraiser is permitted to appraise. The apprentice real property appraiser shall be subject to the uniform standards of professional appraisal practice.
3. ~~Prerequisite requirements~~— **Examination.** There is no examination required for the apprentice real property appraiser.
4. **Education and experience.** The apprentice real property appraiser must have successfully completed ~~at least a~~ the fifteen-hour class ~~covering all the provisions of the~~ national uniform standards of professional appraisal practice course, or its equivalent. Equivalency shall be determined through the appraisal qualifications board course approval program or by an alternate method established by the appraisal qualifications board. No other appraisal or appraisal-related education ~~prerequisite~~ is required for the apprentice real property appraiser. ~~No past appraisal experience is required.~~
  - a. Uniform standards of professional appraisal practice qualifying education credit shall only be awarded when the class is instructed by an appraisal qualifications board certified instructor.
  - b. The applicant must be familiar with North Dakota Century Code chapter 43-23.3 and North Dakota Administrative Code title 101.
5. **Experience.** No experience is required for the apprentice real property appraiser.
6. **Apprentice real property appraiser responsibilities.** The apprentice real property appraiser must be subject to direct supervision by a supervising appraiser who must be state licensed or certified in good standing.



- a. The scope of practice for the apprentice real property appraiser is the appraisal of those properties that the supervising appraiser is permitted by the supervising appraiser's current credential and that the supervising appraiser is qualified to appraise.
  - b. To obtain experience credit for appraisals, the apprentice must sign the report, sign the certification, or be given credit in the certification for significant professional assistance.
  - c. The apprentice real property appraiser shall maintain a log of all appraisals for which the apprentice completed seventy-five percent or more of the assignment. The log, at a minimum, must include the following for each appraisal:
    - (1) Type of property.
    - (2) Date of report.
    - (3) Address of appraised property.
    - (4) Description of work performed.
    - (5) Number of work hours or points.
    - (6) Signature and state license or certification number of the supervising appraiser.
  - d. The apprentice real property appraiser is permitted to have more than one supervising appraiser.
  - e. Separate appraisal logs must be maintained for each supervising appraiser.
  - f. The apprentice real property appraiser is entitled to obtain copies of appraisal reports the apprentice real property appraiser prepared.
7. **Supervisor responsibilities.** The supervising appraiser is responsible for the training, guidance, and direct supervision of the apprentice real property appraiser.
- a. Training, guidance, and direct supervision of the apprentice real property appraiser means:
    - (1) Accepting responsibility for the appraisal report by signing and certifying that the report complies with generally accepted appraisal procedures and is in compliance with the uniform standards of professional appraisal practice.

- (2) Reviewing and signing the apprentice real property appraisal reports.
  - (3) Personally inspecting each appraised property interior and exterior with the apprentice real property appraiser on the first twenty-five appraisal assignments requiring inspection and until the supervising appraiser determines the appraiser trainee is competent in accordance with the competency provision of the uniform standards of professional appraisal practice for the property type.
- b. A supervising appraiser must have a license or certified permit in good standing.
  - c. A supervising appraiser is limited to supervising no more than two apprentice appraisers.
  - d. A supervising appraiser shall keep copies of appraisal reports for a period of five years or at least two years after final disposition of any judicial proceedings in which testimony was given, whichever period expires last.

**History:** Effective October 1, 1992; amended effective October 1, 1998; February 1, 2003.

**General Authority:** NDCC 43-23.3-03

**Law Implemented:** NDCC 43-23.3-03, 43-23.3-06, 43-23.3-08, 43-23.3-09, 43-23.3-17, 43-23.3-18

#### **101-02-02-05. Licensed real property appraiser.**

1. **Definitions.** A licensed real property appraiser permit must be issued to an individual who successfully meets all of the North Dakota appraisal requirements for such a permit.
2. **Property appraisal limitations.** ~~All appraisals for transactions not requiring the services of a certified general real property appraiser may be prepared by a licensed real property appraiser.~~ The licensed real property appraiser is allowed to appraise noncomplex, one-to-four family residential properties that have a transaction value of up to one million dollars and complex one-to-four family residential properties that have a transaction value of up to two hundred fifty thousand dollars. In addition, a licensed real property appraiser is allowed to appraise noncomplex, nonresidential properties, that have a transaction value of up to two hundred fifty thousand dollars. All licensed real property appraisers are bound by the competency provisions of the uniform standards of professional appraisal practice.
3. ~~Prerequisite requirements - Education and examination~~ **Examination.** A An applicant for a licensed real property appraiser



~~permit~~ must have successfully completed the appraisal board ~~endorsed~~ approved uniform licensing examination or its equivalent within two years of making the application. An applicant for the examination as a licensed real property appraiser must have successfully completed ninety classroom hours of real estate appraisal education. ~~Education shall include sixty~~

4. **Education.** Fifteen of the ninety hours must include the successful completion of the national uniform standards of professional appraisal practice course, or its equivalent. Equivalency must be determined through the appraisal qualifications board course approval program or by an alternate method established by the appraisal qualifications board. Sixty of the ninety hours must be comprised of appraisal-specific education related to the valuation of real estate, ~~fifteen classroom hours covering all the provisions of the uniform standards of professional appraisal practice,~~ and fifteen hours may be comprised of appraisal-related subject matter, as approved as such, by the board.

- a. A classroom hour is defined as fifty minutes out of each sixty-minute segment.
- b. Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen hours, and the individual successfully completes an examination pertinent to that educational offering.
- c. Open-book examinations are not acceptable in qualifying education courses.
- d. Uniform standards of professional appraisal practice education credit shall only be awarded when the class is instructed by an appraisal qualifications board certified instructor.
- e. Credit for the classroom requirement may be obtained from the following:
  - (1) Colleges or universities;
  - (2) Community or junior colleges;
  - (3) Real estate appraisal or real estate-related organizations;
  - (4) State or federal agencies or commissions;
  - (5) Proprietary schools; and
  - (6) Other providers approved by the board.

- ~~d~~. f. Credit toward the classroom hour requirement may be awarded to teachers of appraisal courses.
- ~~e~~. g. There is no time limit regarding when qualifying education credit must have been obtained.
- ~~f~~. h. Various appraisal courses may be credited toward the ninety classroom hour education requirement. Applicants must demonstrate that their education involved substantially equivalent coverage of the topics listed below, with particular emphasis on the appraisal of one to four unit residential properties.

(1) Influences on real estate value;<sub>1</sub>

- (a) Physical and environmental.
- (b) Economic.
- (c) Governmental and legal.
- (d) Social.

(2) Legal considerations in appraisal;<sub>1</sub>

- (a) Real estate versus real property.
- (b) Real property versus personal property.
- (c) Limitations on real estate ownership.
- (d) Legal rights and interests.
- (e) Forms of property ownership.
- (f) Legal descriptions.
- (g) Transfer of title.

(3) Types of value;<sub>1</sub>

- (a) Market value or value in exchange.
- (b) Price.
- (c) Cost.
- (d) Investment value.
- (e) Value in use.



- (f) Assessed value.
  - (g) Insurable value.
- (4) Economic principles;
  - (a) Anticipation.
  - (b) Balance.
  - (c) Change.
  - (d) Competition.
  - (e) Conformity.
  - (f) Contribution.
  - (g) Increasing and decreasing returns.
  - (h) Substitution.
  - (i) Supply and demand.
  - (j) Surplus and productivity.
- (5) Real estate markets and analysis;
  - (a) Characteristics of real estate markets.
  - (b) Absorption analysis.
  - (c) Role of money and capital markets.
  - (d) Real estate financing.
- (6) Valuation process;
  - (a) Definition of the problem.
  - (b) Collection and analysis of data.
  - (c) Analysis of highest and best use.
  - (d) Application and limitations of each approach to value.
  - (e) Reconciliation and final value estimate.
  - (f) The appraisal report.

- (7) Property description;<sub>1,2</sub>
  - (a) Site description.
  - (b) Improvement description.
  - (c) Basic construction and design.
- (8) Highest and best use analysis;<sub>1,2</sub>
  - (a) Four tests.
  - (b) Vacant site or as if vacant.
  - (c) As improved.
  - (d) Interim use.
- (9) Appraisal statistical concepts;<sub>1,2</sub>
  - (a) Mean.
  - (b) Median.
  - (c) Mode.
  - (d) Range.
  - (e) Standard deviation.
- (10) Sales comparison approach;<sub>1,2</sub>
  - (a) Research and selection of comparables.
  - (b) Elements of comparison.
  - (c) Adjustment process.
  - (d) Application of sales comparison approach.
- (11) Site value;<sub>1,2</sub>
  - (a) Sales comparison.
  - (b) Land residual.
  - (c) Allocation.
  - (d) Extraction.



- (e) Plottage and assemblage.
- (12) Cost approach;
  - (a) Steps in cost approach.
  - (b) Application of the cost approach.
- (13) Income approach;
  - (a) Gross rent multiplier analysis;
  - (b) Estimation of income and expenses; and
  - (c) Operating expense ratios;
- (14) Valuation of partial interests; and
  - (a) Life estates.
  - (b) Undivided interests in commonly held property.
  - (c) Easements.
  - (d) Timeshares.
  - (e) Cooperatives.
  - (f) Leased fee estate.
  - (g) Leasehold estate.
- (15) Appraisal standards and ethics.
- i. Forty hours may be distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education includes on-line learning, internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must:
  - (1) Provide interaction between the student and the instructor.
  - (2) Meet one of the following requirements:
    - (a) The course is presented by a college or university, accredited by the commission on colleges or a regional accreditation association, which offers distance education programs in other disciplines.

(b) The course is approved for college credit by the American council on education.

(c) The course is approved for design and delivery mechanism by the international distance education certification center and for content by the appraiser qualifications board or the board.

(3) Require the student to successfully complete a written examination proctored by an official approved by the presenting college, university, or sponsoring organization.

(4) Meet the requirements for qualifying education established by the appraiser qualifications board.

(5) Be equivalent to at least fifteen classroom hours.

j. Credit awarded for the classroom hour requirement when an individual seeks a different classification than that held may also be awarded for the continuing education requirement of the classification held.

k. Courses taken in satisfying the qualifying education requirements should not be repetitive in nature. Each course credited toward the required number of qualifying education hours should represent a progression in which the appraiser's knowledge is increased.

l. Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable to the board without additional state review.

**4. ~~5.~~ Prerequisite requirement-- Experience.** A licensed real property appraiser must have the equivalent of two thousand hours of credible appraisal experience prior to obtaining the licensing permit. The applicant for licensure must submit for review a minimum of three summary or self-contained residential appraisal reports. All three of the reports must be complete appraisals and must meet the current uniform standards of professional appraisal practice (USPAP) as of the time effective date of application the appraisal.

a. Adequate experience will be determined on a point system.

(1) The point system awards points based on the types of appraisals performed, the types of properties appraised, and the number of appraisals performed by the individual.

(2) Types of appraisals performed include standard appraisal, review appraisal, and condemnation appraisal.



- (a) A standard appraisal is the process of developing an appraisal using those methods commonly accepted by real estate appraisers as constituting the appraisal process and preparing a written appraisal report or file memorandum describing the appraisal and reporting the estimate of value. The appraisal process consists of an analysis of factors that affect value, definition of the problem, gathering and analyzing data, applying the appropriate value approaches and methodology, arriving at an opinion of value, and correctly reporting the opinion of value in compliance with the uniform standards of professional appraisal practice.
  - (b) A review appraisal is the process of critically reviewing an appraisal report prepared by another appraiser and preparing a separate written report or file memorandum setting forth the results of the review process. The review appraiser reviews the report and forms an opinion as to the adequacy of the report, the appropriateness of the methods used by the appraiser, and the reasonableness of the appraiser's conclusions. A review appraiser may or may not perform a field review. A field review includes inspecting the subject and comparables to verify data, to determine the appropriateness of the comparables selected and adjustments made, and to assist in determining the reasonableness of the value estimate. Review appraisal experience must conform to standard three of the uniform standards of professional appraisal practice. Review appraisal experience should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.
  - (c) A condemnation appraisal is an appraisal of real property for condemnation purposes where a partial taking is involved and the appraiser must develop both a before taking value estimate and an after taking value estimate. The appraiser uses those methods commonly accepted by real estate appraisers as constituting the appraisal process including a field inspection and preparation of a written appraisal report or file memorandum describing the appraisal and reporting the before and after value estimates.
- (3) Types of property appraised may include the following:

- (a) Land may include farms of one hundred acres [40.47 hectares] or more in size, undeveloped tracts, residential multifamily sites, commercial sites, industrial sites, and land in transition.
  - (b) Residential multifamily, five-12 units may include apartments, condominiums, townhouses, and mobile home parks.
  - (c) Residential multifamily, thirteen plus units may include apartments, condominiums, townhouses, and mobile home parks.
  - (d) Commercial single-tenant may include office building, retail store, restaurant, service station, bank, and day care center.
  - (e) Commercial multitenant may include office building, shopping center, and hotel.
  - (f) Industrial may include warehouse and manufacturing plant.
  - (g) Institutional may include rest home, nursing home, hospital, school, church, and government building.
- (4) Points assigned for each appraisal type are assigned by the appraisal board and are included on the application for licensure and certification. A copy of this form can be obtained by contacting the appraisal board office.
- b. A total of two hundred forty points is equivalent to the two thousand-hour requirement. These two hundred forty points (two thousand hours of experience) must be obtained using at least two years of appraisal practice gained over a period of at least twenty-four months.
  - c. There is no other time limit regarding when qualifying experience may be obtained.
  - d. Hours may be treated as cumulative in order to achieve the necessary two thousand hours (two hundred forty points) of appraisal experience.
  - e. Acceptable appraisal experience includes, but is not limited to, the following:
    - (1) Fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal,



appraisal analysis, real estate consulting (excludes related fields such as real estate lending), highest and best use analysis, and feasibility analysis or study.

- (a) Mass appraisal experience must conform to standard six of the uniform standards of professional appraisal practice. Mass appraisal experience claimed by the applicant should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.
  - (b) Review of real estate appraisals or real property consulting services, including market analysis, cash flow and investment analysis, and feasibility analysis, must conform to standards three, four, and five of the uniform standards of professional appraisal practice. Experience involving these functions should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under standard one of the uniform standards of professional appraisal practice.
  - (c) A market analysis typically performed by a real estate broker or sales person should be awarded experience credit when the analysis is prepared in conformity with standards one and two of the uniform standards of professional appraisal practice, the individual can demonstrate that the individual is using techniques and methods consistent with those used by appraisers to value property and the individual is effectively utilizing the appraisal process.
  - (d) Real property appraisal experience should be awarded for appraisals of real estate components, estates, or interests unless the appraiser has not complied with standards one, two, and six of the uniform standards of professional appraisal practice.
- (2) No more than seventy-five points of the total experience credit may be in related areas. Related experience includes authorship and consulting.
- f. Documentation in the form of reports or file memoranda must be provided to support the experience claimed. If reports or file memoranda are unavailable for good cause, the board may accept other evidence of compliance with the uniform standards of professional appraisal practice.

g. The verification for the two thousand hours (two hundred forty points) of experience credit claimed by an applicant shall be on forms prescribed by the state certification or licensing board which shall include:

- (1) Type of property;
- (2) Date of report;
- (3) Address of appraised property;
- (4) Description of work performed; and
- (5) Number of work hours (points).

h. There need not be a client in order for an appraisal to qualify for experience. Appraisals made without clients can fulfill up to fifty percent of the total experience requirement.

**History:** Effective October 1, 1992; amended effective January 1, 1995; October 1, 1998; February 1, 2003.

**General Authority:** NDCC 43-23.3-03, 43-23.3-09

**Law Implemented:** NDCC 43-23.3-03, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-17, 43-23.3-18

#### **101-02-02-06. Certified general real property appraiser.**

1. **Definitions.** A certified general real property appraiser permit must be issued to an individual who successfully meets all of the North Dakota appraisal requirements for such a permit.
2. **Property appraisal limitations.** ~~All transactions having a transaction value of one million dollars or more requires an appraisal prepared by a certified general real property appraiser; all transactions having a transaction value of two hundred fifty thousand dollars or more, other than those involving appraisals of one-to-four family residential properties, require an appraisal prepared by a certified general real property appraiser; and all complex one-to-four family residential property appraisals require a certified general real property appraiser if the transaction value is two hundred fifty thousand dollars or more. The term "complex one-to-four family residential property appraisal" means an appraisal in which the property to be appraised, the form of ownership, or the market conditions are atypical. The certified general real property appraiser may appraise all types of properties. The certified general real property appraiser is bound by the competency provision of the uniform standards of professional appraisal practice.~~
3. ~~**Prerequisite requirements - Education and examination Examination.**~~ A An applicant for a certified general real property



appraiser permit must have successfully completed the appraisal board ~~endorsed~~ approved uniform state certification examination or its equivalent within two years of making the application. An applicant for examination as a certified real property appraiser must have successfully completed one hundred eighty classroom hours of real estate appraisal education. ~~Education shall include one~~

4. **Education.** Fifteen of the one hundred eighty hours must include the successful completion of the national uniform standards of professional appraisal practice course, or its equivalent. Equivalency shall be determined through the appraisal qualifications board course approval program or by an alternate method established by the appraisal qualifications board. One hundred fifty hours of the one hundred eighty hours must be comprised of appraisal-specific education related to the valuation of real estate, fifteen classroom hours covering all the provisions of the uniform standards of professional appraisal practice, and fifteen hours may be comprised of appraisal-related subject matter, as approved as such, by the board.

- a. A classroom hour is defined as fifty minutes out of each sixty-minute segment.
- b. Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen hours, and the individual successfully completes an examination pertinent to that educational offering.
- c. Open-book examinations are not acceptable in qualifying education courses.
- d. Uniform standards of professional appraisal practice education credit shall only be awarded when the class is instructed by an appraisal qualifications board certified instructor.
- e. Credit for the classroom requirement may be obtained from the following:
  - (1) Colleges or universities;<sub>1,2</sub>
  - (2) Community or junior colleges;<sub>1,2</sub>
  - (3) Real estate appraisal or real estate-related organizations;<sub>1,2</sub>
  - (4) State or federal agencies or commission;<sub>1,2</sub>
  - (5) Proprietary schools;<sub>1</sub> and<sub>2</sub>
  - (6) Other providers approved by the state certification or licensing board.

- ~~d~~. f. Credit towards the classroom hour requirement may be awarded to teachers of appraisal courses.
- ~~e~~. g. There is no time limit regarding when qualifying education credit must have been obtained.
- ~~f~~. h. Various appraisal courses may be credited toward the one hundred eighty classroom hour education requirement. Applicants must demonstrate that their education involved substantially equivalent coverage of topics listed below with particular emphasis on the appraisal of nonresidential properties. Residential is defined as one-to-four residential units.
  - (1) Influence on real estate value;
    - (a) Physical and environmental.
    - (b) Economic.
    - (c) Governmental and legal.
    - (d) Social.
  - (2) Legal considerations in appraisal;
    - (a) Real estate versus real property.
    - (b) Real property versus personal property.
    - (c) Limitations on real estate ownership.
    - (d) Legal rights and interests.
    - (e) Forms of property ownership.
    - (f) Legal descriptions.
    - (g) Transfer of title.
  - (3) Types of value;
    - (a) Market value or value in exchange.
    - (b) Price.
    - (c) Cost.
    - (d) Investment value.



- (e) Value in use.
  - (f) Assessed value.
  - (g) Insurable value.
- (4) Economic principles:
- (a) Anticipation.
  - (b) Balance.
  - (c) Change.
  - (d) Competition.
  - (e) Conformity.
  - (f) Contribution.
  - (g) Increasing and decreasing returns.
  - (h) Substitution.
  - (i) Supply and demand.
  - (j) Surplus and productivity.
- (5) Real estate markets and analysis:
- (a) Characteristics of real estate markets.
  - (b) Absorption analysis.
  - (c) Role of money and capital markets.
  - (d) Real estate financing.
- (6) Valuation process:
- (a) Definition of the problem.
  - (b) Collection and analysis of data.
  - (c) Analysis of highest and best use.
  - (d) Application and limitations of each approach to value.
  - (e) Reconciliation and final value estimate.

- (f) The appraisal report.
- (7) Property description;
  - (a) Site description.
  - (b) Improvement description.
  - (c) Basic construction and design.
- (8) Highest and best use analysis;
  - (a) Four tests.
  - (b) Vacant site or as if vacant.
  - (c) As improved.
  - (d) Interim use.
- (9) Appraisal ~~math~~ mathematics and statistics;
  - (a) Compound interest concepts.
  - (b) Statistical concepts used in appraisal.
- (10) Sales comparison approach;
  - (a) Research and selection of comparables.
  - (b) Elements of comparison.
  - (c) Adjustment process.
  - (d) Application of sales comparison approach.
- (11) Site value;
  - (a) Sales comparison.
  - (b) Land residual.
  - (c) Allocation.
  - (d) Extraction.
  - (e) Plottage and assemblage.
- (12) Cost approach;



- (a) Steps in cost approach.
  - (b) Application of the cost approach.
- (13) Income approach;
  - (a) Estimation of income and expenses;
  - (b) Operating statement ratios;
  - (c) Direct capitalization;
  - (d) Cash flow estimates;
  - (e) Measures of cash flow; and
  - (f) Discounted cash flow analysis; Gross rent multiplier analysis.
- (14) Valuation of partial interests;
  - (a) Life estates.
  - (b) Undivided interests in commonly held property.
  - (c) Easements.
  - (d) Timeshares.
  - (e) Cooperatives.
  - (f) Leased fee estate.
  - (g) Leasehold estate.
- (15) Appraisal standards and ethics; and.
- (16) Narrative report writing.
- i. Eighty hours may be distance education. Distance education is an educational process in which the student and instructor are geographically separated. Distance education includes, but is not limited to, on-line learning internet-based instruction, CD-ROM instruction, correspondence courses, and videoconferencing. An acceptable distance education course must:
  - (1) Provide interaction between the student and the instructor.
  - (2) Meet one of the following requirements:

- (a) The course is presented by a college or university, accredited by the commission on colleges or a regional accreditation association, that offers distance education programs in other disciplines.
- (b) The course is approved for college credit by the American council on education.
- (c) The course is approved for design and delivery mechanism by the international distance education certification center, and for content by the appraiser qualifications board or the board.
- (3) Require the student to successfully complete a written examination proctored by an official approved by the presenting college, university, or sponsoring organization.
- (4) Meet the requirements for qualifying education established by the appraisal qualifications board.
- (5) Be equivalent to at least fifteen classroom hours.
- j. Courses that have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may be acceptable to the board without additional state review.
- k. Courses taken in satisfying the qualifying education requirements should not be repetitive in nature. Each course credited toward the required number of qualifying education hours should represent a progression in which the appraiser's knowledge is increased.

**4. ~~5.~~ Prerequisite requirement— Experience.** A certified general real property appraiser must have the equivalent of three thousand hours of credible appraisal experience prior to obtaining the certified general real property appraiser certification permit. The applicant for certification must submit for review a minimum of three summary or self-contained nonresidential appraisal reports. All three of the reports must be complete appraisals and one must include all three approaches to value. The reports submitted must meet the current uniform standards of professional appraisal practice (USPAP) as of the time effective date of application the appraisal.

- a. Adequate experience will be determined on a point system.
  - (1) The point system awards points based on the types of appraisals performed, the types of properties appraised, and the number of appraisals performed by the individual.



- (2) Types of appraisals performed include standard appraisal, review appraisal, and condemnation appraisal.
- (a) A standard appraisal is the process of developing an appraisal using those methods commonly accepted by real estate appraisers as constituting the appraisal process and preparing a written appraisal report or file memorandum describing the appraisal and reporting the estimate of value. The appraisal process consists of an analysis of factors that affect value, definition of the problem, gathering and analyzing data, applying the appropriate value approaches and methodology, arriving at an opinion of value, and correctly reporting the opinion of value in compliance with the uniform standards of professional appraisal practice.
  - (b) A review appraisal is the process of critically reviewing an appraisal report prepared by another appraiser and preparing a separate written report or file memorandum setting forth the results of the review process. The review appraiser reviews the report and forms an opinion as to the adequacy of the report, the appropriateness of the methods used by the appraiser, and the reasonableness of the appraiser's conclusions. A review appraiser may or may not perform a field review. A field review includes inspecting the subject and comparables to verify data, to determine the appropriateness of the comparables selected and adjustments made, and to assist in determining the reasonableness of the value estimate. Review appraisal experience must conform to standard three of the uniform standards of professional appraisal practice. Review appraisal experience should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.
  - (c) A condemnation appraisal is an appraisal of real property for condemnation purposes where a partial taking is involved and the appraiser must develop both a before taking value estimate and an after taking value estimate. The appraiser uses those methods commonly accepted by real estate appraisers as constituting the appraisal process including a field inspection and preparation of a written appraisal report or file memorandum describing the appraisal and reporting the before and after value estimates.

(3) Types of property appraised may include the following:

- (a) Land may include farms of one hundred acres [40.47 hectares] or more in size, undeveloped tracts, residential multifamily sites, commercial sites, industrial sites, and land in transition.
- (b) Residential multifamily, five-12 units may include apartments, condominiums, townhouses, and mobile home parks.
- (c) Residential multifamily, thirteen plus units may include apartments, condominiums, townhouses, and mobile home parks.
- (d) Commercial single-tenant may include office building, retail store, restaurant, service station, bank, and day care center.
- (e) Commercial multitenant may include office building, shopping center, and hotel.
- (f) Industrial may include warehouse and manufacturing plant.
- (g) Institutional may include rest home, nursing home, hospital, school, church, and government building.

(4) Points assigned for each appraisal type are assigned by the appraisal board and are included on the application for licensure or certification. A copy of this form can be obtained by contacting the appraisal board office.

- b. A total of three hundred sixty points is equivalent to three thousand-hour requirement. These three hundred sixty points, (three thousand hours of experience) must be obtained using at least two and one-half years of appraisal practice gained over a period of at least thirty months.
- c. There is no other time limit regarding when qualifying experience may be obtained.
- d. Hours may be treated as cumulative in order to achieve the necessary three thousand hours (three hundred sixty points) of appraisal experience.
- e. Acceptable appraisal experience includes the following:



- (1) Fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate consulting (excludes related fields such as real estate lending), highest and best use analysis, and feasibility analysis or study.
    - (a) Mass appraisal experience must conform to standard six of the uniform standards of professional appraisal practice. Mass appraisal experience claimed by the applicant should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under applicable uniform standards of professional appraisal practice standards.
    - (b) Review of real estate appraisals or real property consulting services, including market analysis, cash flow and investment analysis, and feasibility analysis must conform to standards three, four, and five of the uniform standards of professional appraisal practice. Experience involving these functions should be given credit to the extent that it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under standard one of the uniform standards of professional appraisal practice.
    - (c) A market analysis typically performed by a real estate broker or sales person should be awarded experience credit when the analysis is prepared in conformity with standards one and two of the uniform standards of professional appraisal practice, the individual can demonstrate that the individual is using techniques and methods consistent with those used by appraisers to value property and the individual is effectively utilizing the appraisal process.
    - (d) Real property appraisal experience should be awarded for appraisals of real estate components, estates, or interests unless the appraiser has not complied with standards one, two, and six of the uniform standards of professional appraisal practice.
  - (2) No more than seventy-five points of the total experience credit may be in related areas. Related experience includes authorship and consulting.
- f. Documentation in the form of reports or file memoranda must be provided to support the experience claimed. If reports or file memoranda are unavailable for good cause, the board may

accept other evidence of compliance with the uniform standards of professional appraisal practice.

- g. The verification for the three thousand hours (three hundred sixty points) of experience credit claimed by an applicant shall be on forms prescribed by the state certification or licensing board which shall include:

- (1) Type of property;
- (2) Date of report;
- (3) Address of appraised property;
- (4) Description of work performed; ~~and~~
- (5) Number of work hours (points).

- g. h. The applicant must have at least fifty percent (one thousand five hundred hours) of nonresidential appraisal experience. Residential is defined as one-to-four residential units.

- i. There need not be a client in order for an appraisal to qualify for experience. Appraisals made without clients can fulfill up to fifty percent of the total experience requirement.

**History:** Effective October 1, 1992; amended effective January 1, 1995; October 1, 1998; February 1, 2003.

**General Authority:** NDCC 43-23.3-03, 43-23.3-09

**Law Implemented:** NDCC 43-23.3-03, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-17, 43-23.3-18



## **CHAPTER 101-02-04**

### **101-02-04-01. License and certificate renewal.**

1. A holder of an appraiser license or certificate desiring the renewal of such license or certificate shall, during the month ~~of December~~ preceding the expiration date of such license or certificate, apply for same in writing upon a form approved by the board and shall forward the required fee. Forms are available upon request to the board.
2. A person who, in any way, acts as a state-licensed or state-certified real property appraiser while that individual's license or certificate is expired will be subject to disciplinary action and penalties as described in North Dakota Century Code chapter 43-23.3.

**History:** Effective October 1, 1992; amended effective February 1, 2003.

**General Authority:** NDCC 43-23.3-03

**Law Implemented:** NDCC 43-23.3-12, 43-23.3-23

## **CHAPTER 101-03-03**

**101-03-03-01. Change of name or address.** All licensed and certified permittees shall notify the board in writing of each change of business address, residence address, or trade name within twenty days of said change and pay the ~~five-dollar~~ change of address fee. The address must be sufficiently descriptive to enable the board to correspond with and locate the licensed or certified permittee.

**History:** Effective October 1, 1992; amended effective February 1, 2003.

**General Authority:** NDCC 43-23.3-03

**Law Implemented:** NDCC 43-23.3-13



## CHAPTER 101-03.1-01

**101-03.1-01-01. Unprofessional conduct.** Any of the following acts and omissions constitute a violation of the standards of professional appraisal practice and are grounds for disciplinary action:

1. Violation or attempted violation of North Dakota Century Code chapter 43-23.3 or the rules adopted by the board;\_
2. Failure to comply with the standards of professional appraisal practice and ethical rules specified by the uniform standards of professional appraisal practice and all other standards and ethical requirements adopted by the appraisal foundation;\_
3. Engaging in the business of real estate appraising under an assumed or fictitious name;\_
4. Paying a finder's fee or referral fee to any person in connection with the appraisal of real estate, but an intracompany payment for business development is not unethical;\_
5. Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualification;\_
6. Violation of the confidential nature of individual, business, or governmental records to which a licensee or permittee gained accesses through employment or engagement as an appraiser;\_
7. Performance of appraisal services beyond the licensee's or permittee's level of competence;\_
8. Having been disciplined in another state, territory, or country relating to a license or certificate or the authorization to practice as an appraiser;\_
9. Negligence, refusal, or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;\_
10. Failing as a state-certified real estate appraiser to actively and personally supervise any person not certified under the provisions of North Dakota Century Code chapter 43-23.3 who assists the state-certified appraiser in performing real estate appraisals;\_
11. Having become permanently or temporarily unfit to engage in appraisal activity because of physical, mental, emotional, or other causes. Suspension of a license or certification in cases where the licensee or permittee is temporarily unfit to conduct appraisal activity shall only be for the period of unfitness;\_

12. Commission of any act involving moral turpitude or dishonesty, whether the act is committed in the course of the individual's activities as an appraiser or otherwise.
13. Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.
14. Filing a frivolous complaint against a permitted appraiser.

**History:** Effective January 1, 1995; amended effective February 1, 2003.

**General Authority:** NDCC 43-23.3-03, 43-23.3-22

**Law Implemented:** NDCC 43-23.3-18, 43-23.3-22



## **CHAPTER 101-03.1-03**

**101-03.1-03-01. Complaint procedure.** Any person may file a complaint with the board seeking disciplinary action against the holder of a license issued by the board. The complainant ~~shall~~ should submit a written statement describing the nature of the complaint and the facts supporting the complaint. The complaint ~~must~~ should be ~~verified~~ signed and include the address or ~~phone~~ telephone number at which the complainant can be contacted. A complaint ~~must~~ should be on the form prescribed by the board absent good cause.

**History:** Effective January 1, 1995; amended effective February 1, 2003.

**General Authority:** NDCC 43-23.3-03

**Law Implemented:** NDCC 43-23.3-03, 43-23.3-22

## CHAPTER 101-04-01

### 101-04-01-01. Continuing education requirements.

1. **Purpose.** The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases that individual's skill, knowledge, and competency in real estate appraising.
2. **Requirements.** All apprentice, licensed, and certified permittees must meet a minimum level of continuing education. This minimum level has been set at forty-two hours over a three-year education renewal period. Of the forty-two hours, twenty-one appraisers must complete the seven-hour national uniform standards of professional appraisal practice update course, or its equivalent, every two years. Equivalency must be determined through the appraisal qualifications board course approval program or by an alternate method approved by the appraisal qualifications board. Twenty-one hours of the forty-two hours must include appraisal-specific education related to the valuation of real estate, seven hours must include coverage of the uniform standards of professional appraisal practice (USPAP), and fourteen hours may be comprised of appraisal-related subject matter, as approved as such, by the appraisal board.
  - a. The necessary forty-two hours may be obtained at any time during the three-year renewal period, except for the required national uniform standards of professional appraisal practice requirement.
  - b. Verification of the necessary forty-two hours must be submitted by the end of the three-year renewal period.
  - c. Uniform standards of professional practice (USPAP) continuing education credit shall only be awarded when the class is instructed by an appraisal qualifications board certified instructor.
  - d. All continuing education courses taken in this state must be approved by the board.
  - ~~d.~~ e. Courses taken out of this state may be approved for credit, provided the state in which the course was taken has approved the course for appraiser education.
  - ~~e.~~ f. A course which has not had prior approval may be approved on an individual basis.
  - ~~f.~~ g. All continuing education must be taken in blocks of at least two hours.
  - ~~g.~~ h. A classroom hour is defined as fifty minutes out of each sixty-minute segment.



~~h.~~ i. With the exception of distance education, no examination is required for continuing education courses.

~~i.~~ j. Credit for the classroom requirement may be obtained from the following:

- (1) Colleges or universities;<sub>1,2</sub>
- (2) Community or junior colleges;<sub>1,2</sub>
- (3) Real estate appraisal or real estate-related organizations;<sub>1,2</sub>
- (4) State or federal agencies or commissions;<sub>1,2</sub>
- (5) Proprietary schools;~~and~~<sub>1,2</sub>
- (6) Other providers approved by the state certification or licensing board.

~~j.~~ k. Credit may be granted for education offerings which are consistent with the purpose of continuing education stated in subsection 1 and cover real estate-related appraisal topics such as:

- (1) Ad valorem taxation;<sub>1,2</sub>
- (2) Arbitration;<sub>1,2</sub>
- (3) Business courses related to practice of real estate appraisal;<sub>1,2</sub>
- (4) Construction estimating;<sub>1,2</sub>
- (5) Ethics and standards of professional practice;<sub>1,2</sub>
- (6) Land use planning, zoning, and taxation;<sub>1,2</sub>
- (7) Management, leasing, brokerage, and timesharing;<sub>1,2</sub>
- (8) Property development;<sub>1,2</sub>
- (9) Real estate appraisal (valuations or evaluations);<sub>1,2</sub>
- (10) Real estate law;<sub>1,2</sub>
- (11) Real estate litigation;<sub>1,2</sub>
- (12) Real estate financing and investment;<sub>1,2</sub>
- (13) Real estate appraisal-related computer applications;<sub>1,2</sub>

(14) Real estate securities and syndications; ~~and~~.

(15) Real property exchange.

~~k.~~ l. A professional real estate appraisal organization meeting may be granted credit, provided it is a formal education program of learning which contributes to the real estate appraisal profession.

~~l.~~ m. Real estate appraisal-related field trips may be granted credit. However, transit time to or from the field trip location should not be included when awarding credit if instruction does not occur.

~~m.~~ n. Continuing education credit may be granted for participation, other than as a student in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined to be equivalent to obtaining continuing education.

(1) Ten hours may be granted for authorship of textbooks, publications, or similar activities provided the document contributes to the appraisal profession.

(2) One and one-half hours of credit for each one hour of instruction may be granted for teaching appraisal courses; ~~and~~.

(3) Teaching of a course with the same, or substantially the same subject content may be claimed only once for credit within a three-year renewal cycle.

~~n.~~ o. ~~Ten~~ Fourteen hours may be granted for distance education. Distance education is defined as any educational process based on the geographical separation of provider and student (e.g., CD-ROM, on-line learning, correspondence courses, videoconferencing, or similar activities). Distance education courses may be acceptable to meet the continuing education requirement provided that the course is approved by the board and meets one of the following conditions:

(1) The course is presented to an organized group in an instructional setting with a person qualified and available to answer questions, provide information, and monitor student attendance, and is a minimum of two classroom hours and meets the requirements for continuing education courses established by the appraiser qualifications board; ~~or~~.

(2) The course ~~either~~ has been presented by an accredited (commission on colleges or a regional accreditation association) college or university that offers distance



education programs in other disciplines, or has received either approval for college credit by the American council on education program on noncollegiate sponsored instruction (ACE/PONSI) approval for college credit, or is approved for design and delivery mechanism by the international distance education certification center and for content by the appraiser qualification board's approval through the appraisal qualifications board course approval program; and or the board. Additionally, the course ~~meets~~ must meet the following requirements:

- (a) The course is equivalent to a minimum of two classroom hours in length and meets the requirements for real estate appraisal-related courses established by the ~~appraisal~~ appraiser qualifications board; ~~and~~.
  - (b) The student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation which demonstrate mastery and fluency ~~(said. Said~~ Said mechanisms must be present in a course without an exam examination in order to be acceptable).
- ⊖: P. A course with the same or substantially the same subject content may be claimed only once for credit within a three-year renewal cycle.
- ⊖: Q. Excess hours of education earned in one renewal period cannot be carried over to the next renewal period.
- ⊖: R. Courses that ~~are taken as a result of a disciplinary action~~ have received approval by the appraiser qualifications board of the appraisal foundation through the appraiser qualifications course approval program may not be credited toward continuing education accepted by the board without additional state review.

**History:** Effective October 1, 1992; amended effective October 1, 1998; February 1, 2003.

**General Authority:** NDCC 43-23.3-12, 43-23.3-19

**Law Implemented:** NDCC 43-23.3

**TITLE 108**  
**DEPARTMENT OF COMMERCE**





APRIL 2003

ARTICLE 108-02

NORTH DAKOTA DEPARTMENT OF COMMERCE

Chapter

108-02-01

Third-Party Inspections Program

**CHAPTER 108-02-01**

**THIRD-PARTY INSPECTIONS PROGRAM**

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**108-02-01-01. History.** The fifty-seventh legislative assembly, in House Bill No. 1210, directed the division of community services to develop rules to certify third-party inspection agencies and to develop procedures for these agencies to follow in inspecting the construction of modular residential and commercial structures built in a factory. To implement this program, the division of community services has elected to become a "participating state" under the industrialized buildings commission. The industrialized buildings commission provides for the certification of third-party agencies and the procedures for these agencies to follow in assuring that industrialized modular buildings are designed, manufactured,



handled, stored, delivered, and installed according to adopted state construction standards.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 54-21.3-07

**Law Implemented:** NDCC 54-21.3-07

**108-02-01-02. Administration.** The administration of this program is the responsibility of the division of community services as a participating state under the industrialized buildings commission.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 54-21.3-07

**Law Implemented:** NDCC 54-21.3-07

**108-02-01-03. Inquiries.** Inquiries about this program may be addressed to:

Third-party Inspections Program Manager  
North Dakota Department of Commerce  
Division of Community Services  
Phone: 701-328-3698  
E-mail: [rgray@state.nd.us](mailto:rgray@state.nd.us)

**History:** Effective July 1, 2003.

**General Authority:** NDCC 54-21.3-07

**Law Implemented:** NDCC 54-21.3-07

**108-02-01-04. Scope.** This chapter governs the process for certification of third-party inspection agencies for those manufacturers of industrialized modular residential and commercial buildings built in a factory who want to hire a third-party inspection agency. It also governs the procedures to be employed for approving the design, manufacture, inspection, handling, storage, delivery, and installation of industrialized modular buildings built in a factory. Industrialized modular buildings certified according to this chapter shall be deemed to comply with all requirements of this chapter and shall not be subject to required state or local inspections for any building component in the factory. This chapter does not govern manufactured homes built in a factory under the United States department of housing and urban development code pursuant to the Manufactured Housing and Safety Standards Act, nor does it cover any onsite construction, including construction related to the installation of industrialized modular buildings.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 54-21.3-07

**Law Implemented:** NDCC 54-21.3-07

**108-02-01-05. Effective date.** This chapter is applicable to all modular residential and commercial structures intended for siting anywhere in North Dakota on or after July 1, 2003.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 54-21.3-07

**Law Implemented:** NDCC 54-21.3-07

**108-02-01-06. Applicability of state or local law.** Land use and zoning requirements, building setback requirements, side and rear yard requirements, property line requirements, and onsite development, construction, and inspection requirements are specifically and entirely reserved for state or local government, except as provided by or pursuant to these rules. Upon installation, state or local government code enforcement agencies may conduct nondestructive walkthrough inspections of any industrialized modular building or building component certified in accordance with this chapter, for the purpose of identifying and reporting to the division of community services any code violation. If a person or agency shall deliver, sell, lease, or install any industrialized modular building or building component in any jurisdiction in North Dakota that is not certified in accordance with this chapter, the state and local code enforcement agencies may inspect the building and all building components according to state and local codes and amendments or other related procedures and requirements.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 54-21.3-07

**Law Implemented:** NDCC 54-21.3-07

**108-02-01-07. Definitions.** For purposes of this chapter:

1. "Act" means the laws of the participating state governing industrialized modular construction as amended and supplemented by the enabling legislation of the interstate compact on industrialized modular buildings.
2. "Approved" means approved by the industrialized buildings commission, a participating state, or a designated evaluation inspection agency.
3. "Building component" means any subsystem, subassembly, or other system of closed construction designed for use in or as part of a structure, which may include structural, electrical, mechanical, plumbing, and fire protection systems and other systems affecting health and safety.
4. "Building system" means the method of constructing a type of industrialized modular building or building component described by plans, specifications, and other documentation which together establish a set of limits meeting the building codes, standards, and other requirements of these regulations for that type of industrialized modular building or building component, which may include structural,



electrical, mechanical, plumbing, and fire protection systems and other systems affecting health and safety.

5. "Certification" means the process by which participating states and local building inspection agencies are assured that elements of closed construction, not practical to inspect at the building site, conform to the building codes.
6. "Certification label" means an approved insignia or seal evidencing certification in accordance with the uniform administrative procedures.
7. "Closed construction" means any building, building component, assembly, or system manufactured in such a manner that concealed parts or processes of manufacture cannot be inspected at the building site without disassembly, damage, or destruction. The definition shall not include products, such as structural, electrical, and plumbing fixtures and equipment which are tested, listed, labeled, and certified by a nationally recognized testing laboratory.
8. "Code" means the codes, standards, specifications, and requirements adopted pursuant to section 108-02-01-08.
9. "Commission" means the industrialized buildings commission.
10. "Compliance assurance documents" means approved building system documents, an approved compliance assurance manual, and approved onsite installation instructions.
11. "Compliance assurance program" means the policies and procedures which assure that industrialized modular buildings and building components, including their manufacture, storage, delivery, assembly, handling, and installation, conform with these model rules and regulations and the uniform administrative procedures.
12. "Designated" means selected by the commission to perform one or more of the inspection or evaluation, or both, functions described under the uniform administrative procedures.
13. "Evaluation agency" means a designated person or organization, private or public, determined by the commission to be qualified by reason of facilities, personnel, experience, and demonstrated reliability and independence of judgment, to investigate and evaluate industrialized modular buildings, building components, building systems, or compliance assurance programs.
14. "Factory" means an individual or entity that manufactures industrialized modular buildings. Residential industrialized modular buildings manufactured by high schools, vocational technical centers, and colleges or universities as part of a bona fide educational program are



excluded. Any industrialized modular building that is excluded from the modular residential and commercial structure third-party inspection program is subject to inspection from state or local enforcement agencies.

15. "Independence of judgment" means not being affiliated with or influenced or controlled by building manufacturers or by producers, suppliers, or vendors of products or equipment used in industrialized modular buildings and building components, in any manner which is likely to affect capacity to render reports and findings objectively and without bias.
16. "Industrialized modular building" means any building of closed construction, i.e., constructed in such a manner that concealed parts or processes of manufacture cannot be inspected at the site, without disassembly, damage, or destruction, and which is made or assembled in manufacturing facilities, off the building site, for installation, or assembly and installation, on the building site. Industrialized modular building includes modular housing which is factory-built single-family and multifamily housing, including closed-wall panelized housing, and other modular, nonresidential buildings. Industrialized modular building does not include any structure subject to the requirements of the National Manufactured Home Construction and Safety Standards Act of 1974.
17. "Inspection agency" means a designated person or organization, private or public, who is determined by the commission to be qualified by reason of facilities, personnel, experience, and demonstrated reliability and independence of judgment, to monitor compliance assurance programs.
18. "Installation" means the process of affixing, or assembling and affixing, industrialized modular buildings or building components on the building site.
19. "Interim reciprocal agreement" means a formal reciprocity agreement as defined in the enabling legislation of the interstate compact on industrialized modular buildings.
20. "Local enforcement agency" means the agency or agencies of the participating states or local government with authority to inspect buildings and enforce the law, ordinances, and regulations which establish standards and requirements applicable to the construction, installation, alteration, repair, or relocation of buildings.
21. "Modular residential or commercial structure" means an industrialized modular building.



- 22. "Module" means a closed-wall structure or substantial part of a closed-wall structure incorporating one or more rooms used as habitable, occupiable, or mechanical or equipment space.
- 23. "Nonconformance" means the failure to adhere to the requirements of an approved building system or, where the building system is not specific, to the code.
- 24. "Participating state" means any compacting state or any noncompacting state acting under the purview of an interim reciprocal agreement.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 54-21.3-07

**Law Implemented:** NDCC 54-21.3-07

**108-02-01-08. Standards.** Building systems must comply with:

**1. Primary codes.**

- a. Building codes - International building code (IBC) and international residential code (IRC) published by the international code council (ICC), as adopted and amended in the North Dakota state building code.
- b. Mechanical code - International mechanical code (IMC) published by the international code council (ICC), as adopted and amended in the North Dakota state building code.
- c. Fuel gas code - International fuel gas code (IFGC) published by the international code council (ICC), as adopted and amended in the North Dakota state building code.
- d. Plumbing code - Uniform plumbing code (UPC) published by the international association of plumbing and mechanical officials (IAPMO), as adopted and amended as the North Dakota state plumbing code.
- e. Electrical code - National electrical code (NEC) published by the national fire protection association (NFPA), as adopted and amended as the laws, rules, and wiring standards of North Dakota.
- f. Barrier-free code - Americans with Disabilities Act accessibility guidelines.
- g. Energy code - 1993 model energy code published by the council of American building officials.

**2. Alternates.** The provisions of this chapter are not intended to prevent the use of any technologies, techniques, or materials not

specifically prescribed by these codes, standards, specifications, and requirements, provided any such alternate has been approved.

- a. Applications for such alternates must be filed in writing with the evaluation agency. This application must contain the current requirements of the codes, standards, or specifications from which an alternate is sought and a statement of how the proposed alternate would adequately protect the health, safety, and welfare of both the occupants and the public.
- b. The evaluation agency may approve any such alternate, provided that it determines that the proposed design is satisfactory and that the material, method, or work offered is, for the purpose intended, consistent with the adopted codes and standards as to quality, strength, effectiveness, fire resistance, durability, and safety. The evaluation agency shall require that sufficient evidence or proof be submitted to substantiate any claim that may be made regarding the use of any such alternate. The evaluation agency shall notify the applicant of the determination. If the application is denied, the notification shall state the reasons for the denial.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 54-21.3-07

**Law Implemented:** NDCC 54-21.3-07

**108-02-01-09. Manufacturer's data plate.** The following information must be typewritten on a smudge-proof, permanent manufacturer's data plate located in the vicinity of the certification label:

1. Name and address of manufacturer;
2. Serial numbers (manufacturer's identification numbers);
3. Manufacturer's plan approval designation (model number or name);
4. Certification label numbers;
5. Construction classification;
6. Occupancy classification or use group;
7. Seismic zone;
8. Wind velocity load;
9. Roof and floor live load;
10. Fire rating for exterior walls;



11. Thermal transmittance values;
12. Date of manufacture;
13. The name and date of the building codes complied with; and
14. Service panel size.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 54-21.3-07

**Law Implemented:** NDCC 54-21.3-07

**108-02-01-10. Serial number.** The manufacturer shall apply a serial number to each unit at the beginning of the production process. The serial number shall not be applied to a feature of the industrialized building or building component that is readily removable. The location of the serial numbers must be identified in the manufacturer's compliance assurance program.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 54-21.3-07

**Law Implemented:** NDCC 54-21.3-07

**108-02-01-11. Compliance assurance documents.**

1. **Building systems documents.** The building systems documents consist of plans, specifications, calculations, test results, or other documents which describe in detail the product and manufacturing processes employed to produce industrialized modular buildings or building components. The documents need only show details for equipment provided by the manufacturer. The documents must be comprehensively indexed and shall treat the material listed in this section in detail. For the building systems to be evaluated, the following must be provided:

- a. **General requirements.**

- (1) All plans, specifications, and other documentation must be submitted in three copies.
- (2) All documents submitted with the application must be identified to indicate the manufacturer's name.
- (3) A clear space must be provided on all sheets of plans near the title box for the stamps of approval.
- (4) Manufacturers shall submit plans showing all elements relating to specific systems on properly identifiable sheets.

- (5) Structural connections and connection of systems, equipment, and appliances to be performed onsite must be identified, detailed, and distinguished from work to be performed in the manufacturing facility.
- (6) Method of interconnection between industrialized modular buildings or building components and location of connections.
- (7) Design calculations or test reports, or both, must be submitted when required by the evaluation agency. The manufacturer shall cross-reference all designs to appropriate calculations or test reports, or both.
- (8) Documents must indicate the location of the certification label.
- (9) Drawings must be dated and identified and include an index that can be used to determine that the package is complete.
- (10) Documents must provide or show, as appropriate, occupancy or use; area, height, and number of stories; type of construction; and wind, floor, snow, and seismic loads.

b. Required construction details. Documents for industrialized modular buildings or building components must provide or show, as appropriate, the details listed below. Only the minimum documentation necessary to demonstrate each alternative possible within the system is required.

- (1) General.
  - (a) Details and methods of installation of industrialized modular buildings or building components on foundations or to each other.
  - (b) Floor plans and typical elevations.
  - (c) Cross-sections necessary to identify major building components.
  - (d) Details of flashing, such as at openings and at penetrations through roofs and subcomponent connections, including flashing material and gauge to be used.
  - (e) Attic access and attic ventilation, when required by the code.
  - (f) Exterior wall, roof, and soffit material.



- (g) Interior wall and ceiling material.
- (h) Barrier-free provisions, if applicable.
- (i) Sizes, locations, and types of doors and windows.
- (j) Suggested foundation plans, vents, and underfloor access.
- (k) Details of any elevator or escalator system, including method of emergency operation, when provided.

(2) Fire safety.

- (a) Details of fire-rated assemblies, including reference listing or test report for all stairway enclosures, doors, walls, floors, ceiling, partitions, columns, roof, and other enclosures.
- (b) Means of egress, including details of aisles, exits, corridors, passageways, and stairway enclosures.
- (c) Flame spread and smoke developed classification of interior materials.
- (d) Location of required draftstops and firestops.
- (e) Opening protectives in fire resistance-rated systems and assemblies.
- (f) Drawings of fire suppression systems, standpipes, fire alarms, and detection systems, when required.

(3) Structural detail requirements.

- (a) Calculations of structural members or test results, if appropriate, except when compliance can be demonstrated through code tables, accepted handbooks, and listing documents.
- (b) Details of structural elements, including framing details, spacing, size, and connections.
- (c) Grade, species, and specifications of materials.
- (d) Typical foundation plans, details, and assumed design soil-bearing value.

- (e) Schedule of roof, floor, wind, and seismic loads upon which design is based.
  - (f) Column loads and column schedule.
- (4) Mechanical detail requirements.
  - (a) Location of all equipment, appliances, and baseboard radiation units.
  - (b) Energy conservation calculations.
  - (c) Indicate input and output rating of all equipment and appliances, as appropriate.
  - (d) Duct and register locations, sizes, and materials, as appropriate.
  - (e) Method of providing combustion air, if required.
  - (f) Method of providing ventilation air, if required.
  - (g) Method of providing makeup air, if required.
  - (h) Location of flues, vents, and chimneys and clearances from air intakes, combustible materials, and other vents and flues.
- (5) Plumbing detail requirements.
  - (a) Schematic drawing of the plumbing layout, including size of piping, fittings, traps and vents, cleanouts and valves, and gas, water, and drainage systems.
  - (b) Plumbing materials and location of all equipment, appliances, and safety controls to be used. Indicate the rating and capacity of equipment and appliances.
- (6) Electrical detail requirements.
  - (a) Details of any service equipment provided by the manufacturer.
  - (b) Method of grounding service equipment.
  - (c) Load calculations for service and feeders.
  - (d) Sizes of branch circuit conductors.



- (e) Size, rating, and location of main disconnect and overcurrent protective devices.
- (f) Location of outlets, junction boxes, fixtures, and appliances.
- (g) A single-line diagram of the entire electrical installation, with the exception of one and two family dwellings.

2. **Compliance assurance program.** The compliance assurance program is a system employed by the manufacturer to assure conformance with the approved building systems documents. The compliance assurance manual must be comprehensively indexed and must treat the material listed here in detail. The program must consist of the following:

a. Organizational requirements.

- (1) Manufacturer's name, corporate office address, and the address of each manufacturing facility shall be indicated in the compliance assurance manual.
- (2) The compliance assurance manual shall have a table of contents with the evaluation agency's dated stamp of approval on the cover sheet and any revised pages.
- (3) An organizational mechanism for implementing and maintaining the compliance assurance program and its functional relationship to other elements of the organizational structure of the manufacturer, which mechanism shall not be a part of the production department. Employees in charge of the compliance assurance program must be identified and their training and qualifications specified.
- (4) A uniform system of monitoring and evaluation to ensure program effectiveness.
- (5) A serial numbering system for industrialized modular buildings or building components.
- (6) Requirements for issuance, possession of, attachment of, and accounting for all certification labels to assure that certification labels are attached only to buildings or building components manufactured pursuant to an approved building system and inspected pursuant to an approved compliance assurance program.
- (7) A system to document production changes in accordance with other provisions of this chapter.

b. Materials control.

- (1) Procedures for inspection of materials, supplies, and other items at the point of receipt.
- (2) Method of protection of materials, supplies, and other items at the point of receipt.
- (3) Provision for disposal of rejected materials, supplies, and other items.

c. Production control.

- (1) Procedures for timely remedial and preventive measures to assure product quality.
- (2) Provision, maintenance, and use of testing and inspection equipment to assure compliance with the approved building system.
- (3) Provision for frequency of sampling inspections.
- (4) Provision of necessary authority to reject defective work and carry out compliance assurance functions, notwithstanding any conflict with production department goals and needs.
- (5) A description of the manufacturing process showing the inspection and checkpoints for mandatory inspection characteristics.
- (6) Inspection and test procedures, including accept and reject criteria and mandatory inspection characteristics.
- (7) Provision for disposition of rejects.

d. Finished product control.

- (1) Procedures for handling and storing all finished industrialized modular buildings or building components at the manufacturing plant or other storage point.
- (2) Procedures for packing, packaging, and shipping operations and related inspections.

3. Onsite installation procedures. The onsite installation instructions consist of specific installation procedures provided by the manufacturer which specify the materials and procedures required to install the building in conformance with the code and standards. For purposes



of this subsection, "specific installation procedures provided by the manufacturer" include:

- a. Connection details of industrialized modular buildings or building components to the foundation.
- b. Structural connections between the industrialized modular building or building component.
- c. Connections required to complete the mechanical or utility systems.
- d. Any special conditions affecting other structural elements.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 54-21.3-07

**Law Implemented:** NDCC 54-21.3-07

#### **108-02-01-12. Uniform administrative procedures.**

- 1. The uniform administrative procedures of the industrialized buildings commission, hereby incorporated by reference, shall constitute the procedures by which the division of community services shall assure itself and the commission of the compliance of industrialized modular building construction with the state building, plumbing, electrical, and accessibility codes, assess the adequacy of the building systems, and verify and assure the competency and performance of evaluation and inspection agencies.
- 2. Copies of the uniform administrative procedures may be obtained from the industrialized buildings commission, suite 210, 505 huntmar park drive, Herndon, Virginia 22070.
- 3. The division of community services shall approve those evaluation or inspection agencies that the commission designates as meeting the requirements of part VI, section 1, of the uniform administrative procedures and that the commission finds otherwise qualified to perform the functions delegated to it.
- 4. The division of community services shall take such enforcement action against a manufacturer, inspection agency, or evaluation agency as recommended by the commission if, pursuant to the uniform administrative procedures, the commission determines that such manufacturer, inspection agency, or evaluation agency has failed to fulfill its responsibilities under the uniform administrative procedures.
- 5. Any notice or order issued pursuant to this chapter must be in writing and must be served upon the respondent party by certified mail and return receipt requested.

6. Any party aggrieved with an enforcement action taken by the division of community services may appeal under North Dakota Century Code chapter 28-32.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 54-21.3-07

**Law Implemented:** NDCC 54-21.3-07

**108-02-01-13. Consumer complaints.** In accordance with the uniform administrative procedures of the industrialized buildings commission, a consumer may complain directly to a manufacturer for any alleged code violation. However, the consumer may also submit complaints in writing to the division of community services. Prior to submitting a complaint, the consumer should take every step possible to resolve problems with the manufacturer and indicate those efforts and results in the written complaint to the division of community services.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 54-21.3-07

**Law Implemented:** NDCC 54-21.3-07

**108-02-01-14. Fees for state inspections of sited structures.** If, as a result of a consumer complaint, the division of community services decides to arrange for an onsite inspection of an installed industrialized modular residential or commercial structure subject to these rules, the manufacturer will be responsible for paying all costs related to the inspection. For state inspections performed by the state plumbing board, state electrical board, or state fire marshal, the fees shall be paid according to their respective rates.

**History:** Effective July 1, 2003.

**General Authority:** NDCC 54-21.3-07

**Law Implemented:** NDCC 54-21.3-07



