CHAPTER 75-02-02.1
ELIGIBILITY FOR MEDICAID

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SECTION 1. Section 75-02-02.1-01 is amended as follows:

75-02-02.1-01. Definitions. For the purposes of this chapter:

1. "Agency" means the North Dakota department of human services.
2. "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.
3. "Blind" has the same meaning as the term has when used by the social security administration in determining blindness for title II or XVI of the Act.
4. "Child" means a person, under twenty-one, or, if blind or disabled, under age eighteen, who is not living independently.
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.

6. "County agency" means the county social service board.
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 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. "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.
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 price based on an appraisal, a market analysis by a realtor, or another method which produces an accurate reflection of fair market value or, with respect to 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, the selling price, 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 individuals with intellectual disabilities.
16. "Institutionalized individual" means an individual who is an inpatient in a nursing facility, an intermediate care facility for individuals with intellectual disabilities, the state hospital, a psychiatric residential treatment facility, an institution for mental disease, or who receives swing-bed care in a hospital.
17. "Living independently" means, in reference to an individual under the age of twenty-one, a status which arises in any of the following circumstances:
    a. The 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 individual has married, even though that marriage may have ended through divorce or separation. A marriage ended by legal annulment is treated as if the marriage never occurred.
    c. The individual has lived separately and apart from both parents for at least three consecutive full calendar months after the date the 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 subsection:
        (1) Periods when the individual is attending an educational or training facility, receiving care in a specialized facility, or is an institutionalized individual are deemed to be periods when the 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. 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.
18. "MAGI-based methodology" means the method of determining eligibility for medicaid that generally follows modified adjusted gross income rules.
19. "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.].
~~19.~~20. "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.~~21. "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.

~~21.~~22. "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.

~~22.~~23. "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.~~24. "Property that is essential to earning a livelihood" means property that a member of a medicaid unit owns, and which the medicaid unit is actively engaged in using to earn income, and where the total benefit of such income is derived for the medicaid unit's needs. A member of a medicaid unit is actively engaged in using the property 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.

~~24.~~25. "Property that 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 or if a bona fide offer is received by the third month after the month in which the good-faith effort to sell is begun.

~~25.~~26. "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.~~27. "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.~~28. "Residing in the home" refers to individuals who are physically present, individuals who are temporarily absent, or individuals attending educational facilities.

~~28.~~29. "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.~~31. "State agency" means the North Dakota department of human services.

~~30.~~32. "Student" means an individual who regularly attends and makes satisfactory progress in elementary or secondary school, general educational development classes, college, university, vocational training, including summer vacation periods if the individual intends to return to school in the fall, or a home school program recognized or supervised by the student's state or local school district. A full-time student is a person who attends school on a schedule equal to a full curriculum.

~~31.~~33. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

~~32.~~34. "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.].

~~33.~~35. "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].

~~34.~~36. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].

~~35.~~37. "Title IV-E" means title IV-E of the Social Security Act [42 U.S.C. 670 et seq.].

~~36.~~38. "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; August 1, 2005; April 1, 2008; January 1, 2011; April 1, 2012; July 1, 2012; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01, 50-24.1-37; 42 USC 1396a(e)

SECTION 2. Section 75-02-02.1-05 is amended as follows:

75-02-02.1-05. Coverage groups. Within the limits of legislative appropriation, 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. 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. The categorically needy coverage group includes:
   a. Children for whom adoption assistance maintenance payments are made under title IV-E;
   b. Children for whom foster care maintenance payments are made under title IV-E;
   c. Children who are living in North Dakota and are receiving title IV-E adoption assistance payments from another state;
   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~~ of deprived children who meet the ~~family coverage~~ parent and caretaker relative eligibility criteria;
   f. Families 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 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;
   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;
   h. Pregnant women who meet the non-financial requirements with modified adjusted gross income at or the below the modified adjusted gross income level for pregnant women.
   i. Eligible pregnant women who applied for and were eligible for medicaid as categorically needy during pregnancy continue to be eligible for sixty days beginning on the last day of the pregnancy, and for the remaining days of the month in which the sixtieth day falls;
   ~~i.~~ j. Children born to categorically needy eligible pregnant women who applied for and were 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;
   k. Children up to age nineteen who meet the non-financial medicaid requirements with modified adjusted gross income at or below the modified adjusted gross income level for that child's age;
   l. Adults between the ages of nineteen and sixty-four, inclusive, who meet the nonfinancial medicaid requirements:
      (1) Who are not eligible under subsections (e) through (k) above, or
      (2) Who are not eligible for supplemental security income, unless they fail the medically needy asset test; or

(3) Whose modified adjusted gross income is at or below the established modified adjusted gross income level for this group.

m. Former foster care children through the month they turn twenty-six years of age, who were enrolled in medicaid and were in foster care in this state when they turned eighteen years old, provided they are not eligible under any of the categorically eligible groups other than the group identified in subdivision l.

~~j.~~ n. 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

~~k.~~ o. 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)].

2. The optional categorically needy coverage group includes:

a. ~~Individuals under age twenty-one whose income is within the family coverage group levels, but who are not otherwise eligible under the family coverage group;~~

~~b.~~ 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.~~ b. 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.

~~d.~~ c. Gainfully employed individuals with disabilities age eighteen to sixty-five who meet medically needy nonfinancial criteria, have countable assets within the medically needy asset levels, have income below two hundred twenty-five percent of the poverty level, and are not eligible for medicaid under any other provision except as a qualified medicare beneficiary or a special low-income medicare beneficiary. Coverage under this group ends on the last day of the month before the month in which the individual attains the age of sixty-five.

~~e.~~ d. Individuals under age nineteen who are disabled, who meet medically needy nonfinancial criteria, who have income at or below two hundred percent of the poverty level, and who are not eligible for ~~Medicaid~~ medicaid under any other provision. Coverage under

this group ends on the last day of the month in which the individual reaches age nineteen.

3. The medically needy coverage group includes:
   a. ~~Eligible caretaker relatives and individuals under age twenty-one in families with deprived children who qualify for and require medical services on the basis of insufficient income, but who do not meet income or age family coverage group requirements, or who do not qualify under optional categorically needy or poverty level groups;~~
   ~~b.~~ Individuals under the age of ~~twenty-one~~ nineteen who qualify for and require medical services on the basis of insufficient income, but who do not qualify under categorically needy~~,~~ or optional categorically needy~~, or poverty level~~ groups, including ~~children in common in stepparent families who are ineligible under the family coverage group and~~ foster care children who do not qualify as categorically needy or optional categorically needy;
   ~~c.~~ b. Pregnant women whose pregnancy has been medically verified and who qualify on the basis of financial eligibility;
   ~~d.~~ c. 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 for sixty days beginning on the last day of pregnancy and for the remaining days of the month in which the sixtieth day falls;
   ~~e.~~ d. 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.~~ e. Aged, blind, or disabled individuals who are not in receipt of supplemental security income; and
   ~~g.~~ f. 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. The poverty level coverage group includes:
   a. ~~Pregnant women whose pregnancy has been medically verified and who meet the nonfinancial 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 continue to be eligible for sixty days 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 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 to nineteen, who meet the nonfinancial 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 entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, whose assets do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1860D-14(a)(3) [42 U.S.C. 1395w-114(a)(3)], and have income at or below one hundred percent of the poverty level;

~~f.~~ b. 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 and assets no greater than twice the supplemental security income resource standard, and who are not eligible for medicaid under any other provision;

~~g.~~ c. Special low-income medicare beneficiaries who are entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, whose assets do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1860D-14(a)(3) [42 U.S.C. 1395w-114(a)(3)], and have income above one hundred percent of the poverty level, but not in excess of one hundred twenty percent of the poverty level; and

~~h.~~ d. Qualifying individuals who are entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, whose assets do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1860D-14(a)(3) [42 U.S.C. 1395w-114(a)(3)], 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; June 1, 2004; April 1, 2008; January 1, 2010; April 1, 2012; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02, 50-24.1-31, 50-24.1-37; 42 USC 1396a(e)

SECTION 3. Section 75-02-02.1-08 is amended as follows:

75-02-02.1-08. Medicaid unit. A

1. For individuals not subject to MAGI-based methodology, 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.

2. For individuals subject to a MAGI–based methodology, a medicaid unit is determined by the individual's tax filing status as well as the individual's relationship to those with whom the individual lives.
   a. Each individual will have his or her own medicaid unit determined as follows:
      (1) If the individual is a tax filer, and is not also claimed as a dependent by someone else, the individual's medicaid unit consists of the individual, the individual's spouse, if living with the individual, and anyone the individual or his spouse claims as a dependent, plus a dependent's spouse that lives with them, and any unborn children of a pregnant woman who is included in the unit.
      (2) If the individual is claimed as a tax dependent by another, even if the individual files his or her own tax return, and does not meet any of the following exceptions, that individual's medicaid unit is the same as the household that claims the individual as a dependent, plus the individual's spouse that lives with them and any unborn children of a pregnant woman who is included in the unit:
         (a) The individual is claimed as a dependent by someone other than a spouse, or a natural, adopted, or step parent;
         (b) The individual is under nineteen years old and is living with both parents but the parents are not filing a joint return; or
         (c) The individual is under nineteen years old and will be claimed as a dependent by a non-custodial parent.
      (3) If the individual is not a tax filer, is not expected to be claimed as a dependent by another, or meets one of the conditions set forth in subparagraphs (a), (b), or (c) of paragraph (2) , the individual is subject to the non-filer rules. A non-filer individual's Medicaid unit is the individual, and, if living with the individual, the individual's spouse; natural, adopted. or step-children under nineteen years old; natural, adopted, or step-parents; or natural, adopted, or step-siblings under 19, plus any of their spouses that live with them, and any unborn children of a pregnant woman who is in the household.
3. Individuals may not be opted out of a medicaid household unit determined under subsection 2.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01, 50-24.1-37; 42 USC 1396a(e)

SECTION 4. Subsection 1 of section 75-02-02.1-08.1 is amended as follows:

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; and
   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.

History: Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; July 1, 2012; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01, 50-24.1-37

SECTION 5. Section 75-02-02.1-012 is amended as follows:

75-02-02.1-12. Age and identity.

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~~ 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. ~~3.~~ Blind individuals, disabled individuals, and caretaker relatives are not subject to any age requirements for purposes of medicaid eligibility.
5. ~~4.~~ The identity of each applicant must be established and documented.
6. ~~5.~~ Citizenship status of each applicant must be established and documented.

History: Effective December 1, 1991; amended effective July 1, 2003; June 1, 2004; January 1, 2010; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01, 50-24.1-37

SECTION 6. Section 75-02-02.1-14.1 is created as follows:

75-02-02.1-14.1. Eligibility for medically frail medicaid expansion enrollees.

1. A medicaid expansion enrollee interested in applying for a medically frail determination shall complete a self-assessment and return the completed form to the department.

2. If the self-assessment meets a threshold score set by the department, the enrollee shall schedule an appointment with a primary care provider to review and validate the information on the self-assessment. After the enrollee attends a face-to-face appointment with the primary care provider, the enrollee shall ensure that the primary care provider provides documentation to the department that validates the diagnosis or medical condition and that includes a medication list.
3. Upon review of the information provided by the primary care provider, the department shall determine whether the enrollee meets medically frail eligibility requirements.
4. If the medicaid expansion enrollee is approved for eligibility as medically frail , the enrollee may choose coverage through a managed care organization or through the medicaid state plan services.
5. Coverage of an enrollee as medically frail will begin the first of the month following the month in which the determination is made.

History: Effective January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01, 50-24.1-37

SECTION 7. Section 75-02-02.1-16 is amended as follows:

75-02-02.1-16. State of residence. A resident of the state is 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 individuals entering the state, the earliest date of eligibility is the date of entry. Residence may not be established for individuals who claim residence in another state.
2. Individuals under age twenty-one.
   a. For any individual under age twenty-one who is living independently from 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 the state in which the child is living with the child's parent or caretaker relative on other than a temporary basis.

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 on other than a permanent basis or for an indefinite period 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 or the state of residence of the parent or legal guardian at the time of medicaid application if the child is institutionalized in the same state. 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 the individual's parents and does not have a guardian, the individual is a resident of the state in which the individual is institutionalized.

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. Except as provided in 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~~.
   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. For purposes of this subsection:

a. "Individual incapable of indicating intent" means one who:
   (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;
   (2) Has been found by a court of competent jurisdiction to be an incapacitated person as defined in subsection 2 of North Dakota Century Code section 30.1-26-01;
   (3) Has been found by a court of competent jurisdiction to be legally incompetent; or
   (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; January 1, 2010; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02, 50-24.1-37; 42 CFR Part 435

SECTION 8. Section 75-02-02.1-18 is amended as follows:

75-02-02.1-18. Citizenship and alienage.

1. An applicant or recipient must be a United States citizen or an alien lawfully admitted for permanent residence. Acceptable documents to establish United States citizenship and naturalized citizen status are defined in 42 CFR 435.407.
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 United States 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. 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.
4. The following categories of aliens, while lawfully admitted for a temporary or specified period of time, are not eligible for medicaid, ~~including~~ except for emergency services, because of the temporary nature of their admission status:
    a. Foreign government representatives on official business and their families and servants;
    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.
5. Except for aliens identified in subsection 4, aliens who are not lawfully admitted for permanent residence in the United States are not eligible for medicaid, except for emergency services.
6. Aliens from the Federated States of Micronesia, the Marshall Islands, or Palau are lawfully admitted as permanent nonimmigrants and 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;
b. Refugees and asylees;
c. Aliens whose deportation was withheld under section 243(h) of the Immigration and Naturalization Act;
d. Cuban and Haitian entrants;
e. Aliens admitted as Amerasian immigrants;
f. Victims of a severe form of trafficking;
g. Iraqi and Afghan aliens and family members who are admitted under section 101(a)(27) of the Immigration and Naturalization Act;
h. For the period paroled, aliens paroled into the United States for at least one year under section 212(d)(5) of the Immigration and Nationality Act;
i. Aliens granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act in effect prior to April 1, 1980;
j. Aliens granted nonimmigrant status under section 101(a)(15)(T) of the Immigration and Nationality Act or who have a pending application that sets forth a prima facie case for eligibility for that nonimmigrant status;
k. Certain battered aliens and their children who have been approved or have a petition pending which sets forth a prima facie case as identified in 8 U.S.C. 1641(c), but only if the department determines there is a substantial connection between the battery and the need for the benefits to be provided; and
l. 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; June 1, 2004; January 1, 2010; January 1, 2011; January 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01, 50-24.1-37

SECTION 9. Section 75-02-02.1-19.1 is amended as follows:

75-02-02.1-19.1. Family coverage group.

1. ~~Caretakers, pregnant women, and children~~ Parents and caretaker relatives, and their spouses, who meet the medically needy technical requirements and the requirements of this section are eligible under the ~~family coverage~~ parent and caretaker relative group.
2. ~~Families~~ Parents and caretaker relatives eligible under the ~~family coverage~~ parent and caretaker relative group must ~~include~~ be living with 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~~ 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~~ parent and caretaker relative group, if the family's countable income is within the ~~family coverage~~ parent and caretaker relative group income levels and at least one of the ~~caretaker who is the primary wage earner~~ caretaker relatives 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, 75-02-02.1-37, 75-02-02.1-38, 75-02-02.1-38.2, 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 work training allowance of thirty dollars provided under section 75-02-02.1-39; 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 one hundred twenty dollars 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 disregard equal to thirty-three and one-third percent of the balance of earned income, after deducting the employment expense allowance, is disregarded.~~

~~c. 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.~~ This group shall follow a MAGI-based methodology.

History: Effective January 1, 2003; amended effective September 1, 2003; June 1, 2004; April 1, 2008; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: 42 USC 1396u-1, 50-24.1-37; 42 USC 1396a(e)

SECTION 10. Section 75-02-02.1-20 is amended as follows:

75-02-02.1-20. Transitional and extended medicaid benefits. Families that cease to be eligible under the ~~family coverage~~ parent and caretaker relative group and who meet the requirements of this section may continue to be eligible for medicaid benefits without making further application for medicaid.

1. ~~a.~~ 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 because of the relative's earned income or because a member of the unit has a reduction in the time-limited earned income disregard, may continue to be eligible for transitional medicaid benefits for up to twelve months if:

~~(1) In the first six-month period:~~

~~(a)~~a. The family has a child living in the home who meets the family coverage group age requirements; and

~~(b)~~b. The caretaker relative remains a resident of the state; or

~~(2) In the second six-month period:~~

~~(a) The family has a child living in the home who meets the family coverage group age requirements;~~

~~(b) The caretaker relative remains a resident of the state;~~

~~(c) The caretaker relative remains employed or shows good cause for not being employed if family coverage ineligibility resulted from the caretaker relative's earned income; and~~

~~(d) 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, 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.~~

~~c. A recipient who seeks eligibility under this subsection 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.~~

2. 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 wholly or partly as a result of the collection or increased collection of ~~child or~~ spousal support continue to be eligible for extended medicaid for four calendar months:
   a. The family has a child living in the home who meets the family coverage group age requirements; and
   b. The caretaker relative remains a resident of the state.
3. A family that seeks to demonstrate eligibility in at least three of the six months immediately preceding the month in which the family became ineligible must have been eligible in this state in the month immediately preceding the month in which the family became ineligible.
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; June 1, 2004; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01, 50-24.1-37

SECTION 11. Section 75-02-02.1-34 is amended as follows:

75-02-02.1-34. Income considerations.

1. All income that is actually available 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 shall be reasonably evaluated. 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.
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. Such responsibility is imposed as a condition of eligibility for medicaid. Except as otherwise provided in this section, the income of the spouse and parents is considered available to the applicant or recipient, even if that income is not actually contributed. Biological and adoptive parents, ~~but not~~ and stepparents, are treated as parents.
3. All spousal income is considered actually available unless:
   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; or
   c. The applicant or recipient is subject to marital separation, with or without court order, and there has been no collusion between the applicant or recipient and that person's spouse to render the applicant or family member eligible for medicaid.
4. All parental income is considered actually available to a child under age twenty-one unless the child is:
   a. Disabled and at least age eighteen;
   b. Living independently; ~~or~~
   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; or
   d. Filing an income tax return and the parents are not claiming the child as a tax dependent.
5. Income may be received weekly, biweekly, monthly, intermittently, or annually. However income is received, a monthly income amount must be computed.

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, 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~~ Except for individuals subject to a MAGI-based methodology, 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;
   c. ~~Veterans~~ Except for individuals subject to a MAGI-based methodology, 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~~ Except for individuals subject to a MAGI-based methodology, 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.
7. a. In determining ownership of income from a document, income must be considered available to each individual as provided in the document, or, in the absence of a specific provision in the document:
      (1) If payment of income is made solely to one individual, the income shall be considered available only to that individual; and
      (2) If payment of income is made to more than one individual, the income shall be considered available to each individual in proportion to the individual's interest.
   b. In the case of income available to a couple in which there is no document establishing ownership, one-half of the income shall be considered to be available to each spouse.
   c. Except in the case of income from a trust, the rules for determining ownership of income are superseded to the extent that the applicant or recipient can establish that the ownership interests are otherwise than as provided in those rules.

8. ~~Countable~~ For individuals not subject to a MAGI-based methodology, 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.
9. For an individual subject to a MAGI-based methodology, the individual's share of the net income plus any gross wages paid from the entity is countable income from the entity.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; June 1, 2004; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01, 50-24.1-37; 42 USC 1396a(e)

SECTION 12. Section 75-02-02.1-34.1 is created as follows:

75-02-01.1-34.1 MAGI-based methodology. Effective for the benefit month of January, 2014, the following MAGI-based methodology will be used in determining income eligibility for medicaid.

1. Income is based on household composition.

2. Monthly income is used prospectively for new applications; annualized income is used for ongoing cases.
3. Current, point in time income is used; however, reasonable expected changes in income must be included.
4. A tax dependent child's income does not count in a taxpayer parent's or caretaker relative's household if the child is not required to file a tax return. The child's needs are included in the taxpayer's household.
   a. If the taxpayer parent or taxpayer caretaker relative is in the child's medicaid household, the child's income does not count in the child's household, either.
   b. If the taxpayer parent or taxpayer caretaker relative is not in the child's medicaid household, the child's income counts in the child's household.
   c. If the child is not required to file a tax return, however, files a return to get a refund of taxes withheld, the child's income is not counted;
   d. If the child is required to file a tax return; the child's income is counted in all of the households in which the child is included.
5. If eligibility is determined by using an individual's federal tax return, modified adjusted gross income is as stated in the federal tax return:
   a. Plus:
      (1) Any foreign earned income excluded from taxes.
      (2) Tax-exempt interest.
      (3) Tax-exempt social security income.
   b. Less:
      (1) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses if included in taxable income.
      (2) Certain distributions, payments and student financial assistance for American Indians and Alaska Natives if included in taxable income.
6. When available, the department shall use the most current information to reflect the income elements identified in subsection 5, regardless of whether they were the amounts used for the tax return.
7. If eligibility is determined without using an individual's federal tax return, the department shall determine modified adjusted gross income using internal revenue service rules combined with medicaid and children's health insurance program rules as follows:
   a. Add:
      (1) Gross wages less pre-tax deductions,
      (2) Gross interest income,
      (3) Gross dividend income,
      (4) Taxable refunds of state or local income taxes (counted only in the month received),
      (5) Gross alimony received,
      (6) Net business income or loss from self-employment,
      (7) Capital gains or losses, if expected to recur,

(8) Taxable amount of individual retirement account distributions,
(9) Taxable amount of pensions and annuities,
(10) Net rents, royalties, partnerships, S corporation or trust income,
(11) Net farm income or loss,
(12) Gross unemployment compensation,
(13) Gross social security income,
(14) Gross foreign earned income, and
(15) Other income determined to be reportable by the internal revenue service.

b. Subtract from that sum:
(1) Educator expenses,
(2) Business expenses of reservist, performing artist, and fee-basis government official,
(3) Health savings account deduction,
(4) Moving expenses,
(5) Deductible portion of self-employment tax,
(6) Contributions to self-employed SEP, SIMPLE and qualified plans,
(7) Self-employed health insurance deduction,
(8) Penalty on early withdrawal of savings,
(9) Alimony paid,
(10) Contributions to an individual retirement account,
(11) Student loan interest deduction,
(12) Tuition and fees,
(13) Domestic production activities deduction,
(14) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses,
(15) Certain distributions, payments and student financial assistance for American Indians and Alaska Natives

8. The following income types are not reported on internal revenue service form 1040 and are not countable income under a MAGI-based methodology:
a. Child support income;
b. Veteran's benefits (aid and attendance, homebound benefits and reimbursements for unusual medical expenses;
c. Supplemental security income;
d. Temporary assistance for needy families benefits;
e. Proceeds from life insurance, accident insurance or health insurance;
f. Gifts and loans;
g. Inheritances; and
h. Workers' compensation payments.

9. Instead of itemized disregards and deductions, the department may apply a standard disregard equal to five percent of the federal poverty level as part of the MAGI-based methodology.

History: Effective January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-37; 42 USC 1396a(e)

SECTION 13. Section 75-02-02.1-37 is amended as follows:

75-02-02.1-37. Unearned income. Unearned income is income that is not earned income. Unearned income received in a fixed amount each month shall be applied in the month in which it is normally received. The following income rules apply to individuals not subject to a MAGI-based methodology:

1. Recurring unearned lump sum payments 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 or eligibility for the children's health insurance program as provided in chapter 75-02-02.2, 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 or for the children's health insurance program as provided in chapter 75-02-02.2 are considered income in the month received and are not prorated.
2. All nonrecurring unearned lump sum payments, except health or long-term care insurance payments, veterans administration aid and attendance, veterans administration reimbursements for unusual medical expenses, and veterans administration homebound benefits intended for medical expenses shall be considered as income in the month received and assets thereafter.
3. 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; June 1, 2004; August 1, 2005; January 1, 2011; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02, 50-24.1-37; 42 USC 1396a(e)

SECTION 14. Section 75-02-02.1-37.1 is created as follows:

75-02-02.1-37.1. Unearned income for individuals subject to a MAGI-based methodology. Unearned income is income that is not earned income. Unearned income received in a fixed amount each month shall be applied in the month in which it

is normally received. Effective January 1, 2014, individuals subject to a MAGI-based methodology will have income treated as follows:

1. Recurring unearned lump sum payments 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 or eligibility for the children's health insurance program as provided in chapter 75-02-02.2, 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 or for the children's health insurance program as provided in chapter 75-02-02.2 are considered income in the month received and are not prorated.
2. All nonrecurring unearned lump sum payments, except health or long-term care insurance payments, veterans administration aid and attendance, veterans administration reimbursements for unusual medical expenses, and veterans administration homebound benefits intended for medical expenses shall be considered as income in the month received and assets thereafter.
3. Net taxable Conservation Reserve Program (CRP) income is considered in income and prorated over the year.

History: Effective January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02, 50-24.1-37; 42 USC 1396a(e)

SECTION 15. Section 75-02-02.1-38 is amended as follows:

75-02-02.1-38. Earned income. Earned income is income that 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. 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. The following income rules apply to individuals not subject to a MAGI-based methodology:

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. If a self-employed 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 earnings from self-employment.
3. If a self-employed 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.

4. If a self-employed individual's business furnishes room and board, net income from self-employment is monthly gross receipts less one hundred dollars per room and board client.
5. If a self-employed individual is in a service business 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 earnings from self-employment.
6. If a self-employed individual receives income other than monthly, and the most recently available federal income tax return accurately 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 does not accurately predict income because the business has been recently established, because the business has been terminated or subject to a severe 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. A self-employed individual 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.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02, 50-24.1-37; 42 USC 1396a(e)

SECTION 16. Section 75-02-02.1-38.2 is amended as follows:

75-02-02.1-38.2. Disregarded income. This section applies to an individual residing in the individual's own home or in a specialized facility, workers with disabilities coverage, children with disabilities coverage, and to the medicare savings programs, but does not apply to an individual receiving nursing care services in a nursing facility, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, an intermediate care facility for individuals with intellectual disabilities, or receiving swing-bed care in a hospital. The following types of income shall be disregarded in determining medicaid eligibility for individuals not subject to a MAGI-based methodology:

1. Money payments made by the department in connection with foster care, subsidized guardianship, or the subsidized adoption program;
2. Occasional small gifts;
3. County general assistance that may be issued on an intermittent basis to cover emergency-type situations;

4. 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;
5. Income of an individual living in the parental home if the individual is not included in the medicaid unit;
6. Educational loans, scholarships, grants, awards, workers compensation, vocational rehabilitation payments, and work study received by a student, or any fellowship or gift, or portion of a gift, used to pay the cost of tuition and fees at any educational institution;
7. In-kind income except in-kind income received in lieu of wages;
8. 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;
9. 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;
10. Benefits received through the low income home energy assistance program;
11. Training funds received from vocational rehabilitation;
12. 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;
13. Income tax refunds and earned income credits;
14. 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;
15. 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 [25 U.S.C. 459e];
16. 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;
17. Payments from the family subsidy program;
18. 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;
19. 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.];

20. Payments made tax exempt as a result of section 21 of the Alaska Native Claims Settlement Act [Pub. L. 92-203];
21. 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.];
22. Agent orange payments;
23. A loan from any source that is subject to a written agreement requiring repayment by the recipient;
24. The medicare part B premium refunded by the social security administration;
25. Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime;
26. Temporary assistance for needy families benefit and support service payments;
27. Lump sum supplemental security income benefits in the month in which the benefit is received;
28. 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;
29. 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;
30. Refugee cash assistance or grant payments;
31. Payments from the child and adult food program for meals and snacks to licensed families who provide day care in their home;
32. 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;
33. All income, allowances, and bonuses received as a result of participation in the job corps program;
34. Payments received for the repair or replacement of lost, damaged, or stolen assets;
35. Homestead tax credit;
36. Training stipends provided to victims of domestic violence by private, charitable organizations for attending their educational programs;
37. 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;
38. Netherlands reparation payments based on Nazi, but not Japanese, persecution during World War II [Pub. L. 103-286; 42 U.S.C. 1437a, note];
39. Radiation Exposure Compensation Act [Pub. L. 101-426; 42 U.S.C. 2210, note];
40. Interest or dividend income from liquid assets;

41. Additional pay received by military personnel as a result of deployment to a combat zone; and
42. All wages paid by the census bureau for temporary employment related to census activities.

History: Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2010; January 1, 2011; April 1, 2012; July 1, 2012; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02, 50-24.1-37; 42 USC 1396a(e)

SECTION 17. Section 75-02-02.1-38.3 is created as follows:

75-02-02.1-38.3. Disregarded income for certain individuals subject to a MAGI-based methodology. This section applies to an individual residing in the individual's own home or in a specialized facility, workers with disabilities coverage, children with disabilities coverage, and to the medicare savings programs, but does not apply to an individual receiving nursing care services in a nursing facility, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, an intermediate care facility for individuals with intellectual disabilities, or receiving swing-bed care in a hospital. Effective January 1, 2014, the above-identified individuals subject to a MAGI-based methodology are allowed the following income disregards:

1. Non-taxable income other than:
   a. Non-taxable foreign earned income,
   b. Non-taxable interest, and
   c. The non-taxable portion of Social Security benefits.
2. Supplemental Security Income.
3. Veteran's administration benefits other than retirement pensions.
4. Child support income.
5. Temporary assistance to needy families benefits.
6. Workers' compensation benefits.
7. Proceeds from life insurance, accident insurance, or health insurance.
8. Federal tax credits and federal tax refunds.
9. Gifts and loans.
10. Inheritances.
11. Adjustments from gross income that are used in determining adjusted gross income for income tax purposes must be allowed.

History: Effective January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-37; 42 USC 1396a(e)

SECTION 18. Section 75-02-02.1-38.4 is created as follows:

75-02-02.1-38.4. Earned income for individuals subject to a MAGI-based methodology. Earned income is income that 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. 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. Effective January 1, 2014, individuals subject to a MAGI-based methodology will have income treated as follows:

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. Net earnings or losses from self-employment as considered for income tax purposes are counted for MAGI households.

History: Effective January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-37; 42 USC 1396a(e)

SECTION 19. Section 75-02-02.1-39 is amended as follows:

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, workers with disabilities coverage, children with disabilities coverage, and to the medicare savings programs, but does not apply to an individual receiving nursing care services in a nursing facility, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, an intermediate care facility for individuals with intellectual disabilities, or receiving swing-bed care in a hospital. No deduction not described in subsections 1 through 14 may be allowed in determining medicaid eligibility. For individuals not subject to a MAGI-based methodology, the following deductions apply:

1. Except in determining eligibility for the medicare savings programs, the cost of premiums for health insurance may be deducted from income in the month the premium is paid or prorated and deducted from income in the months for which the premium affords coverage. In determining eligibility for the workers with disabilities coverage, the workers with disabilities enrollment fee and premiums are not deducted. In determining eligibility for the children with disabilities coverage, the children with disabilities premiums are not deducted. For purposes of this 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:
   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.
2. Except in determining eligibility for the medicare savings programs, medical expenses for necessary medical or remedial care may be deducted only if 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;
b. Incurred by a member of a medicaid unit in the month for which eligibility is being determined, or was incurred in a prior month but was actually paid in the month for which eligibility is being determined and was not previously allowed as a deduction or offset of recipient liability, and was not previously applied to recipient liability;
c. Provided by a medical practitioner licensed to furnish the care;
d. Not subject to payment by any third party, including medicaid and medicare;
e. Not incurred for nursing facility services, swing-bed services, or home and community-based services during a period of ineligibility determined under section 75-02-02.1-33.1; and
f. Claimed.

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.
4. 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.
5. The cost of premiums for long-term care insurance carried by an individual or the individual's spouse may be deducted from income in the month the premium is paid or prorated and deducted from income the months for which the premium affords coverage. No premium deduction may be made in determining eligibility for the medicare savings programs.
6. Reasonable child care expenses, not otherwise reimbursed, may be deducted to the extent necessary to permit a caretaker or a spouse to work or participate in training. Reasonable child care expenses do not include payments to parents to care for their own children.
7. With respect to each individual in the medicaid unit who is employed or in training, but who is not aged, blind, or disabled, thirty dollars may be deducted as a work or training allowance, but only if the individual's income is counted in the eligibility determination.
8. 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.
9. Except in determining eligibility for the medicare savings programs, the cost of remedial care for an individual residing in a specialized facility, limited to the difference between the recipient's cost of care at the facility and the regular medically needy income level, may be deducted.
10. 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:

a. When more than one aged, blind, or disabled person lives together, no more than a total of twenty dollars may be deducted;
b. When both earned and unearned income is available, this deduction must be made from unearned income; and
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 b of subsection 13.

11. Reasonable adult dependent care 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.
13. The deductions described in this subsection may be allowed only on earned income.
    a. For all individuals except aged, blind, or disabled applicants or recipients, deduct:
        (1) Mandatory payroll deductions and union dues withheld, or ninety dollars, whichever is greater;
        (2) Mandatory retirement plan deductions;
        (3) Union dues actually paid; and
        (4) Expenses of a nondisabled blind person, reasonably attributable to earning income.
    b. For all aged, blind, or disabled applicants or recipients, deduct sixty-five dollars plus one-half of the remaining monthly gross earned income, 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.
14. A deduction may be made for the cost of services of an applicant's or recipient's guardian or conservator, up to a maximum 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; June 1, 2004; April 1, 2008; January 1, 2010; January 1, 2011; April 1, 2012; July 1, 2012; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02, 50-24.1-37; 42 USC 1396a(e)

SECTION 20. Section 75-02-02.1-39.1 is created as follows:

75-02-02.1-39.1. Income deductions for individuals subject to a MAGI-based methodology. This section applies to an individual residing in the individual's own home or in a specialized facility, workers with disabilities coverage, children with disabilities coverage, and to the medicare savings programs. This section does not

apply to an individual receiving nursing care services in a nursing facility, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, an intermediate care facility for individuals with intellectual disabilities, or receiving swing-bed care in a hospital. Effective January 1, 2014, individuals subject to a MAGI-based methodology are allowed a standard deduction of five percent of the one hundred percent of poverty level applicable to the size of the individual's medicaid unit.

History: Effective January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-37; 42 USC 1396a(e)

SECTION 21. Section 75-02-02.1-40 is amended as follows:

75-02-02.1-40. Income levels.

1. Levels of income for maintenance 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) Family coverage income levels established in the medicaid state plan are applied to the family coverage group. The family size is increased for each unborn child when determining the appropriate family size.
      (2) 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) 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.
      (2) The nursing care income levels established in the medicaid state plan are applied to residents receiving care in a nursing facility, an intermediate care facility for individuals with intellectual disabilities, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, or receiving swing-bed care in a hospital.
      (3) The community spouse income level for a medicaid eligible community spouse is subject to subdivision a, paragraph 1 of subdivision b, or subdivision c. The level for an ineligible community spouse is the 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 [42

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) The income level for each ineligible family member 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 subsection 1 of section 75-02-02.1-24.

c. Poverty income level.

(1) The income level for pregnant women and children under age six is equal to one hundred and ~~thirty-three~~ forty-seven 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) Qualified medicare beneficiaries. The income level for qualified medicare beneficiaries is equal to one hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.

(3) The income level for children aged six to nineteen and adults aged nineteen to sixty-five is equal to one hundred thirty-three 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.

(4) The income level for transitional medicaid benefits is equal to one hundred and eighty-five 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.

(5) The income level for qualified working and disabled individuals is equal to two hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.

(6) The income level for specified low-income medicare beneficiaries is equal to one hundred twenty percent, of the poverty level applicable to 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.

(8) The income level for workers with disabilities is two hundred twenty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

(9) The income level for children with disabilities is two hundred 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 away at school is not treated as living independently, but shall be allowed the 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 enters a specialized facility or leaves a specialized facility to return home, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate income level. An individual residing in a specialized facility shall be allowed the appropriate medically needy, workers with disabilities, or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.

~~d.~~ b. 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, workers with disabilities, or children with disabilities 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. In determining eligibility for workers with disabilities or children with disabilities coverage, individuals in a nursing facility, or in receipt of home and community-based services, will be allowed the appropriate workers with disabilities or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.

~~e.~~ c. 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.~~ d. 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.

~~g.~~ e. An individual with no spouse, disabled adult child, or child under age twenty-one at home who enters a nursing facility may receive the medically needy income level for one if a physician certifies that the individual is likely to return to 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; June 1, 2004; April 1, 2008; January 1, 2010; January 1, 2011; July 1, 2012; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02, 50-24.1-37

SECTION 22. Section 75-02-02.1-41.1 is amended as follows:

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. The following deductions apply to individuals not subject to a MAGI-based methodology.
   a. 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.~~(1) The expense was incurred in any month during which the 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.~~(2) The expense was not previously applied in determining eligibility for, or the amount of, medicaid benefits for any medicaid recipient;

~~c.~~(3) The medical or remedial care was provided by a medical practitioner licensed to furnish the care;

~~d.~~(4) The expense is not subject to payment by any third party, including medicaid and medicare;

~~e.~~(5) The expense was not incurred for swing bed services provided in a hospital, nursing facility services, or home and community-based services during a period of ineligibility determined under section 75-02-02.1-33.1;

~~f.~~(6) 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.~~(7) The medicaid unit is still obligated to pay the provider of the medical or remedial service.

~~2.~~b. 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 expenses of necessary medical care incurred in the month for which eligibility is being determined exceed remaining recipient liability in that month.

2. Effective January 1, 2014, individuals subject to a MAGI-based methodology are allowed a standard deduction of five percent of the one hundred percent of poverty level applicable to the size of the household.

History: Effective December 1, 1991; amended effective January 1, 2003; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01, 50-24.1-37; 42 USC 1396a(e)

SECTION 23. Section 75-02-02.1-41.2 is amended as follows:

75-02-02.1-41.2. Budgeting.

1. **Definitions.** For purposes of this section:

a. "Base month" means the calendar month prior to the processing month.
b. "Benefit month" means the calendar month for which eligibility and recipient liability is being computed.
c. "Best estimate" means an income, expense, or circumstance prediction based on past amounts of income and expenses and known factual information concerning future circumstances which affect eligibility, expenses to be incurred; or income to be received in the benefit month. Factual information concerning future circumstances must be based on information by which the applicant or recipient demonstrates known changes or highly probable changes to the income, expenses, or circumstances which offset eligibility, from the base month to the benefit month.
d. "Processing month" means the month between the base month and the benefit month.
e. "Prospective budgeting" means computation of a household's eligibility and recipient liability based on the best estimate of income, expenses, and circumstances for a benefit month.

2. **Computing recipient liability for previous month.** Compute the amount of recipient liability by use of actual verified information, rather than best estimate, in each of the previous months for which eligibility is sought.
3. **Computing recipient liability for the current month and next month at time of approval of the application.** Compute the amount of the recipient liability prospectively for the current month and the next month. The income received or best estimate of income to be received during the current month must be used to compute the recipient liability for the current month. The best estimates of income to be received during the next month must be used to compute the recipient liability for the next month.
4. **Computing recipient liability for ongoing cases.**
   a. For cases with fluctuating income, compute the recipient liability using verified income, expenses, and circumstances which existed during the base month, unless factual information concerning future circumstances is available. Recipients must report their income, expenses, and other circumstances on a monthly basis to determine continued eligibility.
   b. For cases with stable income, compute the recipient liability using the best estimate of income, expenses, and circumstances. Recipients with stable income must report changes in income, expenses, and other circumstances within ten days of the day the recipients became aware of the change. A determination of continued eligibility, after a change is reported and demonstrated, is based on a revised best estimate which takes the changes into consideration.
5. **Budgeting procedures used when adding individuals to an eligible unit.** Individuals may be added to an eligible unit up to one year prior to

the current month, provided the individual meets all eligibility criteria for medicaid, the eligible unit was eligible in all of the months in which eligibility for the individual is established, and the individual was in the unit in the months with respect to which eligibility for that individual is sought unless the individual would have been eligible under the adult group. Recipient liability will be based on the unit's actual income and circumstances when adding each individual for retroactive periods. Recipient liability must be based on the unit's income and circumstances from the base month, plus the best estimate of each individual's income and circumstances when adding each individual to the current or next month, unless the individual would have been eligible under the adult group.

6. **Budgeting procedures when deleting individuals from a case.** When a member of an existing unit is expected to leave the unit during the benefit month, that person may remain as a member of the unit until the end of the benefit month.

History: Effective December 1, 1991; amended effective May 1, 2006; January 1, 2014.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02, 50-24.1-37

CHAPTER 75-02-02.2
CHILDREN'S HEALTH INSURANCE PROGRAM

SECTION 24. Section 75-02-02.2-01 is amended as follows:

75-02-02.2-01. Definitions. For purposes of this chapter:

1. "American Indian or Alaska Native" means a member of a federally recognized Indian tribe, band, or group or a descendant in the first or second degree, of any such member; an Eskimo or Aleut or other Alaska native enrolled by the secretary of the interior pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]; a person who is considered by the secretary of the interior to be an Indian for any purpose; or a person who is determined to be an Indian under regulations promulgated by the secretary.
2. "Applicant" means an individual seeking benefits under the healthy steps program on behalf of a child.
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. "Children's health insurance program" means the North Dakota children's health insurance program, also known as the healthy steps program,

which is a program implemented pursuant to North Dakota Century Code chapter 50-29 and 42 U.S.C. 1397aa et seq. to furnish health assistance to low-income children funded through title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.].

5. "County agency" means the county social service board.
6. "Creditable health insurance coverage" means a health benefit plan which includes coverage for hospital or medical or major medical. The following are not considered creditable health insurance coverage:
   a. Coverage only for accident or disability income insurance;
   b. Coverage issued as a supplement to automobile liability insurance;
   c. Liability insurance, including general liability insurance and automobile liability insurance;
   d. Workforce safety insurance or similar insurance;
   e. Automobile medical payment insurance;
   f. Credit-only insurance;
   g. Coverage for onsite medical clinics;
   h. Other similar insurance coverage specified in federal regulations under which benefits for medical care are secondary or incidental to other insurance;
   i. Coverage for dental or vision;
   j. Coverage for long-term care, nursing home care, home health care, or community-based care;
   k. Coverage only for specified disease or illness;
   l. Hospital indemnity or other fixed indemnity insurance; and
   m. Coverage provided through Indian health services.
7. "Department" means the North Dakota department of human services.
8. "Disabled" has the same meaning as the term has when used by the social security administration in determining disability for title II or XVI of the Social Security Act [42 U.S.C. 301 et seq.].
9. "Earned income" means income currently received as wages, salaries, commissions, or profits from activities in which an individual or household 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 household, for income to be considered "earned".
10. "Employer" means an individual or entity who employs the services of an applicant or a member of the applicant's household and who pays the individual wages, salaries, or benefits.
11. "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.
12. "Household member" means any individual ~~who shares the child's home a substantial amount of time. Children who are twenty-one years of age or older are not counted as household members. An individual who is temporarily absent from the household by reason of employment, school, training, or medical treatment, or who is expected to return to the household within thirty days of the date of the healthy steps program~~

~~application, shall be considered a household member~~ whose needs or income or both must be included in determining the child's eligibility for the children's health insurance program using MAGI-based methodologies. This is based on tax filing status of the child and child's relationship with the person with whom the child is living.

13. "Institutionalized individual" means an individual who is an inpatient in a nursing facility, an intermediate care facility for individuals with intellectual disabilities, the state hospital, a psychiatric residential treatment facility, an institution for mental disease, or an individual who receives swing-bed care in a hospital.
14. "Insurance carrier" means the insurance company that underwrites the insurance coverage for the children's health insurance program.
15. "Living independently" means an individual under the age of twenty-one who:
    a. Has served a tour of active duty with the armed services of the United States and lives separately and apart from either parent;
    b. Has married even though that marriage may have ended through divorce or separation. A marriage ended by legal annulment is treated as if the marriage never occurred;
    c. Has lived separately and apart from both parents for at least three consecutive full calendar months after the date the individual left the 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. Providing health insurance coverage or paying court-ordered child support payments for a child is not considered to be providing support or assistance. For purposes of this subdivision, periods when an individual is attending an educational or training facility, is receiving care in a specialized facility, or is an institutionalized person are deemed to be periods when the individual was living with a parent unless the individual previously established that the individual was living independently;
    d. Has left foster care and established a living arrangement separate and apart from either parent and received no support or assistance from either parent. Providing health insurance coverage or paying court-ordered child support payments for a child is not considered to be providing support or assistance; or
    e. Has lived separately and apart from both parents due to incest, continues to live separately and apart from both parents, and receives no support or assistance from either parent while living separately and apart. Providing health insurance coverage for a child is not considered to be providing support or assistance.
16. "Long-term care" means the services received by an institutionalized individual when the individual is screened or certified as requiring the services provided in a long-term care facility.

17. "MAGI-Based Methodology" means the method of determining eligibility for Medicaid and Children's Health Insurance Program that generally follows Modified Adjusted Gross Income rules.

18. "Medicaid" means a program implemented pursuant to North Dakota Century Code chapter 50-24.1 and 42 U.S.C. 1396 et seq. to furnish medical assistance, as defined in 42 U.S.C. 1396d(a), to individuals determined eligible for medically necessary covered medical and remedial services.

~~18.~~19. "Poverty line" means the official income poverty line as defined by the United States office of management and budget and revised annually in accordance with 42 U.S.C. 9902(2).

~~19.~~20. "Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

~~20.~~21. "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.

~~21.~~22. "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. A full-time student is a person who attends school on a schedule equal to a full curriculum.

~~22.~~23. "Supplemental security income" or "SSI" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

~~23.~~24. "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.].

~~24.~~25. "The plan" means the North Dakota children's health insurance program.

~~25.~~26. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].

~~26.~~27. "Title XVI" means title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

~~27.~~28. "Title XXI" means title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.].

History: Effective October 1, 1999; amended effective August 1, 2005; January 1, 2011; July 1, 2012; January 1, 2014.
General Authority: NDCC 50-29
Law Implemented: NDCC 50-29-01; 42 USC 1397aa et seq.; 42 USC 1396a(e)

SECTION 25. Section 75-02-02.2-06.1 is amended as follows:

75-02-02.2-06.1. Children's health insurance program unit. This section applies to applications and reviews received and processed for those requesting benefits prior to January 1, 2014. A plan unit may consist of one individual, a married couple, or a family with children under twenty-one years of age, or if disabled, under age eighteen, whose income is 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. A parent or other caretaker of children under twenty-one years of age may select the children who will be included in the plan unit. Anyone who is included in the unit for any month is subject to all plan 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 August 1, 2005; amended effective January 1, 2014.
General Authority: NDCC 50-29
Law Implemented: NDCC 50-24.1-37, 50-29; 42 USC 1397aa et seq.

SECTION 26. Section 75-02-02.2-06.2 is created as follows:

75-02-02.2-06.2 Children's health insurance program MAGI-based methodology household unit. The department shall use a MAGI-based methodology for determining eligibility for benefits under the children's health insurance program, including determination of a children's health insurance program household unit, for all applications filed and any eligibility reviews conducted on or after January 1, 2014. A children's health insurance program household unit is determined as follows:

1. If the child is a tax filer, and is not also claimed as a dependent by someone else, the child's medicaid unit consists of the child, the child's spouse, if living with the child, and anyone the child or the child's spouse claims as a dependent, plus a dependent's spouse that lives with them, and any unborn children of a pregnant woman who is included in the unit.
2. If the child is claimed as a tax dependent by another, even if the child files his or her own tax return, and does not meet any of the following exceptions, that child's medicaid unit is the same as the household that claims the child as a dependent, plus the child's spouse that lives with them and any unborn children of a pregnant woman who is included in the unit:
   a. The child is claimed as a dependent by someone other than a spouse, or a natural, adopted, or step parent;
   b. The child is under nineteen years old and is living with both parents but the parents are not filing a joint return; or
   c. The child is under nineteen years old and will be claimed as a dependent by a non-custodial parent.
3. If the child is not a tax filer, is not expected to be claimed as a dependent by another, or meets one of the conditions set forth in subparagraphs (a), (b), or (c) of paragraph (2) , the child is subject to the non-filer rules. A

non-filer child's children's health insurance program household unit is the child, and, if living with the child, the child's spouse; natural, adopted. or step-children under nineteen years old; natural, adopted, or step-parents; or natural, adopted, or step-siblings under 19, plus any of their spouses that live with them, and any unborn children of a pregnant woman who is in the household.

4. Individuals may not be opted out of the household, unless they choose to be covered under medicaid through the medically needy coverage instead of the children's health insurance program. They are still considered part of the child's children's health insurance program household if they meet the criteria in subsections 1 through 3.

History: Effective January 1, 2014.
General Authority: NDCC 50-29-02
Law Implemented: NDCC 50-29; 42 USC 1397aa et seq.; 42 USC 1396a(e)

SECTION 27. Subsection 3 of section 75-02-02.2-10 is amended as follows:

75-02-02.2-10. Eligibility criteria.

3. A child is not eligible for plan coverage if a family member voluntarily terminated either employer-sponsored or individual health insurance coverage of the child within ~~six months~~ ninety days of the date of application unless:
   a. The health insurance coverage was terminated due to the involuntary loss of employment;
   b. The health insurance coverage was terminated through no fault of the family member who had secured the coverage; ~~or~~
   c. The health insurance coverage was terminated by a household member who is actively engaged in farming in a county which is declared a federal disaster area.~~;~~
   d. The child's parent is determined eligible for advance payment of the premium tax credit for enrollment in a qualified health plan because the employer-sponsored insurance in which the family was enrolled is determined unaffordable;
   e. The premium paid by the family for coverage of the child under the group health plan exceeded five percent of gross household income;
   f. The cost of family coverage that includes the child exceeds nine and one half percent of the gross household income;
   g. The employer stopped offering coverage, including coverage of dependents, under an employer-sponsored health insurance plan;
   h. The child has special health care needs; or
   i. The health insurance coverage was terminated due to the death or divorce of a parent or parents.

History: Effective October 1, 1999; amended effective April 1, 2002; August 1, 2005; January 1, 2010; January 1, 2014.

General Authority: NDCC 50-29
Law Implemented: NDCC 50-24.1-37, 50-29; 42 USC 1397aa et seq.

SECTION 28. Section 75-02-02.2-12 is amended as follows:

75-02-02.2-12. Income considerations. This section applies to applications and reviews received and processed for those requesting benefits prior to January 1, 2014.

1. All income that is actually available must 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; 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.
2. It is presumed that all parental income is actually available to a child under twenty-one years of age. This presumption may be rebutted by a showing that the child is:
   a. Living independently; or
   b. 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 plan coverage.
3. As a condition of eligibility, an applicant, recipient, and financially responsible relative 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 veterans' compensation and pensions; old-age, survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.
   a. Good cause under this section exists if receipt of the annuity, pension, retirement, or disability benefit would result in a loss of health insurance coverage. Good cause must be documented in the case file.
   b. Application for needs-based payments such as social security supplemental security income benefits or temporary aid to needy families benefits cannot be imposed as a condition of eligibility.
4. The financial responsibility of any individual for any other member of the plan unit will be limited to the responsibility of spouse for spouse and parents for children under age twenty-one or under age eighteen if the child is disabled. Such responsibility is imposed as a condition of plan eligibility. Except as otherwise provided in this section, the income of the spouse and parents is considered available even if that income is not actually contributed. Natural and adoptive parents, but not stepparents, are treated as parents.
5. Income may be received weekly, biweekly, monthly, intermittently, or annually. A monthly income amount must be computed by the department or county agency regardless of how often income is received.

6. The following types of income must be disregarded in determining eligibility for plan coverage:
   a. Supplemental security income benefits provided by the social security administration.
   b. Income disregards in section 75-02-02.1-38.2.
7. a. In determining ownership of income from a document, income must be considered available to each individual as provided in the document or in the absence of a specific provision in the document:
      (1) Income shall be considered available only to the individual if payment of the income was made solely to that individual; and
      (2) Income shall be considered available to each individual in proportion to the individual's interest if payment of income is made to more than one individual.
   b. One-half of income shall be considered available to each spouse in the case of income available to a married couple in which there is no document establishing ownership otherwise.
   c. Except in the case of income from a trust, the rules for determining ownership of income are superseded to the extent that the applicant or recipient can establish that the ownership interests are otherwise than as provided in subsection 6.
8. To determine the appropriate income level for a plan unit:
   a. The size of the household is increased by one for each unborn child of a household member;
   b. A child who is away at school is not treated as living independently, but is allowed a separate income level for one in addition to the income level applicable for the family unit remaining at home;
   c. 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. This does not apply to situations in which an individual simply decides to live separately;
   d. An individual in a specialized facility is allowed a separate income level for one during all full calendar months in which the individual resides in the facility;
   e. An individual in a nursing facility is allowed a separate income level for one; and
   f. A recipient of home and community-based services is allowed a separate income level for one.
9. For a child to be eligible for plan coverage, the income remaining after allowing the appropriate disregards and deductions must be equal to or below the income level set by the department in accordance with state law and federal authorization, and must be based on the size of the household. If federal children's health insurance program funding

decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding.

History: Effective October 1, 1999; amended effective April 1, 2002; August 1, 2005; April 1, 2008; October 1, 2008; January 1, 2014.
General Authority: NDCC 50-29
Law Implemented: NDCC 50-24.1-37, 50-29-02, 50-29-04; 42 USC 1397aa et seq.

SECTION 29. Section 75-02-02.2-12.1 is created as follows:

75-02-02.2-12.1 Income considerations under a MAGI-based methodology. Effective for the benefit month of January, 2014, the department shall use the following MAGI-based methodology to determine income eligibility for the children's health insurance program.

1. All taxable income that is actually available must 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; 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.
2. It is presumed that all taxable parental income is actually available to a child when the child lives with the parents and the child is claimed as a dependent on the parent's tax return. This presumption may be rebutted by a showing that the child is:
   a. Living independently;
   b. 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 plan coverage.;
   c. Not living with the parents; or
   d. Living with the parents and files his or her own tax return, and is not claimed as a tax dependent by either parent.
3. As a condition of eligibility, an applicant, recipient, and financially responsible relative 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 veterans' compensation and pensions; old-age, survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.
   a. Good cause under this section exists if receipt of the annuity, pension, retirement, or disability benefit would result in a loss of health insurance coverage. Good cause must be documented in the case file.
   b. Application for needs-based payments such as social security supplemental security income benefits or temporary assistance to needy families benefits cannot be imposed as a condition of eligibility.

4. The financial responsibility of any individual for any other member of the plan unit will be limited to the responsibility of spouse for spouse, taxfilers for those they claim as tax dependents, and for non-taxfilers, their spouses, and, when living with them, their parents; siblings under age 19, and children under age 19, including half-siblings, step-parents, step-siblings, step-children, and adopted siblings, and children. This financial responsibility is imposed as a condition of plan eligibility. Except as otherwise provided in this section, the income of the spouse and parents is considered available even if that income is not actually contributed. Natural and adoptive parents and stepparents, are treated as parents.
5. Income may be received weekly, biweekly, monthly, intermittently, or annually. The department or county agency shall convert income payments identified in this subsection into a monthly income amount regardless of how often the income is received.
6. The following types of income must be disregarded in determining eligibility for plan coverage:
   a. Supplemental security income benefits provided by the social security administration.
   b. Veteran's benefits other than certain pensions.
   c. Child support income.
7. a. In determining ownership of income from a document, income must be considered available to each individual as provided in the document or in the absence of a specific provision in the document:
      (1) Income shall be considered available only to the individual if payment of the income was made solely to that individual; and
      (2) Income shall be considered available to each individual in proportion to the individual's interest if payment of income is made to more than one individual.
   b. One-half of income shall be considered available to each spouse in the case of income available to a married couple in which there is no document establishing ownership otherwise.
   c. The department may consider evidence provided by an applicant or a recipient that refutes ownership of income set forth in subdivision a in determining an applicant's or a recipient's ownership of income.
8. To determine the appropriate income level for a plan unit:
   a. The size of the household is increased by one for each unborn child of a pregnant woman;
   b. A child who is away at school is not treated as living independently, but is included in the children's health insurance program household as part of the family unit remaining at home depending on household composition rules at 75-02-02.2-06.2;
   c. 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 included in the children's health insurance program household as part of the family unit remaining at home depending on household composition rules at 75-02-02.2-06.2. This does not apply to situations in which an individual simply decides to live separately;

d. An individual in a specialized facility is allowed a separate income level for a household of one during all full calendar months in which the individual resides in the facility;

e. An individual in a nursing facility is allowed a separate income level for a household of one; and

f. A recipient of home and community-based services is allowed a separate income level for a household of one.

9. For a child to be eligible for plan coverage, the income remaining after allowing the appropriate disregards and deductions must be equal to or below the income level set by the department in accordance with state law and federal authorization, and must be based on the size of the household. If federal children's health insurance program funding decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding.

History: Effective January 1, 2014.
General Authority: NDCC 50-29-02
Law Implemented: NDCC 50-29; 42 USC 1397aa et seq.; 42 USC 1396a(e)

SECTION 30. Section 75-02-02.2-12.2 is created as follows:

75-02-02.2-12.2 MAGI-based methodology. Effective for the benefit month of January, 2014, the following MAGI-based methodology will be used in determining income eligibility for the children's health insurance program.

1. Income is based on household composition.
2. Monthly income is used prospectively for new applications; annualized income is used for ongoing cases.
3. Current, point in time income is used; however, reasonable expected changes in income must be included.
4. A tax dependent child's income does not count in a taxpayer parent's or caretaker relative's household if the child is not required to file a tax return. The child's needs are included in the taxpayer's household.
   a. If the taxpayer parent or taxpayer caretaker relative is in the child's medicaid household, the child's income does not count in the child's household, either.
   b. If the taxpayer parent or taxpayer caretaker relative is not in the child's medicaid household, the child's income counts in the child's household.
   c. If the child is not required to file a tax return, however, files a return to get a refund of taxes withheld, the child's income is not counted;
   d. If the child is required to file a tax return; the child's income is counted in all of the households in which the child is included.

5. If eligibility is determined by using an individual's federal tax return, modified adjusted gross income is as stated in the federal tax return:
   a. Plus:
      (1) Any foreign earned income excluded from taxes.
      (2) Tax-exempt interest.
      (3) Tax-exempt social security income.
   b. Less:
      (1) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses if included in taxable income.
      (2) Certain distributions, payments and student financial assistance for American Indians and Alaska Natives if included in taxable income.
6. When available, the department shall use the most current information to reflect the income elements identified in subsection 5, regardless of whether they were the amounts used for the tax return.
7. If eligibility is determined without using an individual's federal tax return, the department shall determine modified adjusted gross income using internal revenue service rules combined with medicaid and children's health insurance program rules as follows:
   a. Add:
      (1) Gross wages less pre-tax deductions,
      (2) Gross interest income,
      (3) Gross dividend income,
      (4) Taxable refunds of state or local income taxes (counted only in the month received),
      (5) Gross alimony received,
      (6) Net business income or loss from self-employment,
      (7) Capital gains or losses, if expected to recur,
      (8) Taxable amount of individual retirement account distributions,
      (9) Taxable amount of pensions and annuities,
      (10) Net rents, royalties, partnerships, S corporation or trust income,
      (11) Net farm income or loss,
      (12) Gross unemployment compensation,
      (13) Gross social security income,
      (14) Gross foreign earned income, and
      (15) Other income determined to be reportable by the internal revenue service.
   b. Subtract from that sum:
      (1) Educator expenses,
      (2) Business expenses of reservist, performing artist, and fee-basis government official,
      (3) Health savings account deduction,
      (4) Moving expenses,

(5) Deductible portion of self-employment tax,
(6) Contributions to self-employed SEP, SIMPLE and qualified plans,
(7) Self-employed health insurance deduction,
(8) Penalty on early withdrawal of savings,
(9) Alimony paid,
(10) Contributions to an individual retirement account,
(11) Student loan interest deduction,
(12) Tuition and fees,
(13) Domestic production activities deduction,
(14) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses,
(15) Certain distributions, payments and student financial assistance for American Indians and Alaska Natives

8. The following income types are not reported on internal revenue service form 1040 and are not countable income under a MAGI-based methodology:
   a. Child support income;
   b. Veteran's benefits (aid and attendance, homebound benefits and reimbursements for unusual medical expenses;
   c. Supplemental security income;
   d. Temporary assistance for needy families benefits;
   e. Proceeds from life insurance, accident insurance or health insurance;
   f. Gifts and loans;
   g. Inheritances; and
   h. Workers' compensation payments.
9. Instead of itemized disregards and deductions, the department may apply a standard disregard equal to five percent of the federal poverty level as part of the MAGI-based methodology.

History: Effective January 1, 2014.
General Authority: NDCC 50-29-02
Law Implemented: NDCC 50-29; 42 USC 1397aa et seq.; 42 USC 1396a(e)

SECTION 31. Subsection 3 of section 75-02-02.2-13 is amended as follows:

75-02-02.2-13. Determining household income.

3. Self-employment income must be calculated as follows:
   a. ~~Self-employment income must be calculated based on the previous year of self-employment taken from the federal income tax return. If the previous year's tax return has not been filed, the year prior to that year's tax return must be used. If the plan unit fails to qualify for plan eligibility, the self-employment income must be calculated based on the average of the previous three years of self-employment from that business. If the previous year's tax return has not been filed or the business has been in operation for less~~

~~than three consecutive years, use the income tax returns from the previous three years that have been filed to calculate the average yearly income.~~

~~b.~~ Monthly self-employment income is one-twelfth of the business income or loss calculated from an individual's income tax form 1040 and capital gains or losses related to self-employment business, less one-twelfth of the adjusted gross income deduction from page one of the individual's income tax form 1040. If a unit has more than one self-employment business, only one adjusted gross income deduction is allowed.

~~c.~~ b. For a business that has been operating for less than a full tax year, monthly self-employment income is the business income or loss from the individual's income tax form 1040 and capital gains and losses related to the self-employment business, divided by the number of months the business has been in operation and less one-twelfth of the adjusted gross income deductions from page one of the individual's income tax form 1040. If a plan unit has more than one self-employment business, only one adjusted gross income deduction is allowed.

~~d.~~ c. For a business that is not included on a tax return or if the most recently available federal income tax return does not accurately predict income because the business has been recently established, has been terminated, has been subjected to a severe change such as an uninsured loss, or a decrease or increase in the size of the operation, income statements, business records and ledgers reflecting income and expenses, or any other reliable information may be used to compute self-employment income.

History: Effective October 1, 1999; amended effective April 1, 2002; August 1, 2005; April 1, 2008; January 1, 2014.
General Authority: NDCC 50-29
Law Implemented: NDCC 50-24.1-37, 50-29-02; 42 USC 1397aa et seq.

SECTION 32. Section 75-02-02.2-13.1 is amended as follows:

75-02-02.2-13.1. Income deductions. This section applies to applications and reviews received and processed for those requesting benefits prior to January 1, 2014. The following deductions must be subtracted from monthly income to determine adjusted gross income:

1. For household members with countable earned income:
   a. Actual mandatory payroll deductions, including federal, state, or social security taxes or ninety dollars per month, whichever is greater;
   b. Mandatory retirement plan deductions;
   c. Union dues actually paid; and
   d. Expenses of a nondisabled blind person, reasonably attributable to earning income;

2. Reasonable child care expenses, not otherwise reimbursed by third parties if necessary to engage in employment or training. Reasonable child care expenses do not include payments to parents to care for their own children;
3. Except for a support payment withheld from an extra check that is disregarded, nonvoluntary child and spousal support payments if actually paid by a parent on behalf of an individual who is not a member of the household;
4. With respect to each individual in the unit who is employed or in training, thirty dollars as a work or training allowance, but only if the individual's income is counted in the eligibility determination;
5. The cost of premiums for health insurance may be deducted from income in the month the premium is paid or may be prorated and deducted from income in the months for which the premium affords coverage. This deduction applies primarily for premiums paid for health insurance coverage of members in the unit who are not eligible for this plan coverage. For eligible members, this deduction may be allowed if the health insurance coverage is not creditable coverage for hospital, medical, or major medical coverage; and
6. The cost of medical expenses for necessary medical or remedial care for members of the unit who are not eligible for this plan coverage.

History: Effective August 1, 2005; amended effective April 1, 2008; April 1, 2012; January 1, 2104.
General Authority: NDCC 50-29
Law Implemented: NDCC 50-24.1-37, 50-29-02; 42 USC 1397aa et seq.

SECTION 33. Section 75-02-02.2-13.2 is amended as follows:

75-02-02.2-13.2. Budgeting.

1. For purposes of this section:
   a. "Base month" means the calendar month prior to the processing month.
   b. "Benefit month" means the calendar month for which eligibility is being computed.
   c. "Best estimate" means an income, expense, or circumstance prediction based on past amounts of income and expenses and known factual information concerning future circumstances which affect eligibility; expenses to be incurred; or income to be received in the benefit month. Factual information concerning future circumstances must be based on information by which the applicant or recipient demonstrates known changes or highly probable changes to the income, expense, or circumstances which offset eligibility, from the base month to the benefit month.
   d. "Processing month" means the month between the base month and the benefit month.

e. "Prospective budgeting" means computation of a household's eligibility based on the best estimate of income, expenses, and circumstances for a benefit month.

2. For applications and redeterminations, the department and county agency must use prospective budgeting to determine financial eligibility for the benefit month.
3. A child who is eligible for the benefit month remains eligible for the rest of the period and no further monthly budget will be calculated until the next redetermination of eligibility is due.
4. The same budgeting applies regardless of whether an individual lives in the individual's own home, a specialized facility, or a nursing facility.
5. ~~Excess income of a spouse or parent may be deemed to a spouse or child who is in the plan unit but who has a separate income level to increase that spouse's or child's income to the children's health insurance program income level. Excess income is the amount of net income remaining after allowing the appropriate disregards, deductions, and income level.~~

History: Effective August 1, 2005; amended effective January 1, 2014.
General Authority: NDCC 50-29
Law Implemented: NDCC 50-24.1-37, 50-29-02; 42 USC 1397aa et seq.