CHAPTER 75-02-02.1
ELIGIBILITY FOR MEDICAID

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

75-02-02.1-02. Application and redetermination.

1. Application.

a. All individuals wishing to make application for Medicaid must have the opportunity to do so, without delay.

b. An application is a written request made by an individual desiring assistance under the Medicaid program, or by an individual seeking such assistance on behalf of another individual, to a county agency, the department, a disproportionate share hospital, as defined in section 1923(a)(1)(A) of the Act [42 U.S.C. 1396r-4(a)(1)(A)], or a federally qualified health center, as described in section 1905(l)(2)(B) of the Act [42 U.S.C. 1396d(l)(2)(B)].

c. A prescribed application form must be signed by the applicant or by someone acting responsibly for an incapacitated applicant.

d. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and recipients must be furnished to all who require it.

e. A relative or other interested party may file an application ~~in~~on behalf of a deceased individual to cover medical costs incurred prior to the deceased individual's death.

f. The date of application is the date an application, signed by an appropriate individual, is received at a county agency, the department, a disproportionate share hospital, or a federally qualified health center.

2. Redetermination. A redetermination must be completed within thirty days after a county agency has received information indicating a possible change in eligibility status, when eligibility is lost under a category, and in any event, no less than annually. A recipient has the same responsibility to furnish information during a redetermination as an applicant has during an application.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; May 1, 2006; January 1, 2022.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01

SECTION 2. Subsection 4 of section 75-02-02.1-10 is amended as follows:

4. Eligibility for qualified Medicare beneficiaries begins in the month following the month in which the ~~eligibility determination is made~~individual is determined eligible.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; January 1, 2020; January 1, 2022.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01

SECTION 3. Subsection 4 of section 75-02-02.1-14.1 is amended as follows:

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, except for individuals ages nineteen and twenty as their coverage will be determined under the Medicaid state plan services.

History: Effective January 1, 2014; amended effective April 1, 2018; January 1, 2022.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01, 50-24.1-37; 42 CFR 440.315(f)

SECTION 4. Subsection 6 of section 75-02-02.1-18 is amended as follows:

6. ~~Aliens~~Individuals from the compact of free associated states, including the Federated States of Micronesia, the Republic of Marshall Islands, ~~or~~and the Republic of Palau ~~are lawfully admitted as permanent nonimmigrants and are not eligible for Medicaid, except for emergency services~~, pursuant to section 208 of division CC of the Consolidated Appropriations Act of 2021 [Pub. L. 116-260], are eligible for Medicaid benefits without the five year, forty quarter ban.

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; January 1, 2022.
General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01, 50-24.1-37

SECTION 5. Subsection 1 of section 75-02-02.1-22 is amended as follows:

1. Qualified Medicare beneficiaries are entitled only to Medicare cost-sharing benefits described in subsection 19 of section 75-02-02.1-01, beginning in the month following the month in which the ~~eligibility determination is made~~individual is determined eligible.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; May 1, 2006; January 1, 2010; January 1, 2022.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02

SECTION 6. Subsection 5 of section 75-02-02.1-24 is amended as follows:

5. Income calculations must consider income in the manner provided for in section 75-02-02.1-34, income considerations, section 75-02-02.1-37, unearned income, section 75-02-02.1-38, earned income, section 75-02-02.1-38.1, ~~posteligibility~~post-eligibility treatment of income, section 75-02-02.1-38.2, disregarded income, section 75-02-02.1-39, income deductions, and section 75-02-02.1-40, income levels, except:

   a. No income of the community spouse may be deemed available to an institutionalized spouse during any month in which an institutionalized spouse is in the institution, or to a home and community-based services spouse during any month in which that spouse receives home and community-based services; and

   b. No institutionalized spouse may be income eligible for Medicaid in any month in which that spouse's income, after all income disregards and deductions other than the deduction of amounts provided to a spouse or family member, exceed an amount equal to that individual's current monthly medical expenses, not covered by a third party, plus the medically needy income level for one.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; October 1, 1993; July 1, 2003; June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2011; April 1, 2016; January 1, 2022.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02; 42 USC 1396r-5

SECTION 7. Section 75-02-02.1-24.2 is amended as follows:

75-02-02.1-24.2. Eligibility for workers with disabilities.

1. An individual shall be enrolled as a member of the workers with disabilities coverage if that individual:

   a. Is gainfully employed;

   b. Is at least sixteen, but less than sixty-five, years of age;

c. Is disabled as determined by the social security administration or the state review team;

d. Meets the requirements of this section; and

e. Is not in receipt of any other Medicaid benefits under this chapter other than coverage as a qualified Medicare beneficiary or a special low-income Medicare beneficiary.

2. An individual may be regarded as gainfully employed only if, taking all factors into consideration, the individual shows that the activity asserted as employment:

a. Produces a product or service that someone would ordinarily be employed to produce and for which payment is received;

b. Reflects a relationship of employer and employee or producer and customer;

c. Requires the individual's physical effort for completion of job tasks, or, if the individual has the skills and knowledge to direct the activity of others, reflects the outcome of that direction; and

d. The employment setting is not primarily an evaluative or experiential activity.

3. Asset considerations provided under section 75-02-02.1-25, asset limits provided under section 75-02-02.1-26, and excluded assets provided under section 75-02-02.1-28.1 are applicable to the workers with disabilities coverage except that each individual enrolled as a member of the workers with disabilities coverage group is allowed an additional ten thousand dollars in assets.

4. Except for Indians who are exempt from cost-sharing under federal law, an individual who has not paid a one-time enrollment fee of one hundred dollars may not be enrolled.

5. Any individual who fails to pay the premium established under this section for three months shall be disenrolled and may not be reenrolled thereafter without first reestablishing eligibility under this section and paying all outstanding enrollment fees and premiums. Any month in which no premium is due shall not be counted as a month in which the individual failed to pay a premium.

6. Payments received by the department from an individual claiming eligibility under this section shall be credited first to unpaid enrollment fees and then to the oldest unpaid premium. The department shall credit payments on the day received, provided that credit for any payment made by an instrument that is not honored shall be reversed. The department may require any individual who has attempted payment by a dishonored instrument to make subsequent payments in a specified manner.

7. A monthly premium is due on the tenth day of each month for which coverage is sought and shall be equal to five percent of the individual's gross countable income. This requirement does not apply to Indians who are exempt from cost-sharing under federal law.

8. No individual may be found eligible under this section if the individual and the individual's family have total net income equaling or exceeding two hundred twenty-five percent of the poverty level.

9. This section becomes effective on the effective date of approved amendments to the Medicaid state plan sufficient to secure federal financial participation in the cost of services provided to individuals found eligible under this section, remains effective as long as federal financial participation continues to be available and state law authorizes such coverage, and is thereafter ineffective.

10. The department may not require the payment of a premium or disenroll an individual for failure to pay a premium or enrollment fee for workers with disabilities coverage during a federally declared emergency if collection of the premium or enrollment fee may impact the receipt of federal funds.

History: Effective June 1, 2004; amended effective August 1, 2005; April 1, 2008; January 1, 2011; April 1, 2012; January 1, 2022.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02.7, 50-24.1-18.1

SECTION 8. Section 75-02-02.1-24.3 is amended as follows:

75-02-02.1-24.3. Eligibility for children with disabilities.

1. A child must be enrolled as a member of the children with disabilities coverage if that child:

   a. Is under age nineteen, including the month the child turns age nineteen;

   b. Is disabled;

   c. Meets the requirements of this section; and

   d. Is not in receipt of any other Medicaid benefits under this chapter.

2. As a condition of eligibility, a child must be enrolled in a health insurance policy if:

   a. The child's family has an employer-based health insurance plan available to them; and

   b. The employer pays at least fifty percent of the premium.

3. A monthly premium is due on the tenth day of each month for which coverage is sought and is equal to five percent of the family's gross countable income. This premium may be offset by any other health insurance premium the family pays for a health insurance plan that provides coverage for the individual claiming eligibility under this section. This subsection does not apply to Indians who are exempt from cost-sharing under federal law.

4. If the premium established for an individual's coverage under this section is not paid

for three months, the individual will be disenrolled and may not be reenrolled without first reestablishing eligibility under this section and paying all outstanding premiums. Any month in which no payment is due may not be counted as a month in which the individual's premium failed to be paid.

5. Payments received by the department from or on behalf of an individual claiming eligibility under this section will be credited first to the oldest unpaid premium. The department will credit payments on the day received, provided that credit for any payment made by an instrument that is not honored will be reversed. The department may require any individual who has attempted payment by a dishonored instrument to make subsequent payments in a specified manner.

6. No individual may be found eligible under this section if the individual and the individual's family have total net income in excess of two hundred fifty percent of the poverty level.

7. This section becomes effective March 1, 2008, remains effective as long as federal financial participation continues to be available and state law authorizes such coverage, and is thereafter ineffective.

8. For purposes of this section, "family" means any member of the Medicaid unit who is a spouse, parent, financially responsible caretaker relative, sibling, or child of the individual requesting benefits under this section.

9. The department may not require the payment of a premium or disenroll an individual for failure to pay a premium for families of children with disabilities coverage during a federally declared emergency if collection of the premium may impact receipt of federal funds.

History: Effective April 1, 2008; amended effective January 1, 2011; January 1, 2020; January 1, 2022.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-31