CHAPTER 75-02-02.1
ELIGIBILITY FOR MEDICAID

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SECTION 1. 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 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 benefits. Any individual 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 of deprived children who meet the 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 nonfinancial requirements with modified adjusted gross income at or 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~~twelve months beginning on the last day of the pregnancy, and ~~for the remaining days~~through the end of the month in which the ~~sixtieth day falls~~twelve month period ends;

   j. ~~Children~~A child born to ~~categorically needy eligible pregnant~~a women who ~~applied for and were found~~is eligible ~~for Medicaid on or before~~ the day of the child's birth, is eligible and continues to be

eligible for Medicaid, without regard to the child's income or assets, for ~~sixty days~~twelve months beginning on the day of ~~the child's~~ birth, and ~~for the remaining days~~through the end of the month in which the ~~sixtieth day falls~~twelve month period ends;

k. Children up to age nineteen who meet the nonfinancial 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 subdivisions 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.

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

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 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;

b. Uninsured individuals under age sixty-five, who are not otherwise eligible for Medicaid, who have been screened for breast or 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;

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; and

d. Individuals under age nineteen who are disabled, who meet medically needy nonfinancial criteria, who have income at or below two hundred fifty percent of the poverty level, and who are not eligible for 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. Individuals under the age of twenty-one 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 groups, including foster care children who do not qualify as categorically needy or optional categorically needy;

b. Pregnant women whose pregnancy has been medically verified and who qualify on the basis of financial eligibility;

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~~twelve months beginning on the last day of pregnancy and ~~for the remaining days~~through the end of the month in which the ~~sixtieth day falls~~twelve month period ends;

d. ~~Children~~A child born to ~~eligible pregnant~~a women who ~~have applied for and been found~~is eligible ~~for Medicaid~~ on ~~or before~~ the day of the child's birth, is eligible and continues to be eligible for Medicaid,

without regard to the child's income or assets, for ~~sixty days,~~twelve months beginning on the day of ~~the child's~~ birth, and ~~for the remaining days~~through the end of the month in which the ~~sixtieth day falls~~twelve month period ends;

e. Aged, blind, or disabled individuals who are not in receipt of supplemental security income; and

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. 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;

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;

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

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.

5. Children's health insurance program includes individuals under age nineteen, and who have income at or below one hundred seventy percent of the poverty level. Coverage under this group ends on the last day of the month in which the individual reaches age nineteen.

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; April 1, 2018; January 1, 2020; January 1, 2023.
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 2. Section 75-02-02.1-09 is amended as follows:

75-02-02.1-09. Assignment of rights to medical payments and benefits.

1. The applicant and each individual for whom assistance is requested must, as a condition of eligibility, assign rights to payment or benefits from any third party or private insurer and cooperate in obtaining medical payments and benefits. This assignment of rights to payment or benefits is automatic under North Dakota Century Code sections 50-24.1-02 and 50-24.1-02.1. As a condition of eligibility, the applicant or recipient may be required to execute a written assignment whenever appropriate to facilitate establishment of liability of a third party or private insurer.

   a. The department and county agency shall take reasonable measures to obtain, from an applicant or recipient, health coverage information and other necessary information to determine the liability of third parties and private insurers.

   b. For purposes of this subsection:

      (1) "Private insurer" includes any commercial insurance company offering health or casualty insurance to individuals or groups, including both experience-related insurance contract and indemnity contracts; any profit or nonprofit prepaid plan offering either medical services or full or partial payment for services covered by the Medicaid program; and any organization administering health or casualty insurance plans for professional associations, employer-employee benefit plans, or any similar organization offering these payments or services, including self-insured and self-funded plans.

      (2) "Third party" means any individual, entity, or program that is or may be liable to pay all or a part of the expenditures for services furnished under Medicaid, including a parent or other person who owes a duty to provide medical support to

or on behalf of a child for whom Medicaid benefits are sought.

2. Except as provided in this subsection, each applicant and each individual for whom assistance is requested must, as a condition of eligibility, assign rights to medical support from any absent parent of a deprived child, and cooperate with the department and county agency in obtaining medical support and establishing paternity of a child in the Medicaid unit with respect to whom paternity has not been legally established. This assignment of rights is automatic under North Dakota Century Code sections 50-09-0-6.1 and 50-24.1-02.1. The requirement for the assignment of rights to medical support from absent parents continues through the month in which the child reaches age eighteen.

   a. A pregnant woman is not required to cooperate in establishing paternity and obtaining medical support and payments from, or derived from, the ~~father of the~~non-custodial parent of a child ~~born out of wedlock~~, while pregnant, for ~~sixty days~~twelve months beginning on the date the pregnancy ends, and ~~for the remaining days~~through the end of the month in which the ~~sixtieth day falls~~twelve month period ends.

   b. Recipients of transitional or extended Medicaid benefits are not required to cooperate in obtaining medical support and establishing paternity.

   c. The county agency may waive the requirement to cooperate in obtaining medical support and establishing paternity for good cause if it determines that cooperation is against the best interests of the child. A county agency may determine that cooperation is against the best interests of the child only if:

      (1) The applicant's or recipient's cooperation in establishing paternity or securing medical support is reasonably anticipated to result in:

         (a) Physical harm to the child for whom support is to be sought;

         (b) Emotional harm to the child for whom support is to be sought;

         (c) Physical harm to the parent or caretaker relative with whom the child is living which reduces such person's capacity to care for the child adequately; or

(d) Emotional harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it reduces such person's capacity to care for the child adequately; or

(2) At least one of the following circumstances exists, and the county agency believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure medical support would be detrimental to the child for whom support would be sought.

(a) The child for whom support is sought was conceived as a result of incest or forcible rape;

(b) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or

(c) The applicant or recipient is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep or relinquish the child for adoption, and the discussions have not gone on for more than three months.

d. Physical harm and emotional harm must be of a serious nature in order to justify a waiver of the requirement to cooperate under this subsection.

e. A waiver of the requirement to cooperate under this subsection due to emotional harm may only be based on a demonstration of an emotional impairment that substantially impairs the individual's functioning. In determining a waiver of the requirement to cooperate under this subsection, based in whole or in part upon the anticipation of emotional harm to the child, the parent, or the caretaker relative, the county agency must consider:

(1) The present emotional state of the individual subject to emotional harm;

(2) The emotional health history of the individual subject to emotional harm;

(3) Intensity and probable duration of the emotional impairment;

(4) The degree of cooperation to be required; and

(5) The extent of involvement of the child in the paternity

establishment or support enforcement activity to be undertaken.

f. A determination to grant a waiver of the requirement to cooperate under this subsection must be reviewed no less frequently than every twelve months to determine if the circumstances which led to the waiver continue to exist.

3. For purposes of this section, "cooperate in obtaining medical support and establishing paternity" and "cooperate in obtaining medical payments and benefits" includes:

a. Appearing at a state or local office designated by the department or county agency to provide information or evidence relevant to the case;

b. Appearing as a witness at a court or other proceeding;

c. Providing credible information, or credibly attesting to lack of information;

d. Paying to the department any support or medical care funds received that are covered by the assignment of rights; and

e. Taking any other reasonable steps to assist in establishing paternity and securing medical support and medical payments and benefits.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; January 1, 2023.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01

SECTION 3. Section 75-02-02.1-21 is amended as follows:

75-02-02.1-21. Continuous eligibility for pregnant women and newborns.

When a pregnant woman, whose pregnancy has been ~~medically~~ confirmed, becomes eligible for Medicaid, she continues eligible, without regard to any increase in income of the Medicaid unit, while pregnant, for ~~sixty days~~twelve months beginning on the last day of pregnancy, and ~~for the remaining days~~through the end of the month in which the ~~sixtieth day falls~~twelve month period ends. A child born to a woman who is eligible on the day of the child's birth is eligible and continues to be eligible for Medicaid, without regard to the child's income or assets, for ~~sixty days~~twelve months beginning on the day of birth, and ~~for the remaining days~~through the end of the month in which the ~~sixtieth day falls~~twelve month period ends.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; May

1, 2006; January 1, 2023.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01

SECTION 4. Subsection 2 of section 75-02-02.1-24.4 is amended as follows:

2. The department may provide Medicaid benefits during a period of presumptive eligibility, prior to a determination of Medicaid eligibility, to the following individuals:

   a. Children through the month they turn nineteen years of age;

   b. 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;

   c. Parents and caretaker relatives of children through the month the children turn nineteen years of age;

   d. Pregnant women; and

   e. Medicaid expansion group ages nineteen through sixty-four, from the month following the month they turn nineteen years of age through the month prior to the month they turn sixty-five years of age.

History: Effective July 1, 2016; amended effective January 1, 2023.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-37; 42 U.S.C. 1396a(e)