CHAPTER 75-03-23
PROVISION OF HOME AND COMMUNITY-BASED SERVICES UNDER THE SERVICE PAYMENTS FOR ELDERLY AND DISABLED PROGRAM AND THE MEDICAID WAIVER FOR THE AGED AND DISABLED PROGRAM

SECTION 1: Section 75-03-23-01 is amended as follows:

75-03-23-01. Definitions.

The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-06.2. In addition, as used in this chapter:

1. "Activities of daily living" means the daily self-care personal activities that include bathing, dressing or undressing, eating or feeding, toileting, continence, transferring in and out of bed or chair or on and off the toilet, and mobility inside the home.

2. "Adaptive assessment" means an evaluation to identify adaptive devices, equipment, or modifications that enhance the independence and functional capabilities of an individual who may otherwise be unable to remain in the individual's home.

3. "Aged" means sixty-five years of age or older.

4. "Client" means an individual who meets the eligibility requirements and is receiving services reimbursed under North Dakota Century Code chapter 50-06.2 or this chapter.

5. "Congenital disability" means a disability that exists at birth or shortly thereafter, and is not attributable to a diagnosis of either mental retardation or a closely related condition of mental retardation.

6. "Department" means the North Dakota department of human services.

7. "Disability due to trauma" means a disability that results from an injury or assault to the body by an external force.

8. "Disability that is acquired" means a disability that results from an assault that occurs internally within the body.

9. "Disabled" means under age sixty-five with a congenital disability, a disability due to trauma, or a disability that is acquired.

10. "Functional assessment" means an instrument used to record basic demographic and medical information about an individual, including age, date of birth, spoken language, marital status, individuals residing with, emergency contacts, medical resources, health care coverage, and source and reason for referral; and to secure measurable information regarding:

    a. Physical health;

    b. Cognitive and emotional functioning;

    c. Activities of daily living;

    d. Instrumental activities of daily living;

    e. Informal supports;

    f. Need for twenty-four-hour supervision;

    g. Social participation;

    h. Physical environment;

    i. Financial resources;

    j. Adaptive equipment;

k. Environmental modification; and

l. Other information about the individual's condition not recorded elsewhere.

11. "Functional impairment" means the inability to perform, either by oneself or with adaptive aids or with human help, specific activities of daily living or instrumental activities of daily living.

12. "Home and community-based services" means the array of services under the SPED program and Medicaid waiver defined in the comprehensive human service plan and the other services the department determines to be essential and appropriate to sustain individuals in their homes and in their communities, and to delay or prevent institutional care.

13. "Institution" means a hospital, swing bed facility, nursing facility, or other provider-operated living arrangement receiving prior approval from the department.

14. "Instrumental activities of daily living" means activities requiring cognitive ability or physical ability, or both. Instrumental activities of daily living include preparing meals, shopping, managing money, housework, laundry, taking medicine, transportation, using the telephone, and mobility outside the home.

15. "Medicaid waiver program" means the federal Medicaid waiver for the aged and disabled program, as defined in subpart G of 42 CFR 441, under which the department is authorized to provide specific home and community-based services to aged and disabled persons who are at risk of being institutionalized.

16. "Sanction" means an action taken by the department against a qualified service provider for noncompliance with a federal or state law, rule, or policy, or with the provisions of the Medicaid provider agreement.

17. "Service fee" means the amount a SPED client is required to pay toward the cost of the client's SPED services.

~~17.~~18. "Service payment" means the payment issued by the department to a qualified service provider for the provision of authorized home and community-based services to eligible aged and disabled persons.

~~18.~~19. "SPED program" means the service payments for elderly and disabled program, a state program which authorizes the department to reimburse qualified service providers for the provision of covered home and community-based services to eligible aged and disabled individuals.

~~19.~~20. "SPED program pool" means the list maintained by the department which contains the names of clients for whom SPED program funding is available when the clients' names are transferred from the SPED program pool to SPED program active status.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; January 1, 2018; January 1, 2020.
General Authority: NDCC 50-06.2-03(6)
Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5)

SECTION 2: Section 75-03-23-05 is amended as follows:

75-03-23-05. Services covered under the SPED program - Programmatic criteria.

Room and board costs may not be paid in the SPED service payment. The following categories of services are covered under the SPED program and may be provided to a client:

1. The department may provide adult day care services to a client:

   a. Who requires assistance in activities of daily living or instrumental activities of daily living;

   b. Who is able to participate in group activities; and

   c. Who, if the client does not live alone, has a primary caregiver who will benefit from the temporary relief of care giving.

2. The department may provide adult foster care using a licensed adult foster care provider to a client eighteen years of age or older:

   a. Who resides in a licensed adult foster care home;

   b. Who requires care or supervision;

   c. Who would benefit from a family or shared living environment; and

   d. Whose required care does not exceed the capability of the foster care provider.

3. The department may provide chore services to a client for one-time, intermittent, or occasional activities which would enable the client to remain in the home. Activities such as heavy housework and periodic cleaning, professional extermination, snow removal, and emergency response systems may be provided. Clients receiving emergency

response services must be cognitively and physically capable of activating the emergency response system. The activity must be the responsibility of the client and not the responsibility of the landlord.

4. The department may provide environmental modification to a client:

   a. Who owns the home to be modified;

   b. When the modification will enable the client to complete the client's own personal care or to receive care and allow the client to safely stay in the home;

   c. When no alternative community resource is available; and

   d. Limited to labor and materials for installing safety rails.

5. a. The department may provide extended personal care services to a client who:

      (1) Requires skilled or nursing care that requires training by a nurse licensed under North Dakota Century Code chapter 43-12.1; and

      (2) Has a cognitive or physical impairment that prevents the client from completing the required activity.

   b. Extended personal care services do not include assistance with activities of daily living or instrumental activities of daily living.

6. The department may provide family home care services to a client who:

   a. Lives in the same residence as the care provider on a twenty-four-hour basis;

   b. Agrees to the provision of services by the care provider; and

   c. Is the spouse of the care provider or the current or former spouse of one of the following relatives of the client: parent, grandparent, adult child, adult sibling, adult grandchild, adult niece, or adult nephew.

7. The department may provide home and community-based services case management services to a client who needs a functional assessment and the coordination of cost-effective delivery issues. The case management services must be provided by a social worker licensed under North Dakota Century Code section 43-41-04.

8. The department may provide home-delivered meals to a client who lives alone and is unable to prepare an adequate meal for himself or herself, or who lives with an individual who is unable or not available to prepare an adequate meal for the client.

9. The department may provide homemaker services to a client who needs assistance with environmental maintenance activities including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis and who lives alone or with an adult who is unable or is not obligated to perform homemaking activities. The department may not pay a provider for laundry, shopping, housekeeping, meal preparation, money management, or communication, if the provider lives with the client and is a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02, or is a former spouse of the client; except the department may provide essential homemaking activities such as meal preparation if the adult not receiving care who resides in the home is unavailable due to employment. The department may provide shopping assistance only if at least one other activity is performed and no other shopping assistance is available through informal networks or other community providers. The homemaker services funding cap applies to a household and may not be exceeded regardless of the number of clients residing in that household.

10. Nonmedical transportation services may be provided to clients who are unable to provide their own transportation and need transportation to access essential community services such as grocery stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.

11. The department may provide personal care services to a client who needs help or supervision with personal care activities if:

    a. The client is at least eighteen years of age;

    b. The client lives alone or is alone due to the employment of the primary caregiver or the incapacity of other adult household members; and

    c. The services are provided in the client's home or in a provider's home if the provider meets the definition of a relative as defined in subdivision c of subsection 5 of section 75-03-23-05.

12. a. The department may provide respite care services to a client in the client's home, in the provider's home, in a nursing home, in a swing-bed facility, in a basic care facility, or in a hospital, if:

(1) The client has a full-time primary caregiver;

(2) The client needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;

(3) The primary caregiver's need for the relief is intermittent or occasional; and

(4) The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.

b. A client who is a resident of an adult foster care may choose a respite provider and is not required to use a relative of the adult foster care provider as the client's respite provider.

13. The department may provide other services as the department determines appropriate.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2020.
General Authority: NDCC 50-06.2-03(6)
Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5)

SECTION 3: Section 75-03-23-06 is amended as follows:

75-03-23-06. Services covered under the Medicaid waiver program - Programmatic criteria.

Room and board costs may not be included in the Medicaid waiver service payment. The following services are covered under the Medicaid waiver program and may be provided to a client:

1. The department may provide adult day care services to a client:

a. Who requires assistance in activities of daily living or instrumental activities of daily living;

b. Who is able to participate in group activities; and

c. If the client does not live alone, the client's primary caregiver will benefit from the temporary relief of care giving.

2. The department may provide adult foster care, using a licensed adult foster care provider, to a client who resides in a licensed adult foster care home who:

   a. Is eighteen years of age or older;

   b. Requires care or supervision;

   c. Would benefit from a family or shared living environment; and

   d. Requires care that does not exceed the capability of the foster care provider.

3. The department may provide residential care to a client who:

   a. Has chronic moderate to severe memory loss; or

   b. Has a significant emotional, behavioral, or cognitive impairment.

4. The department may provide attendant care to a client who:

   a. Is ventilator-dependent a minimum of twenty hours per day;

   b. Is medically stable as documented at least annually by the client's primary care physician;

   c. Has identified an informal caregiver support system for contingency planning; and

   d. Is competent to participate in the development and monitoring of the care plan as documented at least annually by the client's primary care physician.

5. The department may provide chore services to a client for one-time, intermittent, or occasional activities that would enable the client to remain in the home, such as heavy housework and periodic cleaning, professional extermination, and snow removal. The activity must be the responsibility of the client and not the responsibility of the landlord.

6. The department may provide an emergency response system to a client who lives alone or with an incapacitated adult, or who lives with an individual whose routine absences from the home present a safety risk for the client, and the client is cognitively and physically capable of activating the emergency response system.

7. When no alternative community resource is available, the department may provide environmental modification to a client, if the client owns the home to be modified and when the modification will enable the client to complete the client's own personal care or to receive care and will allow the client to safely stay in the home for a period of time that is long enough to offset the cost of the modification.

8. a. The department may provide family personal care to a client who:

   (1) Lives in the same residence as the care provider on a twenty-four-hour basis;

   (2) Agrees to the provision of services by the care provider; and

   (3) Is the legal spouse of the care provider.

   b. Family personal care payments may not be made for assistance with the activities of communication, community integration, housework, laundry, meal preparation, money management, shopping, social appropriateness, or transportation.

9. The department may provide home and community-based services case management services to a client who needs a comprehensive assessment and the coordination of cost-effective delivery of services. Case management services provided under this subsection must be provided by a social worker licensed under North Dakota Century Code section 43-41-04.

10. The department may provide home-delivered meals to a client who lives alone and is unable to prepare an adequate meal for himself or herself or who lives with an individual who is unable or not available to prepare an adequate meal.

11. The department may provide homemaker services to a client who needs assistance with environmental maintenance activities, including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis when the client lives alone or with an adult who is unable or is not obligated to complete homemaking activities. The department may not pay a provider for laundry, shopping, housekeeping, meal preparation, money management, or communication, if the provider lives with the client and is a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02, or is a former spouse of the client; except the department may provide essential homemaking activities such as meal preparation if the responsible adult not receiving care who resides in the home is unavailable due to employment. Shopping assistance may

be provided only if at least one other activity is performed and no other shopping assistance is available through informal networks or other community providers. The homemaker service funding cap applies to a household and may not be exceeded regardless of the number of clients residing in that household.

12. a. The department may provide extended personal care services to a client who:

    (1) Requires skilled or nursing care that requires training by a nurse licensed under North Dakota Century Code chapter 43-12.1; and

    (2) Has a cognitive or physical impairment that prevents the client from completing the required activity.

    b. Extended personal care services do not include assistance with activities of daily living and instrumental activities of daily living.

13. The department may provide nonmedical transportation services to a client who is unable to provide his or her own transportation and who needs transportation to access essential community services such as grocery stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.

14. The department may provide up to twenty-four hours per day of supervision to a client who has a cognitive or physical impairment that results in the client needing monitoring to assure the client's continued health and safety, if the client lives alone or with an individual who is not a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02.

15. a. The department may provide respite care services to a client in the client's home, in the provider's home, in a nursing home, in a swing-bed facility, in a basic care facility, or in a hospital, if:

    (1) The client has a full-time primary caregiver;

    (2) The client needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;

    (3) The primary caregiver's need for the relief is intermittent or occasional; and

(4) The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.

b. A client who is a resident of an adult foster care home may choose a respite provider and is not required to use a relative of the adult foster care provider as the client's respite provider.

16. The department may provide specialized equipment and supplies to a client, if:

a. The client's need for the items is based on an adaptive assessment;

b. The items directly benefit the client's ability to perform personal care or household activities;

c. The items will reduce the intensity or frequency of human assistance required to meet the client care needs;

d. The items are necessary to prevent the client's institutionalization;

e. The items are not available under the Medicaid state plan; and

f. The client is motivated to use the item.

17. The department may provide supported employment to a client who is unlikely to obtain competitive employment at or above the minimum wage; who, because of the client's disabilities, needs intensive ongoing support to perform in a work setting; and who has successfully completed the supported employment program available through the North Dakota vocational rehabilitation program.

18. The department may provide transitional living services to a client who needs supervision, training, or assistance with self-care, communication skills, socialization, sensory and motor development, reduction or elimination of maladaptive behavior, community living, and mobility. The department may provide these services until the client's independent living skills development has been met or until an interdisciplinary team determines the service is no longer appropriate for the client.

19. The department may provide community transition services to a client who is transitioning from an institution or another provider-operated living arrangement to a living arrangement in a private residence where the client is directly responsible for his or her own living expenses and needs

nonrecurring set-up expenses. Community transition services include one-time transition costs and transition coordination.

a. Allowable expenses are those necessary to enable a client to establish a basic household that do not constitute room and board and may include:

(1) Security deposits that are required to obtain a lease on a private residence;

(2) Essential household furnishings required to occupy and use a private residence, including furniture, window coverings, food preparation items, and bed and bath linens;

(3) Setup fees or deposits for utility or service access, including telephone, electricity, heating, and water;

(4) Services necessary for the client's health and safety, such as pest eradication and one-time cleaning prior to occupancy;

(5) Moving expenses;

(6) Necessary home accessibility adaptations; and

(7) Activities to assess need and to arrange for and procure need resources.

b. Community transition services do not include monthly rental or mortgage expenses, escrow, specials, insurance, food, regular utility or service access charges, household appliances, or items that are intended for purely diversional or recreational purposes.

c. Community transition services are furnished only to the extent that they are reasonable and necessary as determining through the service plan development process, clearly identified in the service plan and the client is unable to meet such expense, or when the services cannot be obtained from other sources.

20. The department may provide a nurse assessment to a client who requires an evaluation of his or her health care needs to ensure the health, welfare, and safety of the client. The service is limited to a nurse assessment, consultation, and recommendations to address the health-related need for services that are necessary to support a client in a home- or community-based setting. The service must be provided by an advanced practice registered nurse or a registered nurse who is in good standing.

21. The department may provide other services as permitted by an approved waiver.

22. Subsections 19 and 20 become effective on the effective date of approved amendments to the 1915(c) Medicaid waiver sufficient to secure federal financial participation in the cost of services provided to individuals found eligible under subsections 19 and 20, remain effective as long as federal financial participation continues to be available and state law authorizes such coverage, and is thereafter ineffective.

23. The department may provide residential habilitation up to twenty-four hours per day to a client who lives alone or with an adult who is unable or is not obligated to provide care and needs formalized training and supports and requires some level of ongoing daily support. This service is designed to assist with and develop self-help, socialization, and adaptive skills that improve the client's ability to independently reside and participate in an integrated community. Residential habilitation may be provided in an agency foster home for adults facility or in a private residence owned or leased by a client or their family member.

24. The department may provide community support services up to twenty-four hours per day to a client who lives alone or with an adult who is unable or is not obligated to provide care who requires some level of ongoing daily support. This service is designed to assist with self-care tasks and socialization that improves the client's ability to independently reside and participate in an integrated community. Community support services may be provided in an agency foster home for adults facility or in a private residence owned or leased by a client or their family member.

25. The department may provide companionship services up to ten hours per month to clients who live alone and could benefit from services to help reduce social isolation.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2018; January 1, 2020.
General Authority: NDCC 50-06.2-03(6)
Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5)

SECTION 4: Section 75-03-23-07 is amended as follows:

75-03-23-07. Qualified service provider standards and agreements.

1. An individual or agency seeking designation as a qualified service provider shall complete and return the applicable forms supplied by the department in the form and manner prescribed. The qualified service provider, including any employees of an agency designated as a qualified service provider, shall meet all licensure, certification, or competency

requirements applicable under state or federal law and departmental standards necessary to provide care to clients whose care is paid by public funds. An application is not complete until the individual or agency submits all required information and required provider verifications to the department.

2. A provider or an individual seeking designation as a qualified service provider:

   a. Must have the basic ability to read, write, and verbally communicate;

   b. Must not be an individual who has been found guilty of, pled guilty to, or pled no contest to:

      (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; ~~12.1-17, assaults - threats - coercion - harassment; or~~ 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or North Dakota Century Code section 12.1-17-01, simple assault, if a class C felony under subdivision a of subsection 2 of that section; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; ~~North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code section~~ 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering a vulnerable adult; 12.1-31-07.1, exploitation of a vulnerable adult; 14-09-22, abuse of a child; 14-09-22.1, neglect of a child; subsection 1 of section 26.1-02.1-02.1, fraudulent insurance acts; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North

Dakota statutes; ~~except that a person found guilty of misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction may be considered rehabilitated if the requirements of subparagraph a or b of paragraph 2 of subdivision b of subsection 2 are met;~~ or

(2) An offense, other than a direct-bearing offense identified in paragraph 1 of subdivision b of subsection 2, if the department determines that the individual has not been sufficiently rehabilitated.

(a) The department may not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment without subsequent charge or conviction has elapsed, ~~or~~unless sufficient evidence is provided of ~~completion of any relevant~~ rehabilitation ~~program~~.

(b) An individual's completion of a period of three years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation;

c. ~~Must not have an infectious or contagious disease, according to the centers for disease control and prevention's personnel health guidelines, and shall demonstrate any related infection control skills~~In the case of an offense described in North Dakota Century Code section 12.1-17-01, simple assault, if a felony; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence, if a misdemeanor; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-18-03, unlawful imprisonment; 12.1-20-05, corruption or solicitation of minors, if a misdemeanor; 12.1-20-07, sexual assault, if a misdemeanor; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent convictions;

d. Shall maintain confidentiality;

e. Shall submit a request to be a qualified service provider every twenty-four months using applicable forms and shall provide documentation as required by the department;

f. Must be physically capable of performing the service for which they were hired;

g. Must be at least eighteen years of age; and

h. Must not have been the subject of a child abuse or neglect assessment for which a services required decision was made unless the program administrator, after appropriate consultation with persons qualified to evaluate the capabilities of the provider, documenting criteria used in making the decision, and imposing any restrictions necessary, approves the request, provided the provider can demonstrate:

(1) The successful completion of an appropriate therapy; or

(2) The elimination of an underlying basis precipitating the neglect or abuse.

3. If the physical, cognitive, social, or emotional health capabilities of an applicant or provider appear to be questionable, the department may require the applicant or provide to present evidence of the applicant's or provider's ability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.

4. The offenses enumerated in paragraph 1 of subdivision b of subsection 2 have a direct bearing on an individual's ability to be enrolled as a qualified service provider.

a. An individual enrolled as a qualified service provider prior to January 1, 2009, who has been found guilty of, pled guilty to, or pled no contest to, an offense considered to have a direct bearing on the individual's ability to provide care may be considered rehabilitated and may continue to provide services if the individual has had no other offenses and provides sufficient evidence of rehabilitation to the department.

b. The department may not approve, deny, or renew an application for an individual or employee of an agency who is applying to enroll or

re-enroll as a qualified service provider and who has been charged with an offense considered to have a direct bearing on the individual's ability to provide care or an offense in which the alleged victim was under the applicant's care, until final disposition of the criminal case against the individual.

5. Evidence of competency for adult foster care providers serving clients eligible for the developmental disability waiver must be provided in accordance with subdivision b of subsection 2 of section 75-03-21-08.

6. A provider of services for adult day care, adult foster care, attendant care, community support services, extended personal care, family personal care, nurse assessment, personal care, residential care, respite care, residential habilitation, supervision, and transitional living care shall provide evidence of competency in generally accepted procedures for:

   a. Infection control and proper handwashing methods;

   b. Handling and disposing of body fluids;

   c. Tub, shower, and bed bathing techniques;

   d. Hair care techniques, sink shampoo, and shaving;

   e. Oral hygiene techniques of brushing teeth and cleaning dentures;

   f. Caring for an incontinent client;

   g. Feeding or assisting a client with eating;

   h. Basic meal planning and preparation;

   i. Assisting a client with the self-administration of medications;

   j. Maintaining a kitchen, bathroom, and other rooms used by a client in a clean and safe condition, including dusting, vacuuming, floor care, garbage removal, changing linens, and other similar tasks;

   k. Laundry techniques, including mending, washing, drying, folding, putting away, ironing, and related work;

   l. Assisting a client with bill paying and balancing a check book;

   m. Dressing and undressing a client;

   n. Assisting with toileting;

o. Routine eye care;

p. Proper care of fingernails;

q. Caring for skin~~, including giving a back rub~~;

r. Turning and positioning a client in bed;

s. Transfer using a belt, standard sit, or bed to wheelchair;

t. Assisting a client with ambulation; and

u. Making wrinkle-free beds.

7. An applicant for qualified service provider status for attendant care, adult foster care, extended personal care, family personal care, nurse assessment, personal care, residential care, supervision, transitional living care, respite care, or adult day care must secure written verification that the applicant is competent to perform procedures specified in subsection 5 from a physician, chiropractor, registered nurse, licensed practical nurse, occupational therapist, physical therapist, or an individual with a professional degree in specialized areas of health care. Written verification of competency is not required if the individual holds one of the following licenses or certifications in good standing: physician, physician assistant, chiropractor, registered nurse, licensed practical nurse, registered physical therapist, registered occupational therapist, or certified nurse assistant. A certificate or another form of acknowledgment of completion of a program with a curriculum that includes the competencies in subsection 5 may be considered evidence of competence.

8. The department may approve global and client-specific endorsements to provide particular procedures for a provider based on written verification of competence to perform the procedure from a physician, chiropractor, registered nurse, occupational therapist, physical therapist, or other individual with a professional degree in a specialized area of health care or approved within the scope of the individual's health care license or certification.

9. Competence may be demonstrated in the following ways:

a. A demonstration of the procedure being performed;

b. A detailed verbal explanation of the procedure; or

c. A detailed written explanation of the procedure.

10. The department shall notify the individual or the agency of its decision on designation as a qualified service provider.

11. The department shall maintain a list of qualified service providers. Once the client's need for services has been determined, the client selects a provider from the list and the department's designee issues an authorization to provide services to the selected qualified service provider.

12. A service payment may be issued only to a qualified service provider who bills the department after the delivery of authorized services.

History: Effective June 1, 1995; amended effective March 1, 1997; January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2018; January 1, 2020.
General Authority: NDCC 50-06.2-03(6)
Law Implemented: NDCC 50-06.2-03(5)

SECTION 5: Section 75-03-23-08 is amended as follows:

75-03-23-08. ~~Termination of qualified service provider status and denial~~Denial of application to become a qualified service provider.

~~1. The department may terminate a qualified service provider if:~~

~~a. The qualified service provider voluntarily withdraws from participation as a qualified service provider;~~

~~b. The qualified service provider is not in compliance with applicable state laws, state regulations, or program issuances governing providers;~~

~~c. The qualified service provider is not in compliance with the terms set forth in the application or provider agreement;~~

~~d. The qualified service provider is not in compliance with the provider certification terms on the claims submitted for payment;~~

~~e. The qualified service provider has assigned or otherwise transferred the right to payment of a program claim, except as provided in 42 U.S.C. 1396a(a)(32);~~

~~f. The qualified service provider has demonstrated a pattern of submitting inaccurate billings or cost reports;~~

~~g. The qualified service provider has demonstrated a pattern of submitting billings for services not covered under department programs;~~

~~h. The qualified service provider has been debarred or the provider's license or certificate to practice in the provider's profession or to conduct business has been suspended or terminated;~~

~~i. The qualified service provider has delivered goods, supplies, or services that are of an inferior quality or are harmful to individuals;~~

~~j. The qualified service provider has been convicted of an offense determined by the department to have a direct bearing upon the provider's ability to be enrolled as a qualified service provider, or the department determines, following conviction of any other offense, the provider is not sufficiently rehabilitated;~~

~~k. The qualified service provider is currently excluded from participation in Medicare, Medicaid, or any other federal health care program;~~

~~l. The qualified service provider has not provided sufficient evidence to the department, after obtaining a formal evaluation under subsection 3 of section 75-03-23-07 that the provider is physically, cognitively, socially, or emotionally capable of providing the care;~~

~~m. The qualified service provider has been the subject of a child abuse or neglect assessment for which a services required decision was made and the department has determined the provider does not meet the standards to enroll;~~

~~n. There has been no billing activity within the twelve months since the provider's enrollment or most recent reenrollment date; or~~

~~o. For other good cause.~~

~~2.~~ The department may deny an application to become a qualified service provider if:

~~a.~~1. The applicant voluntarily withdraws the application;

~~b.~~2. The applicant is not in compliance with applicable state laws, state regulations, or program issuances governing providers;

~~c.~~3. The applicant, if previously enrolled as a qualified service provider, was not in compliance with the terms set forth in the application or provider agreement;

~~d.~~4. The applicant, if previously enrolled as a qualified service provider, was not in compliance with the provider certification terms on the claims submitted for payment;

~~e.~~5. The applicant, if previously enrolled as a qualified service provider, had assigned or otherwise transferred the right to payment of a program claim, except as provided in 42 U.S.C. 1396a(a)(32);

~~f.~~6. The applicant, if previously enrolled as a qualified service provider, had demonstrated a pattern of submitting inaccurate billings or cost reports;

~~g.~~7. The applicant, if previously enrolled as a qualified service provider, had demonstrated a pattern of submitting billings for services not covered under department programs;

~~h.~~8. The applicant has been debarred or the applicant's license or certificate to practice in the applicant's profession or to conduct business has been suspended or terminated;

~~i.~~9. The applicant has delivered goods, supplies, or services that are of an inferior quality or are harmful to individuals;

~~j.~~10. The applicant has been convicted of an offense determined by the department to have a direct bearing upon the applicant's ability to be enrolled as a qualified service provider, or the department determines, following conviction of any other offense, the applicant is not sufficiently rehabilitated;

~~k.~~11. The applicant, if previously enrolled as a qualified service provider, owes the department money for payments incorrectly made to the provider;

~~l.~~12. The qualified service provider is currently excluded from participation in Medicare, Medicaid, or any other federal health care program;

~~m.~~13. The applicant has not provided sufficient evidence to the department, after obtaining a formal evaluation under subsection 3 of section 75-03-23-07, that the applicant is physically, cognitively, socially, or emotionally capable of providing the care;

~~n.~~14. The applicant has been the subject of a child abuse or neglect assessment for which a services required decision was made and the department has determined the applicant does not meet the standards to enroll;

~~o.~~15. The applicant previously has been terminated for inactivity and does not have a prospective public pay client;

~~p.~~16. The applicant previously has been terminated for inactivity and has not provided valid reason for the inactivity; or

~~q.~~17. For other good cause.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2020.
General Authority: NDCC 50-06.2-03(6)
Law Implemented: NDCC 50-06.2-03(5)

SECTION 6: Section 75-03-23-08.1 is created as follows:

75-03-23-08.1. Sanctions and termination of qualified service providers.

1. The department may impose sanctions against a qualified service provider for any of the reasons listed under section 75-02-05-05 or subdivisions b though g of subsection 4 of this section. Prior to imposing sanctions, the department may require provider education or a business integrity agreement.

2. The department may consider the following in determining the sanction to be imposed:

   a. Seriousness of the qualified service provider's offense.

   b. Extent of the qualified service provider's violations.

   c. Qualified service provider's history of prior violations.

   d. Prior imposition of sanctions against the qualified service provider.

   e. Prior provision of information and training to the qualified service provider.

   f. Qualified service provider's agreement to make restitution to the department.

   g. Actions taken or recommended by peer groups or licensing boards.

   h. Access to care for recipients.

   i. Qualified service provider's self-disclosure or self-audit discoveries.

j. Qualified service provider's willingness to enter a business integrity agreement.

3. The department may impose any of the sanctions listed in subsections 8 or 9 of section 75-02-05-07.

4. The department may terminate a qualified service provider if:

a. The qualified service provider voluntarily withdraws from participation as a qualified service provider.

b. The qualified service provider is not in compliance with applicable state laws, state regulations, or program issuances governing providers.

c. The qualified service provider is not in compliance with the terms set forth in the application or provider agreement.

d. The qualified service provider is not in compliance with the provider certification terms on the claims submitted for payment.

e. The qualified service provider has assigned or otherwise transferred the right to payment of a program claim, except as provided in 42 U.S.C. 1396a(a)(32).

f. The qualified service provider has demonstrated a pattern of submitting inaccurate billings or cost reports.

g. The qualified service provider has demonstrated a pattern of submitting billings for services not covered under department programs.

h. The qualified service provider has been debarred or the provider's license or certificate to practice in the provider's profession or to conduct business has been suspended or terminated.

i. The qualified service provider has delivered goods, supplies, or services that are of an inferior quality or are harmful to individuals.

j. The qualified service provider has been convicted of an offense determined by the department to have a direct bearing upon the provider's ability to be enrolled as a qualified service provider, or the department determines, following conviction of any other offense, the provider is not sufficiently rehabilitated.

k. The qualified service provider is currently excluded from participation in Medicare, Medicaid, or any other federal health care program.

l. The qualified service provider has not provided sufficient evidence to the department, after obtaining a formal evaluation under subsection 3 of section 75-03-23-07 that the provider is physically, cognitively, socially, or emotionally capable of providing the care.

m. The qualified service provider has been the subject of a child abuse or neglect assessment for which a services required decision was made and the department has determined the provider does not meet the standards to enroll.

n. The qualified service provider refuses to repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments.

o. There has been no billing activity within the twelve months since the qualified service provider's enrollment or most recent reenrollment date.

p. For other good cause.

History: Effective January 1, 2020.
General Authority: NDCC 50-06.2-03(6)
Law Implemented: NDCC 50-06.2-03(5)

SECTION 7: Section 75-03-23-12 is amended as follows:

75-03-23-12. Provider - Request for review.

~~1. A qualified service provider may request a review of a decision made by the department regarding provider reimbursement.~~

~~2. A qualified service provider who requests a review of a decision regarding provider reimbursement under this section must do so in writing within ten days of the date the qualified service provider was notified of the determination by the department. The written notice must identify each disputed item and the reason or basis for the dispute. A provider may not request a review under this section of the rate paid for each disputed item.~~

~~3. Within thirty days after requesting a review, a provider shall provide to the department all documents, written statements, exhibits, and other written information that supports the provider's request for review.~~

~~4. The department shall assign a provider's request for review to someone other than an individual who was involved in the initial disputed decision.~~

~~5. The department shall make and issue its final decision within seventy-five days of the date the department received the notice of request for review.~~

~~6. A provider may contact the department employee who made the disputed decision for an informal conference regarding the disputed decision any time before that provider submits a formal request for review to the department~~A qualified service provider may request a review of denial of payment in accordance with North Dakota Century Code section 50-24.1-24.

History: Effective January 1, 2009; amended effective January 1, 2020.
General Authority: NDCC 50-06.2-03, 50-24.1-24
Law Implemented: NDCC 50-06.2-03, 50-24.1-24

SECTION 8: Section 75-03-23-16 is amended as follows:

75-03-23-16. Reapplication after denial or termination.

A provider or applicant whose qualified service provider status has been terminated or denied may not reapply if:

1. The provider's or applicant's status as a qualified service provider has been denied or revoked within the twelve months prior to the date of the current application; except that in the case of an individual who has been denied or terminated under subparagraph a of paragraph 2 of subdivision b of subsection 2 of section 75-03-23-07, the individual may reapply after completion of the term of probation; or

2. The provider's or applicant's status as a qualified service provider has been denied or revoked three or more times and the most recent revocation or denial occurred within the three years immediately preceding the application date.

History: Effective October 1, 2014; amended effective January 1, 2020.
General Authority: NDCC 50-06.2-03
Law Implemented: NDCC 50-06.2-03