

**CHAPTER 75-02-01.2**  
**TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM**

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**SECTION 1.** Section 75-02-01.2-01 is amended as follows:

**75-02-01.2-01. Definitions.** For the purposes of Unless otherwise stated in this section, the definitions set forth in North Dakota Century Code section 50-09-01 are applicable to this chapter. Additionally, in this chapter, unless the context or subject matter requires otherwise:

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



- ~~7-6.~~ "Benefit month" means the calendar month immediately following the processing month.
- ~~8-7.~~ "Benefits" means the amount of temporary assistance for needy families assistance a family receives including the temporary assistance for needy families amount, essential services, and supportive services, reduced by recoupments.
- ~~9- 8.~~ "Caretaker relative" means the relative so designated by the household who:
- a. Lives with an eligible dependent child;
  - b. Is a pregnant woman, caretaker relative to no dependent child, in the last trimester of her pregnancy; or
  - c. Lives with a dependent child, under age eighteen and receiving supplemental security income benefits, who is the last child in the home.
- ~~10-9.~~ "Child only case" means a case in which the only eligible individual is a dependent child and the caretaker relative is ineligible as a nonlegally responsible caretaker, or as a legally responsible caretaker due to being a supplemental security income recipient, a disqualified alien, a disqualified fleeing felon, a disqualified parole violator, a disqualified probation violator, or disqualified for committing fraud.
- ~~11-10.~~ "Child support agency" means any entity created by a county agency or any combination of county agencies, in execution of the county agency's duties under subsection 5 of North Dakota Century Code section 50-09-03.
- ~~12.~~ "County agency" means the county social service board.
- ~~13.~~ "County demonstration project" means a project operated by a county, with state approval, to conduct a temporary assistance for needy families program with different objective criteria for the delivery of benefits, services, and the determination of eligibility from those provided elsewhere in the state.
- ~~14-11.~~ "Department" means the North Dakota department of human services.
- ~~15-12.~~ "Dependent child" means a needy child:
- a. Who lives in the home of a relative by birth, marriage, or adoption;
  - b. Who has been deprived of parental support or care by reason of:
    - (1) The continued absence of a parent from the home, other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States;
    - (2) The death of a parent; or
    - (3) The physical or mental incapacity of a parent; and
  - c. Who is:
    - (1) Under the age of eighteen; or
    - (2) Under the age of nineteen and a full-time student in a secondary school or a vocational or technical school that is equivalent to a secondary school, if, before the end of the calendar month in which the student attains age nineteen,

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

~~46.~~13. "Earned income" means income currently received as wages, salaries, commissions, or profits from activities in which a household member is engaged through either employment or self-employment. There must be an appreciable amount of personal involvement and effort, on the part of the household, for income to be considered earned.

~~47.~~14. "Earned right benefit" means a benefit an individual is entitled to receive as a result of being employed, even after the employment has terminated. These benefits include veterans' compensation and pensions; old age, survivors, and disability insurance benefits; railroad retirement benefits; workforce safety and insurance wage-loss and permanent impairment benefits; and unemployment compensation.

~~48.~~15. "Eligible caretaker relative" means a caretaker relative who:

- a. If, related to an eligible dependent child as a brother or sister, is not under sixteen years of age;
- b. If deprivation of parental support or care is by reason of the incapacity or disability of a parent, is the incapacitated or disabled parent or the eligible dependent child's other parent, but not stepparent;
- c. If deprivation of parental support or care is by reason of the death or continued absence of a parent, is the eligible dependent child's other parent, but not stepparent;
- d. Is not a recipient of supplemental security income benefits; and
- e. Is in financial need;
- f. Is a pregnant woman, in the third trimester of her pregnancy, caretaker relative to no other dependent or legally responsible caretaker child, who or whose husband is incapacitated; or
- g. Is related to a dependent child by birth, whether by whole or half-blood, by marriage, or by adoption, and who is within the fifth degree of relationship to that child.

~~49.~~16. "Family" includes:

- a. An individual or group of related individuals within a household whose needs are recognized in a grant of benefits through temporary assistance for needy families;
- b. The parents of any dependent child and all brothers and sisters of any dependent child, whether by whole or half-blood, marriage, or adoption, any child, parent of an eligible dependent child, or other caretaker relative who receives supplemental security income benefits;
- c. An alien who does not meet citizen and alienage requirements;
- d. An alien who is ineligible for temporary assistance for needy families benefits because of the application of sponsor-to-alien deeming;



- e. An individual who is ineligible for temporary assistance for needy families benefits as the result of the imposition of a sanction or disqualification; and
  - f. An individual who is a household member who is a legal dependent or a legally responsible caretaker of a member of the household, but does not include roomers or boarders.
- ~~20.~~ ~~"Financially responsible person" means a person legally responsible for or with a legal duty to provide for the financial support of another person.~~
- ~~21.~~ ~~"Full calendar month" means the period that begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration.~~
- ~~22.~~17. "Full-time student" means a student who:
- a. If in a secondary school, is enrolled in classes which, if completed, will earn the student four or more units of credit;
  - b. If in a vocational or technical school under state operation, a college, or a university, is enrolled in classes that, if completed, will earn the student twelve or more semester hours of credit during a regular term or six or more semester hours of credit during a summer term at an educational facility operating on a semester system, or twelve or more quarter hours of credit during a regular term or six or more quarter hours of credit during a summer term at an educational facility operating on a quarter system;
  - c. If in a private vocational or technical school, is enrolled in classes which, according to a written statement from school officials, constitutes full-time enrollment;
  - d. Is enrolled in an accredited alternative high school, correspondence courses, or adult basic education, according to a written statement from school officials or who is home schooled; or
  - e. Is an individual participating in job corps, whether an adult or a child.
- ~~20.~~18. "Housing costs" means the full amount of rent or, if purchasing a home, the full amount of the mortgage, property insurance, property taxes, special assessments, repairs, and improvements of the home.
- ~~24.~~19. "Ineligible caretaker relative" means a caretaker relative who is not an eligible caretaker relative.
20. "Legally responsible" means having a legal duty for the financial support of another person.
- ~~25.~~21. "Living Lives in the home of a relative" means a circumstance that arises when a relative assumes and continues responsibility for the day-to-day care and control of a child in a place of residence maintained by the relative (whether one or more) as the relative's own home. It includes situations in which the child or the relative requires medical treatment that requires a special living arrangement. It also includes situations in which the child is temporarily absent from the home, with a plan to return, when the child:



- a. Physically resides in the home, but is under the jurisdiction of a court and is receiving probation services or protective supervision;
  - b. Receives education while in an educational boarding arrangement in another community if needed specialized services or facilities are unavailable in the home community or if transportation problems make school attendance near home difficult or impossible;
  - c. Receives services at a summer camp such as Camp Grassick, receives services at an attention deficit hyperactivity disorder summer camp, or receives extended hospital stays during the summer months;
  - d. Receives special education at the school for the deaf or school for the blind, whether as a day student or a boarding student, except that a boarding student's needs are limited to those maintenance items that are not provided by the school; or
  - e. Receives education at a boarding school in another community, provided that the child was not placed in that setting following removal from the child's home by court order following a determination that the child was abused, neglected, or deprived, except that the child is entitled to a clothing and personal needs allowance only if that allowance is made available for the child's use on a regular basis.
26. ~~"Make an assistance payment" means, in the context of two-month retrospective budgeting, an activity that occurs on the date the department deposits an assistance payment check in the United States mail.~~
27. ~~"Monthly income" means income from any source, either earned or unearned, which is computed and reduced to monthly units for the purpose of determining eligibility and benefits. Income may be received weekly, every other week, twice a month, monthly, intermittently, or annually, but is computed and considered monthly.~~
28. ~~"Needy" means a household, otherwise eligible under this chapter, whose countable income, less any applicable disregards, is less than the income identified in the basic requirements table for a family of the size and composition of the household when added to special items of need and any clothing and personal needs allowances of forty-five dollars for which the household is eligible.~~
29. ~~"Nonlegally responsible relative" means a relative who is not the child's parent.~~
30. 22. "Parent" means the child's mother or father, whether by birth or adoption, but does not mean:
- a. An individual whose parental rights have been terminated with respect to that child; or
  - b. A stepparent.
31. 23. "Part-time student" means an individual enrolled in a secondary school, vocational school, correspondence courses, technical school, college, or university, or who is home schooled, who is not a full-time student.



- 32-24. "Processing month" means the month, immediately after the base month, and immediately before the benefit month, in which the county agency determines eligibility for, and the amount of, any benefit to be paid during the benefit month.
- 33-25. "Proper individual" means any individual of sufficient maturity and understanding to act responsibly on behalf of the applicant.
- 34-26. "Prospective budgeting" means the determination, made only with respect to the initial month of eligibility and the month immediately after the initial month of eligibility, based on the county agency's best estimate of the income and circumstances of the household in those months, of the amount of any grant of benefits in those two months.
- 35-27. "Prudent person concept" means a method or program administration that relies upon individual staff members:
- a. To exercise judgment in requesting, reviewing, and weighing information provided by an applicant, recipient, or any source of verification; and
  - b. To be attentive, vigilant, cautious, perceptive, and governed by reason and common sense.
- 36-28. "Recipient" means an individual who receives cash assistance under this chapter.
- 37-29. "Relative by birth, marriage, or adoption" means an individual related to the dependent child by birth, whether by blood or half-blood, by marriage including a marriage that has been terminated by death or divorce, or by adoption, as father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, or first cousin.
- 38-30. "Retrospective budgeting" means a determination, made by the county agency during the processing month, based on income and circumstances of the household, during the base month, of the amount of any grant of assistance in the benefit month.
- 39-31. "Sanction penalty month" means the month in which a sanctioned individual's financial needs may be removed from a household's temporary assistance for needy families grant.
40. ~~"Self-sufficient" means having income sufficient to require closure of the temporary assistance for needy families case.~~
- 41-32. "Special item of need" means an additional benefit paid to a temporary assistance for needy families household to reimburse certain expenses that are not included in the basic standard of need. These items include health insurance premiums, car seats, essential service, house allowance, and catastrophic events.
- 42-33. "Standard employment expense allowance" means twenty-seven percent of earned income, or one hundred eighty dollars, whichever is greater, to be first disregarded from the earned income of any child or adult relative applying for benefits under this chapter, or any other individual whose needs are taken into account in determining eligibility under this chapter, but whose earned income is not required to be wholly disregarded as the



income of a child who is a full-time student or a part-time student who is not a full-time employee.

43.~~34.~~ "Stepparent" means an individual married to a parent of a child after the birth or adoption of the child, but who is not also a parent of that child by either birth or adoption.

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

45.~~36.~~ "Supportive services" means services approved by the department and provided to an individual receiving other temporary assistance for needy families benefits, to assist in training for employment, seeking employment or maintaining employment, and to support job opportunities and basic skills program activities.

46.~~37.~~ "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] during periods beginning July 1, 1997.

47.~~38.~~ "Temporary assistance for needy families household" means an individual or group of individuals who reside together and includes at least one individual in receipt of temporary assistance for needy families.

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

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

50. ~~"Title IV A" means title IV A of the Social Security Act [42 U.S.C. 601 et seq.].~~

51. ~~"Title IV D" means title IV D of the Social Security Act [42 U.S.C. 651 et seq.].~~

52.~~39.~~ "Unearned income" means income that is not earned income.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011; January 1, 2014.

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

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

**SECTION 2.** Section 75-02-01.2-18 is amended as follows:

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

1. A child, if otherwise eligible for temporary assistance for needy families, is deprived of parental support or care when the child's parent has a physical or mental condition, supported by current competent medical testimony, of such a debilitating nature as to reduce substantially or eliminate the parent's capacity either to earn a livelihood or to discharge the parent's responsibilities as a homemaker and provider of child care for a period of thirty days or more. In making a determination of incapacity to earn a livelihood, the department shall take into account the limited employment opportunities of disabled persons with disabilities.
2. The incapacity must ~~be such that it reduces~~ substantially reduce or ~~eliminates~~ eliminate employment in the parent's usual occupation ~~or another occupation to which a parent may be able to adapt.~~ The fact that a



~~parent may have to change occupation or work location does not establish incapacity or limited employment opportunities for a disabled parent. If the incapacity does not allow the parent to be able to return to the parent's usual occupation, once medically capable, the parent will be expected to adapt to another occupation.~~ It does not matter whether a parent was employed or fulfilled the role of homemaker prior to the onset of the asserted incapacity. Incapacity is established either when the person is unable to earn a livelihood or to act as a homemaker. A parent may also establish incapacity by demonstrating that the parent has reached age sixty-five.

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

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2014.

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

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

**SECTION 3.** Section 75-02-01.2-23 is amended as follows:

**75-02-01.2-23. Exempt assets.** The following assets are exempt from consideration in determining eligibility for temporary assistance for needy families benefits:

1. The home occupied by the household including trailer homes being used as living quarters, and the land upon which the home stands, up to twenty contiguous acres [8.09 hectares], if rural, and up to two acres [.81 hectare], if located within the established boundaries of a city;
2. Personal effects, wearing apparel, household goods, and furniture;
3. One car, van, or pickup of any equity value;



4. Indian trust or restricted lands, the proceeds from the sale thereof so long as those proceeds are impressed with the original trust, and the proceeds from the lease thereof so long as those proceeds are not commingled with other funds;
5. For twelve months from the month of receipt and the following month, any refund of federal income taxes made to a member of the household ~~by reason of 25 U.S.C. 32~~, relating to earned income tax credit, and any payment made to a member of the household by an employer ~~under 26 U.S.C. 3507~~, relating to advance payment of earned income tax credit;
6. Real property that the household is making a good-faith effort to sell;
7. Indian per capita funds and judgment funds awarded by either the Indian claims commission or the court of claims after October 19, 1973, interest and investment income accrued on such Indian per capita or judgment funds while held in trust, and purchases made using interest or investment income accrued on such funds while held in trust. The funds must be identifiable and distinguishable from other funds. Commingling of per capita funds, judgment funds, and interest and investment income earned on those funds, with other funds, results in loss of the exclusion;
8. The equity value of all assets owned by a member of the household who is a recipient of supplemental security income; and
9. The equity value of the assets, jointly owned by a program household member and a recipient of supplemental security income.

**History:** Effective December 9, 1996; amended effective January 1, 2003; January 1, 2014.

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

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

**SECTION 4.** Section 75-02-01.2-34 is amended as follows:

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

1. The county agency, for good cause, may waive the requirement that an individual cooperate in obtaining support and establishing paternity if it determines that cooperation is against the best interests of the child. A county agency may determine that required cooperation is against the best interests of the child only if:
  - a. The individual's cooperation in establishing paternity or securing child support is reasonably anticipated to result in:
    - (1) Physical harm to the child for whom support is to be sought;
    - (2) Emotional harm to the child for whom support is to be sought;
    - (3) Physical harm to the parent or caretaker relative with whom the child is living which reduces that individual's capacity to care for the child adequately; or
    - (4) Emotional harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it



- reduces that individual's capacity to care for the child adequately; or
- b. At least one of the following circumstances exists, and the county agency believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure child support would be detrimental to the child for whom support would be sought:
    - (1) The child for whom support is sought was conceived as a result of incest or forcible rape;
    - (2) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or
    - (3) The individual, otherwise required to cooperate, is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep or relinquish the child for adoption, and the discussions have not gone on for more than three months.
  2. Physical harm and emotional harm must be of a serious nature in order to justify a waiver.
  3. A waiver due to emotional harm may only be based on a demonstration of an emotional impairment that substantially impairs the individual's functioning. In determining a waiver, based in whole or in part upon the anticipation of emotional harm to the child, the parent, or the caretaker relative, the county agency shall consider:
    - a. The present emotional state of the individual subject to emotional harm;
    - b. The emotional health history of the individual subject to emotional harm;
    - c. Intensity and probable duration of the emotional impairment;
    - d. The degree of cooperation to be required; and
    - e. The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.
  4. In all cases in which the county agency has determined that good cause exists based on a circumstance subject to change, a determination to grant a waiver must be reviewed ~~no less frequently than~~ , at a minimum, once every six ~~twelve~~ months to determine if the circumstances which led to the waiver continue to exist.
  5. Claims of good cause must be evaluated using the decisionmaking decision-making principles described in section 75-02-01.2-12.

**History:** Effective December 9, 1996; amended effective January 1, 2003; January 1, 2014.

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

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

**SECTION 5.** Section 75-02-01.2-50 is amended as follows:

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



1. Earned income must be verified and documented in the case record. Earned income may be received from a variety of sources.
2. Net earned income is determined by adding monthly net income from self-employment to other monthly earned income and subtracting the applicable deductions and disregards.
3. Except as provided in subsection 4, "monthly net income from self-employment" ~~means income is determined as follows:~~
  - a. ~~In the case of a self-employed individual whose business does not require the purchase of goods for sale or resale, seventy-five percent of gross monthly earnings from self-employment~~ Monthly self-employment income is one-twelfth of the business or farm income calculated from the net profit of an individual's income tax forms and schedules, plus gains or minus losses related to self-employment business that are expected to continue during the current year, minus any type of income that must be considered unearned income, and minus expenses with the exception of depreciation and depletion.
  - b. ~~In the case of a self-employed individual whose business requires the purchase of goods for sale or resale, seventy-five percent of the result determined by subtracting cost of goods purchased from gross receipts, determined monthly~~ For a business that has been operating for less than a full tax year, monthly self-employment income is the gross income from the individual's income tax forms and schedules, plus gains or minus losses related to the self-employment business that are expected to continue during the current year, minus any type of income that must be considered unearned income and minus expenses, with the exception of depreciation and depletion, divided by the number of months the business has been in operation.
  - c. In the case of a business that furnishes room and board, monthly gross receipts less one hundred dollars per room and board client.
  - d. ~~In the case of a self-employed individual in a service business that requires the purchase of goods or parts for repair or replacement, twenty-five percent of gross monthly earnings from self-employment.~~
  - e. ~~In the case of a self-employed individual who receives income other than monthly, if the most recently available federal income tax return accurately predicts income, twenty-five percent of gross annual income, plus 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 severe reversal, because the applicant or recipient makes a convincing showing that actual net income is substantially less than twenty-five percent of gross profit~~ the amount determined,



~~because the individual has not filed an income tax return, or because the county agency determines for any reason that actual net profits are substantially greater than twenty-five percent of gross profit the amount determined based on the most recent available federal income tax return, an amount determined by the county agency to represent the best estimate of monthly net income from self-employment must be used. A If the most recent available federal income tax return is not used or if the individual did not file a federal income tax return, the self-employed individual shall provide, ~~on a monthly basis~~, the best information available on income and ~~cost of goods expenses~~. Income and expense statements, when available, must be used as a basis for computation. ~~If the business is farming or any other seasonal business, the annual net income, divided by twelve, is the monthly net income.~~~~

4. If earnings from more than one month are received in a lump sum payment, the payment must be divided by the number of months in which the income was earned, and the resulting monthly amounts are attributed to each of the months with respect to which the earnings were received.
5. Income received on a contractual basis is allocated equally to each of the months covered by the contract, regardless of when the contract payments are actually received, and is deemed available to be received in the months to which income is allocated.
6. The standard employment expense allowance recognizes all costs associated with employment, including transportation, uniforms, social security contributions, and income tax withholding. This standard allowance applies to adult household members and nonstudent dependent children who are employed either full time or part time.
7. The standard employment expense allowance is the greater of one hundred eighty dollars or twenty-seven percent of gross earned income per month. This standard employment expense allowance applies to all individuals who receive an employment expenses allowance, including stepparents and parents of minor parents.

**History:** Effective December 9, 1996; amended effective January 1, 2003; January 1, 2014.

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

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

**SECTION 6.** Section 75-02-01.2-68 is amended as follows:

**75-02-01.2-68. High school graduate or general equivalency diploma incentive payment.** The county agency may authorize a one-time payment of ~~two hundred fifty dollars~~ an amount determined by the department, as a special item of need, to each individual in the household upon completion of high school or receipt of general equivalency diploma.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011; January 1, 2014.

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

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

**SECTION 7.** Section 75-02-01.2-68.1 is amended as follows:

**75-02-01.2-68.1. Housing allowance.** The county agency may authorize, as a special item of need, an ~~additional fifty dollars per month~~ amount determined by the department when a family has an independent living arrangement and the members of the family have sole responsibility for all housing costs.

**History:** Effective January 1, 2011; amended effective January 1, 2014.

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

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

**SECTION 8.** Section 75-02-01.2-72 is amended as follows:

**75-02-01.2-72. Intentional program violation – Disqualification penalties.**

1. For purposes of this section:
  - a. "Intentional program violation" means an individual's intentional action or failure to act which consists of:
    - (1) Making a false or misleading statement or misrepresenting, concealing, or withholding facts;
    - (2) Violating provisions of North Dakota Century Code chapter 50-09, this chapter, or any state statute relating to the acquisition or use of assistance provided under North Dakota Century Code chapter 50-09 or this chapter; or
    - (3) Being convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence of the individual to receive temporary assistance for needy families, medicaid, supplemental nutrition assistance program benefits, or supplemental security income simultaneously from two or more states;
    - (4) Using a temporary assistance for needy families debit card in any liquor store; any casino, gambling casino, or gaming establishment, or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state of entertainment in violation of P.L. 112-96, provided access to the funds is not otherwise available through an automated teller machine, financial institution, or other means within a reasonable distance of the recipient's residence; and
  - b. An individual intends all results reasonably foreseeable from the actions the individual takes or fails to take.
2. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or



by a federal or state court must be subject to the penalties provided in this section. Additionally:

- a. If a court judgment includes a temporary assistance for needy families disqualification period, the county agency shall impose the disqualification period according to the temporary assistance for needy families disqualification timeframes; or
  - b. If a court judgment does not include a disqualification period, the county agency shall pursue any appropriate disqualification according to temporary assistance for needy families disqualification requirements.
3. An individual who waives the individual's right to appear at an intentional program violation hearing must be subject to the penalties provided in this section.
4. During any period of disqualification:
  - a. The individual's needs may not be taken into account when determining the household's need and amount of assistance;
  - b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the household;
  - c. Income disregards may be provided for the disqualified individual when determining if the remaining household members are eligible; and
  - d. The overpayment is recovered through a reduction, at the rate of twenty percent of the standard of need, excluding special items of need.
5. The duration of the penalty described in this section must be:
  - a. One year for the first offense;
  - b. Two years for the second offense;
  - c. Permanent for the third and any subsequent offense; and
  - d. Ten years for individuals who were convicted in federal or state court of fraudulently misrepresenting residence.
6. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction, but in no event may the duration of the period for which the penalty was imposed be subject to review.
7. In cases when a disqualification penalty and other sanctions or penalties apply:
  - a. The disqualification penalties in this section must be in addition to, and may not be substituted for, any other sanctions or penalties that may be imposed for the same offense; and
  - b. The disqualification penalties imposed under this section affect only the individual concerned and cannot substitute for other sanctions imposed under this chapter.
8. A disqualification penalty imposed on an individual by another state may be continued in this state and may be used to determine the appropriate duration of a disqualification penalty imposed under this section.

9. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.
10. The department shall issue a written notice informing the individual of the period of disqualification and the amount of assistance the household may receive during the disqualification period.
11. Overpayments must be recovered from the assistance unit which was overpaid, any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or any individual members of the overpaid assistance unit whether or not currently a recipient.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011; January 1, 2014.

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

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

**SECTION 9.** Section 75-02-01.2-72.1 is amended as follows:

**75-02-01.2-72.1. Denial of assistance for fugitive felons, probation and parole violators, and certain convicted drug offenders.**

1. An individual may not be included in the cash grant if the individual is:
  - a. Fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of such state; or
  - b. Violating a condition of probation or parole imposed under federal or state law; ~~or~~
  - c. Convicted.
2. An individual may not be included in the cash grant for a period of seven years from the date of the most recent felony conviction, if the individual is convicted of a felony offense for an act which occurred after August 22, 1996, which has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)]. The disqualification does not apply to alcohol-related convictions.
- 2.3. During any period of disqualification:
  - a. The individual's needs may not be taken into account when determining the household's need and amount of assistance;
  - b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the household; and
  - c. Income disregards may be provided for the disqualified individual when determining if the remaining household members are eligible.



**History:** Effective January 1, 2003; amended effective June 1, 2005; January 1, 2014.

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

**Law Implemented:** NDCC 50-09-02; 50-09-29

**SECTION 10.** Section 75-02-01.2-73 is amended as follows:

**75-02-01.2-73. Health tracks.** ~~All~~ The county agency may authorize an amount to be determined by the department, as a special item of need, to all members of a household, under age twenty-one, who complete a health tracks screening are eligible for a minimum twenty-five dollar payment, as a special item of need. This amount may only be authorized and issued once every twelve months, beginning with the date of the screening.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011; January 1, 2014.

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

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