

**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

75-03-23-01	Definitions
75-03-23-02	Eligibility Criteria
75-03-23-03	Eligibility Determination - Authorization of Services
75-03-23-04	Eligibility Criteria for Medicaid Waiver Program
75-03-23-05	Services Covered Under the SPED Program – Programmatic Criteria
75-03-23-06	Services Covered Under the Medicaid Waiver Program - Programmatic Criteria
75-03-23-07	Qualified Service Provider Standards and Agreements
75-03-23-08	Termination of Qualified Service Provider Status and Denial of Application to Become a Qualified Service Provider
75-03-23-09	Payment Under the SPED Program and the Medicaid Waiver Program
75-03-23-10	Department to Recover Funds Upon Establishment of Noncompliance
75-03-23-11	Denial, Reduction, and Termination of Services - Appeal
75-03-23-12	Provider - Request for Review
75-03-23-13	Provider - Appeals
75-03-23-14	Disqualifying Transfers
75-03-23-15	Application - Applicant Required to Provide Proof of Eligibility
75-03-23-16	Reapplication After Denial or Termination
75-03-23-17	Functional Assessment

**SECTION 1.** Subsection 3 of section 75-03-23-02 is amended as follows:

**75-03-23-02. Eligibility criteria.**

3. An applicant eighteen years of age or older is eligible for the SPED program pool if:
  - a. The applicant has a functional impairment as specified by the department in policies and procedures to indicate applicant eligibility;
  - b. The applicant's functional impairment has lasted, or can be expected to last, three months or longer;
  - c. The applicant's functional impairment is not the result of a mental illness or a condition of mental retardation, or a closely related condition;
  - d. The applicant is living in North Dakota in a housing arrangement commonly considered a private family dwelling and not in an institution;
  - e. The applicant is not eligible for services under the medicaid waiver program or the medicaid state plan option of personal care services unless the applicant's estimated monthly benefits under this

chapter, excluding the cost of case management, are between the current medically needy income level for a household of one plus the disregard established in North Dakota century code section 50-24.1-02.3, and the lowest level of the fee schedule for services under 50-06.2, or unless the individual is receiving a service that is not available under medicaid or the medicaid waiver;

- f. The applicant would receive one or more of the covered services under department policies and procedures for the specific service;
- g. The applicant agrees to the plan of care developed for the provision of home and community-based services;
- h. The applicant is not responsible for one hundred percent of the cost of the covered service provided, under the SPED program sliding fee scales based on family size and income; and
- i. The applicant has not made a disqualifying transfer of assets.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-01(3), 50-06.2-03(5), 50-06.2-04(3)

**SECTION 2.** Subsections 2 and 12 of section 75-03-23-05 are 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:

- 2. The department may provide adult family foster care using a licensed adult family-foster care provider to a client eighteen years of age or older:
  - a. Who resides in a licensed adult family foster care home;
  - b. Who requires care or supervision;
  - c. Who would benefit from a family environment; and
  - d. Whose required care does not exceed the capability of the foster care provider.
  
- 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 family foster care may choose a respite provider and is not required to use a relative of the adult family foster care provider as the client's respite provider.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-01(3), 50-06.2-03(5)

**SECTION 3.** Subsections 2 and 15 of section 75-03-23-06 are 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:

- 2. The department may provide adult family foster care, using a licensed adult family foster care provider, to a client who resides in a licensed adult family foster care home who:
  - a. Is eighteen years of age or older;
  - b. Requires care or supervision;
  - c. Would benefit from a family environment; and
  - d. Requires care that does not exceed the capability of the foster care provider.
  
- 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 family foster care home may choose a respite provider and is not required to use a relative of the adult family foster care provider as the client's respite provider.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016.

**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; North Dakota Century Code section 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; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 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; ~~subsection 1 of section 19-03.1-23, manufacture, deliver, or possess with intent to deliver a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet;~~ or 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 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;

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; and

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.

4-5. Evidence of competency for adult family 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.

5-6. A provider of services for adult day care, adult family foster care, attendant care, extended personal care, family personal care, personal care, residential care, respite care, 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.
- ~~6-7.~~ An applicant for qualified service provider status for attendant care, adult family foster care, extended personal care, family personal care, personal care, residential care, 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, 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.
- ~~7-8.~~ 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.
- ~~8-9.~~ 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.
- ~~9-10.~~ The department shall notify the individual or the agency of its decision on designation as a qualified service provider.
- ~~10-11.~~ 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.
- ~~11-12.~~ 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.

**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 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; or
  - 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. The applicant voluntarily withdraws the application;
- b. The applicant is not in compliance with applicable state laws, state regulations, or program issuances governing providers;
- c. 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. 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. 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. The applicant, if previously enrolled as a qualified service provider, had demonstrated a pattern of submitting inaccurate billings or cost reports;
- g. 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. 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. The applicant has delivered goods, supplies, or services that are of an inferior quality or are harmful to individuals;
- j. 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. The applicant, if previously enrolled as a qualified service provider, owes the department money for payments incorrectly made to the provider;
- l. The qualified service provider is currently excluded from participation in medicare, medicaid, or any other federal health care program; or
- m. 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. 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. The applicant previously has been terminated for inactivity and does not have a prospective public pay client;
- p. The applicant previously has been terminated for inactivity and has not provided valid reason for the inactivity; or

g. For other good cause.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016.

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-03(5)