

**CHAPTER 75-02-02.1
ELIGIBILITY FOR MEDICAID**

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SECTION 1. Subsections 7, 10, and 26 of section 75-02-02.1-28 are amended as follows:

75-02-02.1-28. Excluded assets. Except as provided in section 75-02-02.1-28.1, the following types of assets will be excluded in determining if the available assets of an applicant or recipient exceed asset limits:

7. a. ~~Notwithstanding~~ Notwithstanding any other provision to the contrary, the assets of an individual must be disregarded when determining medicaid eligibility in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy that:
 - (1) Covers an insured who was a resident of North Dakota when coverage first became effective under the policy;
 - (2) Is a qualified long-term care insurance policy, as defined in section 7702B(b) of the Internal Revenue Code of 1986, issued not earlier than the effective date of the state plan amendment described in subdivision b;
 - (3) The agency determines meets the requirements of the long-term care insurance model regulations and the long-term care insurance model act promulgated by the national association of insurance commissioners as adopted as of

- October 2000, or the state insurance commissioner certifies that the policy meets such requirements; and
- (4) Is sold to an individual who:
 - (a) Has not attained age sixty-one as of the date of purchase, if the policy provides compound annual inflation protection;
 - (b) Has attained age sixty-one but has not attained age seventy-six as of the date of purchase, if the policy provides some level of inflation protection; or
 - (c) Has attained age seventy-six as of the date of purchase.
 - b. This subsection applies only to individuals who have purchased a long-term care insurance policy described in this subsection with an issue date on or after the date specified in an approved medicaid state plan amendment that provides for the disregard of assets:
 - (1) To the extent that payments are made under such a long-term care insurance policy; or
 - (2) Because an individual has received or is entitled to receive benefits under such a long-term care insurance policy.
10. a. Any pre-need burial contracts, prepayments, or deposits up to the amount set by the department in accordance with state law and the medicaid state plan, which are designated by an applicant or recipient for the burial of the applicant or recipient. Earnings accrued on the total amount of the designated burial fund are excluded.
- (1) The burial fund must be identifiable and may not be commingled with other funds. Checking accounts are considered to be commingled.
 - (2) The value of an irrevocable burial arrangement shall be considered toward the burial exclusion. The irrevocable amount may not exceed the amount of the burial asset exclusion at the time the contract is entered, plus the portion of the \$3,000 asset limitation the purchaser designates for funeral expenses.
 - (3) The prepayments on a whole life insurance policy or annuity are the lesser of the face value or the premiums that have been paid.
 - (4) Any fund, insurance, or other property given to another person or entity in contemplation that its value will be used to meet the burial needs of the applicant or recipient shall be considered part of the burial fund. If an applicant or recipient's burial is funded by an insurance policy, the amount considered set aside for the burial is the lesser of the cost basis or the face value of the insurance policy.

- (5) At the time of application, the value of a designated burial fund shall be determined by identifying the value of the prepayments which are subject to the burial exclusion and asset limit amounts.
 - (6) Designated burial funds which have been decreased prior to application for medicaid shall be considered redesignated as the date of last withdrawal. The balance at that point shall be considered the prepayment amount and earnings from that date forward shall be disregarded.
 - (7) Reductions made in a designated burial fund after eligibility is established must first reduce the amount of earnings.
 - (8) An applicant shall be determined eligible for the three-month prior period when a burial fund is established at the time of application if the value of all assets are within the medicaid burial fund exclusion and asset limit amounts for each of the three prior months. Future earnings on the newly established burial fund must be excluded.
- b. A burial plot for each family member.

26. Funds held in ~~employer-sponsored retirement plans but not private that are considered qualified retirement plans. An employer-sponsored retirement plan is a benefit plan that an employer offers for the benefit of the employer's employees at no or a relatively low cost to the employees in the Internal Revenue Code [26 United States Code].~~

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; August 1, 2005; April 1, 2008; January 1, 2010; January 1, 2011; April 1, 2012; April 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-02.3

SECTION 2. Subdivision a of subsection 3 and subsection 6 of section 75-02-02.1-32 are amended as follows:

75-02-02.1-32. Valuation of assets. It is not always possible to determine the value of assets with absolute certainty, but it is necessary to determine a value in order to determine eligibility. The valuation must be based on reasonably reliable information. It is the responsibility of the applicant or recipient, or the persons acting on behalf of the applicant or recipient, to furnish reasonably reliable information. Because an applicant or recipient may not be knowledgeable of asset values, and particularly because that person may have a strong interest in the establishment of a particular value, whether or not that value is accurate, some verification of value must be obtained. If a valuation from a source offered by an applicant or recipient is greatly different from generally available or published sources, the applicant or recipient must provide a convincing explanation for the differences particularly if the applicant or recipient may be able to influence the person providing the valuation. If reasonably reliable information

concerning the value of assets is not made available, eligibility may not be determined. Useful sources of verification include:

3. Real property.

a. With respect to mineral interests:

- (1) If determining current value, the best offer received following a good-faith effort to sell the mineral interests. A good-faith effort to sell means offering the mineral interests to at least three companies purchasing mineral rights in the area, or by offering for bids through public advertisement.
- (2) If determining a past value for mineral rights previously sold or transferred:
 - (a) If producing, the value is an amount equal to any lease income received after the transfer plus three times the annual royalty income based on actual royalty income from the ~~thirty-six~~ sixty months following the transfer, or if ~~thirty-six~~ sixty months have not yet passed, based on actual royalty income in the months that have already passed plus an estimate for the remainder of the ~~thirty-six-month~~ sixty-month period.
 - (b) If not producing, but the mineral rights are leased, the value is an amount equal to two times the total lease amount; or
 - (c) If not leased, the value is an amount equal to the greater of two times the estimated lease amount or the potential sale value of the mineral rights, as determined by a geologist, mineral broker, or mineral appraiser.
- (3) In determining current or past value, an applicant, recipient, or the department may provide persuasive evidence establishing a value different from the value established using the process described in this subdivision.

6. Contract values.

- a. The value of a contract under which payments are made to an applicant or a recipient and in which payments are current is equal to the total of all outstanding payments of principal required to be made by the contract, unless evidence is furnished that establishes a lower value.
- b. The value of a contract under which payments are made to an applicant or a recipient and in which payments are not current is an amount equal to the current fair market value of the property subject to the contract. If the contract is not secured by property, the value of the contract is the total of all outstanding payments of

principal and past due interest required to be made under the contract.

- c. If the contractual right to receive money payments is not collectable and is not secured, the debt has no collectable value and is not a countable asset. An applicant or recipient can establish that a note has no collectable value if:
- (1) The debtor is judgment proof which means a money judgment has been secured, an execution has been served upon the debtor which has been returned as wholly unsatisfied, and the debtor's affidavit and claim for exemptions exempt all of the debtor's property; or
 - (2) The applicant or recipient verifies the debt is uncollectable due to a statute of limitations which may be shown, among other ways, by an attorney's letter identifying the applicable statute and the facts that make the debt uncollectable under that statute of limitations.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; April 1, 2008; January 1, 2010; January 1, 2011; April 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

SECTION 3. Subdivision a of subsection 5 of section 75-02-02.1-33.2 is amended as follows:

75-02-02.1-33.2. Disqualifying transfers made on or after February 8, 2006.

5. a. The number of months and days of ineligibility for an individual shall be equal to the total cumulative uncompensated value of all income and assets transferred by the individual, or individual's spouse, on or after the look-back date divided by the average monthly cost or average daily cost, as appropriate, of nursing facility care in North Dakota at the time of the individual's first application.

History: Effective April 1, 2008; amended effective January 1, 2010; January 1, 2011; April 1, 2012; April 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(c)

SECTION 4. Subdivisions d and e of subsection 2 of section 75-02-02.1-40 are amended as follows:

75-02-02.1-40. Income levels.

2. Determining the appropriate income level in special circumstances.
- d. During a month in which an individual with eligible family members in the home enters or leaves a nursing facility to return home, or elects to receive home and community-based services or

terminates that election, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate medically needy, workers with disabilities, or children with disabilities income level. An individual in a nursing facility shall be allowed ~~forty~~ sixty-five dollars to meet maintenance needs during all full calendar months in which the individual resides in the nursing facility. A recipient of home and community-based services shall be allowed the medically needy income level for one during all full calendar months in which the individual receives home and community-based services. In determining eligibility for workers with disabilities or children with disabilities coverage, individuals in a nursing facility, or in receipt of home and community-based services, will be allowed the appropriate workers with disabilities or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.

- e. For an institutionalized spouse with an ineligible community spouse, the ~~forty~~ sixty-five dollar income level is effective in the month of entry, during full calendar months, and in the month of discharge. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2010; January 1, 2011; July 1, 2012; April 1, 2014.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

SECTION 5. Section 75-02-02.1-43 is created as follows:

75-02-02.1-43. Payment for Services by Attorney-in-Fact.

- 1. For purposes of determining an individual's eligibility under this chapter, if payment is made by the individual to the individual's attorney-in-fact for services or assistance furnished to the individual by the attorney-in-fact, the department may not treat the services or assistance furnished as consideration for the transferred income or asset unless:
 - a. (1) The payment is made pursuant to a valid written contract entered between the individual and the attorney-in-fact prior to the attorney-in-fact rendering the services,
 - (2) The contract was executed by the individual or the individual's fiduciary who is not the provider of services or assistance under the contract,
 - (3) Compensation is reasonable and consistent with rates paid in the open market for the services actually provided, and
 - (4) The services are necessary and reasonable; or

- b. The prior course of dealing between the individual and the attorney-in-fact included the individual paying compensation to the POA upon the POA's rendering of services or assistance to the individual, or within 30 days thereafter.
- 2. Reasonable payments are allowed as a spend-down of assets but not as a deduction from income.

History: Effective April 1, 2014.

General Authority: NDCC 50-06-16.

Law Implemented: NDCC 50-24.1-02