

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, ~~except.~~ 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 ~~getting around~~ mobility inside the home.
2. "Adaptive assessment" means an ~~in-home~~ evaluation to identify adaptive devices, equipment, or modifications that enhance the independence and functional capabilities of ~~individuals~~ an individual who may otherwise be unable to remain in their the individual's home. ~~An interdisciplinary team conducts the assessment and oversees implementation of recommendations.~~
3. "Aged" means ~~a person who is~~ sixty-five years of age or older.
4. "Client" means an individual who meets the eligibility requirements ~~to have and is~~ receiving services reimbursed under North Dakota Century Code 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, ~~or its~~ designee.
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 ~~a person under age sixty-five who has~~ with a congenital disability, a disability due to trauma, or ~~an acquired~~ a disability that is acquired.
10. "Disqualifying Transfer" as defined in North Dakota Century Code chapter 50-06.2 means a transfer made at any time before or after an individual makes application for SPED benefits by which the individual or the individual's spouse has made any assignment or transfer of any asset for the purpose of making that individual eligible for benefits. Assignment or transfer includes any action or failure to act that effects a transfer, renunciation, or disclaimer of any asset or interest in an asset that the individual otherwise might assert or have asserted, or which serves to reduce the amount that an individual might otherwise claim from a decedent's estate, a trust or similar device, or another individual obligated by law to furnish support.

- ~~40.~~ 11. "Functional assessment" means an evaluation process based on a person's an individual's ability to perform self-care activities and other skills necessary for independent living.
- ~~41.~~ 12. "Functional impairment" means the inability to perform, either by oneself or with adaptive aids or with human help, the specific activities of daily living or instrumental activities of daily living.
- ~~42.~~ 13. "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.
- ~~43.~~ 14. "Instrumental activities of daily living" means ~~tasks~~ activities requiring cognitive ability or physical ability, or both. ~~Tasks~~ Instrumental activities of daily living include preparing meals, shopping, managing money, housework, laundry, taking medicine, transportation, using the telephone, and mobility outside the home.
- ~~44.~~ 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. "Service fee" means the amount a SPED client is required to pay toward the cost of the client's SPED services.
- ~~45.~~ 17. "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.
- ~~46.~~ 18. "SPED program" means ~~"service the service payments for elderly and disabled program"~~ 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 persons.
- ~~47.~~ 19. "SPED program pool" means the list maintained by the ~~aging services division of the department that~~ which contains the names of those individuals ~~who meet the eligibility criteria to receive services under the SPED program and clients for whom SPED program funding is available when the individual's name is clients' names are~~ transferred from the SPED program pool to SPED program active status.

History: Effective June 1, 1995; amended effective January 1, 2009.

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

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

SECTION 2. Section 75-03-23-02 is amended as follows:

75-03-23-02. Eligibility criteria.

1. An applicant shall must be entered in the SPED program pool before service payments may be authorized. The department shall allow entry into the SPED program pool to occur:

- a. ~~When the county social service board of the county where the applicant resides or will receive services~~ department's designee submits a form in the manner prescribed by the department; or
 - b. When the applicant meets the circumstances provided in subsections 4, 5, or 6 of section 75-03-23-03.
2. An applicant's resources ~~must~~ may not exceed fifty thousand dollars for the applicant to be eligible for services under the SPED program. For purposes of this section, resources are cash or similar assets that can be readily converted to cash and include residences owned by the applicant other than the applicant's primary residence.
3. An applicant eighteen years of age or older is eligible for the SPED program pool if:
 - a. The applicant has a functional impairment in activities of daily living or in instrumental activities of daily living 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 ~~more~~ 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, ~~dormitory, or congregate housing arrangement~~;
 - e. The applicant is not eligible for services under the medicaid waiver program or the medicaid state plan option of personal care services;
 - f. The applicant would receive one or more of the covered services ~~in accord with~~ 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; and
 - h. The applicant is not responsible for one hundred percent of the cost of the covered service provided, ~~in accord with~~ under the ~~human service plan~~ SPED program sliding fee scale ~~scales~~ based on family size and income; and
 - i. The applicant has not made a disqualifying transfer of assets.
4. An applicant under eighteen years of age is eligible for the SPED program pool if the applicant is determined to need nursing facility level of care as provided for in section 75-02-02-09 and the applicant's care need is not the result of a mental illness or the condition of mental retardation, or a closely related condition.
5. Applicants ~~An applicant~~ under eighteen years of age ~~are subject to the following limitations or requirements in addition to the eligibility criteria in subsection 3~~ must meet the eligibility requirements of subsections 3 and 4.
 - a. ~~—An applicant is not eligible for service payments unless care:~~
 - a. Care provided to the applicant by the applicant's parent or the applicant's spouse is provided under family home care.
 - b. An applicant is eligible for service payments if the caregiver:
 - (1) ~~Had to terminate outside employment to care for the applicant;~~
 - (2) ~~Needs to supplement the family income by outside employment if the SPED payments were not available; or~~

- (3) ~~Would be dependent on county poor relief for support with the service payment~~ The applicant is unable to regularly attend school or is severely limited in the amount of time the applicant is able to attend school.
6. ~~All applicants~~ An applicant must be capable of directing self-care or must have a legally responsible party to act in on the applicant's behalf.
 7. An applicant is not eligible for service payments if the care provided is court ordered.

History: Effective June 1, 1995; amended effective January 1, 2009.

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 3. Section 75-03-23-03 is amended as follows:

75-03-23-03. Eligibility determination - Authorization of services.

1. ~~The department shall provide written notice to the county social service board of the county where the applicant receives services as~~ department's designee of the effective date of the applicant's eligibility for services funded under the SPED program.
2. A person transferred to SPED program active status from the SPED program pool shall continue to meet the eligibility criteria of section 75-03-23-02 ~~in order to remain eligible for services funded under the SPED program.~~
3. ~~The county social service board's~~ department's designee is responsible for:
 - a. Verifying that the person transferred to active status continues to meet the eligibility criteria for entry placement into the SPED program pool;
 - b. Developing a care plan; ~~and~~
 - c. Authorizing covered services in ~~accord~~ accordance with department policies and procedures;
 - d. Verifying the financial eligibility criteria in relation to income, assets, and deductions; and
 - e. Assuring that other potential federal and third-party funding sources for similar services are sought first.
4. A recipient of services under the medicaid waiver program, who becomes ineligible for the medicaid waiver program because evaluation shows that the recipient no longer requires a nursing facility level of care, ~~shall~~ does not have to go through the SPED program pool to receive services through the SPED program as long as provided the recipient meets all eligibility criteria in subsections 2 through 5 of section 75-03-23-02 are met.
5. A recipient of services under the medicaid personal care service option, who becomes ineligible for services under the medicaid personal care service option, does not have to go through the SPED program pool to receive services through the SPED program provided the recipient meets all eligibility criteria in section 75-03-23-02.
6. A recipient of services under the expanded service payment for elderly and disabled program, who becomes ineligible for services under the expanded service payments for the elderly and disabled program, does not have to go

through the SPED program pool to receive services through the SPED program provided the recipient meets all eligibility criteria in section 75-03-23-02.

7. An individual who is discharged from an inpatient hospital stay, skilled nursing facility, swing bed facility, long term care facility or basic care facility or who has been off of the SPED program for fewer than 60 days, does not have to go through the SPED program pool to receive services through the SPED program provided the individual meets all eligibility criteria in section 75-03-23-02.

History: Effective June 1, 1995; amended effective January 1, 2009.

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

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

SECTION 4. Section 75-03-23-04 is amended as follows:

75-03-23-04. Eligibility criteria for medicaid waiver program. An applicant is eligible to receive services funded by the medicaid waiver program if:

1. The applicant is either aged or disabled, and, if disabled:
 - a. The disability must not be the result of mental illness as the primary diagnosis or the result of mental retardation, or a closely related condition; and
 - b. The disability must meet the social security administration's definition of disability or the individual must be determined physically disabled by the state review team under section 75-02-02.1-14.
2. The applicant is receiving medicaid;
3. The applicant is evaluated to be in need of a nursing facility level of care;
4. The applicant's needs may be met by one or more of the covered services, as determined by an assessment conducted in ~~accord~~ accordance with department policies and procedures;
5. The applicant's service provider is not the applicant's spouse, except when allowed by an approved waiver, or, if the applicant is less than eighteen years old, the applicant's service provider is not the applicant's parent, step-parent, or a person legally responsible for the care of the individual unless allowed by an approved waiver;
6. The applicant agrees to accept services provided under the medicaid waiver program instead of nursing home care; and
7. The applicant agrees to the plan of care developed for the provision of home and community-based services.

History: Effective June 1, 1995; amended effective January 1, 2009.

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

Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5), 50-06.2-03(6)

SECTION 5. 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. Adult ~~The department may provide adult day care services may be provided to a client:~~
 - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
 - b. ~~Who is able to function in an ambulatory care setting;~~
 - e. Who is able to participate in group activities; and
 - d. c. If ~~Who,~~ if the client does not live alone, the client's has a primary caregiver who will benefit from the temporary relief of care giving.
2. Adult ~~The department may provide adult family foster care, using a licensed adult family foster care provider, may be provided 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;
 - b. c. Who would benefit from a family environment; and
 - e. d. Whose required care does not exceed the capability of the foster care provider.

~~Care must be provided in a licensed adult foster care home. SPED program service payments may not be used to pay room and board costs for adult foster care.~~

3. Chore ~~The department may provide chore services may be provided to a client who is unable to perform intermittent or occasional home tasks 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, minor home repair, and walk maintenance. 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 task activity must be the responsibility of the client and not the responsibility of the landlord. Chore services may also be used to install bathroom safety rails or other equipment that enables self-care.~~
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.
4. 5. Family ~~The department may provide family home care services may be provided to a client:~~
 - a. Who lives in the same residence as the care provider on a twenty-four-hour basis;
 - b. Who agrees to the provision of services by the care provider; and
 - c. Who is the spouse of the care provider ~~or by one of the following relatives,~~ 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.
5. 6. Home ~~The department may provide home and community-based services case management services may be provided to a client who needs a~~

comprehensive assessment and the coordination of cost-effective delivery issues. The case management services must be provided by a licensed social worker in accord with licensed under North Dakota Century Code section 43-41-04.

6. ~~Home health aide services may be provided to a client who needs nonprofessional help with personal care tasks or activities on an intermittent or occasional basis.~~
7. ~~Homemaker~~ The department may provide homemaker services may be provided to a client who needs assistance with environmental maintenance tasks 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 provide essential homemaking activities such as meal preparation if the adult not receiving care who resides in the home is unavailable due to employment. Shopping The department may provide shopping assistance may be provided only if at least one other task activity is performed and no other shopping assistance is available through informal networks or other community providers.
8. 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.
9. ~~Personal attendant~~ The department may provide personal care services, which must be provided in the client's home, may be provided to a client who needs help or supervision with personal care activities if:
 - a. ~~Who~~ The client is at least eighteen years of age;
 - b. ~~Who~~ 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. ~~Who needs nonprofessional care or supervision on a daily basis~~ 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 75-03-23-05 (5)(c).
10. ~~Respite~~ The department may provide respite care services may be provided 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:
 - a. The client has a full-time primary caregiver;
 - b. The client needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;
 - c. The primary caregiver's need for the relief is intermittent or occasional; and
 - d. 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.
11. The department may provide other services as the department determines appropriate.

History: Effective June 1, 1995; amended effective January 1, 2009.

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

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

SECTION 6. 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. Adult ~~The department may provide adult day care services may be provided to a client:~~
 - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
 - b. ~~Who is able to function in an ambulatory care setting;~~
 - c. ~~Who is able to participate in group activities; and~~
 - d. c. Whose primary caregiver, who shall reside with the client, 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 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.
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 20 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.
- 2.5. ~~Chore~~ The department may provide chore services may be provided to a client who is unable to perform intermittent or occasional home tasks, including heavy housework and periodic cleaning, minor home repair, and walk maintenance. 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 task activity must be the responsibility of the client and not the responsibility of the landlord. Chore services may also be used to install bathroom safety rails or other equipment that enables self-care.
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.
- ~~11.7. At a cost that is proportional to the benefit outcome, When no alternative community resource is available, the department may provide environmental modification may be provided to a client:~~
- ~~a. Who if the client owns the home to be modified and owned it prior to making application for the modification; and~~
 - ~~b. Whose home is structurally sound~~
 - ~~c. For whom 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.~~
 - ~~d. When no alternative community resource, such as housing grants, is available.~~
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.
3. 9. Home ~~The department may provide home and community-based services case management services may be provided~~ to a client who needs a comprehensive assessment and the coordination of cost-effective delivery of services. ~~The case~~ Case management services provided under this subsection must be provided by a licensed social worker in accord with licensed under North Dakota Century Code section 43-41-04.
4. ~~Home health aide services may be provided to a client who needs nonprofessional help with personal care tasks or activities or an intermittent or occasional basis.~~
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. Homemaker ~~The department may provide homemaker services may be provided~~ to a client who needs assistance with environmental maintenance tasks 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. Essential homemaking activities such as meal preparation may be provided 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 task activity is performed and no other shopping assistance is available through informal networks or other community providers.
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 43-12.1; and

(2) Has a cognitive or physical impairment that prevents them 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.

~~6- 13. Nonmedical~~ The department may provide nonmedical transportation services may be provided to clients a client who are is unable to provide their his or her own transportation and need 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.

~~7. Personal attendant care services, including adult foster care, may be provided to a client:~~

~~a. Who is at least eighteen years of age;~~

~~b. Who lives alone or is alone due to the employment of the primary caregiver or the incapacity of other household members; and~~

~~c. Who needs nonprofessional care or supervision on a daily basis.~~

~~Personal attendant care may be provided in the client's home or, if the client would benefit from a family environment, in the provider's home. If the care is provided in the provider's home, the provider must be licensed in accord with chapter 75-03-22. Medicaid waiver payments may not be used to pay room and board costs for adult foster care.~~

~~8- 14. Respite~~ The department may provide respite care services may be provided 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:

~~a. The client has a full-time primary caregiver;~~

~~b. The client needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;~~

~~c. The primary caregiver's need for the relief is intermittent or occasional; and~~

~~d. 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 fulltime student.~~

~~9- 15. Specialized~~ The department may provide specialized equipment and supplies may be provided to a client ~~who is at least eighteen years of age, if:~~

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

~~b. The specialized item items directly benefits benefit the client's ability to perform personal care or household tasks-activities;~~

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

~~d. The specialized item is items are necessary to prevent the client's institutionalization;~~

~~e. The specialized item is items are not available under the medicaid state plan; and~~

~~f. The client is motivated to use the specialized item.~~

- ~~10. Training for family caregivers may be provided to family members who provide care to a client.~~
- ~~a. The client shall be at least eighteen years of age.~~
 - ~~b. The client and family member receiving the training shall be related by blood or marriage.~~
 - ~~c. The family member shall provide primary care to the client.~~
 - ~~d. The training must directly benefit the family member's ability to meet the care needs of the client.~~
 - ~~e. The family member is motivated to learn and perform care techniques and therapies.~~
16. 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.
17. 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 skill development has been met or until an interdisciplinary team determines the service is no longer appropriate for the client.
18. The department may provide other services as permitted by an approved waiver.

History: Effective June 1, 1995; amended effective January 1, 2009 .

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

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

SECTION 7. Section 75-03-23-07 is amended as follows:

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

1. The 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 shall meet all licensure, and certification, or competency requirements applicable under state or federal law and departmental standards.
2. ~~All providers shall~~ A provider or an individual seeking designation as a qualified service provider:
 - a. ~~Have~~ Must have the basic ability to read, write, and verbally communicate;
 - b. ~~Not have been convicted of a offense in the last three years that has a direct bearing on the individual's fitness to be a direct care provider; 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 chapters 12.1-16, homicide; 12.1-17, assaults - threats – coercion - harassment; or 12.1-18, kidnapping; North Dakota Century Code sections 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 sections 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; or 12.1-31-07.1 exploitation of a vulnerable adult; 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 subparagraphs 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 one of subdivision b of subsection two of this section, 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. Not 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 be physically capable of performing the service; and
- d. Practice Shall maintain confidentiality; and
- e. Participate in at least one hour of continuing skill development for every two hundred hours of service or care provided, up to a maximum of ten hours per year Shall submit a request to be a qualified service provider every 24 months using applicable forms and shall provide documentation as required by the department;
- f. Be Must be physically capable of performing the service for which they were hired; and
- g. Must be at least eighteen years of age.
3. The offenses enumerated in paragraph one of subdivision b of subsection 2 of this section 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. A decision to approve or deny an application for an individual who applies to 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 will not be made until final disposition of the criminal case against the individual.

4. Evidence of competency for adult family foster care providers serving clients eligible for the developmental disability waiver must be provided in accordance with North Dakota Administrative Code section 75-03-21-08(2)(b).

3. 5. Evidence of competency 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. The generally accepted procedure for infection Infection control and proper hand washing methods;

b. The generally accepted procedure for handling Handling and disposing of body fluids;

c. The generally accepted procedure for tub Tub, shower, and bed bathing techniques;

d. The generally accepted procedure for hair Hair care techniques, sink shampoo, and shaving;

e. The generally accepted procedure for oral Oral hygiene techniques of brushing teeth and cleaning dentures;

f. The generally accepted procedure for caring Caring for an incontinent resident client;

g. The generally accepted procedure for feeding Feeding or assisting a resident client with eating;

h. The generally accepted procedure for basic Basic meal planning and preparation;

i. The generally accepted procedure for assisting Assisting a resident client with the self-administration of medications;

j. The generally accepted procedure for changing a dressing on noninfected sores;

k. The generally accepted procedures and techniques, including dusting, vacuuming, floor care, garbage removal, changing linens, and other similar tasks, for maintaining Maintaining a kitchen, bathroom, and other rooms used by residents a client in a clean and safe condition, including dusting, vacuuming, floor care, garbage removal, changing linens, and other similar tasks;

l. k. The generally accepted procedures in laundry Laundry techniques, including mending, washing, drying, folding, putting away, ironing, and related work;

- m. ~~l.~~ The generally accepted procedure for assisting Assisting a resident client with bill paying and balancing a check book;
 - n. ~~m.~~ The generally accepted procedure for dressing Dressing and undressing a resident client;
 - o. ~~n.~~ The generally accepted procedure for assisting Assisting with toileting;
 - p. ~~o.~~ The generally accepted procedure for routine Routine eye care;
 - q. ~~p.~~ The generally accepted procedure for proper Proper care of nails and feet fingernails;
 - r. ~~q.~~ The generally accepted procedure for caring Caring for skin, including giving a back rub;
 - s. ~~r.~~ The generally accepted procedure for turning Turning and positioning a resident client in bed;
 - t. ~~s.~~ The generally accepted procedure for transfer Transfer using a belt, standard sit, or bed to wheelchair;
 - u. ~~t.~~ The generally accepted procedure for assisting Assisting a resident client with ambulation; and
 - v. ~~u.~~ The generally accepted procedure for making Making wrinkle-free beds.
4. ~~6.~~ A 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 subsections 5 from a physician, chiropractor, registered nurse, licensed practical nurse, occupational therapist, physical therapist, or other person an individual with a professional degree in specialized areas of in-home care shall verify, in writing, on forms furnished by the department, that a provider is competent to perform procedures specified in subsection 3. Verification that a provider is competent to perform a procedure is evidence of competence with respect to that procedure healthcare. 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 acknowledgement of completion of a program with a curriculum that includes the competencies in subsection 5 may be considered evidence of competence.
7. 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 healthcare or approved within the scope of the individual's health care license or certification.
5. ~~8.~~ 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.
6. ~~9.~~ The department shall notify the individual or the agency of its decision on designation as a qualified service provider. If the decision is not favorable, the

individual or agency shall be notified why the requirements for designation as a qualified service provider were not met. If the decision is favorable, the individual's or the agency's name shall be added to the qualified service provider list for each identified county, along with the specific services, endorsements, and unit rates.

7. ~~10.~~ The county social service board 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 county social service board department's designee issues an authorization to provide services to the selected qualified service provider.
8. ~~11.~~ 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.

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

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

SECTION 8. 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 ~~remove~~ terminate a qualified service provider from a county social service board's list of approved providers if the qualified service provider:
 1. ~~a.~~ Voluntarily The qualified service provider voluntarily withdraws from participation as a qualified service provider;
 2. ~~b.~~ Is The qualified service provider is not in compliance with applicable state laws, state regulations, or program issuances ~~concerning~~ governing providers;
 3. ~~c.~~ Is The qualified service provider is not in compliance with the terms of the set forth in the application or provider agreement;
 4. ~~d.~~ Is The qualified service provider is not in compliance with the provider certification terms on the claims submitted for payment;
 5. ~~e.~~ Has 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);
 6. ~~f.~~ Has The qualified service provider has demonstrated a pattern of submitting inaccurate billings or cost reports;
 7. ~~g.~~ Has The qualified service provider has demonstrated a pattern of submitting billings for services not covered under the SPED program or the medicaid waiver program department programs;
 8. ~~h.~~ Has 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;
 9. ~~i.~~ Has The qualified service provider has delivered goods, supplies, or services that are of an inferior quality or are harmful to individuals;
 10. ~~j.~~ Is insolvent; or 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; or
14. k. Has been removed from a county's list of approved providers for 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;
or
 - k. For other good cause.

History: Effective June 1, 1995; amended effective January 1, 2009.

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

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

SECTION 9. Section 75-03-23-09 is amended as follows:

75-03-23-09. Payment under the SPED program and the medicaid waiver program.

1. The department shall establish provider rates for each home and community-based services in accord accordance with a procedure that factors in:
 - a. Whether a provider is an individual or an agency; and
 - b. The range of rates submitted by various providers; and

- ~~e. The average cost of county social service boards in delivering certain services.~~
2. The rate for a specific qualified service provider is established at the time the provider agreement is signed.
 3. ~~A~~ The department shall grant a request for a rate decrease ~~must be accepted at any time and granted~~ when the department receives a written request for the decrease from the qualified service provider.
 4. ~~A~~ The department shall grant in full or in part, or shall deny, a request for a rate increase ~~must be granted in full or in part, or denied,~~ when the department receives a written request for the rate increase from the qualified service provider.
 5. The department shall determine the maximum amount allowable per client each month for a specific service.
 6. The department shall establish the aggregate maximum amount allowable per client each month for all services. The aggregate maximum amount per client depends on whether the client is receiving services under the SPED program, under the medicaid waiver program, or under both programs.
 7. The department may grant approval to exceed the monthly service program maximum for a specific client who is only receiving SPED funds and no medicaid funds if:
 - a. ~~The~~ the client has a special or unique circumstance;
 - b. ~~The~~ the SPED client is not eligible for medicaid; and
 - c. ~~The~~ the need for additional service program funds will not initially exceed three months. Under emergency conditions, the department may grant a one-time extension not to exceed an additional three months.
 8. The department may grant approval to exceed the monthly service program maximum for a specific client who is receiving SPED funds and medicaid funds or only medicaid funds if:
 - a. ~~The~~ the client has a special or unique circumstance; and
 - b. ~~The~~ the need for additional service program funds does not exceed three months; and
 - c. ~~The total need for service program funds per month must not exceed the aggregate monthly maximum amount for a client who receives services under both the SPED program and the medicaid waiver program, excluding home and community-based services case management.~~ Under emergency conditions, the department may grant a one-time extension not to exceed an additional three months.
 9. ~~The county social service board~~ department's designee shall notify the client of the department's determination regarding the request to exceed the monthly service program maximum. If the department denies the request to exceed the monthly aggregate maximum, ~~the county social service board~~ department's designee shall inform the client in writing of the reason for the denial, the client's right to appeal, and the appeal process, as provided ~~for~~ in chapter 75-01-03.
 10. ~~Providers are limited to a maximum of two hundred hours of care per month, unless an emergency or unusual circumstances is determined by the county social service board. The county social service board shall submit a written~~

~~request to exceed the monthly aggregate maximum or the monthly service maximum before authorizing any service in excess of the maximum monthly amount. The department shall provide written notice of its decision to the county social service board and the qualified service provider.~~

- 44-10. The Department will grant approval to exceed the monthly program maximum or service maximum for individuals receiving SPED funds or Medicaid funds, or both, whose service units exceed the program caps as a result of the Qualified Service Provider rate increase. This extension is limited to individuals who were receiving services prior to July 1, 2007.

History: Effective June 1, 1995; amended effective April 1, 2008; January 1, 2009.

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

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

SECTION 10. Section 75-03-23-11 is amended as follows:

75-03-23-11. Denial, reduction, and termination of services - Appeal.

1. ~~The department's designee shall inform A~~ a person who is determined to be ineligible for covered services or who becomes ineligible while receiving services ~~shall be informed in writing of the denial, termination, or reduction, the reasons for the denial, termination, or reduction, the right to appeal, and the appeal process as provided in chapter 75-01-03.~~
2. ~~Clients shall~~ A client must receive ten calendar days' written notice before termination of services occurs. ~~The ten-day notice does not apply~~ is not required if:
 - a. ~~the client enters a basic care facility, or a nursing facility;~~
 - b. ~~the termination is due to changes in federal or state law;~~ or
 - c. ~~the client requests termination of services;~~ or
 - d. ~~the client moves from the service area.~~
3. An applicant denied services or a client terminated from services should be given an appropriate referral to other public or private service providers and should be assisted in finding other resources.
4. For denial or termination of services, a review of the decision by the county social service board director or the director's designee may be requested. A request for review does not change the time within which the request for an appeal hearing must be filed under chapter 75-01-03.
5. ~~Termination of all~~ The department shall deny or terminate SPED program and medicaid waiver program services ~~or immediate termination of a specific service must be considered by the department through its aging services division when continued service to the client presents an immediate threat to the health or safety of the client, the provider of services, or others~~ or when services that are available are not adequate to prevent a threat to the health or safety of the client, the provider of services, or others. ~~Examples of client behaviors that could lead to termination of services~~ health and safety threats include: physical abuse of the provider by the client, client self neglect, an unsafe living environment for the client, or contraindicated practices, like smoking while using oxygen. ~~The county social service board shall inform the client in writing the reason for the~~

termination, the right to appeal, and the appeal process, as provided for in chapter 75-01-03.

History: Effective June 1, 1995; amended effective January 1, 2009.

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

Law Implemented: NDCC 50-06.2-03(5), 50-06.2-03(6), 50-06.2-04(1), 50-06.2-04(3)

SECTION 11. Section 75-03-23-12 is created 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 anytime before that provider submits a formal request for review to the department.

History: Effective January 1, 2009.

General Authority: NDCC 50-06.2-03

Law Implemented: NDCC 50-06.2-03

SECTION 12. Section 75-03-23-13 is created as follows:

75-03-23-13. Provider – appeals . An applicant or provider may appeal a decision to deny or revoke a qualified service provider enrollment by filing a written appeal with the department within ten days of receipt of written notice of the denial or revocation. Upon receipt of a timely appeal, an administrative hearing may be conducted in the manner provided in chapter 75-01-03. A provider or applicant who receives notice of termination or denial of their qualified service provider status and requests a timely review of that decision, is not eligible to provide services until a final decision has been made by the department that reverses the decision to terminate or deny qualified service provider status.

History: Effective January 1, 2009.

General Authority: NDCC 50-06.2-03

Law Implemented: NDCC 50-06.2-03

SECTION 13. Section 75-03-23-14 is created as follows:

75-03-23-14. Disqualifying transfers.

1. An individual is not eligible for SPED benefits under this chapter if the department determines that the individual or the spouse of the individual has made any assignment or transfer of any asset for the purpose of making the individual eligible for benefits before or after making application for SPED services except as provided in subsection 2.
2. An individual is not ineligible for SPED benefits under this chapter by reason of subsection 1 to the extent that:
 - a. The value of the transferred assets when added to the value of the individual's other assets, would not otherwise make the individual ineligible for SPED or does not decrease the individual's service fee.
 - b. The asset transferred was a home, and title to the home was transferred to:
 - (1) The individual's spouse; or
 - (2) The individual's son or daughter who is under the age of twenty-one or who is blind, or disabled.
 - c. The assets:
 - (1) Were transferred to the individual's spouse or to another person for the sole benefit of the individual's spouse; or
 - (2) Were transferred from the individual's spouse to another person for the sole benefit of the individual's spouse;
 - d. The individual makes a satisfactory showing that:
 - (1) The individual intended to dispose of the assets at fair market value or for other valuable consideration, and the individual had an objectively reasonable belief that fair market value or its equivalent was received;
 - (2) The assets were transferred exclusively for a purpose other than to qualify for SPED benefits under this chapter; or
 - (3) All assets transferred for less than fair market value have been returned to the individual.
 - e. If a disqualifying transfer occurred five years prior to the date an individual initially applies for SPED services the department will presume that the transfer was not for the purpose of obtaining SPED benefits.
3. There is a presumption that a transfer was made for purposes of making an individual eligible for SPED services under this chapter:
 - a. If an inquiry about SPED benefits or benefits under this chapter was made, by or on behalf of the individual to any other individual, before the date of transfer;
 - b. If the individual or the individual's spouse was an applicant for or recipient of SPED benefits under this chapter before the date of transfer;
 - c. If a transfer is made by or on behalf of the individual's spouse, if the value of the transferred asset, when added to the value of the individual's other assets, would exceed SPED asset limits; or
 - d. If the transfer was made, on behalf of the individual or the individual's spouse, by a guardian, conservator, or attorney-in-fact, to the guardian, conservator,

or attorney-in-fact or to any spouse, child, grandchild, brother, sister, niece, nephew, parent, or grandparent, by birth, adoption, or marriage, of the guardian, conservator, or attorney-in-fact.

4. An applicant or recipient who claims that assets were transferred exclusively for a purpose other than to qualify for SPED benefits under this chapter must show a desire to receive SPED benefits under this chapter played no part in the decision to make the transfer and must rebut any presumption arising under subsection 3.
5. If the transferee of any assets is the child, grandchild, brother, sister, niece, nephew, parent, grandparent, step-parent, step-child, son-in-law, daughter-in-law, or grandchild-in-law of the individual or the individual's spouse, services or assistance furnished by the transferee to the individual or the individual's spouse may not be treated as consideration for the transferred asset unless the transfer is made pursuant to a valid written contract entered into prior to rendering the services.
6. A transfer is complete when the individual, or the individual's spouse, making the transfer has no lawful means of undoing the transfer or requiring a restoration of ownership.
7. For purposes of this section fair market value is received:
 - a. When one hundred percent of apparent fair market value is received for an asset whose value is not subject to reasonable dispute, such as cash, bank deposits, stocks, and fungible commodities;
 - b. When seventy-five percent of estimated fair market value is received for an asset whose value may be subject to reasonable dispute; and
 - c. When one hundred percent of fair market value is received for an asset considered to be income to the individual or individual's spouse.
8. If an applicant or client is denied Medicaid based on a disqualifying transfer of assets, the sped applicant or client is also ineligible for SPED funded services.

History: Effective January 1, 2009.

General Authority: NDCC 50-06.2-07

Law Implemented: NDCC 50.06.2.07