

**CHAPTER 75-02-02
MEDICAL SERVICES**

SECTION 1. Subsection 2 of section 75-02-02-08 is amended as follows:

75-02-02-08. Amount, duration, and scope of medical assistance.

2. The following limitations apply to medical and remedial care and services covered or provided under the medical assistance program:
 - a. Coverage may not be extended and payment may not be made for diet remedies prescribed for eligible recipients.
 - b. Coverage may not be extended and payment may not be made for alcoholic beverages prescribed for eligible recipients.
 - c. Coverage may not be extended and payment may not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.
 - d. Coverage and payment for eye examinations and eyeglasses for eligible recipients are limited to examinations and eyeglass replacements necessitated because of visual impairment. Coverage and payment for eyeglass frames are available for a reasonable number of frames, and in a reasonable amount, not to exceed limits set by the department. No coverage exists, and no payment may be made, for eyeglass frames which exceed the limits.
 - e. Coverage and payment for home health care services and private duty nursing services are limited to a monthly amount determined by taking the monthly charge, to the medical assistance program, for the most intensive level of nursing care in the most expensive nursing facility in the state and subtracting therefrom the cost, in that month, of all medical and remedial services furnished to the recipient (except physician services and prescribed drugs). For the purposes of determining this limit, remedial services include home and community-based services, service payments to the elderly and disabled, homemaker and home health aide services, and rehabilitative services, regardless of the source of payment for such services. This limit may be exceeded, in unusual and complex cases, if the provider has submitted a prior treatment authorization request describing each medical and remedial service to be received by the recipient, stating the cost of that service, describing the medical necessity for the provision of the home health care services or private duty nursing services, and explaining why less costly alternative treatment does not afford necessary medical care, and has had the request approved.
 - f. Coverage may not be extended and payment may not be made for transportation services except as provided in sections 75-02-02-13.1 and 75-02-02-13.2.

- g. Coverage may not be extended and payment may not be made for any abortion except when necessary to save the life of the mother or when the pregnancy is the result of an act of rape or incest.
- h. Coverage may not be extended and payment may not be made for ambulance services that are not medically necessary, as determined by the department, and provided in response to a medical emergency.
- i. Coverage may not be extended and payment may not be made for emergency room services that are not medically necessary, as determined by the department under section 75-02-02-12, and provided in response to a medical emergency.
- j. Coverage may not be extended and payment may not be made for medically necessary chiropractic services exceeding twenty-four treatments for spinal manipulation services and eight radiologic examinations per year, per recipient, unless the provider requests and receives prior authorization from the department.
- k. Coverage and payment for personal care services may:
 - (1) May not be made unless prior authorization is granted, and the recipient meets the criteria established in 75-02-02-09.5(1), and may not exceed one hundred twenty hours per month except when the recipient meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for the mentally retarded level of care, in which case, coverage and payment may not exceed two hundred forty hours per month
 - (2) May be approved for:
 - (a) Up to one hundred and twenty hours per month, or at a daily rate;
 - (b) Up to two hundred forty hours per month if the recipient meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for the mentally retarded level of care, or
 - (c) May be approved up to three hundred hours per month if the recipient is determined to be impaired in at least five of the activities of daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring; meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for the mentally retarded level of care; and none of the three hundred hours approved for personal care services are allocated to the tasks of laundry, shopping, or housekeeping.

History: Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986; November 1, 1986; November 1, 1987; January 1, 1991; July

1, 1993; January 1, 1994; January 1, 1996; July 1, 1996; January 1, 1997; May 1, 2000; amendments partially voided by the Administrative Rules Committee effective June 5, 2000; November 8, 2002; September 1, 2003; July 1, 2006; January 1, 2010.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04; 42 USC 1396n(b)(1); 42 CFR 431.53; 42 CFR 431.110; 42 CFR 435.1009; 42 CFR Part 440; 42 CFR Part 441, subparts A, B, D

SECTION 2. Section 75-02-02-09.5 is amended as follows:

75-02-02-09.5. Limitations on personal care services.

1. No payment for personal care services may be made unless an assessment of the recipient is made by the department and the recipient is determined to be impaired in at least one of the activities of daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring or in at least three of the instrumental activities of daily living of medication assistance, laundry, housekeeping, and meal preparation.
2. No payment may be made for personal care services unless prior authorization has been granted by the department.
3. Payment for personal care services may only be made to an enrolled qualified service provider who meets the standards described in chapter 75-03-23 or to a basic care assistance provider that qualifies for a rate under chapter 75-02-07.1.
4. No payment may be made for personal care services provided in excess of the services, hours, or timeframe authorized by the department in the recipient's approved service plan.
5. Personal care services may not include skilled health care services performed by persons with professional training.
6. An inpatient or resident of a hospital, a nursing facility, an intermediate care facility for the mentally retarded, or an institution for mental disease may not receive personal care services.
7. Personal care services may not include home-delivered meals, services performed primarily as housekeeping tasks, transportation, social activities, or services or tasks not directly related to the needs of the recipient such as doing laundry for family members, cleaning of areas not occupied by the recipient, or shopping for items not used by the recipient.
8. Laundry, shopping, and housekeeping tasks when provided as personal care services must be incidental to the provision of other personal care tasks and cannot exceed thirty percent of the total time authorized for the provision of all personal care tasks.
9. No payment may be made for personal care services provided to a recipient by the recipient's spouse, parent of a minor child, or legal guardian.
10. No payment may be made for care needs of a recipient which are outside the scope of personal care services.
11. Authorized personal care services may ~~not exceed one hundred twenty hours per month except authorized personal care services may not exceed two hundred forty hours per month when a recipient has been~~

~~determined to meet nursing facility or intermediate care facility for the mentally retarded level of care criteria~~ only be approved for:

- a. Up to one hundred and twenty hours per month, or at a daily rate;
 - b. Up to two hundred forty hours per month, or at a daily rate, if the recipient meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for the mentally retarded level of care; or
 - c. Up to three hundred hours per month if recipient is determined to be impaired in at least five of the activities of daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring; meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for the mentally retarded level of care; and none of the three hundred hours approved for personal care services are allocated to the tasks of laundry, shopping, or housekeeping.
12. Personal care services may only be provided when the needs of the recipient exceed the abilities of the recipient's spouse or parent of a minor child to provide those services. Personal care services may not be substituted when a spouse or parent of a minor child refuses or chooses not to perform the service for a recipient. Personal care services may be provided during periods when a spouse or parent of a minor child is gainfully employed if the services cannot be delayed until the spouse or parent is able to perform them.
 13. Personal care services may not be provided for tasks that are otherwise age appropriate or generally needed by an individual within the normal stages of development.
 14. The authorization for personal care services may be terminated if the services are not used within 60 days, or if services lapse for at least 60 days, after the issuance of the authorization to provide personal care services.
 15. The department may deny or terminate personal care services when 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.

History: Effective July 1, 2006; amended effective January 1, 2010.

General Authority: NDCC 50-24.1-18

Law Implemented: NDCC 50-24.1-18; 42 CFR Part 440.167