

CHAPTER 75-02-10
AID TO VULNERABLE AGED, BLIND, AND DISABLED INDIVIDUALS

Section	
75-02-10-01	Definitions
75-02-10-02	Benefits Available Under This Chapter
75-02-10-03	Application and Redetermination
75-02-10-04	Applicant's or Guardian's Duty to Establish Eligibility
75-02-10-05	Eligibility Criteria
75-02-10-06	Functional Assessment
75-02-10-06.1	Adaptive Assessment Services
75-02-10-07	Decision and Notice
75-02-10-08	Disqualifying Transfers
75-02-10-09	Residency
75-02-10-10	County Administration

SECTION 1. Section 75-02-10-01 of the North Dakota Administrative Code is amended as follows:

75-02-10-01. Definitions. ~~For~~ The terms used in this chapter have the same meaning as in North Dakota century code chapter 50-24.5. In addition, for purposes of this chapter, unless the context requires otherwise:

1. "Activities of daily living" means bathing, dressing, toileting, transferring, eating, bed mobility, medication management, and personal hygiene.
2. ~~"Aged" means at least sixty five years of age.~~
3. "Basic care facility" means a residence, not licensed under North Dakota Century Code chapter 23-16 by the department, that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular twenty-four-hour medical or nursing services and:
 - a. Makes response staff available at all times to meet the twenty-four-hour per day scheduled and unscheduled needs of the individual;
or
 - b. Is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility.
4. ~~"Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.]~~
5. ~~"Congregate housing" means housing shared by two or more individuals not related to each other which is not provided in an institution.~~
- 6.3. "Countable income" means gross income reduced by:
 - a. The cost of guardianship or conservatorship fees actually charged, but no more than five percent of monthly gross income;

- b. The cost of the medicare premium, but only if the individual is ineligible for medicare cost-sharing benefits described in subdivision a of subsection 19 of section 75-02-02.1-01 as a qualified medicare beneficiary or a special low-income medicare beneficiary;
 - c. Court-ordered child support payments actually paid on behalf of a minor child who is not a member of the individual's medicaid unit; and
 - d. For individuals receiving benefits provided under subsection 1 or 2 of section 75-02-10-02:
 - (1) In the month the individual enters the facility, the medically needy income level for a family of the size of the family in which the individual was a member at the beginning of the month; and
 - (2) Sixty-five dollars plus one-half of the remaining monthly gross earned income.
7. ~~"County agency" means the county social service board.~~
8. ~~"Department" means the department of human services.~~
9. ~~"Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].~~
10. ~~"Eligible beneficiary" means a resident of this state who:~~
- a. ~~(1) Is aged; or~~
 - ~~(2) Is at least eighteen years of age and is disabled or blind;~~
 - b. ~~Has applied for and is eligible to receive benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], provided that an individual who was eligible to receive benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] and who was receiving benefits under title XVI before January 1, 1995, is not ineligible because that individual is not eligible to receive benefits under title XIX;~~
 - c. ~~Based on a functional assessment, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating and:~~
 - ~~(1) Has health, welfare, or safety needs, including a need for supervision or a structured environment, which requires care in a licensed adult family foster care home or a licensed basic care facility; or~~
 - ~~(2) Is impaired in three of the following four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry; and~~
 - d. ~~Is determined to be eligible pursuant to rules adopted by the department.~~
- 11.4. "Gross income" includes any income at the disposal of an applicant, recipient, or responsible relative; any income with respect to which an applicant, recipient, or responsible relative has a legal interest in a

liquidated sum and the legal ability to make the sum available for support or maintenance; or any income an applicant, recipient, or responsible relative has the lawful power to make available or to cause to be made available. It includes any income that would be applied in determining eligibility for benefits under chapter 75-02-02.1; any income, except occasional small gifts, that would be disregarded in determining eligibility for benefits under chapter 75-02-02.1; annuities, pensions, retirement, and disability benefits to which an applicant or recipient, or spouse of an applicant or recipient, may be entitled, including veterans' compensation and pensions of any type, old-age survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.

- ~~42.5. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to four or more individuals who are not related to the proprietor a facility licensed under North Dakota century code chapter 23-09.3.~~
- ~~43.6. "Instrumental activities of daily living" means activities to support independent living, including housekeeping, shopping, laundry, transportation, and meal preparation.~~
- ~~44.7. "Necessary benefits" means those benefits:~~
- ~~a. Provided under this chapter;~~
 - ~~b. Identified by the department, or a county agency under the direction and supervision of the department, as appropriate to meet the needs of an applicant or recipient; and~~
 - ~~c. Which, when provided in coordination and conjunction with benefits available from any other source, represent the means least costly to the department of meeting the needs of the applicant or recipient.~~
- ~~15. "Proprietor" means an individual responsible for day to day administration and management of a facility.~~
- ~~16. "Related by blood or marriage to the owner or manager" means an individual who is a spouse or former spouse of the owner or manager or is a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half brother, half sister, stepbrother, or stepsister of the owner or manager or the owner or manager's spouse or former spouse.~~
- ~~17. "Related to the proprietor" means an individual who is a proprietor's spouse or former spouse, or a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half brother, half sister, stepbrother, or stepsister of proprietor or proprietor's spouse or former spouse.~~
- ~~18. "Remedial care" means services that produce the maximum reduction of an eligible beneficiary's physical or mental disability and the restoration of an eligible beneficiary to the beneficiary's best possible functional level.~~

History: Effective May 1, 1995; amended effective January 1, 1997; June 1, 2002; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

SECTION 2. Section 75-02-10-02 of the North Dakota Administrative Code is amended as follows:

75-02-10-02. Benefits available under this chapter. To the extent that an eligible individual lacks income sufficient to meet the cost of necessary benefits, the following benefits are available:

1. ~~Supplementation of the income of users of adult family foster care services;~~
2. ~~Supplementation of the income of users of basic care services;~~
3. ~~Homemaker services;~~
4. ~~Chore services;~~
5. ~~Respite care;~~
6. ~~Home health aide services;~~
7. ~~2. Case management;~~
8. ~~Family home care;~~
9. ~~Adaptive assessment; and~~
10. ~~3. Other services the department determines to be essential and appropriate to sustain an individual in the individual's home and community, and to delay or prevent institutional care.~~
4. Room and board which is limited to the rate set for services in that facility by the department.

History: Effective May 1, 1995; amended effective June 1, 2002; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

SECTION 3. Section 75-02-10-06.1 of the North Dakota Administrative Code is repealed:

~~**75-02-10-06.1. Adaptive assessment services.** Adaptive assessment services are available to an individual receiving services under section 75-02-10-02, except subsection 1 or 2, only if the individual:~~

1. ~~Is eighteen years of age or older;~~
2. ~~Seeks to enhance independence and functional capabilities resulting in a direct benefit of increased performance of personal cares and routine household tasks; and~~
3. ~~Agrees to comply with recommendations of an interdisciplinary team regarding the use of adaptive devices, equipment, or modifications to the individual's surroundings.~~

History: Effective January 1, 1997; amended effective June 1, 2002; repealed effective April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.5-02(8)

Law Implemented: NDCC 50-24.5

CHAPTER 75-03-24
Expanded Service Payments to the Elderly and Disabled

Section	
75-03-24-01	Definitions
75-03-24-02	Eligibility Criteria
75-03-24-03	Eligibility Determination - Authorization of Services
75-03-24-04	Application
75-03-24-05	Applicant's or Guardian's Duty to Establish Eligibility
75-03-24-06	Functional Assessment
75-03-24-07	Services Covered Under the Ex-SPED Program - Programmatic Criteria
75-03-24-08	Residency
75-03-24-09	Denial, Reduction, and Termination of Services - Appeal
75-03-24-10	Payment Under the Ex-SPED Program
75-03-24-11	Department to Recover Funds Upon Establishment of Noncompliance
75-03-24-12	Administration

SECTION 4. Chapter 75-03-24 of the North Dakota Administrative Code is created as follows:

75-03-24-01. Definitions. For purposes of this chapter, unless the context requires otherwise:

1. "Activities of daily living" means bathing, dressing, toileting, transferring, eating, bed mobility, medication management, and personal hygiene.
2. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
3. "Department" means the department of human services.
4. "Department's designee" means the county social service board.
5. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
6. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to four or more individuals who are not related to the proprietor.
7. "Instrumental activities of daily living" means activities to support independent living, including housekeeping, shopping, laundry, transportation, and meal preparation.
8. "Ex-SPED program pool" means the list maintained by the department which contains the names of clients for whom Ex-SPED program funding is available when the clients' names are transferred from the Ex-SPED program pool to Ex-SPED program active status.

History: Effective April 1, 2012.

General Authority: 50-24.7-02

Law Implemented: 50-24.7

75-03-24-02. Eligibility criteria. An individual may receive necessary benefits under this chapter if the individual:

1. Is a resident of this state;
2. Is:
 - a. Sixty-five years of age or older; or
 - b. Eighteen years of age or older and disabled or blind;
3. Has applied for and been found eligible for medicaid benefits;
4. Has countable income which does not exceed an amount equal to the cash benefit under title XVI of the Social Security Act [42 U.S.C. 1381, et seq.]; and
5. Based on a functional assessment made in accordance with this chapter, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating; and
 - a. Has health, welfare, or safety needs, including a need for supervision or a structured environment; or
 - b. Is impaired in three of the following four instrumental activities of daily living:
 - (1) Preparing meals;
 - (2) Doing housework;
 - (3) Taking medicine; and
 - (4) Doing laundry.

History: Effective April 1, 2012.

General Authority: 50-24.7-02

Law Implemented: 50-24.7

75-03-24-03. Eligibility determination - Authorization of services.

1. The department shall provide written notice to the department's designee of the effective date of the applicant's eligibility for services funded under the Ex-SPED program.
2. The department's designee is responsible for:
 - a. Verifying that the person transferred to active status continues to meet the eligibility criteria for placement into the Ex- SPED program pool;
 - b. Developing a care plan;
 - c. Authorizing covered services in accordance with department policies and procedures; and
 - d. Assuring that other potential federal and third-party funding sources for similar services are sought first.
3. 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 Ex-SPED program for fewer than 60 days, does not have to go through the Ex-SPED program pool to receive services through the Ex-SPED program provided the individual meets all eligibility criteria in section 75-03-24-02.

History: Effective April 1, 2012.
General Authority: 50-24.7-02
Law Implemented: 50-24.7

75-03-24-04. Application.

1. All individuals wishing to make application for benefits under this chapter must have the opportunity to do so, without delay.
2. An application is a request made by an individual desiring benefits under this chapter, or by a proper individual seeking such benefits on behalf of another individual, to a department's designee. A proper individual means any individual of sufficient maturity and understanding to act responsibly on behalf of the applicant.
3. An application consists of an application for services, which includes a functional assessment.
4. Application forms must be signed by the applicant, an authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant.
5. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and recipients must be furnished to all who require it.
6. The date of application is the date an application, signed by an appropriate individual, is received by the department's designee.

History: Effective April 1, 2012.
General Authority: 50-24.7-02
Law Implemented: 50-24.7

75-03-24-05. Applicant's or guardian's duty to establish eligibility. The applicant or guardian of the applicant shall provide information sufficient to establish eligibility for benefits, including a social security number and proof of age, identity, residence, blindness, disability, functional limitation, financial eligibility, and such other information as may be required by this chapter.

History: Effective April 1, 2012.
General Authority: 50-24.7-02
Law Implemented: 50-24.7

75-03-24-06. Functional assessment.

1. For purposes of this section, "functional assessment" means an instrument used to record basic demographic and medical information about an individual, including age, date of birth, spoken language, marital status, individuals residing with, emergency contacts, medical resources, health care coverage, and source and reason for referral; and to secure measurable information regarding:
 - a. Physical health;
 - b. Cognitive and emotional functioning;

- c. Activities of daily living;
 - d. Instrumental activities of daily living;
 - e. Informal supports;
 - f. Need for twenty-four-hour supervision;
 - g. Social participation;
 - h. Physical environment;
 - i. Financial resources; and
 - j. Other information about the individual's condition not recorded elsewhere.
2. An initial functional assessment, using an appropriate form determined by the department, must be completed as a part of the application for benefits under this chapter. Eligibility redetermination must be completed at least biannually.
 3. A functional assessment must include an interview with the individual in the home where the individual resides.

History: Effective April 1, 2012.

General Authority: 50-24.7-02

Law Implemented: 50-24.7

75-03-24-07. Services covered under the Ex-SPED program - Programmatic criteria. Room and board costs may not be paid in the Ex-SPED service payment. The following categories of services are covered under the Ex-SPED program and may be provided to a client:

1. The department may provide adult day care services to a client:
 - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
 - b. Who is able to participate in group activities; and
 - c. Who, if the client does not live alone, has a primary caregiver who 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 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.
3. The department may provide chore services to a client 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, 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 activity must be the responsibility of the client and not the responsibility of the landlord.
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.
- 5. The department may provide family home care services 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;
 - c. Whose care provider meets the definition of a family member in North Dakota century code section 50-06.2-02 and is enrolled as a qualified service provider.
- 6. The department may provide homemaker services to a client who needs assistance with environmental maintenance 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. The department may provide shopping assistance only if at least one other activity is performed and no other shopping assistance is available through informal networks or other community providers.
- 7. 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.
- 8. 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:
 - 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.
- 9. The department may provide other services as the department determines appropriate.

History: Effective April 1, 2012.

General Authority: 50-24.7-02

Law Implemented: 50-24.7

75-03-24-08. Residency. For purposes of this chapter:

1. An individual is a resident of this state if the individual is not living in an out of state institution and is living in this state:
 - a. With intent to remain in this state permanently or for an indefinite period; or
 - b. Without intent if the individual is incapable of stating intent.
2. An individual who is a resident of this state is a resident of the county in which the individual is a resident for purposes of receipt of benefits under North Dakota Century Code chapter 50-01.

History: Effective April 1, 2012.

General Authority: 50-24.7-02

Law Implemented: 50-24.7

75-03-24-09. Denial, reduction, and termination of services - Appeal.

1. The department's designee shall inform a person who is determined to be ineligible for covered services or who becomes ineligible while receiving services 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. A client must receive ten calendar days' written notice before termination of services occurs. The ten-day notice 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;
 - 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. The department shall deny or terminate Ex-SPED program 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. Examples of 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.
6. Errors made by public officials and delays caused by the actions of public officials do not create eligibility and may not form the basis for the award of any benefit to an adversely affected applicant or recipient who would not otherwise be eligible to receive that benefit.

History: Effective April 1, 2012.

General Authority: 50-24.7-02

Law Implemented: 50-24.7

75-03-24-10. Payment under the Ex-SPED program.

1. Payment for Ex-SPED services may only be made to an enrolled qualified service provider who meets the standards described in 75-03-23.
2. The department shall establish provider rates for home and community-based services in 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.
3. The rate for a specific qualified service provider is established at the time the provider agreement is signed.
4. The department shall grant a request for a rate decrease when the department receives a written request for the decrease from the qualified service provider.
5. The department shall grant in full or in part, or shall deny, a request for a rate increase, when the department receives a written request for the rate increase from the qualified service provider.
6. The department shall determine the maximum amount allowable per client each month for a specific service.
7. The department shall establish the aggregate maximum amount allowable per client each month for all services.
8. The department may grant approval to exceed the monthly service program maximum for a specific client who is only receiving Ex-SPED funds if:
 - a. The client has a special or unique circumstance; and
 - b. 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.
9. The 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 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 in chapter 75-01-03.
10. The Department will grant approval to exceed the monthly program maximum or service maximum for individuals receiving Ex-SPED funds 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 April 1, 2012.

General Authority: 50-24.7-02

Law Implemented: 50-24.7

75-03-24-11. Department to recover funds upon establishment of noncompliance. A qualified service provider shall not submit a claim for payment or receive service payments for services that have not been delivered in accord with department policies and procedures. The department shall recover all payments received by a qualified service provider who fails to deliver services in accord with the provider agreement or department policy and procedure.

History: Effective April 1, 2012.

General Authority: 50-24.7-02

Law Implemented: 50-24.7

75-03-24-12. Administration. The department's designee of the county where the applicant or recipient is living must be responsible for the administration of the program with respect to that applicant or recipient.

History: Effective April 1, 2012.

General Authority: 50-24.7-02

Law Implemented: 50-24.7