

CHAPTER 75-02-01.3 CHILD CARE ASSISTANCE

Section

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75-02-01.3-01. Definitions.

The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-33. In addition, as used in this chapter unless the context or subject matter otherwise requires:

1. "Applicant" means an individual who is seeking assistance under this program.
2. "Eligible child" means a child member of a child care assistance unit eligible for payment under the child care and development state plan.
3. "Intentional program violation" means an individual's intentional action or failure to act which consists of:
 - a. Making a false or misleading statement or misrepresenting, concealing, or withholding facts; or
 - b. Being convicted in federal or state court of having made a fraudulent statement or representation with respect to child care assistance.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33

75-02-01.3-02. Decision and notice.

1. The human service zone shall notify the applicant or recipient in writing of the approval, denial, or termination. If an applicant's applications is denied or a recipient's eligibility is terminated, the written notice must include:
 - a. A statement of the proposed action;
 - b. The reason for the proposed action, including the rule, regulation, or statute upon which the action is based; and
 - c. An explanation of the applicant's or recipient's right to request an appeal.
2. The effective date a case is closed or suspended is the last calendar day of the month identified in the notice.

3. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for an applicant or recipient who is adversely affected.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-03. Closing a case.

A case must be closed when:

1. The child care assistance unit includes no eligible child.
2. The review form:
 - a. Is not submitted timely; or
 - b. Is incomplete so further eligibility cannot be determined.
3. The household income exceeds the upper income limit for the household size.
4. The family moves out of state.
5. The recipient requests that the case be closed.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-04. Available benefits.

The child care assistance program shall pay a portion of child care costs related to allowable activities of the caretaker based on family size and countable income by applying a sliding fee schedule established by the department which is based on household size and income.

History: Effective April 1, 2010; amended effective October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-05. Approved relative provider's background check information.

1. Before approving an individual as an approved relative provider, the department shall review available public records and the child abuse information index.
2. The department periodically may review available public records and the child abuse information index on an approved relative provider.
3. Based on information from public records, a relative provider applicant's request shall be denied; and an approved relative provider shall be terminated at the end of the month written notification is given; if he or she has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of

child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse of a child; or 14-09-22.1, neglect of a child;

- b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five 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.
4. The department has determined that the offenses enumerated in subdivisions a and b of subsection 3 have a direct bearing on the relative provider applicant's or approved relative provider's ability to serve as an approved relative provider.
5. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
6. If a services required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that a child has been abused or neglected by the applicant or relative provider, that decision has a direct bearing on the applicant's or relative provider's ability to serve as an approved relative provider and the application or certificate may be denied or revoked. If a services required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the applicant or relative provider, the applicant or relative provider shall furnish information, satisfactory to the department, from which the department can determine the applicant's or relative provider's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of current ability to the applicant or relative provider for consideration and action on the application or relative provider's certificate.
7. The department shall notify the relative provider applicant and approved relative provider in writing of the approval, denial, or termination. If a relative provider applicant's request is denied or an approved relative provider's certificate is terminated, the written notice must include:
 - a. A statement of the proposed action;
 - b. The reason for the proposed action, including the rule, regulation, or statute upon which the action is based; and
 - c. An explanation of the applicant's or provider's right to an appeal.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

75-02-01.3-06. Payments to providers - Child care certificate.

1. Unless a provider otherwise elects in a signed and dated writing, all payments of child care assistance must be made to a provider.
2. No payment may be made except on presentation of a claim in a form and manner required by the department for periods during which all caretakers in the child care assistance unit were engaged in an allowable activity.
3. No payment to a provider may be made at a rate in excess of that charged by the provider for services to individuals who do not receive child care assistance. The provider may request for an exception if the provider is providing quality child care services to children in vulnerable populations as determined by the department. Exceptions will be reviewed by the department on a case-by-case basis. The department may deny an exemption request or revoke an exception granted under this subsection. The decision to deny or revoke an exception is not an appealable decision.
4. The department shall issue to the eligible caretaker a child care certificate.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016; October 1, 2018.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-06-06.1, 50-09-02, 50-33

75-02-01.3-07. Treatment of income.

1. A child care assistance unit's earned income from wages or any other source must be considered received in the month it is normally received or available.
2. A child care assistance unit's earned income from self-employment is computed:
 - a. From information in the following order of priority by:
 - (1) Using a federal income tax return and must be prorated over a twelve-month period that coincides with either a calendar year or the fiscal year used on the child care assistance unit member's federal tax return;
 - (2) Annualizing the income for the period of time the business has been in operation;
 - (3) Using income and costs of good ledgers; or
 - (4) Estimating the effect on the annual income based on the best information available from the child care assistance unit.
 - b. By considering the type of business activity, expenses, and income.
3. Depreciation and other costs of doing business associated with a child care assistance unit's self-employment that do not require outlays during the period covered by the tax return must be added to the net income.
4. A child care assistance unit's earned income that is received on a contractual basis must be prorated over the period of the contract, regardless of when it is actually received.
5. Expenses necessarily incurred to maintain the source of the child care assistance unit's unearned income may be deducted to determine countable unearned income. All countable unearned income must be considered received in the month in which it is normally received or normally available.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-08. Disregarded income.

The following types of income must be disregarded in determining child care assistance eligibility and benefits.

1. Money payments made by the department in connection with foster care, subsidized guardianship, family subsidy, or the subsidized adoption program;
2. Temporary assistance for needy families benefits and support services payments;
3. Benefits received through the low-income home energy assistance program;
4. General assistance;
5. Irregular cash gifts received by a child care assistance unit;
6. A loan from any source that is subject to a written agreement requiring repayment by the child care assistance unit;
7. A child care assistance unit's income tax refunds and earned income credits;
8. Training allowances of up to thirty dollars per week provided to a child care assistance unit member through a tribal native employment works program;
9. Training stipends provided by private, charitable organizations to a child care assistance unit member who is a victim of domestic violence for the member of the child care assistance unit to attend educational programs;
10. The first two thousand dollars per year of lease payments deposited in an individual Indian monies account for a child care assistance unit member;
11. Any income required by federal law to be disregarded;
12. Earned income of all children in the child care assistance unit;
13. A one-time bonus incentive payment or commission to a child care assistance unit member;
14. Vendor payments or other payments made to a third party on behalf of the child care assistance unit;
15. Stipend payments to a child care assistance unit that do not require work as a condition of receipt;
16. Nonrecurring lump sum payments to a child care assistance unit;
17. Irregular income from sale of craft items and rummage sales;
18. Payments made by cafeteria or flex compensation plans to a child care assistance unit member;
19. Funds raised on behalf of the child care assistance unit, or any member of that unit, if the child care assistance unit does not have access to the funds; and
20. Income from contracts for deed.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-09. Deduction for child support and spousal support.

Court-ordered child support and court-ordered spousal support, including arrearages, interest, and fees charged for income withholding, paid by or collected from a child care assistance unit member, whose income is counted in determining eligibility and benefit amounts, may be deducted from the child care assistance unit's income.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-10. Caretaker choice - Contract between caretaker and provider.

The caretaker of each eligible child who receives or is offered child care services for which financial assistance is provided through the child care and development fund may choose the approved relative provider, registrant, holder of a self-declaration, or licensed provider of services to that child. The department is not bound by or responsible for either party's compliance with the terms of any contract entered between a provider and a caretaker.

History: Effective April 1, 2010; amended effective April 1, 2014.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-11. Limitations.

1. No caretaker in a child care assistance unit that includes two or more caretakers may be provided a benefit under this chapter for anytime another caretaker is available, or is treated under this chapter as available, to meet the needs of the child for whom assistance is sought.
2. If other eligibility criteria is met, a caretaker who is attending school in a one-year or two-year postsecondary vocational program that will lead to a certificate or a degree, high school or, a program leading to a general equivalency diploma may be eligible to receive assistance under this program.

History: Effective April 1, 2010.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-12. Intentional program violation - Disqualification penalties.

1. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court is subject to the penalties provided in this section. An individual who waives the individual's right to appear at an intentional program violation hearing is subject to the penalties provided in this section.
2. The human service zone shall notify an individual in writing of an intentional program violation. The written notice must include:
 - a. A statement of the proposed action;
 - b. The reason for the proposed action, including the rule, regulation, or statute upon which the action is based; and

- c. An explanation of the individual's right to request an administrative hearing under chapter 75-01-03.
3. During any period of disqualification, if a disqualified individual:
 - a. Is a provider, the individual may not receive any child care assistance payment;
 - b. Is employed by a provider, that provider may not receive any child care assistance payment; and
 - c. Is a member of a child care assistance unit, that child care assistance unit is ineligible for child care assistance benefits.
4. The duration of the penalty described in this section is:
 - a. One year for the first offense;
 - b. Two years for the second offense; and
 - c. Permanently for the third offense.
5. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until a court of appropriate jurisdiction subsequently reverses the finding upon which the penalty was based.
6. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.
7. The department shall issue a written notice informing the individual of the period of disqualification.
8. Overpayments may be recovered from:
 - a. The child care assistance unit that includes the disqualified individual;
 - b. Any child care assistance unit of which the disqualified individual subsequently becomes a member;
 - c. Any individual members of the child care assistance unit that included the disqualified individual;
 - d. The provider who was disqualified; and
 - e. The provider who employed the disqualified individual.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-13. Appeals.

1. An applicant, recipient, relative provider applicant, or approved relative provider of child care assistance aggrieved by a determination made under this chapter may appeal that decision by the department. An applicant, recipient, relative provider applicant, or approved relative provider of child care assistance aggrieved by a decision must appeal in writing and include documentation of all of the following information:
 - a. A copy of the letter received from the department advising of the department's decision;

- b. A statement of disputed facts, if any;
 - c. The authority in statute or rule upon which the applicant for, recipient of relative provider applicant, or approved relative provider of child care assistance relies for each disputed item; and
 - d. The name, address, and telephone number of the individual to whom the department will send all notices and information regarding the appeal.
- 2. An appeal must be filed within thirty days after the date of mailing of a decision.
 - 3. A hearing request may be denied or dismissed when the sole issue is one of state or federal law requiring automatic benefit adjustments for classes of recipients.
 - 4. Chapter 75-01-03 governs an appeal made under this chapter.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02