

CHAPTER 75-03-24
EXPANDED SERVICE PAYMENTS FOR ELDERLY AND DISABLED

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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 health and human services.
4. "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.].
5. "Ex-SPED program pool" means the list maintained by the department which contains the names of eligible individuals for whom ex-SPED program funding is available when the eligible individuals' names are transferred from the ex-SPED program pool to ex-SPED program active status.
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.

History: Effective April 1, 2012; amended effective July 1, 2020; January 1, 2024.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 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: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

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

- 1. The department is responsible for:
 - a. Verifying that the individual 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.
- 2. 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 the ex-SPED program for fewer than ninety 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.
- 3. An applicant is eligible to receive covered services reimbursed under North Dakota Century Code chapter 50-06.2 or this chapter even if the applicant has natural supports.

History: Effective April 1, 2012; amended effective July 1, 2020; January 1, 2022; January 1, 2024.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 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 the department. 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 eligible individuals 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.

History: Effective April 1, 2012; amended effective July 1, 2020; January 1, 2024.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 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: NDCC 50-24.7-02

Law Implemented: NDCC 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;
 - j. Adaptive equipment or environmental modification, or both; and
 - k. 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: NDCC 50-24.7-02

Law Implemented: NDCC 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 an eligible individual:

1. The department may provide adult day care services to an eligible individual:
 - 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 eligible individual does not live alone, has a primary caregiver who will benefit from the temporary relief of caregiving.
2. The department may provide adult family foster care, using a licensed adult family foster care provider, to an eligible individual 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 an eligible individual for one-time, intermittent, or occasional activities which would enable the eligible individual to remain in the home. Activities such as heavy housework and periodic cleaning, professional extermination, snow removal, and emergency response systems may be provided. Eligible individuals receiving emergency response services must be cognitively and physically capable of activating the emergency response system. The activity must be the responsibility of the eligible individual and not the responsibility of the landlord.
4. The department may provide environmental modification to an eligible individual:
 - a. Who owns or rents the home to be modified. If the home is rented the property owner shall approve the modification consistent with the property owner's obligations pursuant to section 804(f)(3)(A) of the Fair Housing Act [42 U.S.C. 3604(f)(3)(A)] before the installation of the environmental modification; and

- b. When the modification will enable the eligible individual to complete the eligible individual's own personal care or to receive care and allow the eligible individual to safely stay in the home.
5. The department may provide family home care services to an eligible individual:
 - 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. Whose care provider is a relative identified within the definition of "family home care" under subsection 2 of North Dakota Century Code section 50-06.2-02 and is enrolled as a qualified service provider.
6. The department may provide home-delivered meals to an eligible individual who lives alone and is unable to prepare an adequate meal for themselves, or who lives with an individual who is unable or not available to prepare an adequate meal for the eligible individual.
7. The department may provide homemaker services to an eligible individual who needs assistance with environmental maintenance activities including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis. The department may pay a provider for laundry, shopping, meal preparation, money management, or communication, if the activity benefits the eligible individual. The department may pay a provider for housekeeping activities involving the eligible individual's personal private space and if the eligible individual is living with an adult, the eligible individual's share of common living space. The homemaker service cap funding applies to a household and may not be exceeded regardless of the number of eligible individuals residing in that household.
8. Nonmedical transportation services may be provided to eligible individuals 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. The department may provide respite care services to an eligible individual in the eligible individual'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 eligible individual has a full-time primary caregiver;
 - b. The eligible individual 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.
10. The department may provide companionship services up to ten hours per month to eligible individuals who live alone and could benefit from services to help reduce social isolation.
11. The department may provide other services as the department determines appropriate.

History: Effective April 1, 2012; amended effective October 1, 2014; January 1, 2022; January 1, 2024.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 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 human service zone 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; amended effective July 1, 2020.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

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

1. The department shall inform an individual 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. An eligible individual must receive ten calendar days' written notice before termination of services occurs. The ten-day notice is not required if:
 - a. The eligible individual enters a basic care facility or a nursing facility;
 - b. The termination is due to changes in federal or state law;
 - c. The eligible individual requests termination of services;
 - d. The eligible individual moves from the service area; or
 - e. The eligible individual is deceased.
3. An applicant denied services or an eligible individual 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. The department shall deny or terminate ex-SPED program services when service to the eligible individual presents an immediate threat to the health or safety of the eligible individual, 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 eligible individual, the provider of services, or others. Examples of health and safety threats include physical abuse of the provider by the eligible individual, eligible individual self-neglect, an unsafe living environment for the eligible individual, or contraindicated practices, like smoking while using oxygen.
5. 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 eligible individual who would not otherwise be eligible to receive that benefit.

History: Effective April 1, 2012; amended effective July 1, 2020; January 1, 2024.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 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 chapter 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 eligible individual each month for a specific service.
7. The department shall establish the aggregate maximum amount allowable per eligible individual each month for all services.
8. The department may grant approval to exceed the monthly service program maximum for a specific eligible individual who is only receiving ex-SPED funds if:
 - a. The eligible individual 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 shall notify the eligible individual 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 shall inform the eligible individual in writing of the reason for the denial, the eligible individual'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 eligible 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 eligible individuals who were receiving services prior to July 1, 2007.

History: Effective April 1, 2012; amended effective July 1, 2020; January 1, 2024.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 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: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

75-03-24-12. Administration.

The department must be responsible for the administration of the program with respect to that applicant or eligible individual.

History: Effective April 1, 2012; amended effective July 1, 2020; January 1, 2024.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7