

**Sixty-first Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1090  
(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to create and enact a new chapter to title 50 of the North Dakota Century Code, relating to child care assistance; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new chapter to title 50 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** For the purposes of this chapter:

1. "Allowable activities" means paid work, job search, attending job training or an education program, any activity in the job opportunity and basic skills program, transportation time related to the activities, temporary illness or incapacity of a current recipient, and temporary illness of the child.
2. "Approved relative" means an individual provider related to a child in that provider's care by marriage, blood, or court decree as a grandparent, step-grandparent, great grandparent, step-great grandparent, aunt, step-aunt, uncle, step-uncle, sibling, or step-sibling, who has been approved to care for specific children in the provider's own home, but does not mean a sibling provider who resides in the home of a child in that provider's care.
3. "Caretaker" means a child's biological or adoptive parent, the spouse of the child's biological or adoptive parent, or an individual acting in the stead of a child's parent at the request of the parent or another with authority to make the request, but does not mean a provider.
4. "Child care assistance unit" means all members of the caretaker's immediate household, including a child through the month of that child's nineteenth birthday, and any parent or stepparent of a child, including an acknowledged or adjudicated father of one or more children in the household, but does not mean any other person who is not acting in the stead of a parent, a child who is nineteen years of age or older, a child for whom the household receives foster care payments, or a minor parent of a child in the household unless the minor parent also requires child care or is incapable of caring for the child.
5. "Child care center" has the meaning provided in chapter 50-11.1.
6. "County agency" means any county social services office.
7. "Department" means the department of human services.
8. "Family child care" has the meaning provided in chapter 50-11.1.
9. "Group child care" has the meaning provided in chapter 50-11.1.
10. "Provider" means an individual who is eighteen years of age or older, licensed as a provider in a family child care, group child care, or child care center, with a self-declaration as a provider of early childhood services who requires no license, registered as a child care provider by a tribal entity, or an approved relative, who meets criteria established by the jurisdiction with authority to regulate child care services.

11. "Recipient" means an individual who is receiving child care assistance.
12. "Tribal entity" means an organization authorized by the government of an Indian tribe within North Dakota to license, register, or otherwise recognize a child care provider operating within the jurisdiction of that Indian tribe.
13. "Work":
  - a. Means any paid employment and any self-employment providing commensurate income; and
  - b. Does not mean any unpaid activity except:
    - (1) With respect to a caretaker who is involved in job opportunity and basic skills or tribal native employment works required by temporary assistance for needy families, any approved activity for the program; and
    - (2) When a state has been determined to have a major disaster, activity by an individual who is residing in the disaster area and involved in unpaid work activities, including the cleaning, repair, restoration, and rebuilding of homes, businesses, and schools.

**Child care assistance - Application for benefits - Applicant's duty to establish eligibility - Decisions - Rules.**

1. An individual desiring child care assistance or an individual seeking assistance on behalf of another individual may apply for child care assistance. An applicant shall submit a request for child care assistance in writing to a county agency on a form prescribed by the department. The applicant shall complete, sign, and date the application. Eligibility begins on the first day of the month in which a signed and dated application is received by the county agency. Eligibility may begin on the first day of the month prior to the month in which a signed and dated application is received by the county agency, if the applicant requests child care assistance for that month and demonstrates eligibility in that month.
2. The applicant shall provide information sufficient to establish the eligibility of each individual for whom assistance is requested, including the age, verification of relative relationship, citizenship or resident alien status of the children, verification of participation in an allowable activity, and financial eligibility.
3. An eligibility decision must be made within fifteen days on child care assistance applications whenever possible. The county agency shall notify the applicant following a determination of eligibility or ineligibility.
4. The department shall establish rules for the administration of the child care assistance program, including rules on income requirements, appeals of eligibility determinations for child care assistance, closure of a child care assistance case, and a sliding scale fee schedule for child care assistance benefits and to establish and enforce standards against program fraud and abuse.

**Available benefits.**

1. The department shall pay child care costs required as a result of participation in allowable activities by the eligible caretaker in a temporary assistance for needy families household or diversion assistance household. The department shall pay a portion of child care costs required as a result of participation in allowable activities by the caretaker based on family size and countable income by applying a sliding fee schedule established under rules to be adopted by the department.

2. Subject to the availability of funding, the department may expand child care assistance to include an eligible caretaker who is attending a postsecondary education program in pursuit of a one-year, two-year, or four-year degree or certificate. If a child care assistance unit includes two parents, child care assistance may be paid with respect to any child only during times that both parents are engaged in an allowable activity.

**Caretaker temporarily out of the home.** A caretaker, temporarily living apart from the remaining members of the child care assistance unit due to employment, education, training, medical care, incarceration, or uniformed service, is not considered absent from the home as long as the caretaker continues to function as caretaker, even if the level of support or care is reduced. The caretaker is counted as a child care assistance unit member and all gross countable income of that caretaker is included as child care assistance unit income used to determine the child care assistance payment.

**State of residence.** Only child care assistance units physically residing within the boundaries of the state are eligible for child care assistance.

**Approved relative provider.**

1. The department may approve a relative provider to provide care for specific children within a specified county. The department shall provide an approved relative provider with a provider identification number. An approved relative provider may provide care for no more than five children under the age of twelve or three children under the age of two, including the provider's children.
2. Before approving an individual as an approved relative provider, the department shall seek a criminal history record investigation as provided under section 50-11.1-06.2 and pursuant to section 12-60-24. The department shall consider any criminal history record information available at the time approval decision is made. A background check must be completed for each adult living in the household of the prospective provider.
3. No payment may be made to a relative provider who is not an approved relative provider.

**Sliding fee schedule.**

1. The sliding fee schedule established by the department for inclusion within the child care and development fund state plan to determine eligibility, benefit levels, and the portion of the allowable child care cost that may be paid as a benefit under this chapter, must not:
  - a. Exceed available federal and non-federal funding; and
  - b. Provide benefits to a family whose income exceeds eighty-five percent of the state median income for a family of the same size.
2. Child care costs that exceed maximums established under this section are the responsibility of the family and may not be considered in determining the child care assistance program payment amount.

**Limitations on in-home child care benefits.** No benefits under this chapter may be provided for in-home child care unless:

1. A health professional provides written documentation demonstrating to the department's satisfaction that the child's health would be at risk if taken to an outside provider; or
2. A developmental disabilities case manager or a special education case manager provides written documentation demonstrating to the department's satisfaction that the child's disability is such that taking the child to an outside provider creates an undue hardship.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1090.

House Vote:      Yeas    90      Nays    0      Absent    4

Senate Vote:    Yeas    47      Nays    0      Absent    0

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2009,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State