

**BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL**

N.D. Admin. Code Chapters 75-02-02.1 and 75-02-02.2, Eligibility for Medicaid and Children's Health Insurance Program (Pages 217-276)))))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> March 14, 2012
--	----------------------------	---

.....

For its report, the North Dakota Department of Human Services states:

1. The proposed amendments to N.D. Admin. Code chapter 75-02-02.1 are related, in part, to statutory changes made by the Legislative Assembly in 2011 House Bill No. 1320.
2. These rules are related, in part, to changes in a federal statute or regulation.
3. The Department of Human Services uses direct and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The Department uses a basic mailing list for each rulemaking project that includes the county social service board directors, the regional human service centers, Legal Services offices in North Dakota, all persons who have asked to be on the basic list, and internal circulation within the Department. Additionally, the Department constructs relevant mailing lists for specific rulemaking. The Department also places public announcements in all county newspapers advising generally of the content of the rulemaking, of over 50 locations throughout the state where the proposed rulemaking documents may be reviewed, and stating the location, date, and time of the public hearing.

The Department conducts public hearings on all substantive rule-making. Oral comments are recorded. Oral comments, as well as any written comments that have been received, are summarized and presented to the Department's executive director, together with any response to the comments that may seem appropriate and a re-drafted rule incorporating any changes occasioned by the comments.

4. A public hearing on the proposed rules was held in Bismarck on December 28, 2011. The record was held open until 5:00 p.m. on January 9, 2012, to allow written comments to be submitted. No comments were received. A summary of comments is attached to this report.
5. The cost of giving public notice, holding a hearing, and the cost (not including staff time) of developing and adopting the rules was \$2,069.82.
6. The proposed rules amend chapters 75-02-02.1 and 75-02-02.2. The following specific changes are made:

Section 75-02-02.1-01. Section 75-02-02.1-01 is amended to move the definitions of nursing care services and student from other sections of chapter 75-02-02.1 to section 75-02-02.1-01 which contains definitions for the chapter.

Section 75-02-02.1-05. Section 75-02-02.1-05 is amended to reflect the increase in the asset level for Medicare Savings Programs.

Section 75-02-02.1-15. Section 75-02-02.1-15 is amended to clarify requirements for establishing incapacity of a parent for purposes of determining eligibility.

Section 75-02-02.1-24.2. Section 75-02-02.1-24.2 is amended to reflect the change that combines the sections on exempt and excluded assets in chapter 75- 02-02.1.

Section 75-02-02.1-25. Section 75-02-02.1-25 is amended to clarify parental assets that are considered available to a disabled child under age eighteen.

Section 75-02-02.1-26. Section 75-02-02.1-26 is amended to reflect the change that combines the sections on exempt and excluded assets in chapter 75-02-02.1.

Section 75-02-02.1-27. Section 75-02-02.1-27 is repealed to reflect the change that combines the sections on exempt and excluded assets in chapter 75-02-02.1.

Section 75-02-02.1-28. Section 75-02-02.1-28 is amended to reflect the change that combines the sections on exempt and excluded assets in chapter 75-02-02.1, to clarify the requirements of what constitutes a good faith effort to sell real property or a mobile home, to clarify that preneed burial contracts are considered pre-payments or deposits set aside for burial, and to add employer-sponsored retirement plans as an excluded asset for purposes of determining medical eligibility.

Section 75-02-02.1-28.1. Section 75-02-02.1-28.1 is amended to correct internal references that changed due to combining the sections on exempt and excluded assets in chapter 75-02-02.1.

Section 75-02-02.1-33.1. Section 75-02-02.1-33.1 is amended to reflect the change that combines the sections on exempt and excluded assets in chapter 75-02-02.1 and to

move the definition of “nursing care services” to section 75-02-02.1-01.

Section 75-02-02.1-33.2. Section 75-02-02.1-33.2 is amended to correct internal references that changed due to combining the sections on exempt and excluded assets in chapter 75-02-02.1, to move the definition of “nursing care services” to section 75-02-02.1-01, and to clarify how to rebut the presumption that assets or income have been transferred to an implied trust.

Section 75-02-02.1-38.1. Section 75-02-02.1-38.1 is amended to include certain real estate taxes in the types of income that may be disregarded in determining Medicaid eligibility.

Section 75-02-02.1-38.2. Section 75-02-02.1-38.2 is amended to move the definition of “student” and “full-time student” to section 75-02-02.1-01.

Section 75-02-02.1-39. Section 75-02-02.1-39 is amended to clarify that reasonable child care expenses do not include payments to parents to care for their own children and to correct a typographical error.

Section 75-02-02.2-13.1. Section 75-02-02.2-13.1 is amended to clarify that reasonable child care expenses do not include payments to parents to care for their own children.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The proposed amendments are expected to have an impact on the regulated community in excess of \$50,000. A regulatory analysis was prepared and is attached to this report.

8. A small entity regulatory analysis and small entity economic impact statement were prepared and are attached to this report.
9. These rules do have a fiscal impact on state revenues and expenditures, including on any funds controlled by the Department. The total Department costs are anticipated to be \$79,920 for the 2011-2013 biennium of which \$35,644 is general fund and \$44,276 is federal funds.
10. A constitutional takings assessment was prepared and is attached to this report.
11. These rules were not adopted as emergency (interim final) rules.

Prepared by:

Jonathan Alm
Legal Advisory Unit
North Dakota Department of Human Services
March 14, 2012

**CHAPTER 75-02-02.1
ELIGIBILITY FOR MEDICAID**

Section	
75-02-02.1-01	Definitions
75-02-02.1-02	Application and Redetermination
75-02-02.1-02.1	Duty to Establish Eligibility
75-02-02.1-03	Decision and Notice
75-02-02.1-04	Screening of Recipients of Certain Services
75-02-02.1-04.1	Certification of Need for Children in an Institution for Mental Disease
75-02-02.1-05	Coverage Groups
75-02-02.1-06	Applicant's Choice of Aid Category
75-02-02.1-07	Applicant's Duty to Establish Eligibility [Repealed]
75-02-02.1-08	Medicaid Unit
75-02-02.1-08.1	Caretaker Relatives
75-02-02.1-09	Assignment of Rights to Medical Payments and Benefits
75-02-02.1-10	Eligibility - Current and Retroactive
75-02-02.1-11	Need
75-02-02.1-12	Age and Identity
75-02-02.1-12.1	Cost-Effective Health Insurance Coverage
75-02-02.1-13	Social Security Numbers
75-02-02.1-14	Blindness and Disability
75-02-02.1-15	Incapacity of a Parent
75-02-02.1-16	State of Residence
75-02-02.1-17	Application for Other Benefits
75-02-02.1-18	Citizenship and Alienage
75-02-02.1-19	Inmates of Public Institutions
75-02-02.1-19.1	Family Coverage Group
75-02-02.1-20	Transitional and Extended Medicaid Benefits
75-02-02.1-21	Continuous Eligibility for Pregnant Women and Newborns
75-02-02.1-22	Medicare Savings Programs
75-02-02.1-23	Eligibility of Qualified Disabled and Working Individuals
75-02-02.1-24	Spousal Impoverishment Prevention
75-02-02.1-24.1	Breast and Cervical Cancer Early Detection Program
75-02-02.1-24.2	Eligibility for Workers With Disabilities
75-02-02.1-24.3	Eligibility for Children With Disabilities
75-02-02.1-25	Asset Considerations
75-02-02.1-26	Asset Limits
75-02-02.1-27	Exempt Assets <u>[Repealed]</u>
75-02-02.1-28	Excluded Assets
75-02-02.1-28.1	Excluded Assets for Medicare Savings Programs, Qualified Disabled and Working Individuals, and Spousal Impoverishment Prevention
75-02-02.1-29	Forms of Asset Ownership
75-02-02.1-30	Contractual Rights to Receive Money Payments

75-02-02.1-30.1	Annuities [Repealed]
75-02-02.1-31	Trusts
75-02-02.1-31.1	Trusts Established by Applicants, Recipients, or Their Spouses After August 10, 1993
75-02-02.1-32	Valuation of Assets
75-02-02.1-33	Disqualifying Transfers Made on or Before August 10, 1993 [Repealed]
75-02-02.1-33.1	Disqualifying Transfers Made Before February 8, 2006
75-02-02.1-33.2	Disqualifying Transfers Made on or After February 8, 2006
75-02-02.1-34	Income Considerations
75-02-02.1-35	Budgeting [Repealed]
75-02-02.1-36	Disregarded Income [Repealed]
75-02-02.1-37	Unearned Income
75-02-02.1-38	Earned Income
75-02-02.1-38.1	Post-Eligibility Treatment of Income
75-02-02.1-38.2	Disregarded Income
75-02-02.1-39	Income Deductions
75-02-02.1-40	Income Levels
75-02-02.1-41	Deeming of Income
75-02-02.1-41.1	Recipient Liability
75-02-02.1-41.2	Budgeting
75-02-02.1-42	Eligibility Under 1972 State Plan

SECTION 1. Section 75-02-02.1-01 is amended as follows:

75-02-02.1-01. Definitions. For the purposes of this chapter:

1. "Agency" means the North Dakota department of human services.
2. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.
3. "Blind" has the same meaning as the term has when used by the social security administration in determining blindness for title II or XVI of the Act.
4. "Child" means a person, under twenty-one, or, if blind or disabled, under age eighteen, who is not living independently.
5. "Contiguous" means real property which is not separated by other real property owned by others. Roads and other public rights of way which run through the property, even if owned by others, do not affect the property's contiguity.
6. "County agency" means the county social service board.
7. "Department" means the North Dakota department of human services.
8. "Deprived child" means a child who is deprived of parental support or care because one or both parents are deceased, incapacitated, disabled, aged, or maintains and resides in a separate verified residence for reasons other than employment, education, training, medical care, or uniformed service.
9. "Disabled" has the same meaning as the term has when used by the social security administration in determining disability for title II or XVI of

the Act.

10. "Disabled adult child" means a disabled or blind person over the age of twenty-one who became blind or disabled before age twenty-two.
11. "Full calendar month" means the period which begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration.
12. "Good-faith effort to sell" means an honest effort to sell in a manner which is reasonably calculated to induce a willing buyer to believe that the property offered for sale is actually for sale at a fair price. A good-faith effort to sell includes, at a minimum, making the offer at a price based on an appraisal, a market analysis by a realtor, or another method which produces an accurate reflection of fair market value or, with respect to a determination of qualified disabled and working individual benefits under section 75-02-02.1-23, sixty-six and two-thirds percent of fair market value, in the following manner:
 - a. To any ~~owner~~ co-owner, joint owner, possessor, or occupier of the property, and, if no buyer is thereby secured;
 - b. To the regular market for such property, if any regular market exists, or, if no regular market exists;
 - c. By public advertisement for sale in a newspaper of general circulation, the circulation area of which includes the location of any property resource offered for sale, which advertisement was published successively for two weeks if the newspaper is a weekly publication and for one week if the newspaper is a daily publication, and which includes a plain and accurate description of the property, the selling price, and the name, address, and telephone number of a person who will answer inquiries and receive offers.
13. "Healthy steps" means an insurance program, for children up to age nineteen, administered under North Dakota Century Code chapter 50-29 and title XXI of the Act.
14. "Home" includes, when used in the phrase "the home occupied by the medicaid unit", the land on which the home is located, provided that the acreage [hectarage] does not exceed one hundred sixty contiguous acres [64.75 hectares] if rural or two acres [.81 hectares] if located within the established boundaries of a city.
15. "Home and community-based services" means services, provided under a waiver secured from the United States department of health and human services, which are:
 - a. Not otherwise available under medicaid; and
 - b. Furnished only to individuals who, but for the provision of such services, would require the level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded.
16. "Institutionalized individual" means an individual who is an inpatient in a nursing facility, an intermediate care facility for the mentally retarded, the state hospital, a psychiatric residential treatment facility, an institution for

- mental disease, or who receives swing-bed care in a hospital.
17. "Living independently" means, in reference to an individual under the age of twenty-one, a status which arises in any of the following circumstances:
- a. The individual has served a tour of active duty with the armed services of the United States and lives separately and apart from the parent.
 - b. The individual has married, even though that marriage may have ended through divorce or separation. A marriage ended by legal annulment is treated as if the marriage never occurred.
 - c. The individual has lived separately and apart from both parents for at least three consecutive full calendar months after the date the individual left a parental home, continues to live separately and apart from both parents, and has received no support or assistance from either parent while living separately and apart. For purposes of this subsection:
 - (1) Periods when the individual is attending an educational or training facility, receiving care in a specialized facility, or is an institutionalized individual are deemed to be periods when the individual is living with a parent unless the individual first established that the individual was living independently; and
 - (2) Health insurance coverage and court-ordered child support payments are not "assistance or support".
 - d. The individual is a former foster care recipient who has established a living arrangement separate and apart from either parent and received no support or assistance from either parent.
 - e. The individual lives separately and apart from both parents due to incest and receives no support or assistance from either parent.
18. "Medicaid" means a program implemented pursuant to North Dakota Century Code chapter 50-24.1 and title XIX of the Act [42 U.S.C. 1396 et seq.].
19. "Medicare cost sharing" means the following costs:
- a. (1) Medicare part A premiums; and
(2) Medicare part B premiums;
 - b. Medicare coinsurance;
 - c. Medicare deductibles; and
 - d. Twenty percent of the allowed cost for medicare covered services where medicare covers only eighty percent of the allowed costs.
20. "Nursing care services" means nursing care provided in a medical institution, a nursing facility, a swing-bed, the state hospital, or a home and community-based services setting.
21. "Occupied" means, when used in the phrase "the home occupied by the medicaid unit", the home the medicaid unit is living in or, if temporarily absent from, possessed with an intention to return and the capability of returning within a reasonable length of time. Property is not occupied if the right to occupy has been given up through a rental or lease agreement,

whether or not that rental or lease agreement is written. Property is not occupied by an individual in long-term care or the state hospital, with no spouse, disabled adult child, or child under age twenty-one at home, unless a physician has certified that the individual is likely to return home within six months.

- ~~21~~22. "Poverty level" means the income official poverty line, as defined by the United States office of management and budget, and as revised annually in accordance with 42 U.S.C. 9902(2).
- ~~22~~23. "Property that is essential to earning a livelihood" means property that a member of a medicaid unit owns, and which the medicaid unit is actively engaged in using to earn income, and where the total benefit of such income is derived for the medicaid unit's needs. A member of a medicaid unit is actively engaged in using the property if a member of the unit contributes significant current personal labor in using the property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active use of the property.
- ~~23~~24. "Property that is not saleable without working an undue hardship" means property which the owner has made a good-faith effort to sell which has produced no buyer willing to pay an amount equaling or exceeding seventy-five percent of the property's fair market value, or sixty-six and two-thirds percent of the property's fair market value with respect to determination of qualified disabled and working individual benefits under section 75-02-02.1-23, and which is continuously for sale. Property may not be included within this definition at any time earlier than the first day of the first month in which a good-faith effort to sell is begun or if a bona fide offer is received by the third month after the month in which the good-faith effort to sell is begun.
- ~~24~~25. "Regulation", as used in 42 CFR 431.210, 431.244, and 435.912, includes any written statement of federal or state law or policy, including, but not limited to, federal and state constitutions, statutes, regulations, rules, policy manuals or directives, policy letters or instructions, and relevant controlling decisions of federal or state courts.
- ~~25~~26. "Remedial services" means those services, provided in specialized facilities, which produce the maximum reduction of physical or mental disability and restoration of the facilities' residents to the residents' best possible level of functioning.
- ~~26~~27. "Residing in the home" refers to individuals who are physically present, individuals who are temporarily absent, or individuals attending educational facilities.
- ~~27~~28. "Specialized facility" means a residential facility, including a basic care facility, a licensed family foster care home for children or adults, a licensed group foster care home for children or adults, a transitional living facility, a facility established to provide quarters to clients of a sheltered workshop, and any other facility determined by the department to be a provider of remedial services, but does not mean an acute care facility or a nursing

facility.

~~28~~29. "State agency" means the North Dakota department of human services.

~~29-30~~30. "Student" means an individual who regularly attends and makes satisfactory progress in elementary or secondary school, general equivalency diploma classes, college, university, vocational training, including summer vacation periods if the individual intends to return to school in the fall, or a home school program recognized or supervised by the student's state or local school district. A full-time student is a person who attends school on a schedule equal to a full curriculum.

31. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

~~30~~32. "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Act [42 U.S.C. 601 et seq.].

~~34~~33. "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].

~~32~~34. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].

~~33~~35. "Title IV-E" means title IV-E of the Social Security Act [42 U.S.C. 670 et seq.].

~~34~~36. "Title XIX" means title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; October 1, 1993; July 1, 2003; August 1, 2005; April 1, 2008; January 1, 2011; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01

SECTION 2. Subsection 4 of section 75-02-02.1-05 is amended as follows:

4. The poverty level coverage group includes:
 - a. Pregnant women whose pregnancy has been medically verified and who meet the nonfinancial requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level;
 - b. Eligible pregnant women who applied for and were poverty level eligible for medicaid during their pregnancy continue to be eligible for sixty days beginning on the last day of pregnancy, and for the remaining days of the month in which the sixtieth day falls;
 - c. Children under the age of six who meet the nonfinancial requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level;
 - d. Children, age six to nineteen, who meet the nonfinancial requirements of the medicaid program and whose family income is at or below one hundred percent of the poverty level;
 - e. Qualified medicare beneficiaries who are entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, have whose assets no greater than twice the supplemental security income resource standards do not exceed the maximum resource

level applied for the year under subparagraph (D) of section 1860D-14(a)(3) [42 U.S.C. 1395w-114(a)(3)], and have income at or below one hundred percent of the poverty level;

- f. Qualified disabled and working individuals who are individuals entitled to enroll in medicare part A under section 1818a of the Social Security Act [42 U.S.C. 1395i-2(a)], who have income no greater than two hundred percent of the federal poverty level and assets no greater than twice the supplemental security income resource standard, and who are not eligible for medicaid under any other provision;
- g. Special low-income medicare beneficiaries who are entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, have whose assets no greater than twice the supplemental security income resource standards do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1860D-14(a)(3) [42 U.S.C. 1395w-114(a)(3)], and have income above one hundred percent of the poverty level, but not in excess of one hundred twenty percent of the poverty level; and
- h. Qualifying individuals who are entitled to medicare part A benefits, who meet the medically needy nonfinancial criteria, have whose assets no greater than twice the supplemental security income resource standards do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1860D-14(a)(3) [42 U.S.C. 1395w-114(a)(3)], have income above one hundred twenty percent of the poverty level, but not in excess of one hundred thirty-five percent of the poverty level, and are not eligible for medicaid under any other provision.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; January 1, 1994; January 1, 1997; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2010; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-31

SECTION 3. Subsection 2 of section 75-02-02.1-15 is amended as follows:

- 2. The incapacity must be such that it reduces substantially or eliminates employment in the parent's usual occupation ~~or another occupation to which the parent may be able to adapt. The fact that a parent may have to change occupation or work location does not establish incapacity or limited employment opportunities for a disabled parent.~~ It does not matter whether a parent was employed or fulfilled the role of homemaker prior to the onset of the asserted incapacity. Incapacity is established either when the parent is unable to earn a livelihood or to act as a homemaker. A parent may also establish incapacity by demonstrating that the parent has reached age sixty-five.

History: Effective December 1, 1991; amended effective December 1, 1991; February 1, 1997; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01

SECTION 4. Subsection 3 of section 75-02-02.1-24.2 is amended as follows:

3. Asset considerations provided under section 75-02-02.1-25, asset limits provided under section 75-02-02.1-26, ~~exempt assets provided under section 75-02-02.1-27,~~ and excluded assets provided under section 75-02-02.1-28.1 are applicable to the workers with disabilities coverage except that each individual enrolled as a member of the workers with disabilities coverage group is allowed an additional ten thousand dollars in assets.

History: Effective June 1, 2004; amended effective August 1, 2005; April 1, 2008; January 1, 2011; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02.7, 50-24.1-18.1

SECTION 5. Subsection 4 of section 75-02-02.1-25 is amended as follows:

4. All parental assets are considered actually available to a disabled child under age eighteen unless the child is living:
 - a. Independently; or
 - b. With a parent who is separated from the child's other parent, with or without court order, if the parents did not separate for the purpose of securing medicaid benefits; in which case only the assets of the parent with whom the child is living are considered available.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; May 1, 2006; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

SECTION 6. Section 75-02-02.1-26 is amended as follows:

75-02-02.1-26. Asset limits. In all instances, including determinations of equity, property must be realistically evaluated in accord with current fair market value. No one subject to an asset limit may be found eligible for medicaid unless the combined equity value of the medicaid unit's assets of whatever nature, not ~~otherwise exempted pursuant to section 75-02-02.1-27,~~ or excluded pursuant to section 75-02-02.1-28 or section 75-02-02.1-28.1, do not exceed:

1. For individuals who seek benefits as members of the categorically needy or medically needy aged, blind, and disabled groups:
 - a. Three thousand dollars for a one-person unit;
 - b. Six thousand dollars for a two-person unit; and

- c. An additional amount of twenty-five dollars for each member of the unit in excess of two;
- 2. For individuals who seek benefits as qualified medicare beneficiaries, qualifying individuals, or special low-income medicare beneficiaries pursuant to section 75-02-02.1-22, the asset limits provided in that section; or
- 3. For individuals who seek benefits as qualified disabled and working individuals pursuant to section 75-02-02.1-23, the asset limits provided in that section.

History: Effective December 1, 1991; amended effective July 1, 1993; July 1, 2003; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

SECTION 7. Section 75-02-02.1-27 is amended as follows:

~~**75-02-02.1-27. Exempt assets.** Except as otherwise specifically provided, the following assets are exempt from consideration in determining medicaid eligibility:~~

- ~~1. The home occupied by the medicaid unit, including trailer homes being used as living quarters;~~
- ~~2. Personal effects, wearing apparel, household goods, and furniture;~~
- ~~3. One motor vehicle if the primary use of the vehicle is to serve the needs of members of the medicaid unit;~~
- ~~4. Indian trust or restricted lands and the proceeds from the sale thereof, so long as those proceeds are impressed with the original trust; and~~
- ~~5. Indian per capita funds and judgments funds awarded by either the Indian claims commission or the court of claims after October 19, 1973, interest and investment income accrued on such Indian per capita or judgment funds while held in trust, and purchases made using interest or investment income accrued on such funds while held in trust. The funds must be identifiable and distinguishable from other funds. Commingling of per capita funds, judgment funds, and interest and investment income earned on those funds, with other funds, results in loss of the exemption.~~
- ~~6. a. In determining the eligibility of an individual with respect to skilled nursing services, swing bed, or home and community-based benefits, the individual will be ineligible for those medicaid benefits if the individual's equity interest in the individual's home exceeds five hundred thousand dollars.~~
- ~~b. The dollar amount specified in this subsection will be increased, beginning with 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers, all items, United States city average, rounded to the nearest one thousand dollars.~~
- ~~c. This subsection does not apply to an individual whose spouse, or child who is under age twenty one or is blind or disabled, lawfully resides in the individual's home.~~

- d. ~~This subsection may not be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.~~
- e. ~~This subsection applies only to individuals who made application for medicaid with respect to skilled nursing facility services, swing bed, or home and community-based benefits on or after January 1, 2006.~~
- 7. a. ~~Notwithstanding any other provision to the contrary, the assets of an individual must be disregarded when determining medicaid eligibility in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long term care insurance policy that:~~
 - (1) ~~Covers an insured who was a resident of North Dakota when coverage first became effective under the policy;~~
 - (2) ~~Is a qualified long term care insurance policy, as defined in section 7702B(b) of the Internal Revenue Code of 1986, issued not earlier than the effective date of the state plan amendment described in subdivision b;~~
 - (3) ~~The agency determines meets the requirements of the long-term care insurance model regulations and the long term care insurance model act promulgated by the national association of insurance commissioners as adopted as of October 2000, or the state insurance commissioner certifies that the policy meets such requirements; and~~
 - (4) ~~Is sold to an individual who:~~
 - (a) ~~Has not attained age sixty one as of the date of purchase, if the policy provides compound annual inflation protection;~~
 - (b) ~~Has attained age sixty one but has not attained age seventy six as of the date of purchase, if the policy provides some level of inflation protection; or~~
 - (c) ~~Has attained age seventy six as of the date of purchase.~~
- b. ~~This subsection applies only to individuals who have purchased a long term care insurance policy described in this subsection with an issue date on or after the date specified in an approved medicaid state plan amendment that provides for the disregard of assets:~~
 - (1) ~~To the extent that payments are made under such a long-term care insurance policy; or~~
 - (2) ~~Because an individual has received or is entitled to receive benefits under such a long term care insurance policy.~~

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; April 1, 2008; repealed effective April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

SECTION 8. Section 75-02-02.1-28 is amended as follows:

75-02-02.1-28. Excluded assets. Except as provided in section 75-02-02.1-28.1, the following types of assets will be excluded in determining if the available assets of an applicant or recipient exceed asset limits:

1. The home occupied by the medicaid unit, including trailer homes being used as living quarters;
2. Personal effects, wearing apparel, household goods, and furniture;
3. One motor vehicle if the primary use of the vehicle is to serve the needs of members of the medicaid unit;
4. Indian trust or restricted lands and the proceeds from the sale thereof, so long as those proceeds are impressed with the original trust; and
5. Indian per capita funds and judgments funds awarded by either the Indian claims commission or the court of claims after October 19, 1973, interest and investment income accrued on such Indian per capita or judgment funds while held in trust, and purchases made using interest or investment income accrued on such funds while held in trust. The funds must be identifiable and distinguishable from other funds. Commingling of per capita funds, judgment funds, and interest and investment income earned on those funds, with other funds, results in loss of the exemption.
6.
 - a. In determining the eligibility of an individual with respect to skilled nursing services, swing-bed, or home and community-based benefits, the individual will be ineligible for those medicaid benefits if the individual's equity interest in the individual's home exceeds five hundred thousand dollars.
 - b. The dollar amount specified in this subsection will be increased, beginning with 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers, all items, United States city average, rounded to the nearest one thousand dollars.
 - c. This subsection does not apply to an individual whose spouse, or child who is under age twenty-one or is blind or disabled, lawfully resides in the individual's home.
 - d. This subsection may not be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.
 - e. This subsection applies only to individuals who made application for medicaid with respect to skilled nursing facility services, swing-bed, or home and community-based benefits on or after January 1, 2006.
7.
 - a. Notwithstanding any other provision to the contrary, the assets of an individual must be disregarded when determining medicaid eligibility in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy that:

- (1) Covers an insured who was a resident of North Dakota when coverage first became effective under the policy;
- (2) Is a qualified long-term care insurance policy, as defined in section 7702B(b) of the Internal Revenue Code of 1986, issued not earlier than the effective date of the state plan amendment described in subdivision b;
- (3) The agency determines meets the requirements of the long-term care insurance model regulations and the long-term care insurance model act promulgated by the national association of insurance commissioners as adopted as of October 2000, or the state insurance commissioner certifies that the policy meets such requirements; and
- (4) Is sold to an individual who:
 - (a) Has not attained age sixty-one as of the date of purchase, if the policy provides compound annual inflation protection;
 - (b) Has attained age sixty-one but has not attained age seventy-six as of the date of purchase, if the policy provides some level of inflation protection; or
 - (c) Has attained age seventy-six as of the date of purchase.

b. This subsection applies only to individuals who have purchased a long-term care insurance policy described in this subsection with an issue date on or after the date specified in an approved medicaid state plan amendment that provides for the disregard of assets:

- (1) To the extent that payments are made under such a long-term care insurance policy; or
- (2) Because an individual has received or is entitled to receive benefits under such a long-term care insurance policy.

8. Property that is essential to earning a livelihood.

- a. Property may be excluded as essential to earning a livelihood only during months in which a member of the medicaid unit is actively engaged in using the property to earn a livelihood, or during months when the medicaid unit is not actively engaged in using the property to earn a livelihood, if the medicaid unit shows that the property has been in such use and there is a reasonable expectation that the use will resume:
 - (1) Within twelve months of the last use; or
 - (2) If the nonuse is due to the disabling condition of a member of the medicaid unit, within twenty-four months of the last use.
- b. Property consisting of an ownership interest in a business entity that employs anyone whose assets are used to determine eligibility may be excluded as property essential to earning a livelihood if:
 - (1) The individual's employment is contingent upon ownership of the property; or

- (2) There is no ready market for the property.
 - c. A ready market for property consisting of an ownership interest in a business entity exists if the interest may be publicly traded. A ready market does not exist if there are unreasonable limitations on the sale of the interest, such as a requirement that the interest be sold at a price substantially below its actual value or a requirement that effectively precludes competition among potential buyers.
 - d. Property currently enrolled in the conservation reserve program is considered to be property essential to earning a livelihood.
 - e. Property from which a medicaid unit is receiving only rental or lease income is not essential to earning a livelihood.
 - f. Liquid assets, to the extent reasonably necessary for the operation of a trade or business, are considered to be property essential to earning a livelihood. Liquid assets may not otherwise be treated as essential to earning a livelihood.
29. Property which is not saleable without working an undue hardship. Such property may be excluded no earlier than the first day of the month in which good-faith attempts to sell are begun, and continues to be excluded only for so long as the asset continues to be for sale and until a bona fide offer for at least seventy-five percent of the property's fair market value is made. Good-faith efforts to sell must be repeated at least annually in order for the property to continue to be excluded.
- a. Persons seeking to establish retroactive eligibility must demonstrate that good-faith efforts to sell were begun and continued in each of the months for which retroactive eligibility is sought. Information concerning attempts to sell, which demonstrate that an asset is not saleable without working an undue hardship, are relevant to establishing eligibility in the month in which the good-faith efforts to sell are begun, but are not relevant to months prior to that month and do not relate back to prior months.
 - (1) A good-faith effort to sell real property or a mobile home must be made for at least three calendar months in which no bona fide offer for at least seventy-five percent of the property's fair market value is received before the property can be shown to be not saleable without working an undue hardship. The three calendar months must include a good faith effort to sell through the regular market for three calendar months.
 - (2) A good-faith effort to sell property other than real property, a mobile home, or an annuity must be made for at least thirty days in which no bona fide offer for at least seventy-five percent of the property's fair market value is received before the property can be shown to be not saleable without working an undue hardship.
 - b. Property may not be shown to be not saleable without working an undue hardship if the owner of the property fails to take action to

collect amounts due and unpaid with respect to the property or otherwise fails to assure the receipt of regular and timely payments due with respect to the property.

310. a. Any preneed burial contracts, prepayments, or deposits up to the amount set by the department in accordance with state law and the medicaid state plan, which are designated by an applicant or recipient for the burial of the applicant or recipient. Earnings accrued on the total amount of the designated burial fund are excluded.

- (1) The burial fund must be identifiable and may not be commingled with other funds. Checking accounts are considered to be commingled.
- (2) The value of an irrevocable burial arrangement shall be considered toward the burial exclusion.
- (3) The prepayments on a whole life insurance policy or annuity are the premiums that have been paid.
- (4) Any fund, insurance, or other property given to another person or entity in contemplation that its value will be used to meet the burial needs of the applicant or recipient shall be considered part of the burial fund.
- (5) At the time of application, the value of a designated burial fund shall be determined by identifying the value of the prepayments which are subject to the burial exclusion and asset limit amounts.
- (6) Designated burial funds which have been decreased prior to application for medicaid shall be considered redesignated as the date of last withdrawal. The balance at that point shall be considered the prepayment amount and earnings from that date forward shall be disregarded.
- (7) Reductions made in a designated burial fund after eligibility is established must first reduce the amount of earnings.
- (8) An applicant shall be determined eligible for the three-month prior period when a burial fund is established at the time of application if the value of all assets are within the medicaid burial fund exclusion and asset limit amounts for each of the three prior months. Future earnings on the newly established burial fund must be excluded.

b. A burial plot for each family member.

411. Home replacement funds, derived from the sale of an excluded home, and if intended for the purchase of another excluded home, until the last day of the third month following the month in which the proceeds from the sale are received. This asset must be identifiable and not commingled with other assets.

512. Unspent assistance, and interest earned on unspent assistance, received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288] or some other federal statute, because of a presidentially declared

- major disaster, and comparable disaster assistance received from a state or local government, or from a disaster assistance organization. This asset must be identifiable and not commingled with other assets.
- ~~6~~13. Payments, interest earned on the payments, and in-kind items received for the repair or replacement of lost, damaged, or stolen exempt or excluded assets are excluded for nine months, and may be excluded for an additional twenty-one months, if circumstances beyond the person's control prevent the repair or replacement of the lost, damaged, or stolen assets, and keep the person from contracting for such repair or replacement. This asset must be identifiable and not commingled with other assets.
- ~~7~~14. For nine months, beginning after the month of receipt, unspent assistance received from a fund established by a state to aid victims of crime, to the extent that the applicant or recipient demonstrates that such amount was paid in compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.
- ~~8~~15. Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.
- ~~9~~16. Payments made pursuant to the Confederate Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, [Pub. L. 103-436; 108 Stat. 4577 et seq.]. This asset must be identifiable and not commingled with other assets.
- ~~40~~17. Stock in regional or village corporations held by natives of Alaska issued pursuant to section 7 of the Alaska Native Claims Settlement Act, [Pub. L. 92-203; 42 U.S.C. 1606].
- ~~44~~18. For nine months beginning after the month of receipt, any educational scholarship, grant, or award and any fellowship or gift, or portion of a gift, used to pay the cost of tuition and fees at any educational institution. This asset must be identifiable and not commingled with other assets.
- ~~42~~19. For nine months beginning after the month of receipt, any income tax refund, any earned income tax credit refund, or any advance payments of earned income tax credit. This asset must be identifiable and not commingled with other assets.
- ~~43~~20. Assets set aside, by a blind or disabled, but not an aged, supplemental security income recipient, as a part of a plan to achieve self-support which has been approved by the social security administration.
- ~~44~~21. The value of a life estate.
- ~~45~~22. Allowances paid to children of Vietnam veterans who are born with spina bifida. This asset must be identifiable and not commingled with other assets.
- ~~46~~23. The value of mineral acres.
- ~~47~~24. Funds, including interest accruing, maintained in an individual development account established under title IV of the Assets for Independence Act, as amended [Pub. L. 105-285; 42 U.S.C. 604, note].

- ~~18~~25. Property connected to the political relationship between Indian tribes and the federal government which consists of:
- a. Any Indian trust or restricted land, or any other property under the supervision of the secretary of the interior located on a federally recognized Indian reservation, including any federally recognized Indian tribe's pueblo or colony, and including Indian allotments on or near a reservation as designated and approved by the bureau of Indian affairs of the department of interior.
 - b. Property located within the most recent boundaries of a prior federal reservation, including former reservations in Oklahoma and Alaska native regions established by the Alaska Native Claims Settlement Act.
 - c. Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights.
 - d. Property with unique Indian significance such as ownership interests in or usage rights to items not covered by subdivisions a through c that have unique religious, spiritual, traditional, or cultural significance, or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.
26. Funds held in employer-sponsored retirement plans, but not private retirement plans. An employer-sponsored retirement plan is a benefit plan that an employer offers for the benefit of his or her employees at no or a relatively low cost to the employees.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; August 1, 2005; April 1, 2008; January 1, 2010; January 1, 2011; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-02.3

SECTION 9. Subsection 2 of section 75-02-02.1-28.1 is amended as follows:

2. The assets described in subsections 2 through 5 of ~~section 75-02-02.1-27~~ and subsections ~~1, 2, and 4 through 18~~ 8, 9, and 11 through 26 of section 75-02-02.1-28 are excluded.

History: Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; April 1, 2008; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-02.3

SECTION 10. Subsection 10 of section 75-02-02.1-28.1 is amended as follows:

10. Life or burial insurance that generates a cash surrender value is excluded

if the face value of all such life and burial insurance policies on the life of that individual total one thousand five hundred dollars or less. This exclusion is not available for applicants or recipients who select the medicaid burial described in subsection ~~310~~ of section 75-02-02.1-28.

History: Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; April 1, 2008; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-02.3

SECTION 11. Subsections 2 of section 75-02-02.1-33.1 is amended as follows:

2. ~~Except as limited by subdivision i of subsection 2 of section 75-02-02.1-24, an~~ An individual shall may not be ineligible for medicaid by reason of subsection 1 to the extent that:
 - a. The assets transferred were a home, and title to the home was transferred to:
 - (1) The individual's spouse;
 - (2) The individual's son or daughter who is under age twenty-one, blind, or disabled;
 - (3) The individual's brother or sister who has an equity interest in the individual's home and who was residing in the individual's home for a period of at least one year immediately before the date the individual became an institutionalized individual; or
 - (4) The individual's son or daughter, other than a child described in paragraph 2, who was residing in the individual's home for a period of at least two years immediately before the date the individual began receiving nursing care services, and who provided care to the individual which permitted the individual to avoid receiving nursing care services;
 - b. The income or assets:
 - (1) Were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse;
 - (2) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;
 - (3) Were transferred to, or to a trust established solely for the benefit of, the individual's child who is blind or disabled; or
 - (4) Were transferred to a trust established solely for the benefit of an individual under sixty-five years of age who is disabled;
 - c. The individual makes a satisfactory showing that:
 - (1) The individual intended to dispose of the income or assets, either at fair market value or other valuable consideration, and the individual had an objectively reasonable belief that fair market value or its equivalent was received;
 - (2) The income or assets were transferred exclusively for a

- purpose other than to qualify for medicaid; or
 - (3) For periods after the return, all income or assets transferred for less than fair market value have been returned to the individual; or
 - d. The asset transferred was an asset excluded or exempted for medicaid purposes other than:
 - (1) The home or residence of the individual or the individual's spouse;
 - (2) Property which is not saleable without working an undue hardship;
 - (3) Excluded home replacement funds;
 - (4) Excluded payments, excluded interest on those payments, and excluded in-kind items received for the repair or replacement of lost, damaged, or stolen exempt or excluded assets;
 - (5) Life estate interests;
 - (6) Mineral interests;
 - (7) An asset received from a decedent's estate during any period it is ~~excluded under subdivision b of subsection 47~~ considered to be unavailable under subsection 5 of section 75-02-02.1-2875-02-02.1-25; or
 - (8) An annuity.

History: Effective October 1, 1993; amended effective December 1, 1996; July 1, 2003; June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(c)

SECTION 12. Subsection 9 of section 75-02-02.1-33.1 is amended as follows:

- 9. For purposes of this section:
 - a. "Annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future, but does not mean an employee benefit that qualifies for favorable tax treatment under the Internal Revenue Code or a plan described in the Internal Revenue Code as a retirement plan under which contributions must end and withdrawals must begin by age seventy and one-half.
 - b. "Average monthly cost of nursing facility care" means the cost determined by the department under section 1917(c)(1)(E)(i)(II) of the Act [42 U.S.C. 1396p(c)(1)(E)(i)(II)].
 - c. "Fair market value" means:
 - (1) In the case of a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, one hundred percent of apparent fair market value;

- (2) In the case of real or personal property that is subject to reasonable dispute concerning its value:
 - (a) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or anyone acting on the individual's behalf, seventy-five percent of estimated fair market value; or
 - (b) If conveyed to someone in a confidential relationship with the individual or anyone acting on the individual's behalf, one hundred percent of estimated fair market value; and
 - (3) In the case of income, one hundred percent of apparent fair market value.
- d. "Major medical policy" includes any policy, certificate, or subscriber contract issued on a group or individual basis by any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization, which provides a plan of health insurance or health benefit coverage including medical, hospital, and surgical care, approved for issuance by the insurance regulatory body in the state of issuance, but does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance; coverage issued as a supplement to liability insurance or automobile medical payment insurance, or a policy or certificate of specified disease, hospital confinement indemnity, or limited benefit health insurance.
- e. "Medicare" means the Health Insurance for the Aged and Disabled Act, title XVIII of the Social Security Act of 1965, as amended [42 U.S.C. 1395, et seq.; Pub. L. 92-603; 86 Stat. 1370].
- f. "Medicare supplement policy offering plan F benefits" means a policy, group, or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization or preferred provider organization, other than a policy issued pursuant to a contract under section 1876 or 1833 of the Social Security Act [42 U.S.C. 1395, et seq.] or an issued policy under a demonstration project authorized pursuant to amendments to the Social Security Act that:
 - (1) Is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare;
 - (2) Is not a policy or contract of one or more employers or labor organizations, or the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization;
 - (3) Is approved for issuance by the insurance regulatory body in

- the state of issuance; and
- (4) Includes:
- (a) Hospitalization benefits consisting of medicare part A coinsurance plus coverage for three hundred sixty-five additional days after medicare benefits end;
 - (b) Medical expense benefits consisting of medicare part B coinsurance;
 - (c) Blood provision consisting of the first three pints of blood each year;
 - (d) Skilled nursing coinsurance;
 - (e) Medicare part A deductible coverage;
 - (f) Medicare part B deductible coverage;
 - (g) Medicare part B excess benefits at one hundred percent coverage; and
 - (h) Foreign travel emergency coverage.
- g. ~~"Nursing care services" means nursing care provided in a medical institution, a nursing facility, a swing bed, the state hospital, or a home and community based services setting.~~
- h. "Relative" means a parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, nephew, great-great-grandparent, great-great-grandchild, great-aunt, great-uncle, first cousin, grandniece, or grandnephew, whether by birth or adoption, and whether by whole or half-blood, of the individual or the individual's current or former spouse.
- i.h. "Someone in a confidential relationship" includes an individual's attorney-in-fact, guardian, conservator, legal custodian, caretaker, trustee, attorney, accountant, or agent, and may include a relative or other person with a close and trusted relationship to the individual.
- j.i. "Uncompensated value" means the difference between fair market value and the value of any consideration received.

History: Effective October 1, 1993; amended effective December 1, 1996; July 1, 2003; June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(c)

SECTION 13. Subsection 2 of section 75-02-02.1-33.2 is amended as follows:

2. Except as provided in subsections ~~6 7~~ and ~~45 16~~, an individual is ineligible for skilled nursing care, swing-bed, or home and community-based benefits if the individual or the individual's spouse disposes of assets or income for less than fair market value on or after the look-back date. The look-back date is a date that is sixty months before the first date on which the individual is both receiving skilled nursing care, swing-bed, or home

and community-based services and has applied for benefits under this chapter, without regard to the action taken on the application.

History: Effective April 1, 2008; amended effective January 1, 2010; January 1, 2011; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(c)

SECTION 14. Subsection 7 of section 75-02-02.1-33.2 is amended as follows:

7. An individual may not be ineligible for medicaid by reason of subsection 42 to the extent that:
 - a. The assets transferred were a home, and title to the home was transferred to:
 - (1) The individual's spouse;
 - (2) The individual's son or daughter who is under age twenty-one, blind, or disabled;
 - (3) The individual's brother or sister who has an equity interest in the individual's home and who was residing in the individual's home for a period of at least one year immediately before the date the individual became an institutionalized individual; or
 - (4) The individual's son or daughter, other than a child described in paragraph 2, who was residing in the individual's home for a period of at least two years immediately before the date the individual began receiving nursing care services, and who provided care to the individual which permitted the individual to avoid receiving nursing care services;
 - b. The income or assets:
 - (1) Were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse;
 - (2) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;
 - (3) Were transferred to, or to a trust established solely for the benefit of, the individual's child who is blind or disabled; or
 - (4) Were transferred to a trust established solely for the benefit of an individual less than sixty-five years of age who is disabled;
 - c. The individual makes a satisfactory showing that:
 - (1) The individual intended to dispose of the income or assets, either at fair market value or other valuable consideration, and the individual had an objectively reasonable belief that fair market value or its equivalent was received;
 - (2) The income or assets were transferred exclusively for a purpose other than to qualify for medicaid; or
 - (3) For periods after the return, all income or assets transferred

- for less than fair market value have been returned to the individual; or
- d. The asset transferred was an asset excluded or exempted for medicaid purposes other than:
- (1) The home or residence of the individual or the individual's spouse;
 - (2) Property that is not saleable without working an undue hardship;
 - (3) Excluded home replacement funds;
 - (4) Excluded payments, excluded interest on those payments, and excluded in-kind items received for the repair or replacement of lost, damaged, or stolen exempt or excluded assets;
 - (5) Life estate interests;
 - (6) Mineral interests;
 - (7) An asset received from a decedent's estate during any period it is considered to be unavailable under subsection 5 of section 75-02-02.1-25; or
 - (8) An annuity.

History: Effective April 1, 2008; amended effective January 1, 2010; January 1, 2011; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(c)

SECTION 15. Subsection 8 of section 75-02-02.1-33.2 is amended as follows:

8. a. An individual shall not be ineligible for medicaid by reason of subsection 2 to the extent the individual makes a satisfactory showing that an undue hardship exists for the individual. Upon imposition of a period of ineligibility because of a transfer of assets or income for less than fair market value, the department shall notify the applicant or recipient of the right to request an undue hardship exception. An individual may apply for an exception to the transfer of asset penalty if the individual claims that the ineligibility period will cause an undue hardship to the individual. A request for a determination of undue hardship must be made within ninety days after the circumstances upon which the claim of undue hardship is made were known or should have been known to the affected individual or the person acting on behalf of that individual if incompetent. The individual must provide to the department sufficient documentation to support the claim of undue hardship. The department shall determine whether a hardship exists upon receipt of all necessary documentation submitted in support of a request for a hardship exception. An undue hardship exists only if the individual shows that all of the following conditions are met:
- (1) Application of the period of ineligibility would deprive the

- individual of food, clothing, shelter, or other necessities of life or would deprive the individual of medical care such that the individual's health or life would be endangered;
- (2) The individual who transferred the assets or income, or on whose behalf the assets or income were transferred, has exhausted all lawful means to recover the assets or income or the value of the transferred assets or income, from the transferee, a fiduciary, or any insurer;
 - (3) A person who would otherwise provide care would have no cause of action, or has exhausted all causes of action, against the transferee of the assets or income of the individual or the individual's spouse under North Dakota Century Code chapter 13-02.1, the Uniform Fraudulent Transfers Act, or any substantially similar law of another jurisdiction; and
 - (4) The individual's remaining available assets and the remaining assets of the individual's spouse are less than the asset limit in subsection 1 of section 75-02-02.1-26 counting the value of all assets except:
 - (a) A home, exempt under section ~~75-02-02.1-27~~ 75-02-02.1-28, but not if the individual or the individual's spouse has equity in the home in excess of twenty-five percent of the amount established in the approved state plan for medical assistance which is allowed as the maximum home equity interest for nursing facility services or other long-term care services;
 - (b) Household and personal effects;
 - (c) One motor vehicle if the primary use is for transportation of the individual, or the individual's spouse or minor, blind, or disabled child who occupies the home; and
 - (d) Funds for burial up to the amount excluded in subsection ~~310~~ of section 75-02-02.1-28 for the individual and the individual's spouse.
- b. Upon the showing required by this subsection, the department shall state the date upon which an undue hardship begins and, if applicable, when it ends.
 - c. The agency shall terminate the undue hardship exception, if not earlier, at the time an individual, the spouse of the individual, or anyone with authority to act on behalf of the individual, makes any uncompensated transfer of income or assets after the undue hardship exception is granted. The agency shall deny any further requests for an undue hardship exception due to either the disqualification based on the transfer upon which the initial undue hardship determination was based, or a disqualification based on

any subsequent transfer.

History: Effective April 1, 2008; amended effective January 1, 2010; January 1, 2011; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(c)

SECTION 16. Subsection 15 of section 75-02-02.1-33.2 is amended as follows:

15. For purposes of this section:
 - a. "Annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future, but does not mean an employee benefit that qualifies for favorable tax treatment under the Internal Revenue Code or a plan described in the Internal Revenue Code as a retirement plan under which contributions must end and withdrawals must begin by age seventy and one-half.
 - b. "Average monthly cost of nursing facility care" means the cost determined by the department under section 1917(c)(1)(E)(i)(II) of the Act [42 U.S.C. 1396p(c)(1)(E)(i)(II)].
 - c. "Fair market value" means:
 - (1) In the case of a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, one hundred percent of apparent fair market value;
 - (2) In the case of real or personal property that is subject to reasonable dispute concerning its value:
 - (a) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or anyone acting on the individual's behalf, seventy-five percent of estimated fair market value; or
 - (b) If conveyed to someone in a confidential relationship with the individual or anyone acting on the individual's behalf, one hundred percent of estimated fair market value; and
 - (3) In the case of income, one hundred percent of apparent fair market value.
 - d. "Major medical policy" includes any policy, certificate, or subscriber contract issued on a group or individual basis by any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization, which provides a plan of health insurance or health benefit coverage, including medical, hospital, and surgical care, approved for issuance by the insurance regulatory body in the state of issuance, but does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a

- supplement to liability insurance or automobile medical payment insurance, or a policy or certificate of specified disease, hospital confinement indemnity, or limited benefit health insurance.
- e. "Medicare" means the Health Insurance for the Aged and Disabled Act, title XVIII of the Social Security Act of 1965, as amended [42 U.S.C. 1395 et seq; Pub. L. 92-603; 86 Stat. 1370].
 - f. "Medicare supplement policy offering plan F benefits" means a policy, group, or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization or preferred provider organization, other than a policy issued pursuant to a contract under section 1876 or 1833 of the Social Security Act [42 U.S.C. 1395 et seq.] or an issued policy under a demonstration project authorized pursuant to amendments to the Social Security Act that:
 - (1) Is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare;
 - (2) Is not a policy or contract of one or more employers or labor organizations, or the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization;
 - (3) Is approved for issuance by the insurance regulatory body in the state of issuance; and
 - (4) Includes:
 - (a) Hospitalization benefits consisting of medicare part A coinsurance plus coverage for three hundred sixty-five additional days after medicare benefits end;
 - (b) Medical expense benefits consisting of medicare part B coinsurance;
 - (c) Blood provision consisting of the first three pints of blood each year;
 - (d) Skilled nursing coinsurance;
 - (e) Medicare part A deductible coverage;
 - (f) Medicare part B deductible coverage;
 - (g) Medicare part B excess benefits at one hundred percent coverage; and
 - (h) Foreign travel emergency coverage.
 - g. ~~"Nursing care services" means nursing care provided in a medical institution, a nursing facility, a swing bed, the state hospital, or a home and community based services setting.~~
 - h. "Relative" means a parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, nephew,

great-great-grandparent, great-great-grandchild, great-aunt, great-uncle, first cousin, grandniece, or grandnephew, whether by birth or adoption, and whether by whole or half-blood, of the individual or the individual's current or former spouse.

i.h. "Someone in a confidential relationship" includes an individual's attorney in fact, guardian, conservator, legal custodian, caretaker, trustee, attorney, accountant, or agent, and may include a relative or other person with a close and trusted relationship to the individual.

j.i. "Uncompensated value" means the difference between fair market value and the value of any consideration received.

History: Effective April 1, 2008; amended effective January 1, 2010; January 1, 2011; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(c)

SECTION 17. Subsection 18 of section 75-02-02.1-33.2 is amended as follows:

18. An individual who disposes of assets or income to someone in a confidential relationship is presumed to have transferred the assets or income to an implied trust in which the individual is the beneficiary and which is subject to treatment under section 75-02-02.1-31.1. The presumption may be rebutted only if the individual shows:
 - a. The compensation actually received by the individual for the assets or income disposed of was equal to at least one hundred percent of fair market value, in which case this section has no application; or
 - b. The individual, ~~having capacity to contract, is competent and~~ disposed of the assets or income, or directed the disposal if made by someone in a confidential relationship, with full knowledge of the motives of the transferee and all other facts concerning the transaction which might affect the individual's own decision and without the use of any influence on the part of the transferee, in which case the transaction is governed by this section.

History: Effective April 1, 2008; amended effective January 1, 2010; January 1, 2011; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 USC 1396p(c)

SECTION 18. Subsection 1 of section 75-02-02.1-38.1 is amended as follows:

1. The following types of income may be disregarded in determining medicaid eligibility:
 - a. Occasional small gifts;
 - b. For so long as 38 U.S.C. 5503 remains effective, ninety dollars of veterans administration improved pensions paid to a veteran, or a

- surviving spouse of a veteran, who has neither spouse nor child, and who resides in a medicaid-approved nursing facility;
- c. Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [50 U.S.C. App. 1989 et seq.];
- d. Agent orange payments;
- e. German reparation payments made to survivors of the holocaust, and reparation payments made under sections 500 through 506 of the Austrian General Social Insurance Act;
- f. Netherlands reparation payments based on Nazi, but not Japanese, persecution during World War II [Pub. L. 103-286; 42 U.S.C. 1437a, note];
- g. Radiation Exposure Compensation Act [Pub. L. 101-426; 42 U.S.C. 2210, note]; and
- h. Interest or dividend income from liquid assets; and
- i. From annual countable gross rental income, an amount equal to real estate taxes for rental property that the recipient is responsible for paying on that property

History: Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2010; January 1, 2011; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

SECTION 19. Section 75-02-02.1-38.2 is amended as follows:

75-02-02.1-38.2. Disregarded income.

- 4. This section applies to an individual residing in the individual's own home or in a specialized facility, workers with disabilities coverage, children with disabilities coverage, and to the medicare savings programs, but does not apply to an individual receiving nursing care services in a nursing facility, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, an intermediate care facility for the mentally retarded, or receiving swing-bed care in a hospital. The following types of income shall be disregarded in determining medicaid eligibility:
 - a. 1. Money payments made by the department in connection with foster care, subsidized guardianship, or the subsidized adoption program;
 - b. 2. Occasional small gifts;
 - c. 3. County general assistance that may be issued on an intermittent basis to cover emergency-type situations;
 - d. 4. Income received as a housing allowance by a program sponsored by the United States department of housing and urban development or rent supplements or utility payments provided through a housing assistance program;
 - e. 5. Income of an individual living in the parental home if the individual is not included in the medicaid unit;

- ~~f~~.6. Educational loans, scholarships, grants, awards, workers compensation, vocational rehabilitation payments, and work study received by a student, or any fellowship or gift, or portion of a gift, used to pay the cost of tuition and fees at any educational institution;
- ~~g~~.7. In-kind income except in-kind income received in lieu of wages;
- ~~h~~.8. Per capita judgment funds paid to members of the Blackfeet Tribe and the Gross Ventre Tribe under Pub. L. 92-254, to any tribe to pay a judgment of the Indian claims commission or the court of claims under Pub. L. 93-134, or to the Turtle Mountain Band of Chippewa Indians, the Chippewa Cree Tribe of Rocky Boy's Reservation, the Minnesota Chippewa Tribe, or the Little Shell Tribe of Chippewa Indians of Montana under Pub. L. 97-403;
- ~~i~~.9. Compensation received by volunteers participating in the action program as stipulated in the Domestic Volunteer Service Act of 1973 [Pub. L. 93-113; 42 U.S.C. 4950 et seq.], including foster grandparents, older American community service program, retired senior volunteer program, service corps of retired executives, volunteers in service to America, and university year for action;
- ~~j~~.10. Benefits received through the low income home energy assistance program;
- ~~k~~.11. Training funds received from vocational rehabilitation;
- ~~l~~.12. Training allowances of up to thirty dollars per week provided through a tribal native employment works program, or the job opportunity and basic skills program;
- ~~m~~.13. Income tax refunds and earned income credits;
- ~~n~~.14. Needs-based payments, support services, and relocation expenses provided through programs established under the Workforce Investment Act [29 U.S.C. 2801 et seq.], and through the job opportunities and basic skills program;
- ~~o~~.15. Income derived from submarginal lands, conveyed to Indian tribes and held in trust by the United States, as required by section 6 of Pub. L. 94-114 [25 U.S.C. 459e];
- ~~p~~.16. Income earned by a child who is a full-time student or a part-time student who is not employed one hundred hours or more per month;
- ~~q~~.17. Payments from the family subsidy program;
- ~~r~~.18. The first fifty dollars per month of current child support, received on behalf of children in the medicaid unit, from each budget unit that is budgeted with a separate income level;
- ~~s~~.19. Payments made to recipients under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [Pub. L. 91-646, 42 U.S.C. 4621 et seq.];
- ~~t~~.20. Payments made tax exempt as a result of section 21 of the Alaska Native Claims Settlement Act [Pub. L. 92-203];
- ~~u~~.21. Payments to certain United States citizens of Japanese ancestry,

- resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [Pub. L. 100-383; 50 U.S.C. App. 1989 et seq.];
- ~~v-22.~~ Agent orange payments;
- ~~w-23.~~ A loan from any source that is subject to a written agreement requiring repayment by the recipient;
- ~~x-24.~~ The medicare part B premium refunded by the social security administration;
- ~~y-25.~~ Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime;
- ~~z-26.~~ Temporary assistance for needy families benefit and support service payments;
- ~~aa-27.~~ Lump sum supplemental security income benefits in the month in which the benefit is received;
- ~~bb-28.~~ German reparation payments made to survivors of the holocaust and reparation payments made under sections 500 through 506 of the Austrian General Social Insurance Act;
- ~~cc-29.~~ Assistance received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288; 42 U.S.C. 5121 et seq.], or some other federal statute, because of a presidentially declared major disaster, and interest earned on that assistance;
- ~~dd-30.~~ Refugee cash assistance or grant payments;
- ~~ee-31.~~ Payments from the child and adult food program for meals and snacks to licensed families who provide day care in their home;
- ~~ff-32.~~ Extra checks consisting only of the third regular payroll check or unemployment benefit payment received in a month by an individual who is paid biweekly, and the fifth regular payroll check received in a month by an individual who is paid weekly;
- ~~gg-33.~~ All income, allowances, and bonuses received as a result of participation in the job corps program;
- ~~hh-34.~~ Payments received for the repair or replacement of lost, damaged, or stolen assets;
- ~~ii-35.~~ Homestead tax credit;
- ~~jj-36.~~ Training stipends provided to victims of domestic violence by private, charitable organizations for attending their educational programs;
- ~~kk-37.~~ Allowances paid to children of Vietnam veterans who are born with spina bifida, or to children of women Vietnam veterans who are born with certain covered birth defects, under 38 U.S.C. 1805 or 38 U.S.C. 1815;
- ~~ll-38.~~ Netherlands reparation payments based on Nazi, but not Japanese, persecution during World War II [Pub. L. 103-286; 42 U.S.C. 1437a, note];
- ~~mm-39.~~ Radiation Exposure Compensation Act [Pub. L. 101-426; 42 U.S.C. 2210, note];
- ~~nn-40.~~ Interest or dividend income from liquid assets;

- ~~ee-41.~~ Additional pay received by military personnel as a result of deployment to a combat zone; and
~~pp-42.~~ All wages paid by the census bureau for temporary employment related to census activities.

2. ~~For purposes of this section:~~

- a. ~~"Full-time student" means a person who attends school on a schedule equal to a full curriculum; and~~
b. ~~"Student" means an individual who regularly attends and makes satisfactory progress in elementary or secondary school, general equivalency diploma classes, home school program recognized or supervised by the student's state or local school district, college, university, or vocational training, including summer vacation periods if the individual intends to return to school in the fall.~~

History: Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2010; January 1, 2011; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

SECTION 20. Subsection 6 of section 75-02-02.1-39 are amended as follows:

6. Reasonable child care expenses, not otherwise reimbursed, may be deducted to the extent necessary to permit a caretaker or a spouse to work or participate in training. Reasonable child care expenses do not include payments to parents to care for their own children.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2010; January 1, 2011; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

SECTION 21. Subsection 11 of section 75-02-02.1-39 is amended as follows:

11. Reasonable adult dependent ~~car~~ care expenses for an incapacitated or disabled adult member of the medicaid unit may be deducted to the extent necessary to permit a caretaker or a spouse to work or participate in training.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2010; January 1, 2011; April 1, 2012.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

CHAPTER 75-02-02.2
CHILDREN'S HEALTH INSURANCE PROGRAM

Section	
75-02-02.2-01	Definitions
75-02-02.2-02	Application, Redetermination, and Eligibility Periods
75-02-02.2-03	Duty to Establish Eligibility
75-02-02.2-04	Decision, Notice, and Appeal
75-02-02.2-05	Notice of Potential Medicaid Eligibility - Choice of Program[Repealed]
75-02-02.2-06	Renewal of Eligibility [Repealed]
75-02-02.2-06.1	Children's Health Insurance Program Unit
75-02-02.2-07	Duty to Report Changes in Household
75-02-02.2-08	Termination of Coverage by Recipient
75-02-02.2-09	Residence and Citizenship Requirements
75-02-02.2-10	Eligibility Criteria
75-02-02.2-11	Asset Considerations
75-02-02.2-12	Income Considerations
75-02-02.2-13	Determining Household Income
75-02-02.2-13.1	Income Deductions
75-02-02.2-13.2	Budgeting
75-02-02.2-14	Eligibility Period
75-02-02.2-15	Covered Services

SECTION 15. Subsection 2 of section 75-02-02.2-13.1 is amended as follows:

2. Reasonable child care expenses, not otherwise reimbursed by third parties if necessary to engage in employment or training. Reasonable child care expenses do not include payments to parents to care for their own children;

History: Effective August 1, 2005; amended effective April 1, 2008; April 1, 2012.

General Authority: NDCC 50-29

Law Implemented: NDCC 50-29-02; 42 USC 1397aa et seq.



Jack Dalrymple, Governor
Carol K. Olson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTERS 75-02-02.1 AND 75-02-02.2
ELIGIBILITY FOR MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAM**

The North Dakota Department of Human Services (the Department) held a public hearing on Wednesday, December 28, 2011, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Chapters 75-02-02.1 and 75-02-02.2, Eligibility for Medicaid and Children's Health Insurance Program.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Monday, January 9, 2012.

No one attended or provided comments at the public hearing. No written comments were received within the comment period.

SUMMARY OF COMMENTS

No comments were received.

There will be no change to the proposed rules as no comments were received.

Prepared by:

A handwritten signature in black ink that reads "Julie Leer". The signature is written in a cursive, flowing style.

Julie Leer, Director
Legal Advisory Unit
N.D. Dept. of Human Services


January 10, 2012

Cc: Curtis Volesky, Medical Services

November 8, 2011

MEMORANDUM

TO: Julie Leer, Legal Advisory Unit

FROM: Curtis Volesky, Director, Medicaid Eligibility Policy 

SUBJECT: Regulatory Analysis for N.D. Admin. Code ch. 75-02-02.1, Eligibility for Medicaid, and 75-02-02.2, Children's Health Insurance Program

.....

To fulfill the requirements of N.D.C.C. § 28-32-08, the following regulatory analysis of proposed N.D. Administrative Code chapters 75-02-02.1, Eligibility for Medicaid, and 75-02-02.2, Children's Health Insurance Program, are provided. The impacts of the proposed amendments are expected to exceed \$50,000.

Purpose:

The proposed rules incorporate recent changes to N.D.C.C. 50-24.1 which allows a deduction for property taxes on rental property owned by Medicaid recipients in long-term care.

The proposed rules modify language in the 'Definitions,' 'Coverage groups,' 'Incapacity of a parent,' 'Eligibility for Workers with Disabilities,' 'Asset considerations,' 'Asset limits,' 'Exempt assets,' 'Excluded assets,' 'Excluded assets for Medicare Savings Programs, Qualified Disabled and Working Individuals, and Spousal impoverishment prevention,' 'Disqualifying transfers made before February 8, 2006,' 'Disqualifying transfers made on or after February 8, 2006,' 'Post-eligibility treatment of income,' 'Disregarded income,' and 'Income deductions' sections to eliminate ambiguity, provide clarification, coincide with state and federal statutes, and per requests during appeals. These changes are not expected to allow additional individuals, or prevent individuals, from becoming eligible for Medicaid.

Classes of persons affected:

Medicaid recipients who own rental property and are in long-term care.

Probable Impact:

- This rule change reflects the state statute change which allows Medicaid recipients who are in long-term care, and who own rental property, to retain income to pay the property taxes they are responsible for on the rental property. It allows the property taxes to be maintained from the rental income the property generates.
- The remaining rule changes are for clarification, simplification, or technical corrections and are not expected to have any fiscal impact.


Probable costs:

There is an estimated fiscal impact on the Medicaid program of approximately \$80,000 per year, as Medicaid recipients will use some of their income to pay property taxes on rental property instead of applying that income toward their cost of long-term care.

Alternative methods:

The most cost effective and user friendly methods were utilized wherever possible to implement these changes.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit
FROM: Curtis Volesky, Director, Medicaid Eligibility 
DATE: November 8, 2011
SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code ch. 75-02-02.1, Eligibility for Medicaid, and 75-02-02.2, Children's Health Insurance Program

The purpose of this small entity regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This regulatory analysis pertains to proposed amendments to N.D. Admin. Code ch. 75-02-02.1 and 75-02-02.2. The proposed rules are designed to reflect federal law, state law, and department policies.

Consistent with public health, safety, and welfare, the Department has considered using regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. For this analysis, the Department has considered the following methods for reducing the rule's impact on small entities:

1. Establishment of Less Stringent Compliance or Reporting Requirements

The only small entities affected by this proposed amendment are small political subdivisions consisting of the County Social Service Boards of counties with populations of fewer than five thousand people. Like all other County Social Service Boards in North Dakota, County Social Service Boards of counties with populations of fewer than five thousand people are responsible for locally administered economic assistance programs, including Medicaid and Healthy Steps. N.D.C.C. § 50-01.2-03.2(1)(a). The County Social Service Boards must meet, or assist the North Dakota Department of Human Services in meeting, compliance and reporting requirements imposed by federal and state laws. Those requirements must be uniformly applied throughout the state. The proposed amendments will not alter in any material way any required compliance or reporting requirement of County Social Service Boards. For these reasons, establishment of less stringent compliance or reporting requirements for these small entities was not considered.

2. Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Entities

The proposed amendment will not alter in any material way any required schedules or deadlines for compliance or reporting requirement of County Social Service Boards. For this reason, and because Medicaid and Healthy Steps policy must be uniformly applied throughout the state, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

3. Consolidation or Simplification of Compliance or Reporting Requirements for Small Entities

The proposed amendment will not alter in any material way any required compliance or reporting requirement of County Social Service Boards. For this reason, and because Medicaid and Healthy Steps policy must be uniformly applied throughout the state, neither consolidation nor simplification of compliance or reporting requirements for these small entities was considered.

4. Establishment of Performance Standards for Small Entities to Replace Design or Operational Standards Required in the Proposed Rule


The County Social Service Boards are responsible for meeting performance standards as well as operational standards imposed by federal and state law. The proposed amendments do not impose any design standards or impose any additional operational standards, and will not alter in any material way any required performance standards or operational standards for County Social Service Boards. For this reason, and because Medicaid and Healthy Steps policy must be uniformly applied throughout the state, establishment of new performance standards to replace operational standards were not considered.

5. Exemption of Small Entities from All or Any Part of the Requirements Contained in the Proposed Rule

Because Medicaid and Healthy Steps policy must be uniformly applied throughout the state, the proposed rules do not exempt County Social Service Boards of counties with populations of fewer than five thousand people from all or any part of the requirements contained in the proposed rule.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Curtis Volesky, Director, Medicaid Eligibility 

DATE: November 8, 2011

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code ch. 75-02-02.1, Eligibility for Medicaid, and 75-02-02.2, Children's Health Insurance Program

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to a proposed amendment to N.D. Admin. Code ch. 75-02-02.1 and 75-02-02.2. The proposed rules are designed to reflect federal law, state law, and department policies. The proposed rules are not anticipated to have an adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the proposed amended rules are: The only small entities affected by this proposed amendment are small political subdivisions consisting of the County Social Service Boards of counties with populations with less than five thousand. Like all other County Social Service Boards in North Dakota, County Social Service Boards of counties with populations with less than five thousand are responsible for locally administered economic assistance programs, including Medicaid. N.D.C.C. § 50-01.2-03.2(1)(a). Medicaid and Healthy Steps policies and practices must be uniformly applied throughout the state. See 42 U.S.C. § 1396a(a)(1), which requires that a state plan for medical assistance (Medicaid) must "provide that it shall be in effect in all political subdivisions of the state, and, if administered by them, be mandatory upon them."

The following small entities may also be subject to the rule: None.

2. Costs for Compliance

The administrative and other costs required for compliance with the proposed rule are expected to be: The rule changes will slightly change one processing method, but no additional administrative or other costs will be incurred by County Social Service Boards due to the proposed amendments.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule: None.

The probable benefit to private persons and consumers who are affected by the proposed rules: The proposed rules will allow individuals in long-term care to retain rental income to pay the property taxes on the rental property instead of using that income to pay toward their long-term care costs.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be:

There is an estimated fiscal impact on the Medicaid program of approximately \$80,000 per year, as Medicaid recipients will use some of their income to pay property taxes on rental property instead of applying that income toward their cost of long-term care.

The remaining rule changes are not expected to have any fiscal impact.

5. Alternative Methods

The major changes being made are required by federal or state law. For all other rule changes where state flexibility was permitted, options were considered and choices made to provide for the most effective policy while being the least intrusive or costly to small entities.

Jack Dalrymple, Governor
Carol K. Olson, Executive Director

TAKINGS ASSESSMENT

concerning proposed amendment to N.D. Admin. Code chapters
75-02-02.1 and 75-02-02.2.

This document constitutes the written assessment of the constitutional takings implications of this proposed rulemaking as required by N.D.C.C. § 28-32-09.

1. This proposed rulemaking does not appear to cause a taking of private real property by government action which requires compensation to the owner of that property by the Fifth or Fourteenth Amendment to the Constitution of the United States or N.D. Const. art. I, § 16. This proposed rulemaking does not appear to reduce the value of any real property by more than fifty percent and is thus not a "regulatory taking" as that term is used in N.D.C.C. § 28-32-09. The likelihood that the proposed rules may result in a taking or regulatory taking is nil.
2. The purpose of this proposed rule is clearly and specifically identified in the public notice of proposed rulemaking which is by reference incorporated in this assessment.
3. The reasons this proposed rule is necessary to substantially advance that purpose are described in the regulatory analysis which is by reference incorporated in this assessment.
4. The potential cost to the government if a court determines that this proposed rulemaking constitutes a taking or regulatory taking cannot be reliably estimated to be greater than \$0. The agency is unable to identify any application of the proposed rulemaking that could conceivably constitute a taking or a regulatory taking. Until an adversely impacted landowner identifies the land allegedly impacted, no basis exists for an estimate of potential compensation costs greater than \$0.
5. There is no fund identified in the agency's current appropriation as a source of payment for any compensation that may be ordered.
6. I certify that the benefits of the proposed rulemaking exceed the estimated compensation costs.

Dated this 18th day of November, 2011.

by: 
N.D. Dept. of Human Services