

**CHAPTER 75-03-23**  
**PROVISION OF HOME AND COMMUNITY-BASED SERVICES UNDER THE**  
**SERVICE PAYMENTS FOR ELDERLY AND DISABLED PROGRAM AND THE**  
**MEDICAID WAIVER FOR THE AGED AND DISABLED PROGRAM**

Section

75-03-23-01	Definitions
75-03-23-02	Eligibility Criteria
75-03-23-03	Eligibility Determination - Authorization of Services
75-03-23-04	Eligibility Criteria for Medicaid Waiver Program
75-03-23-05	Services Covered Under the SPED Program - Programmatic Criteria
75-03-23-06	Services Covered Under the Medicaid Waiver Program - Programmatic Criteria
75-03-23-07	Qualified Service Provider Standards and Agreements
75-03-23-08	Denial of Application to Become a Qualified Service Provider
75-03-23-08.1	Sanctions and Termination of Qualified Service Providers
75-03-23-09	Payment Under the SPED Program and the Medicaid Waiver Program
75-03-23-10	Department to Recover Funds Upon Establishment of Noncompliance
75-03-23-11	Denial, Reduction, and Termination of Services - Appeal
75-03-23-12	Provider - Request for Review
75-03-23-13	Provider - Appeals
75-03-23-14	Disqualifying Transfers
75-03-23-15	Application - Applicant Required to Provide Proof of Eligibility
75-03-23-16	Reapplication After Denial or Termination
75-03-23-17	Functional Assessment

**SECTION 1.** Section 75-03-23-05 is amended as follows:

**75-03-23-05. Services covered under the SPED program - Programmatic criteria.**

Room and board costs may not be paid in the SPED service payment. The following categories of services are covered under the SPED program and may be provided to an eligible individual:

1. The department may provide adult day care services to an eligible individual:
  - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
  - b. Who is able to participate in group activities; and
  - c. Who, if the eligible individual does not live alone, has a primary caregiver who will benefit from the temporary relief of care giving.

2. The department may provide adult foster care using a licensed adult foster care provider to an eligible individual eighteen years of age or older:
  - a. Who resides in a licensed adult foster care home;
  - b. Who requires care or supervision;
  - c. Who would benefit from a family or shared living environment; and
  - d. Whose required care does not exceed the capability of the foster care provider.
3. The department may provide chore services to an eligible individual for one-time, intermittent, or occasional activities which would enable the eligible individual to remain in the home. Activities such as heavy housework and periodic cleaning, professional extermination, snow removal, and emergency response systems may be provided. Eligible individuals receiving emergency response services must be cognitively and physically capable of activating the emergency response system. The activity must be the responsibility of the eligible individual and not the responsibility of the landlord.
4. The department may provide environmental modification to an eligible individual:
  - a. Who owns or rents the home to be modified. If the home is rented the property owner shall approve the modification consistent with the property owner's obligations pursuant to section 804(f)(3)(A) of the Fair Housing Act [42 U.S.C. 3604(f)(3)(A)] before the installation of the environmental modification; and
  - b. When the modification will enable the eligible individual to complete the eligible individual's own personal care or to receive care and allow the eligible individual to safely stay in the home.
5.
  - a. The department may provide extended personal care services to an eligible individual who:
    - (1) Requires skilled or nursing care that requires training by a nurse licensed under North Dakota Century Code chapter 43-12.1; and
    - (2) Has a cognitive or physical impairment that prevents the eligible individual from completing the required activity.
  - b. Extended personal care services do not include assistance with

activities of daily living or instrumental activities of daily living.

6. The department may provide family home care services to an eligible individual who:
  - a. Lives in the same residence as the care provider on a twenty-four-hour basis;
  - b. Agrees to the provision of services by the care provider; and
  - c. Is the spouse of the care provider or the current or former spouse of one of the following relatives of the eligible individual: parent, grandparent, adult child, adult sibling, adult grandchild, adult niece, or adult nephew.
7. The department may provide home and community-based services case management services to an eligible individual who needs a functional assessment and the coordination of cost-effective delivery issues. The case management services must be provided by a social worker licensed under North Dakota Century Code ~~section 43-41-04~~chapter 43-41 or a registered nurse licensed under North Dakota Century Code chapter 43-12.1.
8. The department may provide home-delivered meals to an eligible individual who lives alone and is unable to prepare an adequate meal for themselves, or who lives with an individual who is unable or not available to prepare an adequate meal for the eligible individual.
9. The department may provide homemaker services to an eligible individual who needs assistance with environmental maintenance activities including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis. The department may pay a provider for laundry, shopping, meal preparation, money management, or communication, if the activity benefits the eligible individual. The department may pay a provider for housekeeping activities involving the eligible individual's personal private space and if the eligible individual is living with an adult, the eligible individual's share of common living space. The homemaker services funding cap applies to a household and may not be exceeded regardless of the number of eligible individuals residing in that household.
10. Nonmedical transportation services may be provided to eligible individuals who are unable to provide their own transportation and need transportation to access essential community services such as grocery stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.

11. The department may provide personal care services to an eligible individual who needs help or supervision with personal care activities if:
  - a. The eligible individual is at least eighteen years of age; and
  - b. The services are provided in the eligible individual's home or in a provider's home if the provider meets the definition of a relative as defined in subdivision c of subsection 6 of section 75-03-23-05.
12. a. The department may provide respite care services to an eligible individual in the eligible individual's home, in the provider's home, in a nursing home, in a swing-bed facility, in a basic care facility, or in a hospital, if:
  - (1) The eligible individual has a full-time primary caregiver;
  - (2) The eligible individual needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;
  - (3) The primary caregiver's need for the relief is intermittent or occasional; and
  - (4) The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.
- b. An eligible individual who is a resident of an adult foster care may choose a respite provider and is not required to use a relative of the adult foster care provider as the eligible individual's respite provider.
13. The department may provide companionship services up to ten hours per month to eligible individuals who live alone and could benefit from services to help reduce social isolation.
14. The department may provide other services as the department determines appropriate.

**History:** Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2020; January 1, 2022; January 1, 2024; January 1, 2025.

**General Authority:** NDCC 50-06.2-03(6)

**Law Implemented:** NDCC 50-06.2-01(3), 50-06.2-03(5)

**SECTION 2.** Section 75-03-23-06 is amended as follows:

**75-03-23-06. Services covered under the Medicaid waiver program -**

## **Programmatic criteria.**

Room and board costs may not be included in the Medicaid waiver service payment. The following services are covered under the Medicaid waiver program and may be provided to an eligible individual:

1. The department may provide adult day care services to an eligible individual:
  - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
  - b. Who is able to participate in group activities; and
  - c. If the eligible individual does not live alone, the eligible individual's primary caregiver will benefit from the temporary relief of care giving.
2. The department may provide adult foster care, using a licensed adult foster care provider, to an eligible individual who resides in a licensed adult foster care home who:
  - a. Is eighteen years of age or older;
  - b. Requires care or supervision;
  - c. Would benefit from a family or shared living environment; and
  - d. Requires care that does not exceed the capability of the foster care provider.
3. The department may provide residential care to an eligible individual who:
  - a. Has chronic moderate to severe memory loss; or
  - b. Has a significant emotional, behavioral, or cognitive impairment.
4. The department may provide chore services to an eligible individual for one-time, intermittent, or occasional activities that would enable the eligible individual to remain in the home, such as heavy housework and periodic cleaning, professional extermination, and snow removal. The activity must be the responsibility of the eligible individual and not the responsibility of the landlord.
5. The department may provide an emergency response system to an eligible individual who lives alone or with an adult who is incapacitated, or who lives with an individual whose routine absences from the home present a safety

risk for the eligible individual, and the eligible individual is cognitively and physically capable of activating the emergency response system.

6. The department may provide environmental modification to an eligible individual, if the eligible individual owns or rents the home to be modified and when the modification will enable the eligible individual to complete the eligible individual's own personal care or to receive care and will allow the eligible individual to safely stay in the home for a period of time that is long enough to offset the cost of the modification. If the home is rented the property owner shall approve the modification consistent with the property owner's obligations pursuant to section 804(f)(3)(A) of the Fair Housing Act [42 U.S.C. 3604(f)(3)(A)] before the installation of the environmental modification.
7.
  - a. The department may provide family personal care to an eligible individual who:
    - (1) Lives in the same residence as the care provider on a twenty-four-hour basis;
    - (2) Agrees to the provision of services by the care provider; and
    - (3) Is the legal spouse of the care provider or is a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02.
  - b. Family personal care payments may not be made for assistance with the activities of communication, community integration, laundry, meal preparation, money management, shopping, social appropriateness, or transportation unless the activity benefits the eligible individual. Family personal care payment may not be made for assistance with the activity of housework unless the activity is for the eligible individual's personal space or if the eligible individual is living with an adult, the eligible individual's share of common living space.
8. The department may provide home and community-based services case management services to an eligible individual who needs a comprehensive assessment, ~~and their care~~ and the care coordination ~~of to ensure~~ to ensure cost-effective delivery of services. Case management services provided under this subsection must be provided by a social worker licensed under North Dakota Century Code ~~section 43-41-04~~ chapter 43-41, a registered nurse licensed under North Dakota Century Code chapter 43-12.1, or another approved provider with substantially similar credentials as defined in the Medicaid waiver program.

9. The department may provide home-delivered meals to an eligible individual who lives alone and is unable to prepare an adequate meal for themselves or who lives with an individual who is unable or not available to prepare an adequate meal.
10. The department may provide homemaker services to an eligible individual who needs assistance with environmental maintenance activities, including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis. The department may pay a provider for laundry, shopping, meal preparation, money management, or communication, if the activity benefits the eligible individual. The department may pay a provider for housekeeping activities involving the eligible individual's personal private space and if the eligible individual is living with an adult, the eligible individual's share of common living space. The homemaker service funding cap applies to a household and may not be exceeded regardless of the number of eligible individuals residing in that household.
11.
  - a. The department may provide extended personal care services to an eligible individual who:
    - (1) Requires skilled or nursing care that requires training by a nurse licensed under North Dakota Century Code chapter 43-12.1; and
    - (2) Has a cognitive or physical impairment that prevents the eligible individual from completing the required activity.
  - b. Extended personal care services do not include assistance with activities of daily living and instrumental activities of daily living.
12. The department may provide nonmedical transportation services to an eligible individual who is unable to provide their own transportation and who needs transportation to access essential community services such as grocery stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.
13. The department may provide up to twenty-four hours per day of supervision to an eligible individual who has a cognitive or physical impairment that results in the eligible individual needing monitoring to assure the eligible individual's continued health and safety.
14.
  - a. The department may provide respite care services to an eligible individual in the eligible individual's home, in the provider's home, in a nursing home, in a swing-bed facility, in a basic care facility, or in

a hospital, if:

- (1) The eligible individual has a full-time primary caregiver;
- (2) The eligible individual needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;
- (3) The primary caregiver's need for the relief is intermittent or occasional; and
- (4) The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.

b. An eligible individual who is a resident of an adult foster care home may choose a respite provider and is not required to use a relative of the adult foster care provider as the eligible individual's respite provider.

15. The department may provide specialized equipment and supplies to an eligible individual, if:

- a. The eligible individual's need for the items is based on an adaptive assessment;
- b. The items directly benefit the eligible individual's ability to perform personal care or household activities;
- c. The items will reduce the intensity or frequency of human assistance required to meet the eligible individual care needs;
- d. The items are necessary to prevent the eligible individual's institutionalization;
- e. The items are not available under the Medicaid state plan; and
- f. The eligible individual is motivated to use the item.

16. The department may provide supported employment to an eligible individual who is unlikely to obtain competitive employment at or above the minimum wage; who, because of the eligible individual's disabilities, needs intensive ongoing support to perform in a work setting; and who has successfully completed the supported employment program available through the North Dakota vocational rehabilitation program.



17. The department may provide transitional living services to an eligible individual who needs supervision, training, or assistance with self-care, communication skills, socialization, sensory and motor development, reduction or elimination of maladaptive behavior, community living, and mobility. The department may provide these services until the eligible individual's independent living skills development has been met or until an interdisciplinary team determines the service is no longer appropriate for the eligible individual.
18. The department may provide community transition services to an eligible individual who is transitioning from an institution or another provider-operated living arrangement to a living arrangement in a private residence where the eligible individual is directly responsible for their own living expenses and needs nonrecurring set-up expenses. Community transition services include one-time transition costs and transition coordination.
  - a. Allowable expenses are those necessary to enable an eligible individual to establish a basic household that do not constitute room and board and may include:
    - (1) Security deposits that are required to obtain a lease on a private residence;
    - (2) Essential household furnishings required to occupy and use a private residence, including furniture, window coverings, food preparation items, and bed and bath linens;
    - (3) Setup fees or deposits for utility or service access, including telephone, electricity, heating, and water;
    - (4) Services necessary for the eligible individual's health and safety, such as pest eradication and one-time cleaning prior to occupancy;
    - (5) Moving expenses;
    - (6) Necessary home accessibility adaptations; and
    - (7) Activities to assess need and to arrange for and procure need resources.
  - b. Community transition services do not include monthly rental or mortgage expenses, escrow, specials, insurance, food, regular utility or service access charges, household appliances, or items that are intended for purely diversional or recreational purposes.

- c. Community transition services are furnished only to the extent that they are reasonable and necessary as determined through the service plan development process, clearly identified in the service plan and the eligible individual is unable to meet such expense, or when the services cannot be obtained from other sources.
19. The department may provide other services as permitted by an approved waiver.
20. The department may provide residential habilitation up to twenty-four hours per day to an eligible individual who needs formalized training and supports and requires some level of ongoing daily support. This service is designed to assist with and develop self-help, socialization, and adaptive skills that improve the eligible individual's ability to independently reside and participate in an integrated community. Residential habilitation may be provided in an agency foster home for adults facility or in a private residence owned or leased by an eligible individual or their family member.
21. The department may provide community support services up to twenty-four hours per day to an eligible individual who requires some level of ongoing daily support. This service is designed to assist with self-care tasks and socialization that improves the eligible individual's ability to independently reside and participate in an integrated community. Community support services may be provided in an agency foster home for adults facility or in a private residence owned or leased by an eligible individual or their family member.
22. The department may provide companionship services up to ten hours per month to eligible individuals who live alone and could benefit from services to help reduce social isolation.
23. The department may provide personal care services to an eligible individual who needs supervision and help with personal care services.

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**SECTION 3.** Section 75-03-23-07 is amended as follows:

**75-03-23-07. Qualified service provider standards and agreements.**

1. An individual or agency seeking designation as a qualified service provider shall complete and ~~return~~submit the applicable forms supplied by the department in the form and manner prescribed. The qualified service provider, including any employees of an agency designated as a qualified

service provider, shall meet all licensure, certification, or competency requirements applicable under state or federal law and departmental standards necessary to provide care to eligible individuals whose care is paid by public funds. An application is not complete until the individual or agency submits all required information and required provider verifications to the department.

2. A provider or an individual seeking designation as a qualified service provider:
  - a. Must have the basic ability to read, write, and verbally communicate;
  - b. Must not be an individual who has been found guilty of, pled guilty to, or pled no contest to:
    - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or North Dakota Century Code section 12.1-17-01, simple assault, if a class C felony under subdivision a of subsection 2 of that section; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery; ~~or~~ 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering a vulnerable adult; 12.1-31-07.1, exploitation of a vulnerable adult; 14-09-22, abuse of a child; 14-09-22.1, neglect of a child; subsection 1 of section 26.1-02.1-02.1, fraudulent insurance acts; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or
    - (2) An offense, other than a direct-bearing offense identified in

paragraph 1 of subdivision b of subsection 2, if the department determines that the individual has not been sufficiently rehabilitated.

- (a) The department may not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment ~~without subsequent charge or conviction~~ has elapsed, unless sufficient evidence is provided of rehabilitation.
  - (b) An individual's completion of a period of three years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation;
- c. In the case of an offense described in North Dakota Century Code section 12.1-17-01, simple assault, if a felony; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence, if a misdemeanor; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-18-03, unlawful imprisonment; 12.1-20-05, corruption or solicitation of minors, if a misdemeanor; 12.1-20-07, sexual assault, if a misdemeanor; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, ~~without subsequent convictions~~;
- d. Shall maintain confidentiality;
- e. Shall, using applicable forms and providing documentation as required by the department:
- (1) Revalidate qualified service provider enrollment except as provided in paragraph 3, within the time period as required by the Medicaid state plan option for personal care services or Medicaid waiver program, whichever occurs first; and
  - (2) Provide evidence of competency, except as provided in paragraph 3, at least every sixty months for an agency enrolled as a qualified service provider or at least every thirty

months for an individual enrolled as a qualified service provider, and within the time period as required by the Medicaid state plan option for personal care services or Medicaid waiver program, whichever occurs first; or

- (3) Revalidate qualified service provider enrollment only every sixty months for an individual enrolled as a qualified service provider providing family home care services under the SPED program and expanded service payments for elderly and disabled;
  - f. Must be physically capable of performing the service for which they were contracted with or hired as an independent contractor; and
  - g. Must be at least eighteen years of age.
  - h. A representative of an enrolled qualified service provider agency or an individual qualified service provider must complete a department-approved qualified service provider orientation prior to initial enrollment.
3. If the physical, cognitive, social, or emotional health capabilities of an applicant or provider appear to be questionable, the department may require the applicant or provider to present evidence of the applicant's or provider's ability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
  4. The offenses enumerated in paragraph 1 of subdivision b of subsection 2 have a direct bearing on an individual's ability to be enrolled as a qualified service provider.
    - a. An individual enrolled as a qualified service provider prior to January 1, 2009, who has been found guilty of, pled guilty to, or pled no contest to, an offense considered to have a direct bearing on the individual's ability to provide care may be considered rehabilitated and may continue to provide services if the individual has had no other offenses and provides sufficient evidence of rehabilitation to the department.
    - b. The department may not approve, deny, or renew an application for an individual or employee of an agency who is applying to enroll or re-enroll as a qualified service provider and who has been charged with an offense considered to have a direct bearing on the individual's ability to provide care or an offense in which the alleged victim was under the applicant's care, until final disposition of the criminal case against the individual.

5. Evidence of competency for adult foster care providers serving eligible individuals eligible for the developmental disability waiver must be provided in accordance with subdivision b of subsection 2 of section 75-03-21-08.
6. A provider of services for adult day care, adult foster care, ~~attendant care~~, community support services, extended personal care, family personal care, nurse assessment, personal care, residential care, respite care, residential habilitation, supervision, and transitional living care shall provide evidence of competency in generally accepted procedures for:
  - a. Infection control and proper handwashing methods;
  - b. Handling and disposing of body fluids;
  - c. Tub, shower, and bed bathing techniques;
  - d. Hair care techniques, sink shampoo, and shaving;
  - e. Oral hygiene techniques of brushing teeth and cleaning dentures;
  - f. Caring for an eligible individual who is incontinent;
  - g. Feeding or assisting an eligible individual with eating;
  - h. Basic meal planning and preparation;
  - i. Assisting an eligible individual with the self-administration of medications;
  - j. Maintaining a kitchen, bathroom, and other rooms used by an eligible individual in a clean and safe condition, including dusting, vacuuming, floor care, garbage removal, changing linens, and other similar tasks;
  - k. Laundry techniques, including mending, washing, drying, folding, putting away, ironing, and related work;
  - l. Assisting an eligible individual with bill paying and balancing a check book;
  - m. Dressing and undressing an eligible individual;
  - n. Assisting with toileting;
  - o. Routine eye care;

- p. Proper care of fingernails;
  - q. Caring for skin;
  - r. Turning and positioning an eligible individual in bed;
  - s. Transfer using a belt, standard sit, or bed to wheelchair;
  - t. Assisting an eligible individual with ambulation; and
  - u. Making wrinkle-free beds.
7. An applicant for qualified service provider status for ~~attendant care~~, adult foster care, extended personal care, family personal care, nurse assessment, personal care, residential care, supervision, transitional living care, respite care, or adult day care must secure written verification that the applicant is competent to perform procedures specified in subsection 5 from a physician, chiropractor, registered nurse, licensed practical nurse, occupational therapist, physical therapist, or an individual with a professional degree in specialized areas of health care. Written verification of competency is not required if the individual holds one of the following licenses or certifications in good standing: physician, physician assistant, chiropractor, registered nurse, licensed practical nurse, registered physical therapist, registered occupational therapist, or certified nurse assistant. A certificate or another form of acknowledgment of completion of a program with a curriculum that includes the competencies in subsection 5 may be considered evidence of competence.
8. The department may approve global and eligible individual-specific endorsements to provide particular procedures for a provider based on written verification of competence to perform the procedure from a physician, chiropractor, registered nurse, occupational therapist, physical therapist, or other individual with a professional degree in a specialized area of health care or approved within the scope of the individual's health care license or certification.
9. Competence may be demonstrated in the following ways:
- a. A demonstration of the procedure being performed;
  - b. A detailed verbal explanation of the procedure; or
  - c. A detailed written explanation of the procedure.
10. The department shall notify the individual or the agency of its decision on

designation as a qualified service provider.

11. The department shall maintain a list of qualified service providers. Once the eligible individual's need for services has been determined, the eligible individual selects a provider from the list and the department's designee issues an authorization to provide services to the selected qualified service provider.
12. A service payment may be issued only to a qualified service provider who bills the department after the delivery of authorized services.
13. Agency providers who employ nonfamily members must have a department-approved quality improvement program that includes a process to identify, address, and mitigate harm to the eligible individuals they serve.
14. Agency providers who have accepted an authorization to provide twenty-four-hour supports to an eligible individual must give a thirty-day written notice before they can involuntarily discharge the eligible individual from their care, unless otherwise approved by the department.

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