

**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75-02-02.1-07	Applicant's Duty to Establish Eligibility [Repealed]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
75-02-02.1-14.1	Eligibility for Medically Frail Medicaid Expansion Enrollees
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 <u>[Repealed]</u>
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
75-02-02.1-24.4	Hospital Presumptive Eligibility
75-02-02.1-25	Asset Considerations
75-02-02.1-26	Asset Limits
75-02-02.1-27	Exempt Assets [Repealed]
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75-02-02.1-30.1	Annuities [Repealed]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75-02-02.1-33	Disqualifying Transfers Made on or Before August 10, 1993 [Repealed]
75-02-02.1-33.1	Disqualifying Transfers Made Before February 8, 2006 [Repealed]
75-02-02.1-33.2	Disqualifying Transfers Made on or After February 8, 2006
75-02-02.1-34	Income Considerations
75-02-02.1-34.1	MAGI-Based Methodology
75-02-02.1-34.2	Income Conversion for Individuals Subject to a MAGI-Based Methodology
75-02-02.1-34.3	Reasonable Compatibility of Income for Individuals Subject to a MAGI-Based Methodology
75-02-02.1-35	Budgeting [Repealed]
75-02-02.1-36	Disregarded Income [Repealed]
75-02-02.1-37	Unearned Income
75-02-02.1-37.1	Unearned Income for Individuals Subject to a MAGI-Based Methodology
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
75-02-02.1-38.3	Disregarded Income for Certain Individuals Subject to a MAGI-Based Methodology
75-02-02.1-38.4	Earned Income for Individuals Subject to a MAGI-Based Methodology
75-02-02.1-39	Income Deductions
75-02-02.1-39.1	Income Deductions for Individuals Subject to a MAGI-Based Methodology
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
75-02-02.1-43	Payment for Services by Attorney-in-Fact
75-02-02.1-44	Children's Health Insurance Program

**SECTION 1:** Section 75-02-02.1-17 is repealed:

**75-02-02.1-17. Application for other benefits.**

[Repealed effective January 1, 2025]

- ~~1. Applicants and recipients, including spouses and financially responsible parents, must take all necessary steps to obtain any annuities, pensions,~~

~~retirement, and disability benefits to which they are entitled, unless they can show good cause for not doing so. Annuities, pensions, retirement, and disability benefits include veterans' compensation and pensions; old age, survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation, but do not include needs-based payments.~~

- ~~2. Good cause under this section exists if:~~
  - ~~a. Receipt of the annuity, pension, retirement, or disability benefit would result in a loss of health insurance coverage;~~
  - ~~b. An employed or self-employed individual has not met the individual's full retirement age and chooses not to apply for social security early retirement or widows benefits; or~~
  - ~~c. An employed individual whose retirement benefits are through the individual's current employer and the individual is not allowed to access them while employed.~~

**History:** Effective December 1, 1991; amended effective July 1, 2003; January 1, 2011; April 1, 2018.

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

**Law Implemented:** NDCC 50-24.1-01

**SECTION 2:** Subsection 2 of section 75-02-02.1-40 is amended as follows:

2. Determining the appropriate income level in special circumstances.
  - a. During a month in which an individual enters a specialized facility or leaves a specialized facility to return home, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate income level. An individual residing in a specialized facility shall be allowed the appropriate medically needy, workers with disabilities, or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.
  - b. During a month in which an individual with eligible family members in the home enters or leaves a nursing facility to return home, or elects to receive home and community-based services or terminates that election, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate medically needy, workers with disabilities, or children with disabilities income level. An individual in a nursing facility shall be allowed one hundred dollars to meet maintenance needs during all full calendar months in which the individual resides

in the nursing facility. A recipient of home and community-based services shall be allowed the medically needy income level for one during all full calendar months in which the individual receives home and community-based services. In determining eligibility for workers with disabilities or children with disabilities coverage, individuals in a nursing facility, or in receipt of home and community-based services, will be allowed the appropriate workers with disabilities or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.

- c. For an institutionalized spouse with an ineligible community spouse, the one hundred dollar income level is effective in the month of entry, during full calendar months, and in the month of discharge. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.
- d. For a spouse electing to receive home and community-based services, who has an ineligible community spouse, the medically needy income level for one is effective in the month the home and community-based services begin, during full calendar months, and in the month the home and community-based services are terminated. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.
- e. An individual ~~with no spouse, disabled adult child, or child under age twenty-one at home~~ who enters a nursing facility may receive the medically needy income level for one if a physician certifies that the individual is likely to return to the individual's home within six months. The six-month period begins with the first full calendar month the individual is in the nursing facility. If, at any time during the six-month period, the individual's status changes and the stay in the nursing facility is expected to exceed the six months, the individual may have only the nursing care income level beginning in the month following the month of the status change. An individual may receive the medically needy income level for only one six-month period per stay in a nursing facility. If an individual is discharged, then readmitted to a nursing facility, there must be a break of at least one full calendar month between the periods of institutionalization in order for the new stay to be considered a new period of institutionalization.

**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; July 1, 2012; January 1, 2014; January 1, 2020; January 1, 2024; January 1, 2025.

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

**Law Implemented:** NDCC 50-24.1-02, 50-24.1-02.7, 50-24.1-21, 50-24.1-37, 50-24.1-41

**SECTION 3:** Subsection 4 of section 75-02-02.1-44 is amended as follows:

4. **Income considerations.** This subsection applies to applications and reviews received and processed for those requesting benefits prior to January 1, 2014.
  - a. All income that is actually available must be considered. Income is actually available when it is at the disposal of an applicant, recipient, or responsible relative when the applicant, recipient, or responsible relative has a legal interest in a liquidated sum and has the legal ability to make the sum available; or when the applicant, recipient, or responsible relative has the lawful power to make the income available or to cause the income to be made available.
  - b. It is presumed all parental income is actually available to a child under twenty-one years of age. This presumption may be rebutted by a showing that the child is:
    - (1) Living independently; or
    - (2) Living 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 plan coverage.
  - c. ~~As a condition of eligibility, an applicant, recipient, and financially responsible relative must take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which they are entitled unless they can show good cause for not doing so. Annuities, pensions, retirement, and disability benefits include veterans' compensation and pensions; old age, survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.~~
    - ~~(1) Good cause under this section exists if receipt of the annuity, pension, retirement, or disability benefit would result in a loss of health insurance coverage. Good cause must be documented in the case file.~~
    - ~~(2) Application for needs-based payments such as social security supplemental security income benefits or temporary aid to needy families benefits cannot be imposed as a condition of eligibility.~~
  - d. ~~The financial responsibility of any individual for any other member~~

of the plan unit is limited to the responsibility of spouse for spouse and parents for children under age twenty-one or under age eighteen if the child is disabled. Such responsibility is imposed as a condition of plan eligibility. Except as otherwise provided in this subsection, the income of the spouse and parents is considered available even if that income is not actually contributed. Natural and adoptive parents, but not stepparents, are treated as parents.

e.d. Income may be received weekly, biweekly, monthly, intermittently, or annually. A monthly income amount must be computed by the department or county agency regardless of how often income is received.

f.e. The following types of income must be disregarded in determining eligibility for plan coverage:

(1) Supplemental security income benefits provided by the social security administration.

(2) Income disregards in section 75-02-02.1-38.2.

g.f. (1) In determining ownership of income from a document, income must be considered available to each individual as provided in the document or in the absence of a specific provision in the document:

(a) Income is considered available only to the individual if payment of the income was made solely to that individual; and

(b) Income is considered available to each individual in proportion to the individual's interest if payment of income is made to more than one individual.

(2) One-half of income is considered available to each spouse in the case of income available to a married couple in which there is no document establishing ownership otherwise.

(3) Except in the case of income from a trust, the rules for determining ownership of income are superseded to the extent the applicant or recipient can establish the ownership interests are otherwise than as provided in subdivision fd of subsection 4.

h.g. To determine the appropriate income level for a plan unit:

- (1) The size of the household is increased by one for each unborn child of a household member;
- (2) A child who is away at school is not treated as living independently, but is allowed a separate income level for one in addition to the income level applicable for the family unit remaining at home;
- (3) A child who is living outside of the parental home but who is not living independently; or a spouse who is temporarily living outside of the home to attend training or college, to secure medical treatment, because of temporary work relocation required by an employer, or for other reasons beyond the control of the spouse, is allowed a separate income level. This does not apply to situations in which an individual simply decides to live separately;
- (4) An individual in a specialized facility is allowed a separate income level for one during all full calendar months in which the individual resides in the facility;
- (5) An individual in a nursing facility is allowed a separate income level for one; and
- (6) A recipient of home and community-based services is allowed a separate income level for one.

i.h. For a child to be eligible for plan coverage, the income remaining after allowing the appropriate disregards and deductions must be equal to or below the income level set by the department in accordance with state law and federal authorization and must be based on the size of the household. If federal children's health insurance program funding decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding.

**History:** Effective January 1, 2020; amended effective January 1, 2024; January 1, 2025.

**General Authority:** NDCC 50-29

**Law Implemented:** NDCC 50-24.1-37, 50-29; 42 U.S.C. 1397aa et seq.