

**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**

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**SECTION 1:** Section 75-03-23-06 is amended as follows:

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

The department may not include room and board costs 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. The department may not provide a family personal care payment for assistance with the:
  - (1) ~~activities~~Activities of communication, community integration, laundry, meal preparation, money management, shopping, social appropriateness, or transportation unless the activity benefits the eligible individual. ~~The department may not provide a family personal care payment for assistance with the activity; or~~
  - (2) 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 or care coordination to ensure cost-effective delivery of services. A social worker licensed under North Dakota Century Code 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 may provide case management services under this subsection.
- 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. The department may not approve supervision services to be provided by a provider who lives in the same home as the eligible individual.
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, subject to the following limitations:
  - a. Eligible individuals for family personal care are not eligible to receive personal care under the Medicaid waiver program from a provider who lives in the same home as the eligible individual;
  - b. The department may not provide a personal care payment under the Medicaid waiver program to a provider who lives in the same home as the eligible individual if the provider meets the definition of family member in North Dakota Century Code section 50-06.2-02; and
  - c. Live in personal care is capped at ten hours per day.

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

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