

CHAPTER 75-02-02 MEDICAL SERVICES

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75-02-02-27	Scope of Drug Benefits - Prior Authorization

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SECTION 1: Section 75-02-02-27 is amended as follows:

75-02-02-27. Scope of drug benefits - Prior authorization.

1. Prior authorization means a process requiring the prescriber or the dispenser to verify with the department or the department's contractor that proposed medical use of a particular drug for a Medicaid program or children's health insurance program recipient meets predetermined criteria for coverage by the Medicaid program or children's health insurance program.
2. A prescriber or a dispenser ~~must~~shall secure prior authorization from the department or its designee as a condition of payment for those drugs subject to prior authorization.
3. A prescriber or a dispenser ~~must~~shall provide to the department or its designee in the format required by the department the data necessary for the department or its designee to make a decision regarding prior authorization. The department shall deny a claim for coverage of a drug requiring prior authorization if the prescription was dispensed prior to authorization or if the required information regarding the prior authorization is not provided by the prescriber or the dispenser.
4. A prescriber or dispenser ~~must~~shall submit a request for prior authorization to the department or its designee by telephone, facsimile, electronic mail, or in any other format designated by the department. The department or its designee ~~must~~shall respond to a prior authorization request within twenty-four hours of receipt of a complete request that contains all of the data necessary for the department to make a determination.
5. Emergency supply.
 - a. If a recipient needs a drug before a prescriber or dispenser can secure prior authorization from the department, the department shall provide coverage of the lesser of a five-day supply of a drug or the amount prescribed if it is not feasible to dispense a five-day supply because the drug is packaged in such a way that it is not intended to be further divided.
 - b. The department ~~will~~may not provide further coverage of the drug beyond the five-day supply unless the prescriber or dispenser first secures prior authorization from the department.

6. The department shall authorize the provision of a drug subject to prior authorization if:
 - a. Other drugs not requiring prior authorization have not been effective or with reasonable certainty are not expected to be effective in treating the recipient's condition;
 - b. Other drugs not requiring prior authorization cause or are reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
 - c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization.

7. If a recipient is receiving coverage of a drug that is later subject to prior authorization requirements, the department shall continue to provide coverage of that drug until the prescriber ~~must reevaluate~~reevaluates the recipient. The department shall provide a form by which a prescriber may inform the department of a drug that a recipient ~~must~~shall continue to receive beyond the prescription reevaluation period regardless of whether such drug requires prior authorization. The form ~~shall~~must contain the following information:
 - a. The requested drug and its indication;
 - b. An explanation as to why the drug is medically necessary; and
 - c. The signature of the prescriber confirming that the prescriber has considered generic or other alternatives and has determined that continuing current therapy is in the best interest for successful medical management of the recipient.

8. If a recipient under the age eighteen is prescribed of twenty-two has a medication regimen that contains five or more concurrent prescriptions for antipsychotics, antidepressants, anticonvulsants, benzodiazepines, mood stabilizers, sedative, hypnotics, or medications used for the treatment of attention deficit hyperactivity disorder, the department shall ~~require prior authorization of the fifth or more concurrent drug. Once the prescriber of the fifth or more concurrent drug consults with a board-certified child and adolescent psychiatrist regarding the overall care of the recipient, and if that prescriber wishes to still prescribe the fifth or more concurrent drug, the department shall grant authorization for the drug~~require that the prescribers certify annually the medical necessity of each medication in the regimen.

The department may apply the certification process to other individuals at the discretion of the department.

9. The department may require prior authorization for any medication that is a line extension drug in any of the excluded medication classes under subsection 3 of North Dakota Century Code section 50-24.6-04 if the line extension drug's net cost is higher than the original medication due to federal drug rebate offset differences.
10. The department may require prior authorization for any medication that is a drug in any of the excluded medication classes under subsection 3 of North Dakota Century Code section 50-24.6-04 if a manufacturer of a drug in that class excludes the department from supplemental rebate offers or value-based purchasing agreement offers due to the existence of the prior authorization exclusion in subdivision a of subsection 3 of North Dakota Century Code section 50-24.6-04.

History: Effective September 1, 2003; amended effective July 26, 2004; July 1, 2006; October 1, 2012; April 1, 2018; April 1, 2020; January 1, 2022; January 1, 2024; January 1, 2026.

General Authority: NDCC 50-24.6-04, 50-24.6-10

Law Implemented: NDCC 50-24.6; 42 USC 1396r-8

CHAPTER 75-02-02.1 ELIGIBILITY FOR MEDICAID

Section

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SECTION 2: 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 health and human services.
2. "Applicant" means an individual seeking health care coverage benefits.
3. "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.
4. "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 [42 U.S.C. 401-434, 1381-1385].
5. "Child" means an individual, under twenty-one, or, if blind or disabled, under age eighteen, who is not living independently.
6. "Children's health insurance program" means the North Dakota children's health insurance program implemented pursuant to North Dakota Century Code chapter 50-29 and 42 U.S.C. 1397aa et seq. to furnish health assistance to low-income children funded through title XXI of the ~~Social Security~~ Act [42 U.S.C. 1397aa et seq.].
7. "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.
8. "County agency" means the human service zone.
9. "Creditable health insurance coverage" means a health benefit plan which includes coverage for hospital, medical, or major medical. The following are not considered credible health insurance coverage:
 - a. Coverage only for accident or disability income insurance;
 - b. Coverage issued as a supplement to automobile liability insurance;
 - c. Liability insurance, including general liability insurance and automobile liability insurance;
 - d. Workforce safety and insurance or similar insurance;
 - e. Automobile medical payment insurance;
 - f. Credit-only insurance;

- g. Coverage for onsite medical clinics;
 - h. Other similar insurance coverage specified in federal regulations under which benefits for medical care are secondary or incidental to other insurance;
 - i. Coverage for dental or vision;
 - j. Coverage for long-term care, nursing home care, home health care, or community-based care;
 - k. Coverage only for specified disease or illness;
 - l. Hospital indemnity or other fixed indemnity insurance; and
 - m. Coverage provided through Indian health service.
10. "Department" means the North Dakota department of health and human services.
 11. "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.
 12. "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 [42 U.S.C. 401-434, 1381-1385].
 13. "Disabled adult child" means a disabled or blind individual over the age of twenty-one who became blind or disabled before age twenty-two.
 14. "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.
 15. "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 ~~co-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.
16. "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.
17. "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 individuals with intellectual disabilities.
18. "Individual on conditional release" means an individual who is away from the institution, for trial placement in another setting or for other approved leave, but who is not discharged.
19. "Inmate" means an individual who has been sentenced, placed, committed, admitted, or otherwise required or allowed to live in a public institution, and who has not subsequently been unconditionally released or discharged from the institution. An individual is not considered an inmate if:
- a. The individual is in a public educational or vocational training institution for purposes of securing education or vocational training;
 - b. The individual is in a public institution for a temporary period

pending other arrangements appropriate to the individual's needs; or

c. The individual is receiving long-term care services in a public institution.

20. "Institution" means an establishment that furnishes food, shelter, and treatment or services in a single or multiple facilities to four or more individuals unrelated to the proprietor.

21. "Institution for mental diseases" means an institution that is primarily engaged in providing diagnosis, treatment, or care of individuals with mental diseases, including medical attention, nursing care, and related services.

22. "Institutionalized individual" means an individual who is an inpatient in a nursing facility, an intermediate care facility for individuals with intellectual disabilities, the state hospital, a psychiatric residential treatment facility, an institution for mental disease, or who receives swing-bed care in a hospital.

49-23. "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.

~~20-24.~~ "Long-term care" means the services received by an individual when the individual is screened or certified as requiring long-term care services.

~~21-25.~~ "MAGI-based methodology" means the method of determining eligibility for Medicaid that generally follows modified adjusted gross income rules.

~~22-26.~~ "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.].

~~23-27.~~ "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.

~~24-28.~~ "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.

~~25-29.~~ "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.

~~26-30.~~ "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).

~~27-31.~~ "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.

~~28-32.~~ "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.

33. "Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. The term public institution does not include:

a. A medical institution as defined in 42 CFR 435.1010;

b. An intermediate care facility as defined in 42 CFR 440.140 and 440.150;

c. A publicly operated community residence that serves no more than sixteen residents, as defined in 42 CFR 435.1010; or

d. A child-care institution as defined in 42 CFR 435.1010 with respect to:

(1) Children for whom foster care maintenance payments are made under title IV-E of the Act [42 U.S.C. 670 et seq.]; and

(2) Children receiving aid to families with dependent children – foster care under title IV-A of the Act [42 U.S.C. 601 et seq.].

~~29-34.~~ "Recipient" means an individual approved as eligible for health care coverage.

- ~~30-35.~~ "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.
- ~~31-36.~~ "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.
- ~~32-37.~~ "Residing in the home" refers to individuals who are physically present, individuals who are temporarily absent, or individuals attending educational facilities.
- ~~33-38.~~ "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.
- ~~34-39.~~ "Student" means an individual who regularly attends and makes satisfactory progress in elementary or secondary school, general educational development 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 an individual who attends school on a schedule equal to a full curriculum.
- ~~35-40.~~ "Supplemental security income" means a program administered under title XVI of the ~~Social Security~~ Act [42 U.S.C. 1381 et seq.].
- ~~36-41.~~ "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.].
- ~~37-42.~~ "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].
- ~~38-43.~~ "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].
- ~~39-44.~~ "Title IV-E" means title IV-E of the Social Security Act [42 U.S.C. 670 et seq.].

~~40-45.~~ "Title XIX" means title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

~~41-46.~~ "Title XXI" means title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.].

47. "Unconditionally released" means released, discharged, or otherwise allowed or required to leave the institution under circumstances such that a return to the institution may not be required by the operator of the institution.

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; July 1, 2012; January 1, 2014; January 1, 2020; January 1, 2024; January 1, 2026.

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

Law Implemented: NDCC 50-24.1-01, 50-24.1-37; 42 USC 1396a(e)

SECTION 3: Section 75-02-02.1-03 is amended as follows:

75-02-02.1-03. Decision and notice.

1. A decision as to eligibility will be made promptly on applications, ~~within forty-five days~~by the forty-fifth day, or within ninety days in cases with a disability determination pending, except in unusual circumstances.
2. Following a determination of eligibility or ineligibility, an applicant must be notified of either approval or denial of benefits.
3. Notice must be sent at the time, and in the manner, required by 42 CFR 431.210 through 431.214.
4. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for an applicant or recipient who is adversely affected.

History: Effective December 1, 1991; amended effective July 1, 2003; January 1, 2020; January 1, 2026.

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

Law Implemented: NDCC 50-24.1-02

SECTION 4: Section 75-02-02.1-11 is amended as follows:

75-02-02.1-11. Need.

Need is a factor of eligibility. Need in this sense is not to be confused with the necessity for a particular medical service.

1. Need is established for individuals who are determined to be categorically

needy, optionally categorically needy, or poverty level eligible.

2. For a medically needy applicant or recipient, need is established when there ~~is no recipient liability or when the applicant or recipient has incurred current medical expenses for which the applicant or recipient is responsible after any third-party payments, which equal or exceed current recipient liability. If there is no need, there is no eligibility, and the application must be denied or the case must be closed~~the individual has:
 - a. Applied for Medicaid;
 - b. No client share; or
 - c. Incurred or may incur medical expenses which the individual is responsible for after any third-party payments that equal or exceed client share.
3. If an individual does not meet their client share for six consecutive months, the individual's eligibility will end the following month.

History: Effective December 1, 1991; amended effective July 1, 2003; April 1, 2008; January 1, 2026.

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

Law Implemented: NDCC 50-24.1-01

SECTION 5: Section 75-02-02.1-19 is amended as follows:

75-02-02.1-19. Inmates of public institutions.

1. Incarceration status is not a condition of Medicaid eligibility and does not make an individual ineligible. An inmate individual who is an inmate of a public institution is not eligible who meets all eligibility factors for Medicaid unless the individual is: eligible. Medicaid eligibility for individuals who are inmates of a public institution will be suspended.
 - a. ~~Over age sixty five and a patient in an institution for mental diseases;~~
 - b. ~~Under age twenty one, is a patient in an institution for mental diseases, and is receiving inpatient psychiatric services consistent with the requirements of 42 CFR 440.160 and 42 CFR part 441, subpart D, or, with respect to a patient who is eligible for Medicaid and is receiving services in the institution when the patient reaches age twenty one, inpatient psychiatric services under 42 CFR 440.160 may continue until age twenty two; or~~
 - c. ~~Receiving care as an inpatient in one of the following facilities:~~

- ~~(1) — A hospital as defined in 42 CFR 440.140;~~
 - ~~(2) — A nursing facility as defined in 42 CFR 440.140 and 42 U.S.C. 1396r(a);~~
 - ~~(3) — A psychiatric residential treatment facility as defined in 42 CFR 440.160; or~~
 - ~~(4) — An intermediate care facility for the intellectually disabled as defined in 42 CFR 440.140 and 440.150.~~
2. The period of ~~ineligibility~~Medicaid suspension under this section begins the day after the day of ~~entry~~the individual enters the public institution and ends the day before the day of ~~discharge of the individual~~is discharged from such a public institution. A ten-day advance notice is not required when suspending benefits due to entry into the public institution.
- ~~3. — An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in that institution. However, such an individual who is under age twenty-two and has been receiving inpatient psychiatric services under 42 CFR 440.160 is considered to be a patient in the institution until unconditionally released or, if earlier, the last day of the month in which the patient reaches age twenty-two.~~
4. — For purposes of this section:
 - a. — ~~"Individual on conditional release" means an individual who is away from the institution, for trial placement in another setting or for other approved leave, but who is not discharged. An individual on "definite leave" from the state hospital is an individual on conditional release.~~
 - b. — ~~"Inmate of a public institution" means a person who has been sentenced, placed, committed, admitted, or otherwise required or allowed to live in the institution, and who has not subsequently been unconditionally released or discharged from the institution. An individual is not considered an inmate if:~~
 - ~~(1) — The individual is in a public educational or vocational training institution for purposes of securing education or vocational training;~~
 - ~~(2) — The individual is in a public institution for a temporary period pending other arrangements appropriate to the individual's needs;~~

~~(3) The individual has been unconditionally released from the institution; or~~

~~(4) The individual is receiving long term care services in a public institution.~~

~~c. "Institution" means an establishment that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more persons unrelated to the proprietor.~~

~~d. "Institution for mental diseases" means an institution that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. Whether an institution is an institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such. An institution for individuals with intellectual disabilities is not an institution for mental diseases.~~

~~a. An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in that institution. However, such an individual who is under age twenty two and has been receiving inpatient psychiatric services under 42 CFR 440.160 is considered to be a patient in the institution until unconditionally released or, if earlier, the last day of the month in which the patient reaches age twenty two.~~

~~b. "Individual on conditional release" means an individual who is away from the institution, for trial placement in another setting or for other approved leave, but who is not discharged.~~

~~e. "Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. The term "public institution" does not include:~~

~~(1) A medical institution as defined in 42 CFR 435.1010;~~

~~(2) An intermediate care facility as defined in 42 CFR 440.140 and 440.150;~~

~~(3) A publicly operated community residence that serves no more than sixteen residents, as defined in 20 CFR 416.231(b)(6)(i); or~~

~~(4) A child care institution as defined in 42 CFR 435.1010 with respect to:~~

~~(a) Children for whom foster care maintenance payments are made under title IV-E of the Act; and~~

~~(b) Children receiving aid to families with dependent children foster care under title IV-A of the Act.~~

~~f. "Unconditionally released" means released, discharged, or otherwise allowed or required to leave the institution under circumstances such that a return to the institution cannot be required by the operator of the institution.~~

History: Effective December 1, 1991; amended effective July 1, 2003; July 1, 2012; July 1, 2016; January 1, 2026.

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

Law Implemented: NDCC 50-24.1-02, ~~50-24.1-06~~; 42 CFR 435.1008; 42 CFR 435.1009

SECTION 6: Section 75-02-02.1-19.2 is created as follows:

75-02-02.1-19.2. Institutions for mental diseases.

1. An institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such. An institution for individuals with intellectual disabilities is not an institution for mental diseases.

2. An institution for mental disease consists of more than sixteen beds.

3. Federal financial participation is:

a. Not available to individuals under age sixty-five;

b. Available to individuals age sixty-five and older; and

c. Available to individuals under age twenty-one who have a certification of need.

4. An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in that institution for mental diseases. However, an individual who is under age twenty-two and has been receiving inpatient psychiatric services under 42 CFR 440.160 is considered to be a patient in the institution for mental diseases until unconditionally released or, if earlier, the last day of the

month in which the patient reaches age twenty-two.

History: Effective January 1, 2026.

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

Law Implemented: NDCC 50-24.1-02; 42 CFR 435.1008; 42 CFR 435.1009; 42 CFR 440.160

SECTION 7: Subsection 1 of section 75-02-02.1-24 is amended as follows:

1. For purposes of this section:
 - a. "Community spouse" means the spouse of an institutionalized spouse or the spouse of a home and community-based services spouse.
 - b. "Family member" means only minor or dependent children, dependent parents, or dependent siblings of the institutionalized spouse, home and community-based services spouse, or community spouse who are residing with the community spouse. For purposes of applying this definition, a family member is dependent only if that family member is, and may properly be, claimed as a dependent on the federal income tax return filed by the institutionalized spouse or home and community-based services spouse, or the community spouse, or filed jointly by both.
 - c. "Home and community-based services spouse" means an individual who:
 - (1) Requires care of the type provided in a nursing facility, but chooses to receive home and community-based services in the community; and
 - (2) Is married to a spouse who resides in the community at least one day of each month.
 - d. "Institutionalized spouse" means an individual who:
 - (1) Requires care in a medical institution, a nursing facility, a swing bed, or the state hospital and, at the beginning of the individual's institutionalization, was likely to be in the facility for at least thirty consecutive days even though the individual does not actually remain in the facility for thirty consecutive days; and
 - (2) Is married to a spouse who resides in the community at least one day of each month.
 - e. "Monthly maintenance needs allowance" means for a community

spouse, ~~the greater of the amount authorized by the legislative assembly per month or~~ the minimum amount permitted under section 1924(d)(3) of the Act [42 U.S.C. 1396r-5(d)(3)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; October 1, 1993; July 1, 2003; June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2011; April 1, 2016; January 1, 2022; January 1, 2026.

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

Law Implemented: NDCC 50-24.1-02; 42 USC 1396r-5

SECTION 8: Section 75-02-02.1-38.2 is amended as follows:

75-02-02.1-38.2. Disregarded income.

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 individuals with intellectual disabilities, or receiving swing-bed care in a hospital. The department shall disregard the following types of income ~~shall be disregarded in~~ determining Medicaid eligibility for individuals not subject to a MAGI-based methodology:

1. Money payments made by the department, another state, or tribal entities in connection with the North Dakota long-term subsidy program, foster care, subsidized guardianship, or the subsidized adoption program;
2. ~~Occasional small gifts~~ Effective July 1, 2026, court ordered child support payments and social security survivor income for a child under the age of eighteen years and enrolled in a Medicaid waiver under section 1915(c) of the Act [42 U.S.C. 1396n(c)];
3. County general assistance that may be issued on an intermittent basis to cover emergency-type situations;
4. Income received as a housing allowance by ~~a program~~ programs sponsored by the United States department of housing and urban development ~~or~~ and rent supplements or utility payments provided through a housing assistance program;
5. Income of an individual living in the parental home if the individual is not included in the Medicaid unit;
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;

7. In-kind income except in-kind income received in lieu of wages;
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;
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;
10. Benefits received through the low income home energy assistance program;
11. Training funds received from vocational rehabilitation;
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;
13. Income tax refunds and earned income credits;
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;
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];
16. Income earned by aan eligible child who is a full-time student or a part-time student who is not employed one hundred hours or more per month. The earnings of an eligible child are counted if the child is a part-time student who is employed full-time;
17. Payments from the family subsidy program;
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;

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.];
20. Payments made tax exempt as a result of section 21 of the Alaska Native Claims Settlement Act [Pub. L. 92-203];
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.];
22. Agent orange payments;
23. A loan from any source that is subject to a written agreement requiring repayment by the recipient;
24. The Medicare part B premium refunded by the social security administration;
25. Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime;
26. Temporary assistance for needy families benefit and support service payments;
27. Lump sum supplemental security income benefits in the month in which the benefit is received;
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;
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;
30. Refugee cash assistance or grant payments;
31. Payments from the child and adult food program for meals and snacks to licensed families who provide day care in their home;
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;

33. All income, allowances, and bonuses received as a result of participation in the job corps program;
34. Payments received for the repair or replacement of lost, damaged, or stolen assets;
35. Homestead tax credit;
36. Training stipends provided to victims of domestic violence by private, charitable organizations for attending their educational programs;
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;
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];
39. Radiation Exposure Compensation Act [Pub. L. 101-426; 42 U.S.C. 2210, note];
40. Interest or dividend income from liquid assets;
41. Additional pay received by military personnel as a result of deployment to a combat zone; ~~and~~
42. All wages paid by the census bureau for temporary employment related to census activities;
43. Occasional small gifts;
44. Money received by Indians from the lease or sale of natural resources and rent or leave income, resulting from the exercise of federally protected rights on excluded Indian property, is considered an asset conversion and is therefore not considered as income. This includes distributions of per capita judgement funds or property earnings held in trust for a tribe. This does not include local tribal funds that a tribe distributes to individuals on a per capita basis, but which have not been held in trust by the secretary of interior;
45. Medicare part D premiums, co-payments, and deductibles refunded by prescription drug plans;

46. For periods after October 1, 2008, all wages paid by the census bureau for temporary employment related to census activities;
47. The first two thousand dollars received by an individual over the age of nineteen as compensation for participation in a clinical trial for rare diseases or conditions meeting the requirements of section 1612(b)(26) of the Act [42 U.S.C. 1382a(b)(26)];
48. Monthly food coupons distributed to individuals over the age of fifty-five from the Sisseton-Wahpeton Oyate Lake Traverse Reservation food distribution program;
49. Payments distributed by the emergency rent assistance program;
50. Reimbursements from an employer, training agency, or other organization for past or future training, or volunteer-related expenses. Reimbursements must be specified for an identified expense, other than normal living expenses and used for the purpose intended. Disregarded reimbursements include reimbursements for job or training-related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site and for out-of-pocket expenses of volunteers incurred in the course of their work; and
51. Disbursements from the people's fund and general disbursements to members of the Mandan, Hidatsa, Arikara Nation that come from natural resources royalties.

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; July 1, 2012; January 1, 2014; January 1, 2026.

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

Law Implemented: NDCC 50-24.1-02, 50-24.1-37; 42 USC 1396a(e)

SECTION 9. Section 75-02-02.1-38.3 is amended as follows:

75-02-02.1-38.3. Disregarded income for certain individuals subject to a MAGI-based methodology.

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 individuals with intellectual disabilities, or receiving swing-bed care in a hospital. Effective January 1, 2014, the department shall allow the above-identified individuals subject to a MAGI-based methodology ~~are allowed~~ the following income disregards:

1. Nontaxable income other than:

- a. Nontaxable foreign earned income;
 - b. Nontaxable interest; and
 - c. The nontaxable portion of social security benefits.
- 2. Supplemental security income.
- 3. Veterans administration benefits other than retirement pensions, including:
 - a. Disability benefits;
 - b. Aid and attendance payments;
 - c. Homebound benefits; and
 - d. Reimbursements for unusual medical expenses.
- 4. Child support income.
- 5. Temporary assistance for needy families benefits and support services payments.
- 6. ~~Workers' compensation~~ Workforce safety and insurance benefits.
- 7. Proceeds from life ~~insurance~~, accident ~~insurance~~, or health insurance.
- 8. Federal tax credits and federal income tax refunds.
- 9. Gifts and loans.
- 10. Inheritances.
- 11. ~~Adjustments from gross income that are used in determining adjusted gross income for income tax purposes must be allowed~~ Child's income when allowed under the Patient Protection and Affordable Care Act [Pub L. 111-148; 42 U.S.C. 18001 et seq.] income methodologies.
- 12. Tribal general assistance payments.
- 13. Subsidized guardianship payments.
- 14. Educational scholarships, awards, and fellowship grants used for educational expenses that are not used for living expenses or other non-educational related expenses.

15. Certain distributions, payments, and student financial assistance for American Indians and Alaska Natives if they were initially counted as taxable income.
16. Non-recurring and recurring lump sum payments of disregarded earned or unearned income:
 - a. Veteran's administration aid and attendance payments;
 - b. Veteran's administration homebound benefits;
 - c. Veteran's administration reimbursements for unusual medical expenses;
 - d. Veteran's administration dependents indemnity compensation;
 - e. Insurance settlements for destroyed exempt property;
 - f. Death benefits;
 - g. Health or long-term care insurance payments;
 - h. Life insurance proceeds; or
 - i. Accident insurance proceeds.
17. Voluntary cash contributions from others.
18. Proceeds from a loan agreement, including reverse mortgages. If the individual lending the money receives interest, the interest received is income.
19. Hostile fire pay when an individual is on active military duty serving in a combat zone, the full amount of the individual's military pay must be excluded from taxable income.
20. Deposits to a joint checking account made by a non-household member.
21. Monetary payments made by the department, another state, or tribal entities in connection with the North Dakota long-term care subsidy program, foster care, subsidized guardianship, or the subsidized adoption program.
22. Benefits received through the low income home energy assistance program.

23. Refugee cash assistance or grant payments.
24. County general assistance that may be issued on an intermittent basis to cover emergency type situations.
25. Payments from the child and adult food program for meals and snacks to licensed families who provide day care in their home.
26. Payments from the family subsidy program.
27. Income received as a housing allowance by programs sponsored by the United States department of housing and urban development and rent supplements or utility payments provided through the housing assistance program.
28. Money received by Indians from the lease or sale of natural resources and rent or lease income, resulting from the exercise of federally-protected rights on excluded Indian property, is considered an asset conversion and is therefore not considered as income. This includes distributions of per capita judgment funds or property earnings held in trust for a tribe. This does not include local tribal funds that a tribe distributes to individuals on a per capita basis, but which have not been held in trust by the secretary of interior.
29. Income derived from sub marginal lands, conveyed to Indian tribes and held in trust by the United States, as required by Pub. L. 94-114.
30. Compensation received by volunteers participating pursuant to the Domestic Volunteer Service Act of 1973 [Pub. L. 93-113; 42 U.S.C. 4950 et seq.].
31. 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.].
32. All income, allowances, and bonuses received as a result of participation in the job corps program.
33. Payments received for the repair or replacement of lost, damaged, or stolen assets.
34. Homestead tax credits.
35. Training funds received from vocational rehabilitation.
36. Training allowances of up to thirty dollars per week provided through a tribal

- native employment workers program or the job opportunities and basic skills training program.
37. Needs-based payments, support services, and relocation expenses provided through programs established under the Workforce Innovation and Opportunity Act [Pub. L. 113-128; 29 U.S.C. 701 et seq.] and through the job opportunities and basic skills program.
 38. Training stipends provided to victims of domestic violence by private, charitable organizations for attending their educational programs.
 39. Tax-exempt portions of payments made as a result of the Alaska Native Claims Settlement Act [Pub. L. 92-203].
 40. Payments to certain United States citizens of Japanese ancestry, resident Japanese non-citizens and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [Pub. L. 100-383; 50 U.S.C. App. 1989 et seq.].
 41. Agent orange payments.
 42. Crime victims reparation payments.
 43. 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.
 44. Assistance received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288; 42 U.S.C. 5121 et seq.] or other federal statute, because of the presidentially declared major disaster, including disaster assistance unemployment compensation, and interest earned on that assistance. Comparable assistance received from a state or local government or from a disaster assistance organization is also excluded.
 45. 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.
 46. Netherlands reparation payments based on Nazi, but not Japanese, persecution during World War II [Public L. 103-286; 42 U.S.C. 1437a, note].
 47. Radiation Exposure Compensation Act [Public L. 101-426; 42 U.S.C. 2210, note].
 48. The Medicare part B premium refunded by the social security administration.

49. Medicare part D premiums, copayments, and deductible refunded by prescription drug plans.
50. Reimbursements from an employer, training agency, or other organization or past or future training, or volunteer-related expenses are disregarded from income. Reimbursements must be specified for an identified expense, other than normal living expenses and used for the purpose intended. Disregarded reimbursements include reimbursements for job or training-related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site and for reimbursements for out-of-pocket expenses of volunteers incurred in the course of their work.
51. The first two thousand dollars received by an individual over the age of nineteen as compensation for participation in a clinical trial for rare diseases or conditions meeting the requirements of section 1612(b)(26) of the Act [42 U.S.C. 1382a(b)(26)].
52. Monthly food coupons distributed to individuals over the age of fifty-five from the Sisseton-Wahpeton Oyate Lake Traverse Reservation food distribution program.
53. Payments of flat rate insurance like a hospital plan that pays a daily rate to the client for each day in the hospital.
54. Any withdrawal made from a 529 plan is excluded as income if the funds are used for the intended purposes. If the funds are withdrawn and not used for the qualified education expenses of the designated beneficiary, the withdrawn funds become taxable income and must be counted.
55. Payments distributed by the emergency rent assistance program.
56. Parent mentor compensation of a parent or guardian of a Medicaid or children's health insurance program eligible child who is trained to assist families with children who have no health insurance coverage with respect to improving social determinants of the health of such child.
57. Alimony received when the alimony agreement is finalized or an existing alimony agreement if modified on or after January 1, 2029.
58. Discharged student loan debt, normally included in MAGI-based income, for tax years 2018-2025 in cases of discharged debt on account of the death or permanent and total disability of a student. Debt is not included as income of the borrower.
59. Disbursements from the people's fund and general disbursements to

members of the Mandan, Hidatsa, Arikara Nation that come from natural resources royalties.

History: Effective January 1, 2014; amended effective January 1, 2026.

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

Law Implemented: NDCC 50-24.1-37; 42 USC 1396a(e)

SECTION 10: Section 75-02-02.1-40 is amended as follows:

75-02-02.1-40. Income levels.

1. ~~Levels~~The department shall use levels of income for maintenance ~~shall be used~~ as a basis for establishing financial eligibility for Medicaid. The income levels applicable to individuals and units are:
 - a. Categorically needy income levels.
 - (1) Family coverage income levels established in the Medicaid state plan are applied to the family coverage group. The family size is increased for each unborn child when determining the appropriate family size.
 - (2) Except for individuals subject to the nursing care income level, the income level for categorically needy aged, blind, or disabled recipients is that which establishes supplemental security income eligibility.
 - b. Medically needy income levels.
 - (1) Medically needy income levels established in the Medicaid state plan are applied when a Medicaid individual or unit resides in the individual's or the unit's own home or in a specialized facility, and when a Medicaid individual has been screened as requiring nursing care, but elects to receive home and community-based services. The family size is increased for each unborn child when determining the appropriate family size.
 - (2) The nursing care income levels established in the Medicaid state plan are applied to residents receiving care in a nursing facility, an intermediate care facility for individuals with intellectual disabilities, the state hospital, an institution for mental disease, a psychiatric residential treatment facility, or receiving swing-bed care in a hospital.
 - (3) The community spouse income level for a Medicaid eligible community spouse is subject to subdivision a, paragraph 1 of

subdivision b, or subdivision c. The level for an ineligible community spouse is ~~the greater of two thousand five hundred fifty dollars per month or~~ the minimum amount permitted under section 1924(d)(3)(c) of the Act [42 U.S.C. 1396r-5(d)(3)(C)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].

- (4) The income level for each ineligible family member in a spousal impoverishment prevention case is equal to one-third of an amount determined in accordance with section 1924(d)(3)(A)(i) of the Act [42 U.S.C. 1396r-5(d)(3)(A)(i)], less the monthly income of that family member. For purposes of this paragraph, "family member" has the meaning given in subsection 1 of section 75-02-02.1-24.

c. Poverty income level.

- (1) The income level for children under age six is equal to one hundred forty-seven percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
- (2) The income level for pregnant women is equal to one hundred seventy percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
- (3) Qualified Medicare beneficiaries. The income level for qualified Medicare beneficiaries is equal to one hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.
- (4) The income level for children aged six to nineteen and adults aged nineteen to sixty-five is equal to one hundred thirty-three percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
- (5) The income level for transitional Medicaid benefits is equal to one hundred and eighty-five percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.

- (6) The income level for qualified working and disabled individuals is equal to two hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.
- (7) The income level for specified low-income Medicare beneficiaries is equal to one hundred twenty percent, of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (8) The income level for qualified individuals is equal to one hundred thirty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (9) The income level for workers with disabilities is two hundred twenty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (10) The income level for children with disabilities is two hundred fifty percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

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 fifteen dollars to meet maintenance needs during all full calendar months in which the individual resides in the nursing facility. The department shall yearly adjust the maintenance

needs payment based on the consumer price index. 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 fifteen dollar income level is effective in the month of entry, during full calendar months, and in the month of discharge. The department shall yearly adjust the maintenance needs payment based on the consumer price index. 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 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.

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