CHAPTER 75-02-10
AID TO VULNERABLE AGED, BLIND, AND DISABLED INDIVIDUALS

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75-02-10-01. Definitions.

The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-24.5. In addition, for purposes of this chapter, unless the context requires otherwise:

1. "Activities of daily living" means bathing, dressing, toileting, transferring, eating, bed mobility, medication management, and personal hygiene.

2. "Basic care facility" means a residence, not licensed under North Dakota Century Code chapter 23-16 by the department, that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular twenty-four-hour medical or nursing services and:

   a. Makes response staff available at all times to meet the twenty-four-hour per day scheduled and unscheduled needs of the individual; or

   b. Is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility.

3. "Countable income" means gross income reduced by:

   a. The cost of guardianship or conservatorship fees actually charged, but no more than five percent of monthly gross income;

   b. The cost of the medicare premium, but only if the individual is ineligible for medicare cost-sharing benefits described in subdivision a of subsection 19 of section 75-02-02.1-01 as a qualified medicare beneficiary or a special low-income medicare beneficiary;

   c. Court-ordered child support payments actually paid on behalf of a minor child who is not a member of the individual's medicaid unit; and

   d. For individuals receiving benefits provided under subsection 1 or 2 of section 75-02-10-02:

      (1) In the month the individual enters the facility, the medically needy income level for a family of the size of the family in which the individual was a member at the beginning of the month; and

      (2) Sixty-five dollars plus one-half of the remaining monthly gross earned income.

4. "Gross income" includes any income at the disposal of an applicant, recipient, or responsible relative; any income with respect to which an applicant, recipient, or responsible relative has a legal interest in a liquidated sum and the legal ability to make the sum available for support or maintenance; or any income an applicant, recipient, or responsible relative has the lawful power to make available or to cause to be made available. It includes any income that would be applied in determining eligibility for benefits under chapter 75-02-02.1; any income, except occasional small gifts, that would be disregarded in determining eligibility for benefits under chapter 75-02-02.1; annuities, pensions, retirement, and disability benefits to which an applicant or recipient, or spouse of an applicant or recipient, may be entitled, including veterans' compensation and pensions of any type, old-age survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.

5. "Institution" means a facility licensed under North Dakota Century Code chapter 23-09.3.

6. "Instrumental activities of daily living" means activities to support independent living, including housekeeping, shopping, laundry, transportation, and meal preparation.

7. "Necessary benefits" means those benefits:

   a. Provided under this chapter;

   b. Identified by the department, or a county agency under the direction and supervision of the department, as appropriate to meet the needs of an applicant or recipient; and

   c. Which, when provided in coordination and conjunction with benefits available from any other source, represent the means least costly to the department of meeting the needs of the applicant or recipient.

History: Effective May 1, 1995; amended effective January 1, 1997; June 1, 2002; April 1, 2012.
General Authority: NDCC 50-06-16, 50-24.5-02(8)
Law Implemented: NDCC 50-24.5

75-02-10-02. Benefits available under this chapter.

To the extent that an eligible individual lacks income sufficient to meet the cost of necessary benefits, the following benefits are available:

1. Supplementation of the income of users of basic care services;

2. Case management;

3. Other services the department determines to be essential and appropriate to sustain an individual in the individual's home and community, and to delay or prevent institutional care; and

4. Room and board, which is limited to the rate set for services in that facility by the department.

History: Effective May 1, 1995; amended effective June 1, 2002; April 1, 2012.
General Authority: NDCC 50-06-16, 50-24.5-02(8)
Law Implemented: NDCC 50-24.5

75-02-10-03. Application and redetermination.

1. a. All individuals wishing to make application for benefits under this chapter must have the opportunity to do so, without delay.

   b. An application is a request made by an individual desiring benefits under this chapter, or by a proper individual seeking such benefits on behalf of another individual, to a county

agency. A proper individual means any individual of sufficient maturity and understanding to act responsibly on behalf of the applicant.

c. An application consists of an application for medicaid benefits and an application for services, which includes a functional assessment.

d. Application forms must be signed by the applicant if the applicant is physically and mentally able to do so. An application made on behalf of an applicant adjudged incompetent by a court must be signed by the guardian.

e. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and recipients must be furnished to all who require it.

f. The date of application is the date an application, signed by an appropriate individual, is received at a county agency.

2. A redetermination must be made within thirty days after a county agency has received information indicating a possible change in eligibility status, when a recipient enters a nursing facility, and, in any event, no less than annually. A recipient or recipient's guardian has the same responsibility to furnish information during a redetermination as an applicant or an applicant's guardian has during an application.

History: Effective May 1, 1995; amended effective June 1, 2002.
General Authority: NDCC 50-06-16, 50-24.5-02(8)
Law Implemented: NDCC 50-24.5

75-02-10-04. Applicant's or guardian's duty to establish eligibility.

The applicant or guardian of the applicant shall provide information sufficient to establish eligibility for benefits, including a social security number and proof of age, identity, residence, blindness, disability, functional limitation, financial eligibility, and such other information as may be required by this chapter for each month for which benefits are sought.

History: Effective May 1, 1995.
General Authority: NDCC 50-06-16, 50-24.5-02(8)
Law Implemented: NDCC 50-24.5

75-02-10-05. Eligibility criteria.

An individual may receive necessary benefits under this chapter if the individual:

1. Is a resident of this state;

2. Is:

   a. Sixty-five years of age or older; or

   b. Eighteen years of age or older and disabled or blind;

3. Has applied for and been found eligible for medicaid benefits;

4. Has countable income which, when reduced by the cost of necessary benefits provided under:

   a. Subsection 1 or 2 of section 75-02-10-02, does not exceed the personal needs allowance established pursuant to legislative appropriation; or

b. Section 75-02-10-02, except subsection 1 or 2, does not exceed an amount equal to the cash benefit under title XVI of the Social Security Act [42 U.S.C. 1381, et seq.], which the individual would receive if the individual had no income or assets;

5. Has not made an assignment or transfer of property for the purpose of rendering the individual eligible for assistance under this chapter; and

6. Based on a functional assessment made in accordance with this chapter, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating; and

   a. Has health, welfare, or safety needs, including a need for supervision or a structured environment, which require care in a licensed adult family foster care home or a licensed basic care facility; or

   b. Is impaired in three of the following four instrumental activities of daily living:

      (1) Preparing meals;

      (2) Doing housework;

      (3) Taking medicine; and

      (4) Doing laundry.

History: Effective May 1, 1995; amended effective June 1, 2002; January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.5-02(8)
Law Implemented: NDCC 50-24.5

75-02-10-06. Functional assessment.

1. For purposes of this section, "functional assessment" means an instrument used to record basic demographic and medical information about an individual, including age, date of birth, spoken language, marital status, individuals residing with, emergency contacts, medical resources, health care coverage, and source and reason for referral; and to secure measurable information regarding:

   a. Physical health;

   b. Cognitive and emotional functioning;

   c. Activities of daily living;

   d. Instrumental activities of daily living;

   e. Informal supports;

   f. Need for twenty-four-hour supervision;

   g. Social participation;

   h. Physical environment;

   i. Financial resources; and

   j. Other information about the individual's condition not recorded elsewhere.

2. An initial functional assessment, using an appropriate form determined by the department, must be completed as a part of the application for benefits under this chapter. An update of

the individual's functional assessment must be completed in conjunction with each medicaid eligibility redetermination that is anticipated to be completed at least six months after the initial functional assessment.

3. A functional assessment must include an interview with the individual in the home where the individual resides.

History: Effective May 1, 1995; amended effective June 1, 2002.
General Authority: NDCC 50-06-16, 50-24.5-02(8)
Law Implemented: NDCC 50-24.5

75-02-10-06.1. Adaptive assessment services.

Repealed effective April 1, 2012.

75-02-10-07. Decision and notice.

1. A decision as to eligibility will be made promptly on applications, usually within forty-five days, except in unusual circumstances.

2. A decision as to eligibility on a redetermination will be made within thirty days.

3. Immediately upon an eligibility determination, whether eligibility can be found, ineligibility can be found, or eligibility cannot be determined, applicants or recipients must be notified by the county agency. A notice must be sent in advance of any decision terminating or reducing benefits under this chapter.

4. Notice must be timely and adequate, as provided under chapter 75-01-03.

5. Errors made by public officials and delays caused by the actions of public officials do not create eligibility and may not form the basis for the award of any benefit to an adversely affected applicant or recipient who would not otherwise be eligible to receive that benefit.

History: Effective May 1, 1995.
General Authority: NDCC 50-06-16, 50-24.5-02(8)
Law Implemented: NDCC 50-24.5

75-02-10-08. Disqualifying transfers.

1. a. Except as provided in subsection 2, an individual is ineligible for benefits under this chapter if the individual or the spouse of the individual disposes of assets or income for less than fair market value on or after the look-back date specified in subdivision b.

   b. The look-back date specified in this subdivision is a date that is thirty-six months, or, in the case of payments from a trust or portions of a trust that are treated as income or assets disposed of by an individual, sixty months, before the date on which the individual has applied for benefits under this chapter.

2. An individual is not ineligible for benefits under this chapter by reason of subsection 1 to the extent that:

   a. The assets transferred were a home, and title to the home was transferred to:

      (1) The individual's spouse; or

      (2) The individual's son or daughter who is under age twenty-one, blind, or disabled;

   b. The income or assets:

(1) Were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse; or

(2) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;

c. The individual makes a satisfactory showing that:

(1) The individual intended to dispose of the income or assets, either at fair market value or other valuable consideration, and the individual had an objectively reasonable belief that fair market value or its equivalent was received;

(2) The income or assets were transferred exclusively for a purpose other than to qualify for medicaid or benefits under this chapter; or

(3) For periods after the return, all income or assets transferred for less than fair market value have been returned to the individual; and

d. The individual shows that the total cumulative uncompensated value of all income and assets transferred for less than fair market value by the individual or the individual's spouse is less than the actual cost of services of a type provided as benefits under this chapter, provided after the transfer was made, for which payment has not been made and which are not subject to payment by any third party, provided that such a showing may only be made with respect to periods when the individual is otherwise eligible for benefits under this chapter.

3. There is a presumption that a transfer for less than fair market value was made for purposes, including the purpose of qualifying for benefits under this chapter:

a. In any case in which the individual's assets and the assets of the individual's spouse remaining after the transfer produce income which, when added to other income available to the individual and to the individual's spouse totals an amount insufficient to meet all living expenses and medical costs reasonably anticipated to be incurred by the individual and by the individual's spouse in the month of transfer and in the thirty-five months, or fifty-nine months in the case of a transfer to a trust, following the month of transfer;

b. In any case in which an inquiry about medicaid benefits or benefits under this chapter was made, by or on behalf of the individual to any other individual, before the date of the transfer;

c. In any case in which the individual or the individual's spouse was an applicant for or recipient of medicaid or benefits under this chapter before the date of transfer;

d. In any case in which a transfer is made by or on behalf of the individual's spouse, if the value of the transferred income or asset, when added to the value of the individual's other assets, would exceed asset limits; or

e. In any case in which the transfer was made, on behalf of the individual or the individual's spouse, by a guardian, conservator, or attorney in fact, to the guardian, conservator, or attorney in fact or to any spouse, child, grandchild, brother, sister, niece, nephew, parent, or grandparent, by birth, adoption, or marriage, of the guardian, conservator, or attorney in fact.

4. An applicant or recipient who claims that income or assets were transferred exclusively for a purpose other than to qualify for medicaid or benefits under this chapter must show that a desire to receive medicaid or benefits under this chapter played no part in the decision to

make the transfer and must rebut any presumption arising under subsection 3. The fact, if it is a fact, that the individual would be eligible for medicaid or benefits under this chapter had the individual's spouse not transferred income or assets for less than fair market value, is not evidence that the income or assets were transferred exclusively for a purpose other than to qualify for medicaid or benefits under this chapter.

5. If the transferee of any income or asset is the child, grandchild, brother, sister, niece, nephew, parent, or grandparent of the individual or the individual's spouse, services or assistance furnished by the transferee to the individual or the individual's spouse may not be treated as consideration for the transferred income or asset unless the transfer is made pursuant to a valid written contract entered into prior to rendering the services.

6. A transfer is complete when the individual, or the individual's spouse, making the transfer has no lawful means of undoing the transfer or requiring a restoration of ownership.

7. For purposes of this section:

   a. Fair market value is received:

      (1) In the case of an asset not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, when one hundred percent of apparent fair market value is received;

      (2) In the case of an asset subject to reasonable dispute concerning its value, when seventy-five percent of estimated fair market value is received; and

      (3) In the case of income, when one hundred percent of apparent fair market value is received.

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

8. This section is applicable to all transfers whenever made.

History: Effective May 1, 1995; amended effective June 1, 2002.
General Authority: NDCC 50-06-16, 50-24.5-02(8)
Law Implemented: NDCC 50-24.5

75-02-10-09. Residency.

For purposes of this chapter:

1. An individual is a resident of this state if:

   a. The individual is not living in an institution and is living in this state:

      (1) With intent to remain in this state permanently or for an indefinite period; or

      (2) Without intent if the individual is incapable of stating intent.

   b. The individual is living in an institution outside this state and was receiving a benefit under North Dakota Century Code chapter 50-01 immediately before January 1, 1995.

   c. The individual was placed in an out-of-state institution by a county agency or the department while the individual was incapable of indicating intent.

   d. The individual is living in an in-state institution, has lived in that institution for at least thirty days, and was not placed in that institution by another state. An individual placed in

an institution by another state is a resident of the state making the placement. Any action beyond providing information to the individual and the individual's family constitutes arranging or making a state placement. The following actions do not constitute state placement:

(1) Providing basic information about this chapter and information about the availability of this chapter; or

(2) Assisting an individual in locating an institution in this state, if the individual is capable of indicating intent and independently decides to move.

2. An individual who is a resident of this state is a resident of the county in which the individual is a resident for purposes of receipt of benefits under North Dakota Century Code chapter 50-01.

History: Effective May 1, 1995; amended effective June 1, 2002.
General Authority: NDCC 50-06-16, 50-24.5-02(8)
Law Implemented: NDCC 50-24.5

75-02-10-10. County administration.

1. Except as provided in subsection 2, the county agency of the county where the applicant or recipient is living must be responsible for the administration of the program with respect to that applicant or recipient.

2. When a recipient moves from one county to another, the county agency in the outgoing county continues to be responsible for the administration of the program with respect to that recipient until the last day of the month after the month in which the recipient moved to the incoming county.

History: Effective January 1, 1996; amended effective January 1, 1997; June 1, 2002.
General Authority: NDCC 50-06-16, 50-24.5-02(8)
Law Implemented: NDCC 50-24.5