CHAPTER 75-02-02.1
ELIGIBILITY FOR MEDICAID

75-02-02.1-29	Forms of Asset Ownership
75-02-02.1-30	Contractual Rights to Receive Money Payments
75-02-02.1-30.1	Annuities [Repealed]
75-02-02.1-31	Trusts
75-02-02.1-31.1	Trusts Established by Applicants, Recipients, or Their Spouses After August 10, 1993
75-02-02.1-32	Valuation of Assets
75-02-02.1-33	Disqualifying Transfers Made on or Before August 10, 1993 [Repealed]
75-02-02.1-33.1	Disqualifying Transfers Made Before February 8, 2006
75-02-02.1-33.2	Disqualifying Transfers Made on or After February 8, 2006
75-02-02.1-34	Income Considerations
75-02-02.1-34.1	MAGI-Based Methodology
75-02-02.1-34.2	Income Conversion for Individuals Subject to a MAGI-Based Methodology
75-02-02.1-34.3	Reasonable Compatibility of Income for Individuals Subject to a MAGI-Based Methodology
75-02-02.1-35	Budgeting [Repealed]
75-02-02.1-36	Disregarded Income [Repealed]
75-02-02.1-37	Unearned Income
75-02-02.1-37.1	Unearned Income for Individuals Subject to a MAGI-Based Methodology
75-02-02.1-38	Earned Income
75-02-02.1-38.1	Post-Eligibility Treatment of Income
75-02-02.1-38.2	Disregarded Income
75-02-02.1-38.3	Disregarded Income for Certain Individuals Subject to a MAGI-Based Methodology
75-02-02.1-38.4	Earned Income for Individuals Subject to a MAGI-Based Methodology
75-02-02.1-39	Income Deductions
75-02-02.1-39.1	Income Deductions for Individuals Subject to a MAGI-Based Methodology
75-02-02.1-40	Income Levels
75-02-02.1-41	Deeming of Income
75-02-02.1-41.1	Recipient Liability
75-02-02.1-41.2	Budgeting
75-02-02.1-42	Eligibility Under 1972 State Plan

SECTION 1. Section 75-02-02.1-13 is amended as follows:

75-02-02.1-13. Social security numbers.

A social security number must be furnished as a condition of eligibility, for each individual for whom medicaid benefits are sought, except for:

1. A newborn child who is eligible during the birth month, for sixty days after the date of birth beginning on the date of birth and for the remaining days of the month in which the sixtieth day falls or, if the newborn is continuously eligible, for the remaining days of the newborn's first eligibility period;

2. Coverage of emergency services provided to illegal aliens; and

3. Individuals who have applied for, but not yet received, social security numbers.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; March 4, 2016.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01

SECTION 2. Section 75-02-02.1-19 is amended as follows:

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

1. An inmate of a public institution is not eligible for medicaid unless the individual is:

   a. ~~over~~ Over age sixty-five and a patient in an institution for mental diseases ~~or is under~~;

   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~~, and is a patient in an institution for mental diseases, and receiving inpatient psychiatric services consistent with the requirements of 42 CFR 440.160 and 42 CFR part 441, subpart D~~; 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.

~~1~~2. The period of ineligibility under this section begins the day after the day of entry and ends the day before the day of discharge of the individual from such an institution.

~~2~~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.

~~3~~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.

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 ~~435.1009~~ 435.1010;

(2) ~~A nursing facility as defined in 42 U.S.C. 1396r(a)~~ An intermediate care facility as defined in 42 CFR 440.140 and 440.150; ~~or~~

(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; March 4, 2016.
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 3. Section 75-02-02.1-24.4 is created as follows:

75-02-02.1-24.4. Hospital presumptive eligibility.

1. For purposes of this section, "qualified hospital" means a hospital or hospital-owned physician practice or clinic that:

   a. Is a medicaid provider;

   b. Notifies the department of its election to make presumptive eligibility determinations; and

   c. Has been approved by the department to make presumptive eligibility determinations under this section.

2. The department may provide medicaid benefits during a period of presumptive eligibility, prior to a determination of medicaid eligibility, to the following individuals:

   a. Children through the month they turn nineteen years of age;

   b. Former foster care children through the month they turn twenty-six years of age, who were enrolled in medicaid and were in foster care in this state when they turned eighteen years old;

   c. Parents and caretaker relatives of children through the month the children turn nineteen years of age;

   d. Pregnant women; and

   e. Medicaid expansion group ages nineteen through sixty-four, from the month following the month they turn nineteen years of age through the month prior to the month they turn sixty-five years of age.

3. An applicant shall apply for presumptive eligibility coverage at a qualified hospital. Applicants do not need to be hospitalized. Presumptive eligibility determinations shall be made only by qualified hospital employees that are trained and certified to determine presumptive eligibility.

4. The application for presumptive eligibility must be signed by the applicant, an authorized representative, or if the applicant is incompetent or incapacitated and has not designated an authorized representative, someone acting responsibly for the applicant.

5. The presumptive eligibility determination is based on the information reported by the applicant and verification is not required. The applicant shall provide all information the qualified hospital needs to determine presumptive eligibility.

6. Applicants shall attest to each of the following for each household member requesting presumptive eligibility:

   a. United States citizen, United States national, or eligible immigrant status;

   b. North Dakota residency;

   c. Gross income amount;

   d. Whether or not the applicant is currently enrolled in medicaid; and

   e. That the applicant does not have any other health insurance coverage that meets minimum essential coverage, as defined in section 5000A(f) of subtitle D of the Internal Revenue Code, as added by section 1401 of the Affordable Care Act, and implementing regulations.

7. MAGI–based methodology must be used to determine presumptive eligibility.

8. The presumptive eligibility period begins on the day the presumptive eligibility determination is made and ends the earlier of:

   a. If a medicaid application has been submitted, the day on which a decision is made on that application; or

   b. If a medicaid application has not been submitted, the last day of the month following the month the presumptive eligibility determination was made.

9. Individuals, excluding pregnant women, are eligible for one period of presumptive eligibility per calendar year. Pregnant women are eligible for presumptive eligibility coverage once per pregnancy.

10. Presumptive eligibility coverage does not include the three-month prior period.

11. An individual may not appeal presumptive eligibility determinations.

12. Qualified hospitals shall:

a. Make presumptive eligibility determinations for applicants without medicaid or other health care coverage;

b. Assure timely access to care while the presumptive eligibility determination is being made;

c. Ensure that all employees assisting in and completing presumptive eligibility determinations follow department regulations and policies for presumptive eligibility determinations;

d. Provide the applicant with notice of the presumptive eligibility determination;

e. Inform applicants at the time of the presumptive eligibility determination that they must submit an application for medicaid to obtain medicaid coverage beyond the presumptive eligibility period;

f. Assist applicants in completing and submitting an application for medicaid and children's health insurance program or subsidized insurance through the federally facilitated marketplace;

g. Meet the performance standards as set forth in subsection 13;

h. Ensure that all employees assisting in and completing presumptive eligibility applications and determinations attend all presumptive eligibility policy training provided by the department and stay current with changes, including the following:

(1) Participate in all in-person, telephone conference, webinar, and computer-based presumptive eligibility training sessions; and

(2) Read all information provided regarding updates and changes to presumptive eligibility policies and regulations; and

i. Provide verification to the department upon request that all employees assisting in and completing presumptive eligibility applications and determinations have completed the training set forth in subdivision h.

13. Qualified hospitals shall meet the following performance standards:

a. Ninety-five percent of applicants are not enrolled in medicaid at the time the presumptive eligibility determination is made;

b. Ninety percent of applicants determined presumptively eligible by the qualified hospital submit a medicaid application during the presumptive eligibility period; and

c. Eighty-five percent of applicants that are determined presumptively eligible and submit a medicaid application during the presumptive eligibility period are determined eligible for medicaid.

14. Qualified hospitals that do not meet the performance standards set forth in subsection 13 for three consecutive months are required to participate in additional training or other reasonable corrective action measures, or both, provided by the department. If the qualified hospital continues to fail to meet the performance standards for an additional two consecutive months after the training or other corrective action measures, the department will disqualify the qualified hospital.

History: Effective March 4, 2016.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-37; 42 USC 1396a(e)

SECTION 4. Section 75-02-02.1-34.2 is created as follows:

75-02-02.1-34.2. Income conversion for individuals subject to a MAGI-based methodology.

1. For purposes of this section, "biweekly" means every two weeks.

2. Income received either weekly or biweekly must be converted to monthly income in determining the household's countable income under MAGI-based methodology. Income must be received each week for those paid weekly, or every other week for those paid biweekly, for income to be converted.

3. Income conversion is not done for the three-month prior period. Actual income received in those months is counted in determining eligibility.

History: Effective March 4, 2016.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-37; 42 USC 1396a(e)

SECTION 5. Section 75-02-02.1-34.3 is created as follows:

75-02-02.1-34.3. Reasonable compatibility of income for individuals subject to a MAGI-based methodology.

1. For purposes of this section, "reasonable compatibility" refers to an allowable difference or discrepancy between the income reported by an applicant or recipient and the income reported by an electronic data source.

2. The department may request additional information or documentation from an applicant or recipient only if verification cannot be obtained from an electronic data source or information obtained from the electronic data source is not reasonably compatible with information provided by the applicant or recipient.

3. The most recent verification of income from an electronic data source is reasonably compatible if it results in the same eligibility outcome as information reported by the applicant or recipient.

4. Any income verification information requested and received by the department as a result of the application or review of other economic assistance programs must be used to determine eligibility for medicaid and children's health insurance program and reasonable compatibility does not need to be determined.

5. If an applicant or recipient has multiple types of income and income from different sources, each type of income and each source of income must be compared for reasonable compatibility, and the highest amount from each type and source must be used to determine eligibility.

6. When income verification is received quarterly, the income must be converted to a monthly amount to determine reasonable compatibility.

7. For purposes of determining reasonable compatibility for earned income, other than self-employment, and unearned income:

    a. When both the electronic data source and the applicant or recipient report total countable income that is below the budget unit income level, the two data sources are considered to be reasonably compatible and further verification may not be requested. The higher of the two amounts will be used to determine eligibility.

    b. When both the electronic data source and the applicant or recipient report total countable income that is above the budget unit income level, the two data sources are considered to be reasonably compatible and further verification may not be requested.

    c. When verification from the electronic data source is above the budget unit income level, but the information reported by the applicant or recipient is less than the budget unit income level, or

when verification from the electronic data source is below the budget unit income level but the information reported by the applicant or recipient is higher than the budget unit income level, the two data sources are not reasonably compatible and further verification is required to determine eligibility.

d. When the electronic data source does not provide verification of income from the same source and type as the applicant or recipient reported, the two data sources are not reasonably compatible and further verification is required in order to determine eligibility.

8. Reasonable compatibility is not determined for self-employment income.

History: Effective March 4, 2016.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-37; 42 USC 1396a(e)

CHAPTER 75-02-02.2
CHILDREN'S HEALTH INSURANCE PROGRAM

SECTION 6. Subsection 3 of section 75-02-02.2-02 is amended as follows:

75-02-02.2-02. Application, redetermination, and eligibility periods.

3. **Eligibility periods.**

   a. Eligibility for the children's health insurance program begins on the first day of the month following the month in which the eligibility determination is made.

   b. The coverage period ends at the earliest of:

      (1) The end of the twelve-month eligibility period;

(2) The end of the month in which the recipient turns age nineteen;

(3) The end of the month prior to the first full month for which the recipient has obtained other creditable health insurance coverage;

(4) The end of the month in which the recipient leaves the household;

(5) The end of the month in which the recipient loses residency in the state; ~~or~~

(6) When the recipient's whereabouts are unknown and mail directed to the recipient is returned by the post office indicating no known forwarding address; or

(7) The end of the month in which the child is determined eligible for medicaid other than medically needy coverage.

History: Effective October 1, 1999; amended effective August 1, 2005; January 1, 2010; March 4, 2016.
General Authority: NDCC 50-29
Law Implemented: NDCC 50-29-02; 42 USC 1397aa et seq.

SECTION 7. Subsection 8 of section 75-02-02.2-10 is amended as follows:

75-02-02.2-10. Eligibility criteria.

8. A social security number must be furnished as a condition of eligibility for each child for whom benefits are sought except for:

   a. A newborn child who is eligible during the birth month, beginning on the date of birth and for the remaining days of the current eligibility period; and

   b. Children who have applied for, but not yet received, social security numbers.

History: Effective October 1, 1999; amended effective April 1, 2002; August 1, 2005; January 1, 2010; January 1, 2014; March 4, 2016.
General Authority: NDCC 50-29
Law Implemented: NDCC 50-24.1-37, 50-29; 42 USC 1397aa et seq.

SECTION 8. Section 75-02-02.2-13.3 is created as follows:

75-02-02.2-13.3. Reasonable compatibility of income for individuals subject to a MAGI-based methodology.

1. For purposes of this section, "reasonable compatibility" refers to an allowable difference or discrepancy between the income reported by an applicant or recipient and the income reported by an electronic data source.

2. The department may request additional information or documentation from an applicant or recipient only if verification cannot be obtained from an electronic data source or information obtained from the electronic data source is not reasonably compatible with information provided by the applicant or recipient.

3. The most recent verification of income from an electronic data source is reasonably compatible if it results in the same eligibility outcome as information reported by the applicant or recipient.

4. Any income verification information requested and received by the department as a result of the application or review of other economic assistance programs must be used to determine eligibility for medicaid and children's health insurance program and reasonable compatibility does not need to be determined.

5. If an applicant or recipient has multiple types of income and income from different sources, each type of income and each source of income must be compared for reasonable compatibility, and the highest amount from each type and source must be used to determine eligibility.

6. When income verification is received quarterly, the income must be converted to a monthly amount to determine reasonable compatibility.

7. For purposes of determining reasonable compatibility for earned income, other than self-employment, and unearned income:

    a. When both the electronic data source and the applicant or recipient report total countable income that is below the budget unit income level, the two data sources are considered to be reasonably compatible and further verification may not be requested. The higher of the two amounts will be used to determine eligibility.

    b. When both the electronic data source and the applicant or recipient report total countable income that is above the budget unit income level, the two data sources are considered to be reasonably compatible and further verification may not be requested.

c. When verification from the electronic data source is above the budget unit income level, but the information reported by the applicant or recipient is less than the budget unit income level, or when verification from the electronic data source is below the budget unit income level but the information reported by the applicant or recipient is higher than the budget unit income level, the two data sources are not reasonably compatible and further verification is required to determine eligibility.

d. When the electronic data source does not provide verification of income from the same source and type as the applicant or recipient reported, the two data sources are not reasonably compatible and further verification is required in order to determine eligibility.

8. Reasonable compatibility is not determined for self-employment income.

History: Effective March 4, 2016.
General Authority: NDCC 50-29
Law Implemented: NDCC 50-29-01; 42 USC 1396a(e), 42 USC 1397aa et seq.