

CHAPTER 75-03-23

PROVISION OF HOME AND COMMUNITY-BASED SERVICES UNDER THE SERVICE PAYMENTS FOR ELDERLY AND DISABLED PROGRAM AND THE MEDICAID WAIVER FOR THE AGED AND DISABLED PROGRAM

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SECTION 1. Section 75-03-23-01 is amended as follows:

75-03-23-01. Definitions.

The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-06.2. In addition, as used in this chapter:

1. "Activities of daily living" means the daily self-care personal activities that include bathing, dressing or undressing, eating or feeding, toileting, continence, transferring in and out of bed or chair or on and off the toilet, and mobility inside the home.
2. "Adaptive assessment" means an evaluation to identify adaptive devices, equipment, or modifications that enhance the independence and functional capabilities of an individual who may otherwise be unable to remain in the individual's home.
3. "Aged" means sixty-five years of age or older.

4. "Client" means an individual who meets the eligibility requirements and is receiving services reimbursed under North Dakota Century Code chapter 50-06.2 or this chapter.
5. "Congenital disability" means a disability that exists at birth or shortly thereafter, and is not attributable to a diagnosis of either mental retardation or a closely related condition of mental retardation.
6. "Department" means the North Dakota department of human services.
7. "Designee" means a person that enrolls as a qualified service provider to provide case management services for the Medicaid waiver program.
8. "Disability due to trauma" means a disability that results from an injury or assault to the body by an external force.
9. "Disability that is acquired" means a disability that results from an assault that occurs internally within the body.
10. "Disabled" means under age sixty-five with a congenital disability, a disability due to trauma, or a disability that is acquired.
11. "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;
 - j. Adaptive equipment;
 - k. Environmental modification; and
 - l. Other information about the individual's condition not recorded elsewhere.

12. "Functional impairment" means the inability to perform, either by oneself or with adaptive aids or with human help, specific activities of daily living or instrumental activities of daily living.
13. "Home and community-based services" means the array of services under the SPED program and Medicaid waiver defined in the comprehensive human service plan and the other services the department determines to be essential and appropriate to sustain individuals in their homes and in their communities, and to delay or prevent institutional care.
14. "Institution" means a hospital, swing bed facility, nursing facility, or other provider-operated living arrangement receiving prior approval from the department.
15. "Instrumental activities of daily living" means activities requiring cognitive ability or physical ability, or both. Instrumental activities of daily living include preparing meals, shopping, managing money, housework, laundry, taking medicine, transportation, using the telephone, and mobility outside the home.
16. "Medicaid waiver program" means the federal Medicaid waiver for the aged and disabled program, as defined in subpart G of 42 CFR 441, under which the department is authorized to provide specific home and community-based services to aged and disabled persons who are at risk of being institutionalized.
17. "Natural supports" means an informal, unpaid caregiver that provides care to an applicant or client.
18. "Sanction" means an action taken by the department against a qualified service provider for noncompliance with a federal or state law, rule, or policy, or with the provisions of the Medicaid provider agreement.
- ~~18-19.~~ "Service fee" means the amount a SPED client is required to pay toward the cost of the client's SPED services.
- ~~19-20.~~ "Service payment" means the payment issued by the department to a qualified service provider for the provision of authorized home and community-based services to eligible aged and disabled persons.
- ~~20-21.~~ "SPED program" means the service payments for elderly and disabled program, a state program which authorizes the department to reimburse qualified service providers for the provision of covered home and community-based services to eligible aged and disabled individuals.
- ~~21-22.~~ "SPED program pool" means the list maintained by the department which contains the names of clients for whom SPED program funding is available when the clients' names are transferred from the SPED program pool to SPED program active status.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; January 1, 2018; January 1, 2020; July 1, 2020; January 1, 2022.

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

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

SECTION 2. Section 75-03-23-02 is amended as follows:

75-03-23-02. Eligibility criteria.

1. An applicant must be entered in the SPED program pool before service payments may be authorized. The department shall allow entry into the SPED program pool to occur:
 - a. When the department's designee submits a form in the manner prescribed by the department; or
 - b. When the applicant meets the special circumstances provided in subsection 4, 5, or 6 of section 75-03-23-03.
2. An applicant's resources may not exceed fifty thousand dollars for the applicant to be eligible for services under the SPED program. For purposes of this section, resources are cash or similar assets, except recovery rebates authorized by section 2201 of the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 [Pub. L. 116-136], that can be readily converted to cash and include residences owned by the applicant other than the applicant's primary residence.
3. An applicant eighteen years of age or older is eligible for the SPED program pool if:
 - a. The applicant has a functional impairment as specified by the department in policies and procedures to indicate applicant eligibility;
 - b. The applicant's functional impairment has lasted, or can be expected to last, three months or longer;
 - c. The applicant's functional impairment is not the result of a mental illness or a condition of mental retardation, or a closely related condition;
 - d. The applicant is living in North Dakota in a housing arrangement commonly considered a private residence and not in an institution;
 - e. The applicant is not eligible for services under the Medicaid waiver program or the Medicaid state plan option of personal care services unless the applicant's estimated monthly benefits under this chapter, excluding the cost of case management, are between the current medically needy income level for a household of one plus the disregard established in North Dakota Century Code section 50-24.1-02.3, and the lowest level of the fee schedule for services under

North Dakota Century Code chapter 50-06.2, or unless the individual is receiving a service that is not available under Medicaid or the Medicaid waiver;

- f. The applicant would receive one or more of the covered services under department policies and procedures for the specific service;
 - g. The applicant agrees to the plan of care developed for the provision of home and community-based services;
 - h. The applicant is not responsible for one hundred percent of the cost of the covered service provided, under the SPED program sliding fee scales based on family size and income; and
 - i. The applicant has not made a disqualifying transfer of assets.
4. An applicant under eighteen years of age is eligible for the SPED program pool if the applicant is determined to need nursing facility level of care as provided for in section 75-02-02-09 and the applicant's care need is not the result of a mental illness or the condition of mental retardation, or a closely related condition.
5. An applicant under eighteen years of age:
- a. Must meet the eligibility requirements of subsections 3 and 4.
 - b. Is not eligible to receive personal care services under this chapter.
 - c. Is not eligible for service payments unless:
 - (1) Care provided to the applicant by the applicant's parent or the applicant's spouse is provided under family home care.
 - (2) The applicant is unable to regularly attend school or is severely limited in the amount of time the applicant is able to attend school.
6. An applicant must be capable of directing self-care or must have a legally responsible party to act on the applicant's behalf.
7. An applicant is not eligible for service payments if the care provided is court-ordered.
8. An applicant is eligible to receive covered services reimbursed under North Dakota Century Code chapter 50-06.2 or this chapter even if the applicant has natural supports.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2018; May 19, 2020; January 1, 2022.

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

Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5), 50-06.2-04(3)

SECTION 3. Section 75-03-23-03 is amended as follows:

75-03-23-03. Eligibility determination - Authorization of services.

1. A person transferred to SPED program active status from the SPED program pool shall continue to meet the eligibility criteria of section 75-03-23-02 in order to remain eligible for services funded under the SPED program.
2. The department is responsible for:
 - a. Verifying that the person transferred to active status continues to meet the eligibility criteria for placement into the SPED program pool;
 - b. Developing a care plan;
 - c. Authorizing covered services in accordance with department policies and procedures;
 - d. Verifying the financial eligibility criteria in relation to income, assets, and deductions; and
 - e. Assuring that other potential federal and third-party funding sources for similar services are sought first.
3. A recipient of services under the Medicaid waiver program, who becomes ineligible for the Medicaid waiver program because evaluation shows that the recipient no longer requires a nursing facility level of care, does not have to go through the SPED program pool to receive services through the SPED program provided the recipient meets all eligibility criteria in section 75-03-23-02.
4. A recipient of services under the Medicaid personal care service option, who becomes ineligible for services under the Medicaid personal care service option, does not have to go through the SPED program pool to receive services through the SPED program provided the recipient meets all eligibility criteria in section 75-03-23-02.
5. A recipient of services under the expanded service payments for elderly and disabled program, who becomes ineligible for services under the expanded service payments for elderly and disabled program, does not have to go through the SPED program pool to receive services through the SPED program provided the recipient meets all eligibility criteria in section 75-03-23-02.
6. An individual who is discharged from an inpatient hospital stay, skilled nursing facility, swing-bed facility, long-term care facility, or basic care facility or who has been off of the SPED program for fewer than sixty~~ninety~~

days, does not have to go through the SPED program pool to receive services through the SPED program provided the individual meets all eligibility criteria in section 75-03-23-02.

History: Effective June 1, 1995; amended effective January 1, 2009; July 1, 2020; January 1, 2022.

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

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

SECTION 4. Section 75-03-23-05 is amended as follows:

75-03-23-05. Services covered under the SPED program - Programmatic criteria.

Room and board costs may not be paid in the SPED service payment. The following categories of services are covered under the SPED program and may be provided to a client:

1. The department may provide adult day care services to a client:
 - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
 - b. Who is able to participate in group activities; and
 - c. Who, if the client does not live alone, has a primary caregiver who will benefit from the temporary relief of care giving.
2. The department may provide adult foster care using a licensed adult foster care provider to a client eighteen years of age or older:
 - a. Who resides in a licensed adult foster care home;
 - b. Who requires care or supervision;
 - c. Who would benefit from a family or shared living environment; and
 - d. Whose required care does not exceed the capability of the foster care provider.
3. The department may provide chore services to a client for one-time, intermittent, or occasional activities which would enable the client to remain in the home. Activities such as heavy housework and periodic cleaning, professional extermination, snow removal, and emergency response systems may be provided. Clients receiving emergency response services must be cognitively and physically capable of activating the emergency response system. The activity must be the responsibility of the client and not the responsibility of the landlord.
4. The department may provide environmental modification to a client:

- a. Who owns or rents the home to be modified. If the home is rented the property owner must approve the modification;
 - b. When the modification will enable the client to complete the client's own personal care or to receive care and allow the client to safely stay in the home; and
 - c. ~~When no alternative community resource is available; and~~
 - d. ~~—~~Limited to labor and materials for installing safety rails.
5. a. The department may provide extended personal care services to a client who:
- (1) Requires skilled or nursing care that requires training by a nurse licensed under North Dakota Century Code chapter 43-12.1; and
 - (2) Has a cognitive or physical impairment that prevents the client from completing the required activity. b. Extended personal care services do not include assistance with activities of daily living or instrumental activities of daily living.
6. The department may provide family home care services to a client who:
- a. Lives in the same residence as the care provider on a twenty-four-hour basis;
 - b. Agrees to the provision of services by the care provider; and
 - c. Is the spouse of the care provider or the current or former spouse of one of the following relatives of the client: parent, grandparent, adult child, adult sibling, adult grandchild, adult niece, or adult nephew.
7. The department may provide home and community-based services case management services to a client who needs a functional assessment and the coordination of cost-effective delivery issues. The case management services must be provided by a social worker licensed under North Dakota Century Code section 43-41-04.
8. The department may provide home-delivered meals to a client who lives alone and is unable to prepare an adequate meal for himself or herself, or who lives with an individual who is unable or not available to prepare an adequate meal for the client.
9. The department may provide homemaker services to a client who needs assistance with environmental maintenance activities including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis and who lives alone or with an adult who is unable or is not obligated to perform homemaking activities. The

department may ~~not~~ pay a provider for laundry, shopping, housekeeping, meal preparation, money management, or communication, if the provider lives with the client and is a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02, or is a former spouse of the client; ~~except if the activity exclusively benefits the client.~~ The department may provide essential homemaking activities such as meal preparation if the responsible adult not receiving care who resides in the home is unavailable due to employment. The ~~department may provide shopping assistance only if at least one other activity is performed and no other shopping assistance is available through informal networks or other community providers.~~ The homemaker services funding cap applies to a household and may not be exceeded regardless of the number of clients residing in that household.

10. Nonmedical transportation services may be provided to clients who are unable to provide their own transportation and need transportation to access essential community services such as grocery stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.
11. The department may provide personal care services to a client who needs help or supervision with personal care activities if:
 - a. The client is at least eighteen years of age;
 - b. The client lives alone or is alone due to the employment of the primary caregiver or the incapacity of other responsible adult household members; and
 - c. The services are provided in the client's home or in a provider's home if the provider meets the definition of a relative as defined in subdivision c of subsection 5 of section 75-03-23-05.
12.
 - a. The department may provide respite care services to a client in the client's home, in the provider's home, in a nursing home, in a swing-bed facility, in a basic care facility, or in a hospital, if:
 - (1) The client has a full-time primary caregiver;
 - (2) The client needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;
 - (3) The primary caregiver's need for the relief is intermittent or occasional; and
 - (4) The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.

- b. A client who is a resident of an adult foster care may choose a respite provider and is not required to use a relative of the adult foster care provider as the client's respite provider.
13. The department may provide other services as the department determines appropriate.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2020; January 1, 2022.

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

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

SECTION 5. Section 75-03-23-06 is amended as follows:

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

Room and board costs may not be included in the Medicaid waiver service payment. The following services are covered under the Medicaid waiver program and may be provided to a client:

1. The department may provide adult day care services to a client:
 - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
 - b. Who is able to participate in group activities; and
 - c. If the client does not live alone, the client's primary caregiver will benefit from the temporary relief of care giving.
2. The department may provide adult foster care, using a licensed adult foster care provider, to a client who resides in a licensed adult foster care home who:
 - a. Is eighteen years of age or older;
 - b. Requires care or supervision;
 - c. Would benefit from a family or shared living environment; and
 - d. Requires care that does not exceed the capability of the foster care provider.
3. The department may provide residential care to a client who:
 - a. Has chronic moderate to severe memory loss; or
 - b. Has a significant emotional, behavioral, or cognitive impairment.
4. The department may provide attendant care to a client who:

- a. Is ventilator-dependent a minimum of twenty hours per day;
 - b. Is medically stable as documented at least annually by the client's primary care physician;
 - c. Has identified an informal caregiver support system for contingency planning; and
 - d. Is competent to participate in the development and monitoring of the care plan as documented at least annually by the client's primary care physician.
5. The department may provide chore services to a client for one-time, intermittent, or occasional activities that would enable the client to remain in the home, such as heavy housework and periodic cleaning, professional extermination, and snow removal. The activity must be the responsibility of the client and not the responsibility of the landlord.
 6. The department may provide an emergency response system to a client who lives alone or with an incapacitated adult, or who lives with an individual whose routine absences from the home present a safety risk for the client, and the client is cognitively and physically capable of activating the emergency response system.
 7. ~~When no alternative community resource is available, the~~The department may provide environmental modification to a client, if the client owns or rents the home to be modified and when the modification will enable the client to complete the client's own personal care or to receive care and will allow the client to safely stay in the home for a period of time that is long enough to offset the cost of the modification. If the home is rented the property owner must approve the modification.
 8.
 - a. The department may provide family personal care to a client who:
 - (1) Lives in the same residence as the care provider on a twenty-four-hour basis;
 - (2) Agrees to the provision of services by the care provider; and
 - (3) Is the legal spouse of the care provider or is a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02.
 - b. Family personal care payments may not be made for assistance with the activities of communication, community integration, housework, laundry, meal preparation, money management, shopping, social appropriateness, or transportation unless the activity exclusively benefits the client.

9. The department may provide home and community-based services case management services to a client who needs a comprehensive assessment and the coordination of cost-effective delivery of services. Case management services provided under this subsection must be provided by a social worker licensed under North Dakota Century Code section 43-41-04.
10. The department may provide home-delivered meals to a client who lives alone and is unable to prepare an adequate meal for himself or herself or who lives with an individual who is unable or not available to prepare an adequate meal.
11. The department may provide homemaker services to a client who needs assistance with environmental maintenance activities, including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis when the client lives alone or with an adult who is unable or is not obligated to complete homemaking activities. The department may not pay a provider for laundry, shopping, housekeeping, meal preparation, money management, or communication, if the provider lives with the client and is a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02, or is a former spouse of the client; except if the activity exclusively benefits the client. The department may provide essential homemaking activities such as meal preparation if the responsible adult not receiving care who resides in the home is unavailable due to employment. ~~Shopping assistance may be provided only if at least one other activity is performed and no other shopping assistance is available through informal networks or other community providers.~~ The homemaker service funding cap applies to a household and may not be exceeded regardless of the number of clients residing in that household.
12.
 - a. The department may provide extended personal care services to a client who:
 - (1) Requires skilled or nursing care that requires training by a nurse licensed under North Dakota Century Code chapter 43-12.1; and
 - (2) Has a cognitive or physical impairment that prevents the client from completing the required activity.
 - b. Extended personal care services do not include assistance with activities of daily living and instrumental activities of daily living.
13. The department may provide nonmedical transportation services to a client who is unable to provide his or her own transportation and who needs transportation to access essential community services such as grocery

stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.

14. The department may provide up to twenty-four hours per day of supervision to a client who has a cognitive or physical impairment that results in the client needing monitoring to assure the client's continued health and safety, ~~if the client lives alone or with an individual who is not a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02.~~
15.
 - a. The department may provide respite care services to a client in the client's home, in the provider's home, in a nursing home, in a swing-bed facility, in a basic care facility, or in a hospital, if:
 - (1) The client has a full-time primary caregiver;
 - (2) The client needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;
 - (3) The primary caregiver's need for the relief is intermittent or occasional; and
 - (4) The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.
 - b. A client who is a resident of an adult foster care home may choose a respite provider and is not required to use a relative of the adult foster care provider as the client's respite provider.
16. The department may provide specialized equipment and supplies to a client, if:
 - a. The client's need for the items is based on an adaptive assessment;
 - b. The items directly benefit the client's ability to perform personal care or household activities;
 - c. The items will reduce the intensity or frequency of human assistance required to meet the client care needs;
 - d. The items are necessary to prevent the client's institutionalization;
 - e. The items are not available under the Medicaid state plan; and
 - f. The client is motivated to use the item.
17. The department may provide supported employment to a client who is unlikely to obtain competitive employment at or above the minimum wage; who, because of the client's disabilities, needs intensive ongoing support to

perform in a work setting; and who has successfully completed the supported employment program available through the North Dakota vocational rehabilitation program.

18. The department may provide transitional living services to a client who needs supervision, training, or assistance with self-care, communication skills, socialization, sensory and motor development, reduction or elimination of maladaptive behavior, community living, and mobility. The department may provide these services until the client's independent living skills development has been met or until an interdisciplinary team determines the service is no longer appropriate for the client.
19. The department may provide community transition services to a client who is transitioning from an institution or another provider-operated living arrangement to a living arrangement in a private residence where the client is directly responsible for his or her own living expenses and needs nonrecurring set-up expenses. Community transition services include one-time transition costs and transition coordination.
 - a. Allowable expenses are those necessary to enable a client to establish a basic household that do not constitute room and board and may include:
 - (1) Security deposits that are required to obtain a lease on a private residence;
 - (2) Essential household furnishings required to occupy and use a private residence, including furniture, window coverings, food preparation items, and bed and bath linens;
 - (3) Setup fees or deposits for utility or service access, including telephone, electricity, heating, and water;
 - (4) Services necessary for the client's health and safety, such as pest eradication and one-time cleaning prior to occupancy;
 - (5) Moving expenses;
 - (6) Necessary home accessibility adaptations; and
 - (7) Activities to assess need and to arrange for and procure need resources.
 - b. Community transition services do not include monthly rental or mortgage expenses, escrow, specials, insurance, food, regular utility or service access charges, household appliances, or items that are intended for purely diversional or recreational purposes.
 - c. Community transition services are furnished only to the extent that they are reasonable and necessary as determined through the

service plan development process, clearly identified in the service plan and the client is unable to meet such expense, or when the services cannot be obtained from other sources.

20. The department may provide a nurse assessment to a client who requires an evaluation of his or her health care needs to ensure the health, welfare, and safety of the client. The service is limited to a nurse assessment, consultation, and recommendations to address the health-related need for services that are necessary to support a client in a home- or community-based setting. The service must be provided by an advanced practice registered nurse or a registered nurse who is in good standing.
21. The department may provide other services as permitted by an approved waiver.
22. Subsections 19 and 20 become effective on the effective date of approved amendments to the 1915(c) Medicaid waiver sufficient to secure federal financial participation in the cost of services provided to individuals found eligible under subsections 19 and 20, remain effective as long as federal financial participation continues to be available and state law authorizes such coverage, and is thereafter ineffective.
23. The department may provide residential habilitation up to twenty-four hours per day to a client ~~who lives alone or with an adult who is unable or is not obligated to provide care and~~ needs formalized training and supports and requires some level of ongoing daily support. This service is designed to assist with and develop self-help, socialization, and adaptive skills that improve the client's ability to independently reside and participate in an integrated community. Residential habilitation may be provided in an agency foster home for adults facility or in a private residence owned or leased by a client or their family member.
24. The department may provide community support services up to twenty-four hours per day to a client ~~who lives alone or with an adult who is unable or is not obligated to provide care~~ who requires some level of ongoing daily support. This service is designed to assist with self-care tasks and socialization that improves the client's ability to independently reside and participate in an integrated community. Community support services may be provided in an agency foster home for adults facility or in a private residence owned or leased by a client or their family member.
25. The department may provide companionship services up to ten hours per month to clients who live alone and could benefit from services to help reduce social isolation.

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

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

SECTION 6. Section 75-03-23-07 is amended as follows:

75-03-23-07. Qualified service provider standards and agreements.

1. An individual or agency seeking designation as a qualified service provider shall complete and return the applicable forms supplied by the department in the form and manner prescribed. The qualified service provider, including any employees of an agency designated as a qualified service provider, shall meet all licensure, certification, or competency requirements applicable under state or federal law and departmental standards necessary to provide care to clients whose care is paid by public funds. An application is not complete until the individual or agency submits all required information and required provider verifications to the department.
2. A provider or an individual seeking designation as a qualified service provider:
 - a. Must have the basic ability to read, write, and verbally communicate;
 - b. Must not be an individual who has been found guilty of, pled guilty to, or pled no contest to:
 - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or North Dakota Century Code section 12.1-17-01, simple assault, if a class C felony under subdivision a of subsection 2 of that section; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering a vulnerable adult; 12.1-31-07.1, exploitation of a vulnerable adult; 14-09-22, abuse of a child; 14-09-22.1, neglect of a child; subsection 1 of section 26.1-02.1-02.1, fraudulent insurance acts; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or

- (2) An offense, other than a direct-bearing offense identified in paragraph 1 of subdivision b of subsection 2, if the department determines that the individual has not been sufficiently rehabilitated.
- (a) The department may not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment without subsequent charge or conviction has elapsed, unless sufficient evidence is provided of rehabilitation.
 - (b) An individual's completion of a period of three years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation;
- c. In the case of an offense described in North Dakota Century Code section 12.1-17-01, simple assault, if a felony; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence, if a misdemeanor; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-18-03, unlawful imprisonment; 12.1-20-05, corruption or solicitation of minors, if a misdemeanor; 12.1-20-07, sexual assault, if a misdemeanor; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent convictions;
- d. Shall maintain confidentiality;
- e. Shall submit a request to be a qualified service provider every twenty-four months using applicable forms and shall provide documentation as required by the department;
- f. Must be physically capable of performing the service for which they were hired;
- g. Must be at least eighteen years of age; and
- h. Must not have been the subject of a child abuse or neglect assessment for which a ~~services required~~confirmed decision was made unless the program administrator, after appropriate consultation with persons qualified to evaluate the capabilities of the provider, documenting criteria used in making the decision, and imposing any restrictions necessary, approves the request, provided the provider can demonstrate:

- (1) The successful completion of an appropriate therapy; or
 - (2) The elimination of an underlying basis precipitating the neglect or abuse.
3. If the physical, cognitive, social, or emotional health capabilities of an applicant or provider appear to be questionable, the department may require the applicant or provide to present evidence of the applicant's or provider's ability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
4. The offenses enumerated in paragraph 1 of subdivision b of subsection 2 have a direct bearing on an individual's ability to be enrolled as a qualified service provider.
 - a. An individual enrolled as a qualified service provider prior to January 1, 2009, who has been found guilty of, pled guilty to, or pled no contest to, an offense considered to have a direct bearing on the individual's ability to provide care may be considered rehabilitated and may continue to provide services if the individual has had no other offenses and provides sufficient evidence of rehabilitation to the department.
 - b. The department may not approve, deny, or renew an application for an individual or employee of an agency who is applying to enroll or re-enroll as a qualified service provider and who has been charged with an offense considered to have a direct bearing on the individual's ability to provide care or an offense in which the alleged victim was under the applicant's care, until final disposition of the criminal case against the individual.
5. Evidence of competency for adult foster care providers serving clients eligible for the developmental disability waiver must be provided in accordance with subdivision b of subsection 2 of section 75-03-21-08.
6. A provider of services for adult day care, adult foster care, attendant care, community support services, extended personal care, family personal care, nurse assessment, personal care, residential care, respite care, residential habilitation, supervision, and transitional living care shall provide evidence of competency in generally accepted procedures for:
 - a. Infection control and proper handwashing methods;
 - b. Handling and disposing of body fluids;
 - c. Tub, shower, and bed bathing techniques;
 - d. Hair care techniques, sink shampoo, and shaving;
 - e. Oral hygiene techniques of brushing teeth and cleaning dentures;

- f. Caring for an incontinent client;
 - g. Feeding or assisting a client with eating;
 - h. Basic meal planning and preparation;
 - i. Assisting a client with the self-administration of medications;
 - j. Maintaining a kitchen, bathroom, and other rooms used by a client in a clean and safe condition, including dusting, vacuuming, floor care, garbage removal, changing linens, and other similar tasks;
 - k. Laundry techniques, including mending, washing, drying, folding, putting away, ironing, and related work;
 - l. Assisting a client with bill paying and balancing a check book;
 - m. Dressing and undressing a client;
 - n. Assisting with toileting;
 - o. Routine eye care;
 - p. Proper care of fingernails;
 - q. Caring for skin;
 - r. Turning and positioning a client in bed;
 - s. Transfer using a belt, standard sit, or bed to wheelchair;
 - t. Assisting a client with ambulation; and
 - u. Making wrinkle-free beds.
7. An applicant for qualified service provider status for attendant care, adult foster care, extended personal care, family personal care, nurse assessment, personal care, residential care, supervision, transitional living care, respite care, or adult day care must secure written verification that the applicant is competent to perform procedures specified in subsection 5 from a physician, chiropractor, registered nurse, licensed practical nurse, occupational therapist, physical therapist, or an individual with a professional degree in specialized areas of health care. Written verification of competency is not required if the individual holds one of the following licenses or certifications in good standing: physician, physician assistant, chiropractor, registered nurse, licensed practical nurse, registered physical therapist, registered occupational therapist, or certified nurse assistant. A certificate or another form of acknowledgment of completion of a program with a curriculum that includes the competencies in subsection 5 may be considered evidence of competence.

8. The department may approve global and client-specific endorsements to provide particular procedures for a provider based on written verification of competence to perform the procedure from a physician, chiropractor, registered nurse, occupational therapist, physical therapist, or other individual with a professional degree in a specialized area of health care or approved within the scope of the individual's health care license or certification.
9. Competence may be demonstrated in the following ways:
 - a. A demonstration of the procedure being performed;
 - b. A detailed verbal explanation of the procedure; or
 - c. A detailed written explanation of the procedure.
10. The department shall notify the individual or the agency of its decision on designation as a qualified service provider.
11. The department shall maintain a list of qualified service providers. Once the client's need for services has been determined, the client selects a provider from the list and the department's designee issues an authorization to provide services to the selected qualified service provider.
12. A service payment may be issued only to a qualified service provider who bills the department after the delivery of authorized services.
13. Agency providers who employ non-family members must have a department approved quality improvement program that includes a process to identify, address, and mitigate harm to the clients they serve.

History: Effective June 1, 1995; amended effective March 1, 1997; January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2018; January 1, 2020; January 1, 2022.

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

Law Implemented: NDCC 50-06.2-03(5)

SECTION 7. Subsection 14 of section 75-03-23-08 is amended as follows:

14. The applicant has been the subject of a child abuse or neglect assessment for which a ~~services required~~confirmed decision was made and the department has determined the applicant does not meet the standards to enroll;

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; April 1, 2016; January 1, 2020; January 1, 2022.

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

Law Implemented: NDCC 50-06.2-03(5)

SECTION 8. Subdivision m of subsection 4 of section 75-03-23-08.1 is amended as follows:

- m. The qualified service provider has been the subject of a child abuse or neglect assessment for which a ~~services required~~confirmed decision was made and the department has determined the provider does not meet the standards to enroll.

History: Effective January 1, 2020; amended effective January 1, 2022.

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

Law Implemented: NDCC 50-06.2-03(5)

CHAPTER 75-03-24
EXPANDED SERVICE PAYMENTS FOR ELDERLY AND DISABLED

Section	
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75-03-24-11	Department to Recover Funds Upon Establishment of Noncompliance
75-03-24-12	Administration

SECTION 9. Section 75-03-24-03 is amended as follows:

75-03-24-03. Eligibility determination - Authorization of services.

1. The department is responsible for:
 - a. Verifying that the person transferred to active status continues to meet the eligibility criteria for placement into the ex-SPED program pool;
 - b. Developing a care plan;
 - c. Authorizing covered services in accordance with department policies and procedures; and
 - d. Assuring that other potential federal and third-party funding sources for similar services are sought first.
2. An individual who is discharged from an inpatient hospital stay, skilled nursing facility, swing-bed facility, long-term care facility, or basic care facility or who has been off the ex-SPED program for fewer than ~~60~~ninety days, does not have to go through the ex-SPED program pool to receive services through the ex-SPED program provided the individual meets all eligibility criteria in section 75-03-24-02.
3. An applicant is eligible to receive covered services reimbursed under North Dakota Century Code chapter 50-06.2 or this chapter even if the applicant has natural supports.

History: Effective April 1, 2012; amended effective July 1, 2020; January 1, 2022.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

SECTION 10. Section 75-03-24-07 is amended as follows:

75-03-24-07. Services covered under the ex-SPED program - Programmatic criteria.

Room and board costs may not be paid in the ex-SPED service payment. The following categories of services are covered under the ex-SPED program and may be provided to a client:

1. The department may provide adult day care services to a client:
 - a. Who requires assistance in activities of daily living or instrumental activities of daily living;
 - b. Who is able to participate in group activities; and
 - c. Who, if the client does not live alone, has a primary caregiver who will benefit from the temporary relief of caregiving.
2. The department may provide adult family foster care, using a licensed adult family foster care provider, to a client eighteen years of age or older:
 - a. Who resides in a licensed adult family foster care home;
 - b. Who requires care or supervision;
 - c. Who would benefit from a family environment; and
 - d. Whose required care does not exceed the capability of the foster care provider.
3. The department may provide chore services to a client for one-time, intermittent, or occasional activities which would enable the client to remain in the home. Activities such as heavy housework and periodic cleaning, professional extermination, snow removal, and emergency response systems may be provided. Clients receiving emergency response services must be cognitively and physically capable of activating the emergency response system. The activity must be the responsibility of the client and not the responsibility of the landlord.
4. The department may provide environmental modification to a client:
 - a. Who owns or rents the home to be modified. If the home is rented the property owner must approve the modification;
 - b. When the modification will enable the client to complete the client's own personal care or to receive care and allow the client to safely stay in the home; and
 - c. ~~When no alternative community resource is available; and~~

- d.——Limited to labor and materials for installing safety rails.
5. The department may provide family home care services to a client:
 - a. Who lives in the same residence as the care provider on a twenty-four-hour basis;
 - b. Who agrees to the provision of services by the care provider; and
 - c. Whose care provider is a relative identified within the definition of "family home care" under subsection 2 of North Dakota Century Code section 50-06.2-02 and is enrolled as a qualified service provider.
 6. The department may provide home-delivered meals to a client who lives alone and is unable to prepare an adequate meal for himself or herself, or who lives with an individual who is unable or not available to prepare an adequate meal for the client.
 7. The department may provide homemaker services to a client who needs assistance with environmental maintenance activities including light housekeeping, laundry, meal planning and preparation, and shopping on an intermittent or occasional basis and who lives alone or with an adult who is unable or is not obligated to perform homemaking activities. The department may pay a provider for laundry, shopping, housekeeping, meal preparation, money management, or communication, if the provider lives with the client and is a relative identified within the definition of "family home care" under subsection 4 of North Dakota Century Code section 50-06.2-02, or is a former spouse of the client or if the activity exclusively benefits the client. The department may provide essential homemaking activities such as meal preparation if the responsible adult not receiving care who resides in the home is unavailable due to employment. ~~The department may provide shopping assistance only if at least one other activity is performed and no other shopping assistance is available through informal networks or other community providers.~~ homemaker service cap funding applies to a household and may not be exceeded regardless of the number of clients residing in that household.
 8. Nonmedical transportation services may be provided to clients who are unable to provide their own transportation and need transportation to access essential community services such as grocery stores or pharmacies. "Nonmedical transportation services" are transportation services not related to the receipt of medical care.
 9. The department may provide respite care services to a client in the client's home, in the provider's home, in a nursing home, in a swing-bed facility, in a basic care facility, or in a hospital, if:
 - a. The client has a full-time primary caregiver;

- b. The client needs a qualified caregiver or it would be inappropriate to use an unqualified caregiver in the absence of the primary caregiver;
 - c. The primary caregiver's need for the relief is intermittent or occasional; and
 - d. The primary caregiver's need for relief is not due to the primary caregiver's employment or attendance at school as a part-time or full-time student.
10. The department may provide other services as the department determines appropriate.

History: Effective April 1, 2012; amended effective October 1, 2014; January 1, 2022.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7