

October 25, 2019

RE: Proposed amendments to N.D. Admin. Code chapter 75-02-02  
Medical Services

TO WHOM IT MAY CONCERN:

The Department of Human Services is proposing amendments to N.D. Admin. Code chapter 75-02-02, Medical Services. The department has adopted procedures to assure public input into the formulation of the rules prior to adoption.

In conformity with those procedures, we are providing you with a copy of the proposed rules and are requesting that you provide any written data, views, or arguments no later than 5:00 p.m. on December 19, 2019.

The department has scheduled an oral hearing for December 9, 2019. Further information concerning the public hearing is included in the attached notice of proposed rulemaking and public hearing.

Your participation is welcomed, as are your suggestions. Please send all written data, views, or arguments to: Rules Administrator, Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Bismarck, ND 58505-0250.

Sincerely,



Christopher Jones,  
Executive Director

CDJ/rs

Enclosures

cc: Vonette Richter, Legislative Council  
Caprice Knapp, Medical Services  
LeeAnn Thiel, Medical Services

**EXECUTIVE OFFICE**

GOVERNOR  
Doug Burgum

EXECUTIVE DIRECTOR  
Christopher Jones

NOTICE OF INTENT TO AMEND  
ADMINISTRATIVE RULES RELATING TO  
N.D.A.C. CHAPTER 75-02-02  
MEDICAL SERVICES

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code chapter 75-02-02 at 9:00 a.m. on Monday, December 9, 2019, in Bismarck, N.D. in AV Room 210, located on the second floor of the Judicial Wing of the State Capitol.

The proposed amendments to N.D. Admin. Code chapter 75-02-02, Medical Services, are necessary to ensure the rules remain accurate and consistent with federal Medicaid regulations and the State Plan and to comply with 2019 House Bill No. 1515 and 2019 Senate Bill No. 2243.

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The proposed changes are as follows:

**Section 75-02-02-02** is amended to include North Dakota Century Code Chapter 50-29 as a source of authority for promulgating these rules; to include title XXI of the Social Security Act as a source of federal funds that are sought using the rules under this chapter; and to clarify that these regulations are subject to the Medicaid and children's health insurance program state plan.

**Subsection 1 of 75-02-02-03** is amended to clarify that the department is the single state agency for administering the Medicaid and children's health insurance program state plan and program.

**Section 75-02-02-03.2** is amended to update the definition of behavioral health services to address changes to social work titles that are included within that definition; to remove definitions of "county agency" and "Section 1931 group"; and to update the definition of "recipient" to include a reference to the children's health insurance program.

**Section 75-02-02-08** is amended to change multiple references to "medical assistance" to "Medicaid program and children's health insurance program"; to provide a correct citation to North Dakota Century Code Section 50-24.1-15; and to add a reference to "qualified residential treatment program".

LEGAL ADVISORY UNIT

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**Section 75-02-02-09** is amended to change multiple references to “medical assistance” to “Medicaid program and children’s health insurance program”, and to update level of care criteria for an individual with a traumatic brain injury to provide that a nursing level of care is medically necessary if the individual requires direct supervision at least four hours a day for five days a week.

**Section 75-02-02-09.1** is being repealed.

**Subsection 2 of section 75-02-02-10** is amended to replace a reference to “medical assistance” with “Medicaid”.

**Section 75-02-02-10.2** is amended to be consistent with language in the Medicaid State Plan and reorganizing the section. This includes revising definitions for “American Society of Addiction Medicine I”, “American Society of Addition Medicine II.1”, and “American Society of Addition Medicine II.5”, and includes adding definitions for “American Society of Addition Medicine III.1” and “American Society of Addition Medicine III.5”. The section is also amended to remove language stating that no payment for services for treatment of addiction will be made unless the provider requests authorization from the department within five business days of providing such services and the department approves the request. The section also changes the amount of days per calendar year per recipient for which payment can be made under ASAM. Language is added stating that payment may not be made for ASAM III.1 services, unless the recipient is concurrently receiving ASAM II.1 or II.5 services. Language is added to clarify who qualifies as a “licensed addiction counselor”. Language is added to state that licensed addiction programs operating in a border state must provide documentation to the department of their state’s approval for the operation of the addiction program.

**Section 75-02-02-10.2** is amended to reorganize the definitions and remove language stating that no payment for partial hospitalization services may be made unless the provider requests authorization from the department within five business days and department approves the request. The section is also amended to state that department may authorize additional days per calendar year per recipient if determined to be medically necessary.

**Section 75-02-02-11** is amended to change a reference from “county agency” to “human service zone”, and to change multiple references from “medical assistance” to “Medicaid program and children’s health insurance program”.

**Section 75-02-02-13** is amended to change a reference from “medical assistance” to “Medicaid program and children’s health insurance program”.

**Section 75-02-02-13.1** is amended to change multiple references from “county agency” to “human service zone”, and to change multiple references from “medical assistance” to “Medicaid program and children’s health insurance program” or “Medicaid”.

**Section 75-02-02-13.2** is amended to remove “group homes serving children in foster care” from among a list of service providers that may not be compensated as a “transportation service provider”. The section also replaces a reference to “residential childcare facilities” with “qualified residential treatment programs”.

**Section 75-02-02-14** is amended to change multiple references from “county” to “human service zone”; to replace a reference from “medical assistance” to “Medicaid”; and to provide new language that the human service zone where the Medicaid Unit is physically present is responsible to assist and applicant applying for or receiving Medicaid or children’s special health program benefits, and that the human service zone where the Medicaid Unit physically resides is responsible for the administration of the program with respect to that unit.

**Section 75-02-02-27** is amended to change multiple references from “medical assistance” to “Medicaid program and children’s health insurance program”. New language is also added to comply with 2019 Senate Bill Number 2243 regarding prior authorization of a prescribed stimulate medication used in the treatment of attention deficit disorder and attention deficit hyperactivity disorder by an individual who prescribes this medication at a rate a certain percentage higher than other prescribers.

**Subsection 2 of Section 75-02-02-28** is amended to replace a reference to “medical assistance” with “Medicaid program and children’s health insurance program”.

**Section 75-02-02-29** is amended to place a reference to “medical assistance” with “Medicaid”. The section is also amended to increase the eligibility for federal poverty level for a pregnant woman; a pregnant woman who requires medical services and qualifies for Medicaid on the basis of financial eligibility resulting in a recipient liability under 75-02-02.1-41.1; and a child, not including a child in foster care, less than 19 years of age. The section also adds new language stating that a physician, nurse practitioner, or physician assistant practicing in Adult Health may be selected as a primary care provider.



The proposed amendments are not anticipated to have an impact on the regulated community in excess of \$50,000. No taking of real property is involved in this rulemaking action.

Copies of the proposed rules are available for review at county social services offices and at human service centers. Copies of the proposed rules and the regulatory analysis relating to these rules may be requested by telephoning (701) 328-2311. Written or oral data, views, or arguments may be entered at the hearing or sent to: Rules Administrator, North Dakota Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Dept. 325, Bismarck, ND 58505-0250. Written data, views, or arguments on the proposed rules must be received no later than 5:00 p.m. on Thursday, December 19, 2019.

**ATTENTION PERSONS WITH DISABILITIES:** If you plan to attend the hearing and will need special facilities or assistance relating to a disability, please contact the Department of Human Services at the above telephone number or address at least two weeks prior to the hearing.

Dated this 25th day of October, 2019.

**CHAPTER 75-02-02  
MEDICAL SERVICES**

Section	
75-02-02-01	Purpose [Repealed]
75-02-02-02	Authority and Objective
75-02-02-03	State Organization
75-02-02-03.1	Definitions [Repealed]
75-02-02-03.2	Definitions
75-02-02-04	Application and Decision [Repealed]
75-02-02-05	Furnishing Assistance [Repealed]
75-02-02-06	Coverage for Eligibility [Repealed]
75-02-02-07	Conditions of Eligibility [Repealed]
75-02-02-08	Amount, Duration, and Scope of <del>Medical Assistance</del> <u>Medicaid and Children's Health Insurance Program</u>
75-02-02-09	Nursing Facility Level of Care
75-02-02-09.1	Cost Sharing <u>[Repealed]</u>
75-02-02-09.2	Limitations on Inpatient Rehabilitation
75-02-02-09.3	Limitations on Payment for Dental Services
75-02-02-09.4	General Limitations on Amount, Duration, and Scope
75-02-02-09.5	Limitations on Personal Care Services
75-02-02-10	Limitations on Inpatient Psychiatric Services for Individuals Under Age Twenty-One
75-02-02-10.1	Limitations on Inpatient Psychiatric Services
75-02-02-10.2	Limitations on Services for Treatment of Addiction
75-02-02-10.3	Limitations on Partial Hospitalization Psychiatric Services
75-02-02-11	Coordinated Services
75-02-02-12	Limitations on Emergency Room Services
75-02-02-13	Limitations on Out-of-State Care
75-02-02-13.1	Travel Expenses for Medical Purposes - Limitations
75-02-02-13.2	Travel Expenses for Medical Purposes - Institutionalized Individuals - Limitations
75-02-02-14	<del>County</del> <u>Human Service Zone</u> Administration
75-02-02-15	Groups Covered [Repealed]
75-02-02-16	Basic Eligibility Factors [Repealed]
75-02-02-17	Blindness and Disability [Repealed]
75-02-02-18	Financial Eligibility [Repealed]
75-02-02-19	Income and Resource Considerations [Repealed]
75-02-02-20	Income Levels and Application [Repealed]
75-02-02-21	Property Resource Limits [Repealed]
75-02-02-22	Exempt Property Resources [Repealed]
75-02-02-23	Excluded Property Resources [Repealed]
75-02-02-24	Contractual Rights to Receive Money Payments [Repealed]
75-02-02-25	Disqualifying Transfers [Repealed]
75-02-02-26	Eligibility Under 1972 State Plan [Repealed]
75-02-02-27	Scope of Drug Benefits - Prior Authorization
75-02-02-28	Drug Use Review Board and Appeals
75-02-02-29	Primary Care Provider

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

**75-02-02-02. Authority and objective.**

Under authority of North Dakota Century Code ~~chapter~~chapters 50-24.1 and 50-29, the department of human services is empowered to promulgate such rules and regulations as are necessary to qualify for federal funds under section 1901 specifically and ~~titles XIX and XXI~~ generally of the Social Security Act. These regulations are subject to the ~~medical-assistance~~Medicaid and children's health insurance program state plan and to applicable federal and state law and regulations.

**History:** Effective October 1, 1979; amended effective February 1, 1981; April 1, 2020.

**General Authority:** NDCC 50-06-05.1, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04; 42 USC 1396a

**SECTION 2.** Subsection 1 of section 75-02-02-03 is amended as follows:

1. **Single state agency.** The department of human services is the single state agency with authority to supervise the administration of the ~~medical-assistance~~Medicaid and children's health insurance program state plan and program.

**History:** ~~Amended~~Effective October 1, 1979; amended effective May 1, 1986; April 1, 2020.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-06-05.1, 50-24.1-04; 42 CFR 431.10; 42 CFR 431.20

**SECTION 3.** Section 75-02-02-03.2 is amended as follows:

**75-02-02-03.2. Definitions.**

For purposes of this chapter:

1. "Behavioral health service" means an evaluation, therapy, or testing service rendered by one of the following practitioners within their scope of practice: physician, licensed ~~independent~~ clinical social worker, psychologist, licensed ~~addition~~addiction counselor, licensed clinical addiction counselor, masters addiction counselor, licensed associate professional counselor, licensed professional counselor, licensed professional clinical counselor, clinical nurse specialist, physician assistant, nurse practitioner, licensed baccalaureate social worker, licensed marriage and family therapist, or licensed ~~certified~~master social worker.
2. "Certification of need" means a regulatory review process that requires specific health care providers to obtain prior authorization for provision of services for Medicaid applicants or eligible recipients under age twenty-one. Certification of need is a determination of the medical necessity of the proposed services as required for all applicants or recipients under the age of twenty-one prior to admission to a psychiatric hospital, an inpatient psychiatric program in a hospital, or a psychiatric facility, including a psychiatric residential treatment

facility. The certification of need evaluates the individual's capacity to benefit from proposed services, the efficacy of proposed services, and consideration of the availability of less restrictive services to meet the individual's needs.

3. ~~"County agency" means the county social service board.~~
4. ~~"Department" means the North Dakota department of human services.~~
- 5.4. "Drug use review board" means the board established pursuant to North Dakota Century Code chapter 50-24.6.
- 6.5. "Exercise program" includes regimens to achieve various improvements in physical fitness and health.
- 7.6. "Home health agency" means a public or private agency or organization, or a subdivision of such an agency or organization, which is qualified to participate as a home health agency under title XVIII of the Social Security Act, or is determined currently to meet the requirements for participation.
- 8.7. "Indian health services or tribal health facility or clinic" means either a health services facility or clinic operated by the United States department of health and human services Indian health services division or a federally recognized tribal nation that has opted to contract with Indian health services to plan, conduct, and administer one or more individual programs, functions, services, or activities, resulting in tribal health facilities or clinics operated by tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act [Pub. L. 93-638].
- 9.8. "Licensed practitioner" means an individual other than a physician who is licensed or otherwise authorized by the state to provide health care services within the practitioner's scope of practice.
- 10.9. "Medical emergency" means a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson acting reasonably and possessing an average knowledge of health and medicine to believe that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily function, serious dysfunction of any bodily organ or part, or would place the person's health, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.
- 11.10. "Medically necessary" includes only medical or remedial services or supplies required for treatment of illness, injury, diseased condition, or impairment; consistent with the recipient's diagnosis or symptoms; appropriate according to generally accepted standards of medical practice; not provided only as a convenience to the recipient or provider; not investigational, experimental, or unproven; clinically appropriate in terms of scope, duration, intensity, and site; and provided at the most appropriate level of service that is safe and effective.
- 12.11. "Provider" means an individual, entity, or facility furnishing medical or remedial services or supplies pursuant to a provider agreement with the department.

~~43.12.~~ "Psychiatric residential treatment facility" is as defined in subsection 13 of section 75-03-17-01.

~~44.13.~~ "Recipient" means an individual approved as eligible for ~~medical assistance~~Medicaid or children's health insurance program.

~~45.14.~~ "Rehabilitative services" means any medical or remedial items or services prescribed for a recipient by the recipient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the recipient to the recipient's best possible functional level.

~~46.15.~~ "Remedial services" includes those services, including rehabilitative services, which produce the maximum reduction in physical or mental disability and restoration of a recipient to the recipient's best possible functional level.

~~47.16.~~ "Weight loss program" includes programs designed for reduction in weight, but does not include weight loss surgery.

~~48.~~ "~~Section 1931 group~~" includes individuals whose eligibility is based on the ~~provisions of section 1931 of the Social Security Act [42 U.S.C. 1396u-1].~~

**History:** Effective May 1, 2000; amended effective August 29, 2000; November 1, 2001; September 1, 2003; October 1, 2012; April 1, 2016; January 1, 2017; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**SECTION 4.** Section 75-02-02-08 is amended as follows:

**75-02-02-08. Amount, duration, and scope of ~~medical assistance~~ Medicaid and children's health insurance program.**

1. Within any limitations which may be established by rule, regulation, or statute and within the limits of legislative appropriations, eligible recipients may obtain the medically necessary medical and remedial care and services which are described in the approved Medicaid and children's health insurance program state plan in effect at the time the service is rendered by providers. Services may include:
  - a. (1) Inpatient hospital services. "Inpatient hospital services" means those items and services ordinarily furnished by the hospital for the care and treatment of inpatients provided under the direction of a physician or dentist in an institution maintained primarily for treatment and care of patients with disorders other than tuberculosis or mental diseases and which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the

requirements for such participation; and which has in effect a hospital utilization review plan applicable to all patients who receive ~~medical assistance under title XIX of the Act~~ Medicaid or children's health insurance program.

- (2) Inpatient prospective payment system hospitals that are reimbursed by a diagnostic-related group will follow Medicare guidelines for supplies and services included and excluded as outlined in 42 CFR 409.10.
- b. Outpatient hospital services. "Outpatient hospital services" means those preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an outpatient by an institution which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation and emergency hospital services which are necessary to prevent the death or serious impairment of the health of the individual and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital available that is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act.
  - c. Other laboratory and x-ray services. "Other laboratory and x-ray services" means professional and technical laboratory and radiological services ordered by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and provided to a recipient by, or under the direction of, a physician or licensed practitioner, in an office or similar facility other than a hospital outpatient department or a clinic, and provided to a recipient by a laboratory that is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
  - d. Nursing facility services. "Nursing facility services" does not include services in an institution for mental diseases and means those items and services furnished by a licensed and otherwise eligible nursing facility or swing-bed hospital maintained primarily for the care and treatment which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for individuals who need or needed on a daily basis nursing care, provided directly or requiring the supervision of nursing personnel, or other rehabilitation services which, as a practical matter, may only be provided in a nursing facility on an inpatient basis.
  - e. Intermediate care facility for individuals with intellectual disabilities services. "Intermediate care" means those items and services which are provided under the direction of a physician or other licensed practitioner



of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as provided in chapter 75-04-01.

- f. Early and periodic screening, diagnosis, and treatment of individuals. "Early and periodic screening, diagnosis, and treatment" means the services provided to ensure that individuals under age twenty-one who are eligible under the plan receive appropriate, preventative, mental health developmental, and specialty services to correct or ameliorate medical conditions.
- g. Physician's services. "Physician's services" whether furnished in the office, the recipient's home, a hospital, nursing facility, or elsewhere means those services provided, within the scope of practice of the physician's profession as defined by state law, by or under the personal supervision of an individual licensed under state law to practice medicine or osteopathy.
- h. Medical care and any other type of remedial care other than physician's services recognized under state law and furnished by licensed practitioners within the scope of their practice as defined by state law.
- i. Home health care services. "Home health care services", is in addition to the services of physicians, dentists, physical therapists, and other services and items available to recipients in their homes and described elsewhere in this section, means any of the following items and services when they are provided, based on physician order, medical necessity, and a written plan of care, to a recipient in the recipient's place of residence, excluding a residence that is a hospital or a skilled nursing facility:
  - (1) Intermittent or part-time skilled nursing services furnished by a home health agency;
  - (2) Intermittent or part-time nursing services of a registered nurse, or a licensed practical nurse, or which are provided under the direction of a physician and under the supervision of a registered nurse, when a home health agency is not available to provide nursing services;
  - (3) Medical supplies, equipment, and appliances ordered or prescribed by the physician as required in the care of the patient and suitable for use in the home; and
  - (4) Services of a home health aide provided to a patient in accordance with the plan of treatment outlined for the patient by the attending physician and in collaboration with the home health agency.



- j. Hospice care. "Hospice care" means the care described in 42 CFR 418 furnished to a terminally ill individual who has voluntarily elected to have hospice care. Hospice care may be provided to an individual while the individual is a resident of a nursing facility, but only the hospice care payment may be made. An individual's voluntary election must be made in accordance with procedures established by the department.
- k. Private duty nursing services. "Private duty nursing services" means nursing services for recipients who require more individual and continuous care than is available from a visiting nurse or is routinely provided by the nursing staff of a medical facility. Services are provided by a registered nurse or a licensed practical nurse under the direction of and ordered by a physician.
- l. Dental services. "Dental services" means any diagnostic, preventive, or corrective procedures administered by or under the supervision of a dentist in the practice of the dentist's profession and not excluded from coverage. Dental services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual. Dental services reimbursed under 42 C.F.R. 440.90 may only be reimbursed if provided through a public or private nonprofit entity that provides dental services.
- m. Physical therapy. "Physical therapy" means those services prescribed by a physician or other licensed practitioner of the healing arts within the scope of that person's practice under state law and provided to a recipient by or under the supervision of a qualified physical therapist.
- n. Occupational therapy. "Occupational therapy" means those services prescribed by a physician or other licensed practitioner of the healing arts within the scope of that person's practice under state law and provided to a recipient and given by or under the supervision of a qualified occupational therapist.
- o. Services for individuals with speech, hearing, and language disorders. "Services for individuals with speech, hearing, and language disorders" means those diagnostic, screening, preventive, or corrective services provided by or under the supervision of a speech pathologist or audiologist in the scope of practice of the speech pathologist's or audiologist's profession for which a recipient is referred by a physician or other licensed practitioner of the healing arts within the scope of the practitioner's practice under state law.
- p. Prescribed drugs. "Prescribed drugs" means any simple or compounded substance or mixture of substances prescribed as such or in other acceptable dosage forms for the cure, mitigation, or prevention of disease, or for health maintenance, by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's professional practice as defined and limited by federal and state law.

q. Durable medical equipment and supplies. "Durable medical equipment and supplies" means those medically necessary items that are primarily and customarily used to serve a medical purpose and are suitable for use in the home and used to treat disease, to promote healing, to restore bodily functioning to as near normal as possible, or to prevent further deterioration, debilitation, or injury which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. Durable medical equipment includes prosthetic and orthotic devices, eyeglasses, and hearing aids. For purposes of this subdivision:

- (1) "Eyeglasses" means lenses, including frames when necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye, or by an optometrist, whichever the recipient may select, to aid or improve vision;
- (2) "Hearing aid" means a specialized orthotic device individually prescribed and fitted to correct or ameliorate a hearing disorder; and
- (3) "Prosthetic and orthotic devices" means replacement, corrective, or supportive devices prescribed for a recipient by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for the purpose of artificially replacing a missing portion of the body, or to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.

r. Other diagnostic, screening, preventive, and rehabilitative services.

- (1) "Diagnostic services", other than those for which provision is made elsewhere in these definitions, includes any medical procedures or supplies recommended for a recipient by the recipient's physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, as necessary to enable the physician or practitioner to identify the existence, nature, or extent of illness, injury, or other health deviation in the recipient.
- (2) "Preventive services" means those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability, and other health deviations or their progression, prolong life, and promote physical and mental health and efficiency.
- (3) "Rehabilitative services", in addition to those for which provision is made elsewhere in these definitions, includes any medical or remedial items or services prescribed for a recipient by the

recipient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the recipient to the recipient's best possible functional level.

- (4) "Screening services" consists of the use of standardized tests performed under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations, to identify suspects for more definitive studies, or identify individuals suspected of having certain diseases.
- s. Inpatient psychiatric services for individuals under age twenty-one, as defined in 42 CFR 440.160, provided consistent with the requirements of 42 CFR part 441 and section 75-02-02-10.
- t. Services provided to persons age sixty-five and older in an institution for mental diseases, as defined in 42 U.S.C. 1396d(i).
- u. Personal care services. "Personal care services" means those services that assist an individual with activities of daily living and instrumental activities of daily living in order to maintain independence and self-reliance to the greatest degree possible.
- v. Any other medical care and any other type of remedial care recognized under state law and specified by the secretary of the United States' department of health and human services, including:
  - (1) Nonemergency medical transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the department to be medically necessary.
  - (2) Family planning services, including drugs, supplies, and devices, when such services are under the medical direction of a physician or licensed practitioner of the healing arts within the scope of their practices as defined by state law. There must be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals may choose in accordance with the dictates of their consciences.
  - (3) Whole blood, including items and services required in collection, storage, and administration, when it has been recommended by a physician or licensed practitioner and when it is not available to the recipient from other sources.
- w. A community paramedic service. "Community paramedic service" means a Medicaid-covered service rendered by a community paramedic, advanced emergency medical technician, or emergency medical

technician. The care must be provided under the supervision of a physician or advanced practice registered nurse.

2. The following limitations apply to medical and remedial care and services covered or provided under the ~~medical assistance~~ Medicaid program and children's health insurance program:
  - a. Coverage may not be extended and payment may not be made for an exercise program or a weight loss program prescribed for eligible recipients.
  - b. Coverage may not be extended and payment may not be made for alcoholic beverages prescribed for eligible recipients.
  - c. Coverage may not be extended and payment may not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.
  - d. Coverage may not be extended and payment may not be made for any service provided to increase fertility or to evaluate or treat fertility.
  - e. Coverage and payment for eye examinations and eyeglasses for eligible recipients are limited to, and payment will only be made for, examinations and eyeglass replacements necessitated because of visual impairment.
  - f.
    - (1) Coverage may not be extended to and payment may not be made for any physician-administered drugs in an outpatient setting if the drug does not meet the requirements for a covered outpatient drug as outlined in section 1927 of the Social Security Act [42 U.S.C. 1396r-8].
    - (2) Payment for any physician-administered drugs in an outpatient setting will be the lesser of the provider's submitted charge, the Medicare allowed amount, or the pharmacy services allowed amount described in subdivision n.
  - g. Coverage and payment for home health care services and private duty nursing services are limited to no more, on an average monthly basis, to the equivalent of one hundred seventy-five visits. The limit for private duty nursing is in combination with the limit for home health services.
    - (1) This limit may be exceeded in cases where it is determined there is a medical necessity for exceeding the limit and the department has approved a prior treatment authorization request.
    - (2) The prior authorization request must describe the medical necessity of the home health care services or private duty nursing services, and explain why less costly alternative treatment does not afford necessary medical care.

- (3) At the time of initial ordering of home health services, a physician or other licensed practitioner shall document that a face-to-face encounter related to the primary reason the recipient requires home health services occurred no more than ninety days before or thirty days after the start of home health services.
- h. Coverage may not be extended and payment may not be made for transportation services except as provided in sections 75-02-02-13.1 and 75-02-02-13.2.
- i. Coverage may not be extended and payment may not be made for any abortion except when necessary to save the life of the mother or when the pregnancy is the result of an act of rape or incest.
- j. After consideration of North Dakota Century Code section ~~50-241-1550-24.1-15~~, coverage for ambulance services must be in response to a medical emergency and may not be extended and payment may not be made for ambulance services that are not medically necessary, as determined by the department.
- k. Coverage for an emergency room must be made in response to a medical emergency and may not be extended and payment may not be made for emergency room services that are not medically necessary, as determined by the department under section 75-02-02-12.
- l. Coverage may not be extended and payment may not be made for medically necessary chiropractic services exceeding twelve treatments for spinal manipulation services and two radiologic examinations per year, per recipient, unless the provider requests and receives prior authorization from the department.
- m. Coverage and payment for personal care services:
  - (1) May not be made unless prior authorization is granted, and the recipient meets the criteria established in subsection 1 of section 75-02-02-09.5; and
  - (2) May be approved for:
    - (a) Up to one hundred twenty hours per month, or at a daily rate;
    - (b) Up to two hundred forty hours per month if the recipient meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for individuals with intellectual disabilities level of care; or
    - (c) Up to three hundred hours per month if the recipient is determined to be impaired in at least five of the activities of

daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring; meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for individuals with intellectual disabilities level of care; and none of the three hundred hours approved for personal care services are allocated to the tasks of laundry, shopping, or housekeeping.

- n. Coverage and payment for pharmacy services are limited to the coverage and methodology approved by the centers for Medicare and Medicaid services in the current North Dakota Medicaid state plan.
- 3.
    - a. Except as provided in subdivision b, remedial services are covered services.
    - b. Remedial services provided by residential facilities such as licensed basic care facilities, licensed foster care homes or facilities qualified residential treatment programs, and specialized facilities are not covered services, but expenses incurred in securing such services must be deducted from countable income in determining financial eligibility.
  - 4.
    - a. The department may refuse payment for any covered service or procedure for which a prior treatment authorization request is required but not secured.
    - b. The department may consider making payment if the provider demonstrates good cause for the failure to secure the required prior treatment authorization request. Provider requests for good cause consideration must be received within twelve months of the date the services or procedures were furnished and any related claims must be filed within timely claims submission requirements.
    - c. The department may refuse payment for any covered service or procedure provided to an individual eligible for both Medicaid and third-party coverage if the third-party coverage denies payment because of the failure of the provider or recipient to comply with the requirements of the third-party coverage.
  - 5. A provider who renders a covered service except for personal care, but fails to receive payment due to the requirements of subsection 4, may not bill the recipient. A provider who attempts to collect from the eligible recipient or the eligible recipient's responsible relatives any amounts which would have been paid by the department but for the requirements of subsection 4, has by so doing breached the terms of their Medicaid provider agreement.
  - 6. Community paramedic services are limited to vaccinations, immunizations, and immunization administration.



**History:** Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986; November 1, 1986; November 1, 1987; January 1, 1991; July 1, 1993; January 1, 1994; January 1, 1996; July 1, 1996; January 1, 1997; May 1, 2000; amendments partially voided by the Administrative Rules Committee effective June 5, 2000; November 8, 2002; September 1, 2003; July 1, 2006; January 1, 2010; July 1, 2012; October 1, 2012; July 1, 2014; April 1, 2016; January 1, 2017; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04; 42 USC 1396n(b)(1); 42 CFR 431.53; 42 CFR 431.110; 42 CFR 435.1009; 42 CFR Part 440; 42 CFR Part 441, subparts A, B, D

**SECTION 5.** Section 75-02-02-09 is amended as follows:

**75-02-02-09. Nursing facility level of care.**

1. "Nursing facility level of care" means, for purposes of ~~medical-assistance~~Medicaid and children's health insurance program, services provided by a facility that meets the standards for nursing facility licensing established by the state department of health, and in addition, meets all requirements for nursing facilities imposed under federal law and regulations governing the ~~medical-assistance~~Medicaid program and children's health insurance program.
2. Except as provided in subsection 3 or 4, an individual who applies for care in a nursing facility, or who resides in a nursing facility, may demonstrate that a nursing facility level of care is medically necessary only if any one of the criteria in this subsection is met.
  - a. The individual's nursing facility stay is, or is anticipated to be, temporary for receipt of Medicare part A benefits. A nursing facility stay may be based on this criterion for no more than fourteen days after termination of Medicare part A benefits.
  - b. The individual is in a comatose state.
  - c. The individual requires the use of a ventilator at least six hours per day, seven days a week.
  - d. The individual has respiratory problems that require regular treatment, observation, or monitoring that may only be provided by or under the direction of a registered nurse or, in the case of a facility which has secured a waiver of the requirements of 42 CFR 483.30(b), a licensed practical nurse, and is incapable of self-care.
  - e. The individual requires constant help sixty percent or more of the time with at least two of the activities of daily living of toileting, eating, transferring, and locomotion. For purposes of this subdivision, constant help is required if the individual requires a caregiver's continual presence or help without which the activity would not be completed.
  - f. The individual requires aspiration for maintenance of a clear airway.





- a. The individual has an acquired brain injury, including anoxia, cerebral vascular accident, brain tumor, infection, or traumatic brain injury; and
  - b. As a result of the brain injury, the individual requires direct supervision at least ~~eight~~four hours a day, ~~seven~~five days a week.
- 6.
- a. Payment, by the department of human services, for care furnished in a nursing facility to individuals who were applicants for or recipients of ~~medical assistance~~Medicaid or children's health insurance program benefits prior to admission to the nursing facility may be made only for periods after a nursing facility level of care determination is made. If a nursing facility admits an individual who has applied for or is receiving ~~medical assistance~~Medicaid or children's health insurance program benefits before a nursing facility level of care determination is made, the nursing facility may not solicit or receive payment, from any source, for services furnished before the level of care determination is made.
  - b. Payment, by the department of human services, for care furnished in a nursing facility to individuals who become applicants for or recipients of ~~medical assistance~~Medicaid or children's health insurance program benefits after admission to the nursing facility may be made only after a nursing facility level of care determination is made.
  - c. Payment, by the department of human services, for care furnished in a nursing facility to individuals who are eligible for Medicare benefits related to that care, and who are also eligible for ~~medical assistance~~Medicaid or children's health insurance program, may be made only after a nursing facility level of care determination is made.
7. A nursing facility shall ensure that appropriate medical, social, and psychological services are provided to each resident of the facility who is dependent in whole or in part on the ~~medical assistance~~Medicaid program or children's health insurance program under title XIX of the Social Security Act. The appropriateness of such services must be based on the need of each resident to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being, and must consider, among other factors, age.

**History:** Amended effective September 1, 1979; July 1, 1993; November 1, 2001; October 1, 2012; April 1, 2020.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04; 42 CFR Part 442

**SECTION 6.** Section 75-02-02-09.1 is repealed.

**75-02-02-09.1. Cost sharing.**

Repealed effective April 1, 2020.

~~1. Copayments provided for in this section may be imposed unless:~~

a. — The recipient receiving the service:

- (1) — Is in a nursing facility, intermediate care facility for individuals with intellectual disabilities, or any medical institution and is required to spend all income except for the recipient's personal needs allowance for the recipient's cost of care;
- (2) — Receives swing bed services in a hospital;
- (3) — Has not reached the age of twenty one years;
- (4) — Is pregnant;
- (5) — Is an Indian who is eligible to receive, is currently receiving, or who has ever received an item or service furnished by Indian health service providers or through referral under contract health services;
- (6) — Is terminally ill and is receiving hospice care;
- (7) — Is receiving medical assistance because of the state's election to extend coverage to eligible individuals receiving treatment for breast or cervical cancer; and
- (8) — Is an inmate, otherwise eligible for medical assistance, and is receiving qualifying inpatient services.

b. — The service is:

- (1) — Emergency room services; or
- (2) — Family planning services.

2. — Copayments are:

- a. — Seventy five dollars for each inpatient hospital admission, including admissions to distinct part psychiatric and rehabilitation units of hospitals and excluding long term hospitals;
- b. — Two dollars for each office or consultation visit;
- c. — Three dollars for each office visit to a rural health clinic or federally qualified health center;
- d. — One dollar for each chiropractic manipulation of the spine;
- e. — Two dollars for each dental visit that includes an oral examination;
- f. — Three dollars for each brand name prescription filled;

- g. ~~Two dollars for each optometric visit that includes a vision examination;~~
- h. ~~Three dollars for each podiatric office visit;~~
- i. ~~Two dollars for each occupational therapy visit;~~
- j. ~~Two dollars for each physical therapy visit;~~
- k. ~~One dollar for each speech therapy visit;~~
- l. ~~Three dollars for each hearing aid dispensing service;~~
- m. ~~Two dollars for each audiology testing visit;~~
- n. ~~Two dollars for each behavioral health service visit; and~~
- o. ~~Two dollars for each licensed independent clinical social worker visit.~~

**History:** Effective January 1, 1997; amended effective November 8, 2002; September 1, 2003; July 1, 2006; July 1, 2012; October 1, 2012; April 1, 2016; January 1, 2017; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04

**SECTION 7.** Subsection 2 of section 75-02-02-10 is amended as follows:

2. A psychiatric facility or program providing inpatient psychiatric services to individuals under age twenty-one shall:
  - a. Except as provided in subdivision c, obtain a certification of need from an independent review team qualified under subsection 3 prior to admitting a recipient;
  - b. Obtain a certification of need from an independent review team qualified under subsection 3 for an individual who applies for ~~medical assistance~~ Medicaid while in the facility or program covering any period for which claims are made; or
  - c. Obtain a certification of need from an independent review team qualified under subsection 3 for an emergency admission of an individual, within fourteen days after the admission, covering any period prior to the certification for which claims are made.

**History:** ~~Amended~~ Effective October 1, 1979; amended effective February 1, 1981; January 1, 1997; November 1, 2001; November 8, 2002; July 1, 2006; October 1, 2012; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04; 42 CFR Part 441, subpart D

**SECTION 8.** Section 75-02-02-10.2 is amended as follows:

**75-02-02-10.2. Limitations on services for treatment of addiction.**

1. For purposes of this section:
  - a. ~~"Services for treatment of addiction" means ambulatory services provided to an individual with an impairment resulting from an addictive disorder which are provided by a multidisciplinary team of health care professionals and are designed to stabilize the health of the individual. Services for treatment of addiction may be hospital-based or nonhospital-based.~~ "American Society of Addiction Medicine I" means services for treatment of addiction as prescribed in article 75-09.1.
  - b. ~~"American Society of Addiction Medicine II.5II.1" means an intense level of services for treatment of addiction as prescribed in article 75-09.1.~~
  - c. ~~"American Society of Addiction Medicine II.4II.5" means an intermediate-level of services for treatment of addiction as prescribed in article 75-09.1.~~
  - d. ~~"American Society of Addiction Medicine III.1" means a low-level of ambulatory behavioral health care that provides chemical dependency treatment for services for treatment of addiction as prescribed in article 75-09.1.~~
  - e. "American Society of Addiction Medicine III.5" means services for treatment of addiction as prescribed in article 75-09.1.
  - f. "Services for treatment of addiction" means ambulatory services provided to an individual with an impairment resulting from an addictive disorder which are provided by a multidisciplinary team of health care professionals and are designed to stabilize the health of the individual. Services for treatment of addiction may be hospital-based or nonhospital-based.
  
2. ~~No payment for services for treatment of addiction will be made unless the provider requests authorization from the department within five business days of providing such services and the department approves such request. A provider must submit a written request for authorization to the department on forms prescribed by the department.~~
  
3. ~~Limitations.~~
  - a. Payment may not be made for American Society of Addiction Medicine ~~II.5II.1~~ services exceeding forty-five~~thirty~~ days per calendar year per recipient.
  - b. Payment may not be made for American Society of Addiction Medicine ~~II.4II.5~~ services exceeding thirty~~forty-five~~ days per calendar year per recipient.

- c. Payment may not be made for American Society of Addiction Medicine III.5 services exceeding twentyfourty-five days per calendar year per recipient.
  - d. The department may ~~approve~~authorize additional days per calendar year per recipient ~~on a case-by-case basis~~if determined to be medically necessary.
  - e. Payment may not be made for American Society of Addiction Medicine III.1 services, unless the recipient is concurrently receiving American Society of Addiction Medicine II.1 or II.5 services.
- 4.3. Licensed addiction counselors, operating within their scope of practice, performing American Society of Addiction Medicine I, and practicing within a recognized Indian reservation in North Dakota are not required to also have licensure prescribed in article 75-09.1, for Medicaid American Society of Addiction Medicine I billed services provided within a recognized Indian reservation in North Dakota.
4. Licensed addiction counselor includes licensed clinical addiction counselors, licensed master addiction counselors, and practitioners possessing a similar license in a border state and operating within their scope of practice in that state.
5. Licensed addiction programs operating in a border state must provide documentation to the department of their state's approval for the operation of the addiction program.

**History:** Effective November 8, 2002; amended effective November 19, 2003; October 1, 2012; July 1, 2014; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04; 42 CFR Part 431.54

**SECTION 9.** Section 75-02-02-10.3 is amended as follows:

**75-02-02-10.3. Limitations on partial hospitalization psychiatric services.**

- 1. For purposes of this section:
  - a. ~~"Partial hospitalization psychiatric services" means services provided to an individual with an impairment resulting from a psychiatric, emotional, or behavior disorder which are provided by a multidisciplinary team of health-care professionals and are designed to stabilize the health of the individual with the intent to avert inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization psychiatric services must be hospital based.~~
  - b. ~~—~~"Level A" means an intense level of partial hospitalization psychiatric services which provide treatment for an individual by at least three licensed health care professionals under the supervision of a licensed

physician for at least four hours and no more than eleven hours per day for at least three days per week.

e-b. "Level B" means an intermediate level of partial hospitalization psychiatric services which provide treatment for an individual by at least three licensed health care professionals under the supervision of a licensed physician for three hours per day for at least two days per week.

c. "Partial hospitalization psychiatric services" means services provided to an individual with an impairment resulting from a psychiatric, emotional, or behavior disorder which are provided by a multidisciplinary team of health care professionals and are designed to stabilize the health of the individual with the intent to avert inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization psychiatric services must be hospital based.

2. ~~No payment for partial hospitalization psychiatric services may be made unless the provider requests authorization from the department within five business days of providing such services and the department approves such request. A provider shall submit a written request for authorization to the department on forms prescribed by the department.~~

3. ~~Limitations.~~

a. Payment may not be made for level A services exceeding forty-five days per calendar year per recipient.

b. Payment may not be made for level B services exceeding thirty days per calendar year per recipient.

c. The department may ~~approve~~authorize additional days per calendar year per recipient ~~on a case-by-case basis if determined to be medically necessary.~~

**History:** Effective April 1, 2018; amended effective April 1, 2020.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04; 42 CFR Part 431.54

**SECTION 10.** Section 75-02-02-11 is amended as follows:

**75-02-02-11. Coordinated services.**

1. For purposes of this section:

a. "Coordinated services" means the process used to limit a recipient's medical care and treatment to a single physician or other provider to prevent the continued misutilization of services.

b. "Coordinated services provider" means a physician, nurse practitioner, physician assistant, or Indian health services or tribal health facility or



clinic selected by the coordinated services recipient to provide care and treatment to the recipient. The selected coordinated services provider is subject to approval by the department.

- c. "Misutilization" means the incorrect, improper, or excessive utilization of medical services which may increase the possibility of adverse effects to a recipient's health or may result in a decrease in the overall quality of care.
2. Coordinated services may be required by the department of a past, current, or future recipient who has misutilized services, including:
  - a. Securing excessive services from more than one provider when there is little or no evidence of a medical need for those services;
  - b. Drug acquisition in excess of medical need resulting from securing prescriptions or drugs from more than one provider;
  - c. Excessive utilization of emergency services when no medical emergency is present; or
  - d. Causing services to be misutilized due to fraud, deception, or direct action, without regard to payer source.
3. The determination to require coordinated services of a recipient is made by the department upon recommendation of medical professionals who have reviewed and identified the services the recipient appears to be misutilizing.
4. The following factors must be considered in determining if coordinated services is to be required:
  - a. The seriousness of the misutilization;
  - b. The historical utilization of the recipient; and
  - c. The availability of a coordinated services physician or provider.
5. If a coordinated services recipient does not select a coordinated services provider within thirty days after qualifying for the program, the department will limit the recipient to only medically necessary medical and pharmacy services. If a coordinated services recipient selects a coordinated services provider after the initial thirty days, the selection will be reviewed by the department to determine if the selected provider is appropriate and to ensure the provider accepts the assignment. A coordinated services recipient may have a coordinated services provider in more than one specialty, such as medical, dental, or pharmacy.
6. Upon a determination to require coordinated services:
  - a. The department shall provide the recipient with written notice of:

- (1) The decision to require coordinated services;
  - (2) The recipient's right to choose a coordinated services provider, subject to approval by the department and acceptance by the provider;
  - (3) The recipient's responsibility to pay for medical care or services rendered by any provider other than the coordinated services provider; and
  - (4) The recipient's right to appeal the requirement of enrollment into the coordinated services program.
- b. The appropriate ~~county agency~~ human service zone shall:
- (1) Obtain the recipient's selection of a coordinated services provider; and
  - (2) Document that selection in the case record.
7. Coordinated services may be required of an individual recipient and may not be imposed on an entire ~~medical assistance~~ Medicaid or children's health insurance program case. If more than one recipient within a case is misutilizing medical care, each individual recipient must be treated separately.
  8. Coordinated services may be required without regard to breaks in eligibility until the department determines coordinated services is discontinued.
  9. No ~~medical assistance~~ Medicaid or children's health insurance program payment may be made for misutilized medical care or services furnished to the coordinated services recipient by any provider other than the recipient's coordinated services physician or provider, except for:
    - a. Medical care rendered in a medical emergency; or
    - b. Medical care rendered by a provider upon referral by the coordinated services physician or provider and approved by the department.
  10. A recipient may appeal the decision to require coordinated services in the manner provided by chapter 75-01-03.

**History:** Effective May 1, 1981; amended effective May 1, 2000; July 1, 2006; October 1, 2012; April 1, 2016; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 50-24.1-02

**Law Implemented:** NDCC 50-24.1-01; 42 CFR Part 455

**SECTION 11.** Section 75-02-02-13 is amended as follows:

**75-02-02-13. Limitations on out-of-state care.**

3. a. A referral for emergency care, including related travel expenses, to an out-of-state provider can be made by the in-state primary care provider. A determination that the emergency requires out-of-state care may be made at the primary care provider's discretion, but is subject to review by the department. Claims for payment for such emergency services must identify the referring primary care provider and document the emergency.
- b. Claims for payment for care for a medical emergency or surgical emergency, as those terms are defined in section 75-02-02-12, which occurs when the affected recipient is traveling outside of North Dakota, will be paid unless payment is denied pursuant to limitations contained in section 75-02-02-12.
- c. Claims for payment for any covered service rendered to a recipient who is a resident of North Dakota for ~~medical assistance~~Medicaid and children's health insurance program purposes, but whose current place of abode is outside of North Dakota, will not be governed by this section.
- d. Claims for payment for any covered service rendered to a recipient during a verified retroactive eligibility period will not be governed by this section.
- e. If a recipient is referred for out-of-state care without first securing approval under subsection 2, and the care is not otherwise allowable under this subsection, the department may approve payment upon receipt of a written request, from the primary care provider or specialist, that:
  - (1) Demonstrates good cause for not first securing approval under subsection 2;
  - (2) Clearly establishes that the care and services were unavailable in the state; and
  - (3) Documents that the care and services were medically necessary.

**History:** Effective November 1, 1983; amended effective October 1, 1995; October 1, 2012; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

**SECTION 12.** Section 75-02-02-13.1 is amended as follows:

**75-02-02-13.1. Travel expenses for medical purposes - Limitations.**

1. For purposes of this section:
  - a. "Family member" means spouse, sibling, parent, stepparent, child, stepchild, grandparent, stepgrandparent, grandchild, stepgrandchild, aunt, uncle, niece, or nephew, whether by half or whole blood, and whether by birth, marriage, or adoption; and

- b. "Travel expenses" means fares, mileage, meals, lodging, and driver and attendant care.
2. General requirements.
- a. A transportation service provider shall be enrolled as a provider in the ~~medical assistance~~ Medicaid program and children's health insurance program and may be an individual, a taxi, a bus, a food service provider, a lodging provider, an airline service provider, a travel agency, or another commercial form of transportation.
  - b. The ~~county agency~~ human service zone may determine and authorize the most efficient, economical, and appropriate means of travel to meet the medical needs of the recipient.
  - c. The cost of travel provided by a parent, spouse, or any other member of the recipient's ~~medical assistance~~ Medicaid unit may be allowed as an expense of necessary medical or remedial care for recipient liability purposes. No parent, spouse, friend, household member, or family member of the recipient may be paid as an enrolled provider for transportation for that recipient. An individual who provides foster care, kinship, or guardianship may enroll as a transportation provider and is eligible for reimbursement to transport a Medicaid-eligible child to and from Medicaid-eligible medical appointments in situations in which the Medicaid-eligible child's medical needs exceed ordinary, typical, and routine levels. A guardian of a vulnerable adult may enroll as a transportation provider and is eligible for reimbursement to transport a Medicaid-eligible adult, for whom the guardian has been court-ordered to provide guardianship services, to and from Medicaid-covered medical appointments.
  - d. Emergency transport by ambulance is a covered service when provided in response to a medical emergency.
  - e. Nonemergency transportation by ambulance is a covered service only when medically necessary and ordered by the attending licensed provider.
  - f. A recipient may choose to obtain medical services outside the recipient's community. If similar medical services are available within the community and the recipient chooses to seek medical services elsewhere, travel expenses are not covered services and are the responsibility of the recipient.
  - g. If a provider refers a recipient to a facility or provider that is not located at the closest medical center, travel expenses are not covered services and are the responsibility of the recipient, unless special circumstances apply and prior authorization is secured.

3. Out-of-state travel expenses. Travel expenses for nonemergency out-of-state medical services, including follow-up visits, may be authorized if the out-of-state medical services are first approved by the department under section 75-02-02-13 or if prior approval is not required under that section.
4. Limitations.
  - a. Private or noncommercial vehicle mileage compensation is limited to the amount on the department fee schedule. This limit applies even if more than one recipient is transported at the same time. Mileage is determined by map miles from the residence or community of the recipient to the medical facility. When necessary to ensure volunteer drivers continue to provide transportation services to a recipient, the ~~county agency~~human service zone may request authorization from the department to make payment for additional mileage. Transportation services may be billed to ~~medical assistance~~Medicaid program or children's health insurance program only upon completion of the service. Transportation services may be allowed if the recipient or a household member does not have a vehicle that is in operable condition or if the health of the recipient or household member does not permit safe operation of the vehicle. If free or low-cost transportation services are available, including transportation that could be provided by a friend, family member, or household member, the department will not pay transportation costs.
  - b. Meals compensation is allowed only when medical services or travel arrangements require a recipient to stay overnight. Compensation is limited to the amount on the department fee schedule. The entity providing meals must be an enrolled Medicaid provider and must submit the proper requests for payment.
  - c. Lodging expense is allowed only when medical services or travel arrangements require a recipient to stay overnight. Lodging compensation is limited to the amount on the department fee schedule. Lodging providers must be enrolled in Medicaid and shall submit the proper requests for payment.
  - d. Travel expenses may not be authorized for both a driver and an attendant unless the referring licensed practitioner determines that one individual cannot function both as driver and attendant. Travel expenses may not be allowed for a noncommercial driver or an attendant while the recipient is a patient in a medical facility unless it is more economical for the driver or attendant to remain in the service area, as determined by the department.
  - e. Travel expenses may be authorized for one parent to travel with a child who is under eighteen years of age. No additional travel expenses may be authorized for another driver, attendant, or parent unless the referring licensed practitioner determines that person's presence is necessary for the physical, psychological, or medical needs of the child.

- f. Compensation for attendant services, provided by an attendant who is not a family member, may be allowed at a rate determined by the department if the department determines attendant services are medically necessary. Attendant services must be approved by the ~~county agency~~human service zone.

**History:** Effective July 1, 1996; amended effective May 1, 2000; September 1, 2003; October 1, 2012; July 1, 2014; April 1, 2016; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04

**SECTION 13.** Section 75-02-02-13.2 is amended as follows:

**75-02-02-13.2. Travel expenses for medical purposes - Institutionalized individuals - Limitations.**

1. For purposes of this section:
  - a. "Long-term care facility" means a nursing facility, intermediate care facility for individuals with intellectual disabilities, or swing-bed facility; and
  - b. "Medical center city" means Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Jamestown, Minot, and Williston, and includes any city that shares a common boundary with any of those cities.
2. A long-term care facility may not charge a resident for the cost of travel provided by the facility. Except as provided in subsection 4, a long-term care facility shall provide transportation to and from any provider of necessary medical services located within, or at no greater distance than the distance to, the nearest medical center city. Distance must be calculated by road miles.
3. If the resident has to travel farther than the nearest medical center city, the costs of travel may be reimbursed by Medicaid according to the appropriate fee schedule. Distance must be calculated by map miles.
4. A long-term care facility is not required to pay for transportation by ambulance for emergency or nonemergency situations for residents.
5. A service provider that is paid a rate, determined by the department on a cost basis that includes transportation service expenses, however denominated, may not be compensated as a transportation service provider for transportation services provided to an individual residing in the provider's facility. The following service providers may not be so compensated:
  - a. Basic care facilities;
  - b. Residential habilitation services for individuals with intellectual or developmental disabilities;
  - c. ~~Group homes serving children in foster care;~~



- d. — Intermediate care facilities for individuals with intellectual disabilities;
- e-d. Independent habilitation services for individuals with intellectual or developmental disabilities;
- f.e. Nursing facilities;
- g-f. Psychiatric residential treatment facilities;
- h-g. ~~Residential child care facilities~~ Qualified residential treatment programs;  
and
- i-h. Swing-bed facilities.

6. If, under the circumstances, a long-term care facility is not required to transport a resident, and the facility does not actually transport the resident, the availability of transportation services and payment of travel expenses is governed by section 75-02-02-13.1.

**History:** Effective July 1, 1996; amended effective July 1, 2012; October 1, 2012; April 1, 2016; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-24.1-04

**SECTION 14.** Section 75-02-02-14 is amended as follows:

**75-02-02-14. ~~County~~ Human service zone administration.**

1. Except as provided in subsection 2, unless otherwise directed or determined by the department, the ~~county~~ human service zone where the ~~medical-assistance~~ Medicaid unit is physically ~~present~~ residing is responsible for the administration of the program with respect to that unit.
2. When a unit receiving assistance moves from one ~~county~~ human service zone to another, the outgoing ~~county~~ human service zone continues to be responsible for the administration of the program with respect to that unit until the last day of the month after the month in which the unit assumes physical residence in an incoming ~~county~~ human service zone.
3. The human service zone where Medicaid unit is physically present is responsible to assist the individual applying for or receiving Medicaid or children's special health program benefits. The human service zone where the Medicaid unit physically resides is responsible for the administration of the program with respect to that unit.

**History:** Effective November 1, 1983; amended effective July 1, 1984; May 1, 1986; May 1, 2000; October 1, 2012; April 1, 2020.

**General Authority:** NDCC 50-24.1-04

**Law Implemented:** NDCC 50-01.2-03



**SECTION 15.** Section 75-02-02-27 is amended as follows:

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

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

- b. Other drugs not requiring prior authorization cause or are reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
  - c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization.
7. If a recipient is receiving coverage of a drug that is later subject to prior authorization requirements, the department shall continue to provide coverage of that drug until the prescriber must reevaluate the recipient. The department will provide a form by which a prescriber may inform the department of a drug that a recipient must continue to receive beyond the prescription reevaluation period regardless of whether such drug requires prior authorization. The form shall contain the following information:
  - a. The requested drug and its indication;
  - b. An explanation as to why the drug is medically necessary; and
  - c. The signature of the prescriber confirming that the prescriber has considered generic or other alternatives and has determined that continuing current therapy is in the best interest for successful medical management of the recipient.
8. If a recipient under age twenty-one is prescribed five or more concurrent prescriptions for antipsychotics, antidepressants, anticonvulsants, benzodiazepines, mood stabilizers, sedative, hypnotics, or medications used for the treatment of attention deficit hyperactivity disorder, the department shall require prior authorization of the fifth or more concurrent drug. Once the prescriber of the fifth or more concurrent drug consults with a board-certified pediatric psychiatrist regarding the overall care of the recipient, and if that prescriber wishes to still prescribe the fifth or more concurrent drug, the department will grant authorization for the drug.
9. The department may require prior authorization if a recipient age twenty-one or over is prescribed a stimulate medication used in the treatment of attention deficit disorder and attention deficit hyperactivity disorder by an individual who prescribes this medication at a rate two times higher than the rate of the top ten prescribers excluding the top prescriber based on data representing claims processed for a time period of no less than the previous quarter and no greater than the previous twelve months.

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

**General Authority:** NDCC 50-24.6-10; 50-24.6-04

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

**SECTION 16.** Subsection 2 of section 75-02-02-28 is amended as follows:

2. The drug use review board shall:
  - a. Cooperate with the department to implement a drug use review program;
  - b. Receive and consider information regarding the drug use review process which is provided by the department and interested parties, including prescribers who treat significant numbers of recipients;
  - c. Review and make recommendations to the department regarding drugs to be included on prior authorization status;
  - d. Review no less than once each year the status of the drugs that have been deemed to require prior authorization and make recommendations to the department regarding any suggested changes;
  - e. Review and approve the prior authorization program process used by the department, including the process to accommodate the provision of a drug benefit in an emergency situation;
  - f. Advise and make recommendations to the department regarding any rule proposed for adoption by the department to implement the provisions of state and federal law related to drug use review; and
  - g. Propose remedial strategies to improve the quality of care and to promote effective use of medical-assistanceMedicaid program and children's health insurance program funds or recipient expenditures.

**History:** Effective September 1, 2003; amended effective October 1, 2012; April 1, 2020.

**General Authority:** NDCC 50-24.6-10

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

**SECTION 17.** Section 75-02-02-29 is amended as follows:

**75-02-02-29. Primary care provider.**

1. Payment may not be made for services that require a referral from a recipient's primary care provider for recipients, with the exception of recipients who are notified by the department and are required within fourteen days from the date of that notice, but who have not yet selected, or have not yet been auto-assigned a primary care provider.
2. A primary care provider must be selected by or on behalf of the members in the following medical-assistanceMedicaid units:
  - a. The parents or caretaker relatives and their spouses of a deprived child under the age of eighteen years, but through the month of the child's eighteenth birthday, up to fifty-four percent of the federal poverty level.
  - b. For up to twelve months, the parents or caretaker relatives, along with their spouses and dependent children, of a deprived child under the age

of eighteen years, but through the month of the child's eighteenth birthday, who were eligible under the parents and caretaker relatives and their spouses category in at least three of the six months immediately preceding the month in which the parents or caretakers lose coverage under the parents and caretaker relatives and their spouses category due to increased earned income or hours of employment.

- c. For up to four months, the parents or caretaker relatives, along with their spouses and dependent children, of a deprived child under the age of eighteen years, but through the month of the child's eighteenth birthday, who were eligible under the parents and caretaker relative and their spouses category in at least three of the six months immediately preceding the month in which the parents or caretaker relatives lose coverage under the parents and caretaker relatives and their spouses category due to increased alimony or spousal support.
- d. A pregnant woman up to one hundred ~~forty-seven~~fifty-seven percent of the federal poverty level.
- e. An eligible woman who applied for and was eligible for Medicaid during pregnancy continues to be eligible for sixty days, beginning on the last day of pregnancy, and for the remaining days of the month in which the sixtieth day falls.
- f. A child born to an eligible pregnant woman who applied for and was found eligible for Medicaid on or before the day of the child's birth, for twelve months, beginning on the day of the child's birth and for the remaining days of the month in which the twelfth month falls.
- g. A child, not including a child in foster care, from birth through five years of age up to one hundred forty-seven percent of the federal poverty level.
- h. A child, not including a child in foster care, from six through eighteen years of age, up to one hundred thirty-three percent of the federal poverty level.
- i. A child, not including a child in foster care, from six through eighteen years of age who becomes Medicaid eligible due to an increase in the Medicaid income levels used to determine eligibility.
- j. An individual who is not otherwise eligible for Medicaid and who was in title IV-E funded, state-funded, or tribal foster care in this state under in the month the individual reaches eighteen years of age, through the month in which the individual reaches twenty-six years of age.
- k. A pregnant woman who requires medical services and qualifies for Medicaid on the basis of financial eligibility resulting in a recipient liability under section 75-02-02.1-41.1 and whose income is above one hundred ~~forty-seven~~sixty-two percent of the federal poverty level.

- l. A child less than nineteen years of age who requires medical services and qualifies for Medicaid on the basis of financial eligibility resulting in a recipient liability under section 75-02-02.1- 41.1 and whose income is above one hundred seventy percent of the federal poverty level.
  - m. The parents and caretaker relatives and their spouses of a deprived child who require medical services and qualify for Medicaid on the basis of financial eligibility resulting in a recipient liability under section 75-02-02.1-41.1 and whose income is above one hundred thirty-three percent of the federal poverty level.
  - n. A child, not including a child in foster care, less than nineteen years of age with income up to one hundred seventy percent of the federal poverty level.
3. A physician, nurse practitioner, or physician assistant practicing in the following specialties or the following entities may be selected as a primary care provider:
- a. Family practice;
  - b. Internal medicine;
  - c. Obstetrics;
  - d. Pediatrics;
  - e. General practice;
  - f. Adult health;
  - g. A rural health clinic;
  - ~~g~~.~~h~~. A federally qualified health center; or
  - ~~h~~.~~i~~. An Indian health services clinic or tribal health facility clinic.
4. A recipient need not select, or have selected on the recipient's behalf, a primary care provider if:
- a. The recipient is aged, blind, or disabled;
  - b. The period for which benefits are sought is prior to the date of application;
  - c. The recipient is receiving foster care or subsidized adoption benefits;
  - d. The recipient is receiving home and community-based services; or
  - e. The recipient has been determined medically frail under section 75-02-02.1-14.1.

5. Payment may be made for the following medically necessary covered services whether or not provided by, or upon referral from, a primary care provider:
- a. Early and periodic screening, diagnosis, and treatment of recipients under age twenty-one;
  - b. Family planning services;
  - c. Certified nurse midwife services;
  - d. Optometric services;
  - e. Chiropractic services;
  - f. Dental services;
  - g. Orthodontic services provided as the result of a referral through the early and periodic screening, diagnosis, and treatment program;
  - h. Services provided by an intermediate care facility for individuals with intellectual disabilities;
  - i. Emergency services;
  - j. Transportation services;
  - k. Targeted case management services;
  - l. Home and community-based services;
  - m. Nursing facility services;
  - n. Prescribed drugs except as otherwise specified in section 75-02-02-27;
  - o. Psychiatric services;
  - p. Ophthalmic services;
  - q. Obstetrical services;
  - r. Behavioral health services;
  - s. Services for treatment of addiction;
  - t. Partial hospitalization for psychiatric services;
  - u. Ambulance services;
  - v. Immunizations;



- w. Independent laboratory and radiology services;
  - x. Public health unit services; and
  - y. Personal care services.
6. Except as provided in subsection 4, or unless the department exempts the recipient, a primary care provider must be selected for each recipient.
7. A primary care provider may be changed during the ninety days after the recipient's initial enrollment with the primary care provider or the date the state sends the recipient notice of the enrollment, at redetermination of eligibility, once every twelve months during the sixty-day open enrollment period, or with good cause. Good cause for changing a primary care provider less than twelve months after the previous selection of a primary care provider exists if:
- a. The recipient relocates;
  - b. Significant changes in the recipient's health require the selection of a primary care provider with a different specialty;
  - c. The primary care provider relocates or is reassigned;
  - d. The selected provider refuses to act as a primary care provider or refuses to continue to act as a primary care provider; or
  - e. The department, or its agents, determines that a change of primary care provider is necessary.

**History:** Effective October 1, 2012; amended effective July 1, 2014; April 1, 2016; January 1, 2017; April 1, 2018; April 1, 2020.

**General Authority:** NDCC 50-24.1-04; 50-24.1-41

**Law Implemented:** NDCC 50-24.1-32; 50-24.1-41; 42 USC 1396u-2