

**Sixty-second Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2011**

SENATE BILL NO. 2077  
(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to create and enact a new chapter to title 50 of the North Dakota Century Code, relating to expanded service payments for elderly and disabled; and to amend and reenact sections 50-24.5-01, 50-24.5-02, 50-24.5-03, and 50-24.5-04 of the North Dakota Century Code, relating to the requirements for basic care assistance eligibility, personal care services, and functional assessment criteria.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 50-24.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Aged" means at least sixty-five years of age.
2. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under ~~titles II and XVI~~ of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.].
3. "Congregate housing" means housing shared by two or more individuals not related to each other which is not provided in an institution.
4. "County agency" means the county social service board.
5. "Department" means the department of human services.
6. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under ~~titles II and XVI~~ of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.].
7. "Eligible beneficiary" means a resident of this state who:
  - a. (1) Is aged; or  
(2) Is at least eighteen years of age and is disabled or blind;
  - b. Has applied for and is eligible to receive and receives benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], ~~provided that an individual and who was has applied for and is receiving benefits, if the individual is eligible to receive benefits, under titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.] and who was receiving benefits under title XVI before January 1, 1995, is not ineligible because that individual is not eligible to receive benefits under title XIX;~~
  - c. Meets the requirements of section 23-09.3-08.1;
  - d. Based on a functional assessment, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating and:

- (1) Has health, welfare, or safety needs, including a need for supervision or a structured environment, which require care in a licensed adult family foster care home or an assisted living facility; or
- (2) Is impaired in three of the following four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry; and

~~d.e.~~ Is determined to be eligible pursuant to rules adopted by the department.

8. ~~"Institution" means an establishment that makes available some treatment or services beyond food or shelter to five or more individuals who are not related to the proprietor~~ a facility licensed under chapter 23-09.3.
9. "Living independently" includes living in congregate housing. The term does not include living in an institution.
10. "Personal needs allowance" means an amount retained by the eligible beneficiary to cover the costs of clothing and other personal needs.
11. "Proprietor" means an individual responsible for day-to-day administration and management of a facility.
11. ~~"Qualified service provider" means a county agency or independent contractor who agrees to meet standards for services and operations established by the department.~~
12. ~~"Related to the proprietor" means an individual who is a proprietor's spouse or former spouse, or a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half brother, half sister, stepbrother, or stepsister of a proprietor or proprietor's spouse or former spouse.~~
13. "Remedial care" means services that produce the maximum reduction of an eligible beneficiary's physical or mental disability and the restoration of an eligible beneficiary to the beneficiary's best possible functional level.
14. ~~13.~~ "Would be eligible to receive the cash benefits except for income" refers to an individual whose countable income, less the cost of necessary remedial care that may be provided under this chapter, does not exceed an amount equal to the cash benefit under titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.] which the individual would receive if the individual had no income, plus sixty dollars the amount allowed as the personal needs allowance.

**SECTION 2. AMENDMENT.** Section 50-24.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-02. Powers and duties of the department.**

The department shall:

1. Administer aid to vulnerable aged, blind, and disabled persons and supervise and direct county agencies in the administration of aid to vulnerable aged, blind, and disabled persons.
2. ~~Supplement, within the limits of legislative appropriation, the income of an eligible beneficiary receiving necessary adult family foster care services to the extent that the eligible beneficiary lacks income sufficient to meet the cost of that care provided at rates determined by the department.~~
3. Supplement, within the limits of legislative appropriation, the income of an eligible beneficiary receiving necessary basic care services to the extent that the eligible beneficiary lacks income sufficient to meet the cost of that care, provided at rates determined by the department

adjusted by the inflation rate for basic care services used to develop the legislative appropriation for the department.

- 4.3. Pay qualified ~~service~~basic care providers at rates determined by the department, within the limits of legislative appropriation, ~~for the provision of the following services provided to an eligible beneficiary to the extent that the eligible beneficiary lacks income sufficient to meet the cost of these services:~~
- a. ~~Homemaker services;~~
  - b. ~~Chore services;~~
  - e. ~~Respite care;~~
  - d. ~~Home health aide services;~~
  - e. ~~Case management;~~
  - f. ~~Family home care;~~
  - g. ~~Personal attendant care;~~
  - h. ~~Adult family foster care;~~
  - i. ~~Adaptive assessment; and~~
  - j. ~~Other services the department determines to be essential and appropriate to sustain an individual in the individual's home and community and to delay or prevent institutional care.~~
5. ~~Establish, maintain, and ensure the enforcement of standards for congregate housing as may be appropriate to the needs of the residents of congregate housing who are receiving services under this chapter. The standards must govern matters such as admission policy, safety, sanitation, and protection of civil rights.~~
6. ~~Establish an individualized care rate for each eligible beneficiary receiving adult family foster care services or assisted living services.~~
- 7.4. Issue payment to basic facilities and adult family foster care facilities for services provided to an eligible beneficiary.
- 8.5. Take action and give directions necessary to implement this chapter.

**SECTION 3. AMENDMENT.** Section 50-24.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-03. Powers and duties of county agency.**

Each county agency shall:

1. Administer aid to aged, blind, and disabled persons at the county level under the direction and supervision of the department, pursuant to state requirements.
2. Provide the services described in this chapter. ~~The county agency may contract with a qualified service provider in the provision of those services.~~
3. Determine eligibility for benefits under this chapter and periodically redetermine eligibility of persons receiving benefits pursuant to this chapter.

4. ~~Review the circumstances of congregate housing for residents receiving services under this chapter which may exist or may be established in the county and certify to the department that each congregate housing facility conforms to standards contained in rules adopted by the department.~~
5. Provide case management services to eligible beneficiaries.
6. ~~Provide assessments to eligible beneficiaries and to applicants, where necessary.~~
- 7-5. Conduct initial and ongoing functional assessments of applicants in cooperation with basic care facilities.
8. ~~Submit an annual budget to the board of county commissioners containing an estimate and supporting data, setting forth the county funds needed to carry out this chapter.~~
- 9-6. Cooperate with any other county agency to assure the conduct of initial and ongoing functional assessments and determinations of eligibility with respect to any applicant or eligible beneficiary who is physically present in a county other than the county in which the applicant or eligible beneficiary is a resident for purposes of chapter 50-01.

**SECTION 4. AMENDMENT.** Section 50-24.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-04. Services provided - Limit on cost.**

Services provided under this chapter must be treated as necessary remedial care to the extent those services are not covered under the medical assistance program. The cost of the services provided under this chapter to a person residing in a basic care ~~or adult family foster care~~ facility for which the rate charged includes room and board is limited to the rate set for services in that facility, plus ~~eighty-five dollars~~ the amount allowed as the personal needs allowance, less that person's total income.

**SECTION 5.** A new chapter to title 50 of the North Dakota Century Code is created and enacted as follows:

**Definitions.**

In this chapter, unless the context otherwise requires:

1. "Aged" means at least sixty-five years of age.
2. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.].
3. "County agency" means the county social service board.
4. "Department" means the department of human services.
5. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.].
6. "Eligible beneficiary" means a resident of this state who:
  - a. (1) Is aged; or  
(2) Is at least eighteen years of age and is disabled or blind;
  - b. Has applied for and is eligible to receive benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], and who has applied for and is receiving benefits, if the

individual is eligible to receive benefits, under titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.];

- c. Based on a functional assessment, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating and:
    - (1) Has health, welfare, or safety needs, including a need for supervision or a structured environment; and
    - (2) Is impaired in three of the four instrumental activities of daily living of preparing meals, doing homework, taking medicine, and doing laundry;
  - d. Has countable income, less the cost of necessary remedial care that may be provided under this chapter, does not exceed an amount equal to the cash benefit under titles II and XVI of the Social Security Act [42 U.S.C. 401-434 and 42 U.S.C. 1381 et seq.] which the individual would receive if the individual had no income, plus the personal needs allowance;
  - e. Has impairments that are not the result of an intellectual disability; and
  - f. Is determined to be eligible pursuant to rules adopted by the department.
7. "Family home care" means the provision of room, board, supervisory care, and personal services to an eligible elderly or disabled person by the spouse or by one of the following relatives, or the current or former spouse of one of the following relatives, of the elderly or disabled person: parent, grandparent, adult child, adult sibling, adult grandchild, adult niece, or adult nephew. The family home care provider need not be present in the home on a twenty-four-hour basis if the welfare and safety of the client is maintained.
8. "Qualified service provider" means a county agency or independent contractor who agrees to meet standards for services and operations established by the department.
9. "Remedial care" means services that produce the maximum reduction of an eligible beneficiary's physical or mental disability and the restoration of an eligible beneficiary to the beneficiary's best possible functional level.

#### **Powers and duties of the department.**

The department shall:

- 1. Administer expanded service payments for elderly and disabled and supervise and direct county agencies in the administration of expanded service payments for elderly and disabled.
- 2. Pay qualified service providers at rates determined by the department, within limits of legislative appropriation, for the provision of the following services provided to eligible individuals:
  - a. Adult day care;
  - b. Adult family foster care;
  - c. Case management;
  - d. Chore services;
  - e. Family home care;
  - f. Homemaker services;
  - g. Nonmedical transportation;

- h. Respite care; and
  - i. Other services the department determines to be essential and appropriate to sustain an individual in the individual's home and community and to delay or prevent institutional care.
3. Take actions, give directions, and adopt rules as necessary to carry out the provisions of this chapter.

**Powers and duties of county agency.**

Each county agency shall:

1. Administer expanded service payments for the elderly and disabled at the county level under the direction and supervision of the department, pursuant to state requirements.
2. Provide the services described in this chapter. The county agency may contract with a qualified service provider in the provision of those services.
3. Determine eligibility for benefits under this chapter and periodically redetermine eligibility of persons receiving benefits pursuant to this chapter.
4. Provide case management services to eligible beneficiaries.
5. Conduct initial and ongoing functional assessments of applicants.

**Applicant's or guardian's duty to establish eligibility.**

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

**Department has preferred claim against estate.**

Funds used to provide services to an eligible beneficiary may not be considered as gifts. The department has a preferred claim against the estate of any person for recovery of funds expended under this chapter for that person or that person's spouse or minor children. No statute of limitations or similar statute nor the doctrine of laches bars a claim under this chapter.

**Responsibility for expenditures.**

Except as otherwise specifically provided in section 50-03-08, expenditures required under this chapter are the responsibility of the state of North Dakota.

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President of the Senate

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Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2077.

Senate Vote:    Yeas 45            Nays 0            Absent 2

House Vote:    Yeas 90            Nays 0            Absent 4

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2011,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State