

CHAPTER 50-24.5
AID TO AGED, BLIND, AND DISABLED PERSONS

50-24.5-01. Definitions. (Effective through December 31, 2019)

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. (1) 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.], 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.]; or
(2) Has applied for and is eligible to receive and receives benefits under section 50-24.1-37 for long-term services and supports pursuant to an asset test established under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] and section 50-24.1-02;
 - 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; 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
 - e. Is determined to be eligible pursuant to rules adopted by the department.
8. "Institution" means 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.
12. "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.
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 the amount allowed as the personal needs allowance.

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(2) Has applied for and is eligible to receive and receives benefits under section 50-24.1-37 for long-term services and supports pursuant to an asset test established under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] and section 50-24.1-02;
 - 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; 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
 - e. Is determined to be eligible pursuant to rules adopted by the department.
7. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
8. "Institution" means 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.
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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 the amount allowed as the personal needs allowance.

50-24.5-02. Powers and duties of the department. (Effective through December 31, 2019)

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 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.
3. Pay qualified basic care providers at rates determined by the department, within the limits of legislative appropriation.
4. Issue payment to basic care facilities for services provided to an eligible beneficiary.
5. Take action and give directions necessary to implement this chapter.

Powers and duties of the department. (Effective after December 31, 2019) The department shall:

1. Administer aid to vulnerable aged, blind, and disabled persons and supervise and direct human service zones 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 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.
3. Pay qualified basic care providers at rates determined by the department, within the limits of legislative appropriation.
4. Issue payment to basic care facilities for services provided to an eligible beneficiary.
5. Take action and give directions necessary to implement this chapter.

50-24.5-02.1. Registration of assisted living facilities.

Repealed by S.L. 2003, ch. 429, § 5.

50-24.5-02.2. Basic care facility private room rates.

The department of human services shall allow a basic care facility to charge a higher rate for a private room used by a recipient of benefits under this chapter if the private room is not necessary to meet the resident's care needs; the resident, or a person acting on behalf of the resident, has requested the private room and the facility informs the person making the request, at the time of the request, of the amount of payment and that the payment must come from sources other than a resident's monthly income; and the payment does not exceed the amount charged to private pay residents.

50-24.5-02.3. Basic care payment rates.

1. The department shall establish, by rule, procedures for determining rates for the care of residents of basic care facilities that qualify as vendors of an aged, blind, and disabled persons program and for implementing provisions of this chapter. The procedures must be based on methods and standards that the department finds are adequate to recognize the costs that must be incurred for the care of residents in efficiently and economically operated basic care facilities.
2. The department shall identify costs that are recognized for establishing payment rates.
3. For the rate year beginning July 1, 2016, the department shall establish the limits by using the average of the highest and lowest rates from the 2014 rate year. The direct care limit must be ninety-five percent of the average and the indirect care limit must be ninety percent of the average. Beginning with the July 1, 2017, rate year, the department shall adjust the limits by using the cost percentage change from the prior two rate years, within the limits of legislative appropriations.
4. The department shall provide, by rule, within the limits of legislative appropriations, for payment of rates paid by the aged, blind, and disabled persons program for a maximum of thirty days per occurrence for leave days for a resident who is in a licensed health care facility when the resident is expected to return to the facility.

5. Within the limits of legislative appropriations, the department shall establish an uncompensated care expense of one hundred eighty days.

50-24.5-03. Powers and duties of county agency. (Effective through December 31, 2019)

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.
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 in cooperation with basic care facilities.
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.

Powers and duties of human service zone. (Effective after December 31, 2019) Each human service zone, unless otherwise directed or determined by the department, shall:

1. Administer aid to aged, blind, and disabled persons at the human service zone level under the direction and supervision of the department, pursuant to state requirements.
2. Provide the services described in this chapter.
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 in cooperation with basic care facilities.
6. Cooperate with any other human service zone 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 human service zone other than the human service zone in which the applicant or eligible beneficiary is a resident for purposes of chapter 50-01.

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 facility for which the rate charged includes room and board is limited to the rate set for services in that facility, plus the amount allowed as the personal needs allowance, less that person's total income.

50-24.5-05. 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.

50-24.5-06. Appropriation of county funds - Reimbursement by department - Reimbursement by county agency.

Repealed by S.L. 1997, ch. 403, § 13.

50-24.5-07. Residency. (Effective through December 31, 2019)

For purposes of this chapter:

1. A person is a resident of this state if:
 - a. The person is not living in an institution and is living in this state:

- (1) With intent to remain in this state permanently or for an indefinite period; or
- (2) Without intent if the person is incapable of stating intent.
- b. The person is living in an institution outside this state and was receiving a benefit under chapter 50-01 on January 1, 1995.
- c. The person was placed in an out-of-state institution by a county agency or the department while the person was incapable of indicating intent.
- d. The person is living in an in-state institution, has lived in that institution for at least thirty days, and was not placed in that institution by another state. A person placed in an institution by another state is a resident of the state making the placement. Any action beyond providing information to the person and the person's family constitutes arranging or making a state placement. However, the following actions do not constitute state placement:
 - (1) Providing basic information about this chapter and information about the availability of this chapter; or
 - (2) Assisting a person in locating an institution in this state, if the person is capable of indicating intent and independently decides to move.
- 2. A person who is a resident of this state is a resident of the county in which the person is a resident for purposes of chapter 50-01.

Residency. (Effective after December 31, 2019) For purposes of this chapter:

- 1. A person is a resident of this state if:
 - a. The person is not living in an institution and is living in this state:
 - (1) With intent to remain in this state permanently or for an indefinite period; or
 - (2) Without intent if the person is incapable of stating intent.
 - b. The person is living in an institution outside this state and was receiving a benefit under chapter 50-01 on January 1, 1995.
 - c. The person was placed in an out-of-state institution by a human service zone or the department while the person was incapable of indicating intent.
 - d. The person is living in an in-state institution, has lived in that institution for at least thirty days, and was not placed in that institution by another state. A person placed in an institution by another state is a resident of the state making the placement. Any action beyond providing information to the person and the person's family constitutes arranging or making a state placement. However, the following actions do not constitute state placement:
 - (1) Providing basic information about this chapter and information about the availability of this chapter; or
 - (2) Assisting a person in locating an institution in this state, if the person is capable of indicating intent and independently decides to move.
- 2. A person who is a resident of this state is a resident of the human service zone in which the person is a resident for purposes of chapter 50-01.

50-24.5-08. 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.

50-24.5-09. Responsibility for expenditures. (Effective through December 31, 2019)

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

Responsibility for expenditures. (Effective after December 31, 2019) Expenditures required under this chapter are the responsibility of the state of North Dakota.

50-24.5-10. Compensation for top management personnel - Department to adopt emergency rules.

Notwithstanding the requirements of subsection 2 of section 28-32-03, the department of human services has the authority to create emergency rules related to the compensation for top management personnel of a basic care facility combined with a hospital.