

SECTION 1: Chapter 75-03-38 is repealed.

**CHAPTER 75-03-38
AUTISM SPECTRUM DISORDER VOUCHER PROGRAM**

[Repealed effective January 1, 2024]

Section

~~75-03-38-01~~ Definitions

~~75-03-38-02~~ Eligibility

~~75-03-38-03~~ Application

~~75-03-38-04~~ Voucher Administration

~~75-03-38-05~~ Denials—Terminations—Appeals

~~75-03-38-06~~ Variance

~~75-03-38-01. Definitions.~~

- ~~1. "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities.~~
- ~~2. "Assistive technology service" means any service that directly assists an individual in the selection, acquisition, or use of an assistive technology device.~~
- ~~3. "Department" means the department of human services.~~
- ~~4. "Division" means the medical services division of the department.~~
- ~~5. "Federal poverty level" means the poverty guidelines that are issued each year in the federal register by the United States department of health and human services as applicable to the state of North Dakota.~~
- ~~6. "Provider" means a teacher, physical therapist, occupational therapist, or licensed therapist working with a child to address deficits created by an autism diagnosis.~~
- ~~7. "Qualified professional" means a primary care provider or licensed medical care provider qualified to diagnose autism spectrum disorder.~~
- ~~8. "Sensory equipment" means an item that lessens or amplifies the intensity of various forms of sensory stimulation and helps to desensitize individuals to sensory stimuli.~~

History: Effective July 1, 2014; amended effective April 1, 2018; January 1, 2022.

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 50-06-32.1

~~75-03-38-02. Eligibility.~~

- ~~1. A parent, custodian, or legal guardian may apply to the division to participate in the voucher program if all the following conditions are met:
 - ~~a. The child has an autism spectrum disorder diagnosis;~~
 - ~~b. The child's age is from three years through seventeen years;~~
 - ~~c. The household has an income below two hundred percent of the federal poverty level;~~
 - ~~d. The child is not currently served under any of the department's waivers;~~
 - ~~e. The child's support need cannot be obtained through insurance or through other service systems, including educational and behavioral health systems and the federal Medicaid 1915(i) state plan amendment;~~
 - ~~f. The child's needs cannot be met by a generic service or support;~~
 - ~~g. The child lives with the child's parent, custodian, or legal guardian; and~~
 - ~~h. The child is currently a North Dakota resident.~~~~
- ~~2. The department shall review complete voucher applications in the order received, and shall only approve voucher applications within the limits of legislative appropriations.~~

History: Effective July 1, 2014; amended effective April 1, 2018; April 1, 2020; January 1, 2022.

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 50-06-32.1

~~75-03-38-03. Application.~~

- ~~1. A parent, custodian, or legal guardian of a child diagnosed with an autism spectrum disorder shall provide the following information on an application form provided by the division:
 - ~~a. Verification from a qualified professional of a diagnosis of the autism spectrum disorder based on the criteria identified in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American psychiatric association.~~~~

- b. ~~Verification of North Dakota residency.~~
 - c. ~~Verification of household's gross income below two hundred percent of the federal poverty level.~~
 - d. ~~Signed releases of information, if necessary, to the child's service providers and school.~~
2. ~~A completed application must be submitted yearly.~~

History: Effective July 1, 2014; amended effective April 1, 2018; January 1, 2022.

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 50-06-32.1

75-03-38-04. Voucher administration.

- 1. ~~Voucher support approved for a child with an autism spectrum diagnosis under this chapter may not exceed seven thousand five hundred dollars per state fiscal year.~~
- 2. ~~Upon approval of the application, the division shall issue an autism voucher purchase form that includes a list to select from, to be completed by the parent, custodian, or legal guardian indicating the specific item or service being requested. For an item or service not included on the preapproved list, a description of each item or service requested must accompany the autism voucher purchase form. This description must be from a provider who is working with the eligible child and must state how the item or service will compensate for a deficit created by an autism spectrum disorder.~~
- 3. ~~The division may approve an autism voucher purchase for a one-time or a recurring item or service not to exceed the maximum amount in subsection 1. The difference between the maximum amount of funding permitted in subsection 1 and the amount approved may be used to fund additional autism voucher purchases.~~
- 4. ~~If a voucher is approved for recurring purchases, the division will monitor the voucher for activity.~~
- 5. ~~If the voucher is not used for thirty consecutive calendar days, the division shall inform the parent, custodian, or legal guardian that, if an additional thirty calendar days pass without a voucher purchase or request for item or service, the voucher will be terminated. Unspent funds from a terminated voucher must be returned to the voucher program and the division may distribute the funds to another applicant.~~
- 6. ~~A voucher application may be denied if approving the application, item, or service would exceed the limits of legislative appropriations. A voucher may~~

~~be terminated if the funding awarded under the voucher is exhausted.~~

- ~~7. Voucher funds must be used on items or services that are age-appropriate, safe, cost effective, and connected to the child. These items or services are not funded by the voucher:~~
 - ~~a. Items or services that are parental responsibilities, including upkeep of residence, fences, internet, housing or house maintenance, or utilities;~~
 - ~~b. Duplicate items or services that address identical deficit goals, except for disposable items;~~
 - ~~c. Items or services covered by insurance;~~
 - ~~d. Items or services that put the health and safety of the child at risk;~~
 - ~~e. Replacement items, except for disposable products, such as sensory or tactile stimulation items;~~
 - ~~f. Items that are restricted within property rental agreements or are the responsibility of landlords, tenants, or the homeowner;~~
 - ~~g. Items that would cause a parent, custodian, or legal guardian to have additional or recurring costs;~~
 - ~~h. Service animals or emotional support animals and related items;~~
 - ~~i. General entertainment;~~
 - ~~j. Consumer electronics for everyday use;~~
 - ~~k. Household items, excluding assistive technology;~~
 - ~~l. Food;~~
 - ~~m. Telephone or telecommunications, excluding assistive technology;~~
 - ~~n. Vehicles;~~
 - ~~o. Clothing, personal goods, or personal treatments, such as toiletries or aesthetic or cosmetic services, excluding compression clothing; and~~
 - ~~p. Recreation that benefits the entire family and vacations.~~

- ~~8. Items or supports requested through the voucher program must be cost-effective in meeting the child's needs.~~
- ~~9. Voucher funds are not available until the division approves the autism voucher purchase form.~~

~~**History:** Effective July 1, 2014; amended effective April 1, 2018; April 1, 2020; January 1, 2022.~~

~~**General Authority:** NDCC 50-06-32.1~~

~~**Law Implemented:** NDCC 50-06-32.1~~

~~**75-03-38-05. Denials - Terminations - Appeals.**~~

- ~~1. The division shall issue a written notice to a parent, custodian, or legal guardian when a voucher application has been denied, an item or service has been denied, or if the voucher is terminated for inactivity.~~
- ~~2. The division shall include the reason for the denial or termination and shall inform the parent, custodian, or legal guardian of the right to appeal the denial or termination.~~
- ~~3. A voucher application, an item or service, or voucher may be denied or terminated under the terms and conditions of this chapter or North Dakota Century Code section 50-06-32.1.~~
- ~~4. A parent, custodian, or legal guardian may appeal a denial or termination of a voucher under this chapter. An appeal under this section must be made in writing within thirty days of the date of the notice issued under this section. The parent, custodian, or legal guardian shall submit the written request for an appeal and hearing under North Dakota Century Code chapter 28-32 and chapter 75-01-03 to the appeals supervisor for the department of human services.~~
- ~~5. A parent, custodian, or legal guardian may not appeal a termination resulting from exhausting the funding awarded under the voucher or if approving the voucher would exceed the limits of legislative appropriations.~~
- ~~6. A parent, custodian, or legal guardian may appeal the denial of an item or service that was requested when the child was a resident of North Dakota, even if the child is no longer a resident of North Dakota at the time of the denial.~~
- ~~7. A parent, custodian, or legal guardian may not appeal a termination resulting from the child no longer being a resident of North Dakota.~~

~~**History:** Effective July 1, 2014; amended effective April 1, 2018.~~

~~**General Authority:** NDCC 50-06-32.1~~

~~**Law Implemented:** NDCC 50-06-32.1~~

~~75-03-38-06. Variance.~~

~~Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance to approve additional funding requests for respite care or tutoring to exceed seven thousand five hundred dollars per state fiscal year upon such terms as the department may prescribe, except no variance may be granted beyond the limits of legislative appropriations, and no variance may be granted except at the discretion of the department. A parent, custodian, or legal guardian with a voucher support approved for a child diagnosed with an autism spectrum disorder under this chapter shall submit a written request to the department justifying the variance. A refusal to grant a variance is not subject to appeal.~~

History: Effective January 1, 2022.

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 50-06-32.1

**CHAPTER 75-03-39
AUTISM SERVICES WAIVER**

Section

75-03-39-01 Definitions

75-03-39-02 Eligibility for Services Under the Medicaid Autism Spectrum Disorder Birth Through ~~Fifteen~~Seventeen Waiver

SECTION 2. Section 75-03-39-01 is amended as follows:

75-03-39-01. Definitions.

1. "Department" means the department of health and human services.
2. "Division" means the medical services division of the department.
3. "Qualified professional" means a primary care provider or licensed medical care provider qualified to diagnose autism spectrum disorder.

History: Effective July 1, 2014; amended effective April 1, 2018, January 1, 2024.

General Authority: NDCC 50-24.1-26

Law Implemented: NDCC 50-24.1-26

SECTION 3. Section 75-03-39-02 is amended as follows:

75-03-39-02. Eligibility for services under the Medicaid autism spectrum disorder birth through ~~fifteen~~seventeen waiver.

1. A child is eligible for autism services under the department's Medicaid autism spectrum disorder birth through ~~fifteen~~seventeen waiver if the following conditions are met:
 - a. The age of the child is birth through ~~fifteen~~seventeen years of age;
 - b. The child has an autism spectrum disorder diagnosis from a qualified professional able to determine diagnosis;
 - c. An autism spectrum disorder waiver slot is available; and
 - d. The child meets the institutional level of care required by the centers for Medicare and Medicaid services.
2. Annual redetermination for continued waiver services is required to determine if the child meets the institutional level of care required by the centers for Medicare and Medicaid services.

History: Effective July 1, 2014; amended effective April 1, 2018; January 1, 2020; January 1,

2022; January 1, 2024.

General Authority: NDCC 50-24.1-26

Law Implemented: NDCC 50-24.1-26