

**CHAPTER 75-02-01.3
CHILD CARE ASSISTANCE**

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SECTION 1. Section 75-02-01.3-02 is amended as follows:

75-02-01.3-02. Decision and notice.

1. The county agency shall notify the applicant or recipient in writing of the approval, denial, or termination. If an applicant's application is denied or a recipient's eligibility is terminated, the written notice must include:
 - a. A statement of the proposed action;
 - b. The reason for the proposed action, including the rule, regulation, or statute upon which the action is based; and
 - c. An explanation of the applicant's or recipient's right to request reconsideration or an appeal, ~~or both~~.
2. The effective date a case is closed or suspended is the last calendar day of the month identified in the notice.
3. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for an applicant or recipient who is adversely affected.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

SECTION 2. Section 75-02-01.3-03 is amended as follows:

75-02-01.3-03. Closing a case.

A case must be closed when:

1. ~~The caretaker is not participating in an allowable activity.~~
2. ~~The child care assistance unit includes no eligible child.~~
3. The review form:
 - a. Is not submitted timely; or
 - b. Is incomplete so further eligibility cannot be determined; ~~or~~
 - c. ~~Indicates the family's income exceeds the upper income limit for the family size.~~
3. The household income exceeds the upper income limit for the household size.
4. The family moves out of state.
5. The recipient requests that the case be closed.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.
General Authority: NDCC 50-33-02
Law Implemented: NDCC 50-33-02

SECTION 3. Section 75-02-01.3-04 is amended as follows.

75-02-01.3-04. Available benefits.

1. ~~The child care assistance program shall pay child care costs related to allowable activities of the eligible caretaker in a temporary assistance for needy families household or diversion assistance household.~~
2. ~~The child care assistance program shall pay a portion of child care costs related to allowable activities of the caretaker based on family size and countable income by applying a sliding fee schedule established by the department which is based on household size and income.~~

History: Effective April 1, 2010; amended effective October 1, 2016.
General Authority: NDCC 50-33-02
Law Implemented: NDCC 50-33-02

SECTION 4. Section 75-02-01.3-05 is amended as follows:

75-02-01.3-05. Approved relative provider's background check information.

1. Before approving an individual as an approved relative provider, the department shall review available public records and the child abuse information index.
2. The department periodically may review available public records and the child abuse information index on an approved relative provider.
3. Based on information from public records, a relative provider applicant's request ~~will~~ shall be approved or denied; and an approved relative provider ~~will~~ shall be terminated at the end of the month written notification is given; if he or she has been found guilty of, pled guilty, to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or ~~12.1-40, human trafficking~~ 12.1-41, uniform act on prevention of and remedies for human trafficking; or in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, ~~abuse or neglect of a child~~; or 14-09-22.1, neglect of a child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of these offenses identified in subdivision a; or
 - c. An offense other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

4. The department has determined that the offenses enumerated in subdivisions a and b of subsection 3 have a direct bearing on the relative provider applicant's or approved relative provider's ability to serve as an approved relative provider.
5. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17.01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
6. If a services required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that a child has been abused or neglected by the applicant or relative provider, that decision has a direct bearing on the applicant's or relative provider's ability to serve as an approved relative and the application or certificate may be denied or revoked. If a services required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the applicant or relative provider, the applicant or relative provider shall furnish information, satisfactory to the department, from which the department can determine the applicant's or relative provider's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of current ability to the applicant or relative provider for consideration and action on the application or relative provider's certificate.
7. The department shall notify the relative provider applicant and approved relative provider in writing of the approval, denial, or termination. If a relative provider applicant's request is denied or an approved relative provider's certificate is terminated, the written notice must include:
 - a. A statement of the proposed action;
 - b. The reason for the proposed action, including the rule, regulation or statute upon which the action is based; and
 - c. An explanation of the applicant's or provider's right to request reconsideration or an appeal, or both.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.
General Authority: NDCC 50-33-02
Law Implemented: NDCC 50-33-02

SECTION 5. Section 75-02-01.3-06 is amended as follows:

75-02-01.3-06. Payments to providers - Child care certificate.

1. Unless a provider otherwise elects in a signed and dated writing, all payments of child care assistance must be made to a provider.
2. No payment may be made except on presentation of a claim in a form and manner required by the department for periods during which all caretakers in the child care assistance unit were engaged in an allowable activity.
3. No payment to a provider may be made at a rate in excess of that charged by the provider for services to individuals who do not receive child care assistance.
4. The department ~~will~~shall issue to the eligible caretaker a child care certificate.
5. ~~When a caretaker fails to pay the provider, the family is ineligible for child care assistance until:~~
 - a. ~~The payment is made; or~~
 - b. ~~The family reaches an agreement for payment with the provider and the family continues to comply with the payment agreement.~~

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-06-06.1, 50-09-02, 50-33

SECTION 6. Section 75-02-01.3-08 is amended as follows:

75-02-01.3-08. Disregarded income. The following types of income must be disregarded in determining child care assistance eligibility and benefits.

1. Money payments made by the department in connection with foster care, subsidized guardianship, family subsidy, or the subsidized adoption program;
2. Temporary assistance for needy families benefits and support services payments;
3. Benefits received through the low-income home energy assistance program;
4. County general assistance;
5. ~~Bureau of Indian affairs general assistance;~~
6. ~~Irregular cash gifts received by a child care assistance unit;~~

- ~~7~~6. A loan from any source that is subject to a written agreement requiring repayment by the child care assistance unit;
- ~~8~~7. A child care assistance unit's income tax refunds and earned income credits;
- ~~9~~. A child care assistance unit's educational loans, scholarships, grants, and awards; educational assistance provided under the Montgomery GI Bill, Public Law No. 95-525 [98 Stat. 2553; 38 U.S.C. 101 et seq.]; and vocational rehabilitation payments;
- ~~10~~. Any fellowship or gift or portion of a gift used to pay the cost of a child care assistance unit's tuition and fees at any educational institution;
- ~~11~~. Training funds received by a child care assistance unit from vocational rehabilitation;
- ~~12~~8. Training allowances of up to thirty dollars per week provided to a child care assistance unit member through a tribal native employment works program;
- ~~13~~. Needs-based payments, support services, and relocation expenses provided to a child care assistance unit through programs established under the Workforce Investment Act of 1998 [Pub. L. 105-220, August 7, 1998; 112 Stat. 936];
- ~~14~~9. Training stipends provided by private, charitable organizations to a caretaker who is a victim of domestic violence for the child care assistance unit to attend educational programs;
- ~~15~~10. The first two thousand dollars per year of lease payments deposited in an individual Indian monies account for a child care assistance unit member;
- ~~16~~11. Any income required by federal law to be disregarded;
- ~~17~~12. Earned income of all children in the child care assistance unit;
- ~~18~~13. A one-time bonus incentive payment or commission to a child care assistance unit member;
- ~~19~~14. Vendor payments or other payments made to a third party on behalf of the child care assistance unit;
- ~~20~~15. Stipend payments to a child care assistance unit that do not require work as a condition of receipt;
- ~~21~~16. Nonrecurring lump sum payments to a child care assistance unit;
- ~~22~~17. Irregular income from sale of craft items and rummage sales;

- 2318. Payments made by cafeteria or flex compensation plans to a child care assistance unit member;
- 2419. Funds raised on behalf of the child care assistance unit, or any member of that unit, if the child care assistance unit does not have access to the funds;
- 2520. Income from contracts for deed.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

SECTION 7. Section 75-02-01.3-12 is amended as follows:

75-02-01.3-12. Intentional program violation - Disqualification penalties.

1. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court is subject to the penalties provided in this section. An individual who waives the individual's right to appear at an intentional program violation hearing is subject to the penalties provided in this section.
2. The county agency shall notify an individual in writing of an intentional program violation. The written notice must include:
 - a. A statement of the proposed action;
 - b. The reason for the proposed action, including the rule, regulation, or statute upon which the action is based; and
 - c. An explanation of the individual's right to request an administrative hearing under chapter 75-01-03.
3. During any period of disqualification, if a disqualified individual:
 - a. Is a provider, the individual may not receive any child care assistance payment;
 - b. Is employed by a provider, that provider may not receive any child care assistance payment; and
 - c. Is a member of a child care assistance unit, that child care assistance unit is ineligible for child care assistance benefits.
4. The duration of the penalty described in this section is:
 - a. ~~Six months~~ One year for the first offense;

- b. ~~One year~~ Two years for the second offense; and
 - c. Permanently for the third offense.
5. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until a court of appropriate jurisdiction subsequently reverses the finding upon which the penalty was based.
 6. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.
 7. The department shall issue a written notice informing the individual of the period of disqualification.
 8. Overpayments may be recovered from:
 - a. The child care assistance unit that includes the disqualified individual;
 - b. Any child care assistance unit of which the disqualified individual subsequently becomes a member;
 - c. Any individual members of the child care assistance unit that included the disqualified individual;
 - d. The provider who was disqualified; and
 - e. The provider who employed the disqualified individual.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.
 General Authority: NDCC 50-33-02
 Law Implemented: NDCC 50-33-02

SECTION 8. Section 75-02-01.3-13 is amended as follows.

75-02-01.3-13. ~~Reconsideration and appeal requests~~ Appeals.

1. An applicant, recipient, relative provider applicant, or approved relative provider of child care assistance aggrieved by a determination made under this chapter may ~~request reconsideration of~~ appeal that decision by the department, ~~and must request reconsideration before appealing that decision unless the decision is based on an intentional program violation.~~ An applicant, recipient, relative provider applicant, or approved relative provider of child care assistance aggrieved by a decision ~~issued after a request for reconsideration~~ must appeal in writing and include documentation of all of the following information:

- a. A copy of the letter received from the department advising of the department's decision ~~on the request for reconsideration~~;
 - b. A statement of disputed facts, if any;
 - c. The authority in statute or rule upon which the applicant for, recipient of relative provider applicant, or approved relative provider of child care assistance relies for each disputed item; and
 - d. The name, address, and telephone number of the individual to whom the department will send all notices and information regarding the appeal.
2. ~~A request for reconsideration must be made within thirty days after notice of a determination made under this chapter. An appeal must be filed within thirty days after the date of mailing of a decision issued pursuant to a request for reconsideration.~~
 3. A hearing request may be denied or dismissed when the sole issue is one of state or federal law requiring automatic benefit adjustments for classes of recipients.
 4. Chapter 75-01-03 governs an appeal made under this chapter.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02