

CHAPTER 50-24.5

AID TO AGED, BLIND, AND DISABLED PERSONS

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 title XVI of the Social Security Act [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 title XVI of the Social Security Act [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 benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], provided that an individual who was eligible to receive benefits under title XVI of the Social Security Act [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. 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. 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.
9. "Living independently" includes living in congregate housing. The term does not include living in an institution.
10. "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. "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 title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] which the individual would receive if the individual had no income, plus sixty dollars.

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. Pay qualified service 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;
 - c. 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. Issue payment to basic facilities and adult family foster care facilities for services provided to an eligible beneficiary.
8. 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.

50-24.5-03. 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. 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. 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.

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, 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. 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.

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