



Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

February 27, 2014

RE: Proposed Creation of N.D. Admin. Code Chapters 75-03-38 and 75-03-39
Autism Spectrum Disorder Voucher Program and Autism Services Waiver
Proposed Amendment to N.D. Admin. Code Chapter 75-04-06 Eligibility for
Intellectual Disabilities-Developmental Disabilities Case Management Services

TO WHOM IT MAY CONCERN:

The Department of Human Services is proposing creation of N.D. Admin. Code chapters 75-03-38 and 75-03-39, Autism Spectrum Disorder Voucher Program and Autism Services Waiver and amendments to N.D. Admin. Code Chapter 75-04-06 Eligibility for Intellectual Disabilities-Developmental Disabilities Case Management Services. The department has adopted procedures to assure public input into the formulation of the rules prior to adoption.

In conformity with those procedures, we are providing you with a copy of the proposed rules and are requesting that you provide any written data, views, or arguments no later than 5:00 p.m. on April 14, 2014.

The department has scheduled an oral hearing for April 2, 2014. Further information concerning the public hearing is included in the attached notice of proposed rulemaking and public hearing.

Your participation is welcomed, as are your suggestions. Please send all written data, views, or arguments to: Rules Administrator, Department of Human Services, State Capitol - Judicial Wing, 600 E. Boulevard Ave., Bismarck, ND 58505-0250.

Sincerely,

A handwritten signature in black ink that reads "Maggie D. Anderson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Maggie D. Anderson,
Executive Director

MDA/rs

Attachments

cc: John Walstad, Legislative Council
Trisha Page, Autism Services

Jack Dalrymple, Governor
Maggie D. Anderson, Executive Director

NOTICE OF INTENT TO CREATE
ADMINISTRATIVE RULES RELATING TO
N.D.A.C. CHAPTERS 75-03-38 AND 75-03-39
AUTISM SPECTRUM DISORDER VOUCHER PROGRAM AND AUTISM SERVICES
WAIVER AND
TO AMEND N.D.A.C. CHAPTER 75-04-06
ELIGIBILITY FOR INTELLECTUAL DISABILITIES-DEVELOPMENTAL
DISABILITIES CASE MANAGEMENT SERVICES

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed creation of N.D. Admin. Code chapters 75-03-38 and 75-03-39 at 1:30 p.m. on Wednesday, April 2, 2014, in Bismarck, N.D. in Room 210, located on the second floor of the Judicial Wing of the State Capitol.

The proposed creation of N.D. Admin. Code chapters 75-03-38 and 75-03-39, Autism Spectrum Disorder Voucher Program and Autism Services Waiver, are necessary to comply with House Bill No. 1038 which was passed by the Sixty-third Legislative Assembly in 2013. .

The proposed changes are as follows:

Chapter 75-03-38 is created to establish the definitions; the eligibility requirements; the application process, including review, approval, and denial of an application; and the appeals process for the autism spectrum disorder voucher pilot project.

Chapter 75-03-39 is created to define eligibility for services under the autism spectrum disorder birth through seven medicaid waiver.

Section 75-04-06-06 is repealed to remove eligibility for autism waiver services from the developmental disabilities program, in conjunction with the creation of chapter 75-03-39.

The proposed amendments are anticipated to have an impact on the regulated community in excess of \$50,000. No taking of real property is involved in this rulemaking action.

Copies of the proposed rules are available for review at county social services offices and at human service centers. Copies of the proposed rules and the regulatory analysis relating to these rules may be requested by telephoning (701) 328-2311. Written or oral data, views, or arguments may be entered at the hearing or sent to: Rules Administrator, North Dakota Department of Human Services, State

Capitol - Judicial Wing, 600 E. Boulevard Ave., Dept. 325, Bismarck, ND 58505-0250. Written data, views, or arguments on the proposed rules must be received no later than 5:00 p.m. on Monday, April 14, 2014.

ATTENTION PERSONS WITH DISABILITIES: If you plan to attend the hearing and will need special facilities or assistance relating to a disability, please contact the Department of Human Services at the above telephone number or address at least two weeks prior to the hearing.

Dated this 27th day of February, 2014.

Chapter 75-03-38
Autism Spectrum Disorder Voucher Program

<u>Section</u>	
<u>75-03-38-01</u>	<u>Definitions</u>
<u>75-03-38-02</u>	<u>Eligibility – Financial – Functional</u>
<u>75-03-38-03</u>	<u>Application</u>
<u>75-03-38-04</u>	<u>Review of Application – Approval – Denial – Effect of Inactivity</u>
<u>75-03-38-05</u>	<u>Appeals</u>

SECTION 1. Chapter 75-03-38 is created as follows:

75-03-38-01. Definitions.

1. "Assistive technology" means technology used by an individual with a disability to perform functions that might otherwise be difficult or impossible for that individual to perform.
2. "Department" means the department of human services.
3. "Qualified professional" means an individual who holds a doctor of philosophy degree in the medical or health-care industry who uses the diagnostic guidelines of the American academy of pediatrics.
4. "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.
5. "Unit" means the autism services unit of the department.

History: Effective July 1, 2014

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 50-06-32.1

75-03-38-02. Eligibility – Financial – Functional.

1. A parent, custodian, or legal guardian may apply to the unit to participate in the voucher program for needs identified for a child with an autism diagnosis, whose age is from three years through seventeen years, and whose family has an income below two hundred percent of the federal poverty level for the child's family's size. The child may not be served under the department's developmental disability medicaid waiver or the department's autism spectrum disorder birth through seven medicaid waiver, and the need for voucher support must be established through the completion of the voucher program application provided by the unit.
2. A child aged three years through seventeen years may be eligible if all of the following conditions are met:
 - a. The child has been recommended for voucher support by a qualified professional;
 - b. The child's support need cannot be obtained through insurance or through other service systems including educational and behavioral health systems;

- c. The item or support requested is cost effective in meeting the child's needs; and
 - d. The child's needs cannot be met by a generic service or support.
3. Voucher support approved for a child with an autism diagnosis under this chapter may not exceed twelve thousand five hundred dollars per year.

History: Effective July 1, 2014

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 50-06-32.1; 206 S.L. 2013, § 8

75-03-38-03. Application. A parent, custodian, or legal guardian of a child diagnosed with an autism disorder shall provide the following information on an application form provided by the unit:

1. Verification from a qualified professional of a diagnosis of the autism disorder based on the criteria identified in edition five of the diagnostic and statistical manual of mental disorders published by the American psychiatric association.
2. Verification of North Dakota residency for at least six months.
3. Verification of family income below two hundred percent of the federal poverty level for the appropriate family size.
4. Copy of the child's most recent individualized service plan, or other evaluation, assessment, or treatment plan.
5. Signed releases of information to the child's service providers and school.
6. Description of how the funding will be used.

History: Effective July 1, 2014

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 50-06-32.1

75-03-38-04. Review of application – Approval – Denial – Effect of inactivity of voucher. The unit shall review the application for completeness and will determine the child's eligibility for voucher supports. Upon written approval of the voucher application, the unit shall enter an agreement with the parent, custodian, or legal guardian of the eligible child. The unit shall issue a voucher to the parent, custodian, or legal guardian of the eligible child indicating the specific approved supports or services. The unit may approve a voucher request for a one-time purchase or for multiple purchases over time. The unit may alter or deny a request for practices or supports that may put the health and safety of the child at risk. If a voucher is approved for multiple purchases over time, the unit will monitor the voucher for activity. If the voucher is not used for one hundred eighty consecutive calendar days, the eligible child's parent, custodian, or legal guardian will be informed that the voucher will be terminated if an additional thirty calendar days pass without a voucher purchase or request for voucher reimbursement. Any funds approved for a terminated voucher that are unspent will be returned to the voucher program and the unit may distribute the funds to another applicant. The unit shall issue a written notice to a parent, custodian, or legal guardian whose voucher application has been denied or if the voucher is terminated for inactivity. The unit 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; provided, however that a parent, custodian, or legal guardian may not appeal a termination resulting from the parent, custodian, or legal guardian exhausting the funding awarded under the voucher.

History: Effective July 1, 2014

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 50-06-32.1

75-03-38-05. Appeals. 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 on a form developed and provided by the department within thirty days of the date of the notice issued under section 75-03-38-04. The parent, custodian, or legal guardian shall submit the written request for an appeal and hearing under North Dakota Century Code chapter 28-32 to the appeals supervisor for the department of human services.

History: Effective July 1, 2014

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 Autism Spectrum Disorder Birth through Seven Medicaid Waiver

Section 2. Chapter 75-03-39 is created as follows:

75-03-39-01. Definitions.

1. "Department" means the department of human services.
2. "Unit" means the autism services unit of the department.

History: Effective April 1, 2014.

General Authority: 206 S.L. 2013, § 3

Law Implemented: 206 S.L. 2013, § 3

75-03-39-02. Eligibility for services under the autism spectrum disorder birth through seven medicaid waiver.

1. A child is eligible for autism services under the department's autism spectrum disorder birth through seven medicaid waiver if the following conditions are met:
 - a. The age of the child is birth through seven years of age;
 - b. The child has an autism spectrum disorder diagnosis confirmed by an autism spectrum disorder waiver evaluation and diagnostic team approved by the unit; and
 - c. An autism spectrum disorder waiver slot is available.
2. Annual re-determination is required to ascertain if the child meets the institutional level of care required by the Centers for Medicare and Medicaid Services and can continue to receive services on the autism waiver.

History: Effective April 1, 2014.

General Authority: 206 S.L. 2013, § 3

Law Implemented: 206 S.L. 2013, § 3

CHAPTER 75-04-06
ELIGIBILITY FOR INTELLECTUAL DISABILITIES-DEVELOPMENTAL
DISABILITIES CASE MANAGEMENT SERVICES

Section	
75-04-06-01	Principles of Eligibility
75-04-06-02	Criteria for Service Eligibility - Class Member [Repealed]
75-04-06-02.1	Criteria for Service Eligibility
75-04-06-03	Criteria for Service Eligibility - Applicants Who Are Not Members of the Plaintiff Class [Repealed]
75-04-06-04	Criteria for Service Eligibility - Children Birth Through Age Two
75-04-06-05	Service Availability
75-04-06-06	Developmental Disabilities Program Management Eligibility for Three Year Old and Four Year Old Children

SECTION 3. Section 75-04-06-06 is repealed:

~~**75-04-06-06. Developmental disabilities program management eligibility for three-year-old and four-year-old children.**~~

- ~~1. A child is eligible for developmental disabilities program management if all of the following conditions are met:
 - a. The child is three or four years of age;
 - b. The child has an autism spectrum disorder diagnosis confirmed by the autism spectrum disorder waiver evaluation and diagnostic team;
 - c. An autism spectrum disorder waiver slot is available; and
 - d. child is or will be receiving a service through the autism spectrum disorder waiver.~~
- ~~2. If all of the above conditions are met, the child will be eligible for developmental disabilities program management until the child's fifth birthday, at which time developmental disabilities program management adult eligibility criteria will apply.~~

History: Effective July 1, 2010; repealed effective April 1, 2014.

General Authority: NDCC 25-01.2-18, 50-06-16

Law Implemented: NDCC 25-01.2-02, 50-06-05.3