

**NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
BISMARCK, NORTH DAKOTA
December 31, 2019**

IM 5371

TO: County Social Service Directors
Policy and System Support
Economic Assistance Policy Quality Control Reviewers

FROM: Michele Gee, Director, Economic Assistance

SUBJECT: Non-Allowable Medical Expense – Medical Marijuana

PROGRAMS: Health Care Coverage (HCC), Low Income Home
Energy Assistance Program (LIHEAP), Supplemental
Nutrition Assistance Program (SNAP)

EFFECTIVE: Immediately

**SECTIONS
AFFECTED:** **LIHEAP:**
Medical Expenses 415-25-05-05-05

Non ACA Medicaid:
Income Deductions 510-05-85-35

SNAP:
Allowable Medical Expenses 430-05-55-20-20

Medical marijuana is considered a non-allowable medical expense for Health Care Coverage (HCC), Low Income Home Energy Assistance Program (LIHEAP) and Supplemental Nutrition Assistance Program (SNAP) as the federal government does not legally recognize medical marijuana.

The Child Care Assistance Program (CCAP) and Temporary Assistance for Needy Families (TANF) programs do not allow for any medical expense deductions.

LIHEAP:

Medical Expenses 415-25-05-05-05

Medical expenses incurred by any current member of the household may be considered when calculating medical deductions. A medical expense may be deducted only if it has been paid, OR there is an agreement with the medical vendor for a specific payment plan.

If an incurred expense may be reimbursed by an insurance policy, it cannot be deducted as a medical expense until the insurance company has paid their portion and the household has a specific payment plan with the medical vendor or has paid the bill. This would include reimbursement from the Veteran's Administration or private insurance for pharmaceutical expenses.

Allowable Medical Expenses

The following is a list of allowable medical expenses:

- Medical and dental care provided by a licensed practitioner, including but not limited to:
 - psychotherapy
 - rehabilitation
 - surgery
 - orthodontics
- Hospitalization or outpatient treatment, nursing care, and nursing home care. This includes payments by the household for an individual who was a household member immediately prior to dying or entering a hospital or nursing home, if the remaining household members are **legally responsible** for payment of the expenses.
- Prescription drugs and other over-the-counter medication (including insulin) prescribed by a qualified health professional. Additionally, costs of medical supplies, sickroom equipment (including rental) or other prescribed equipment are deductible.

EXCEPTION:

Medical marijuana is not federally recognized as legal and as such is not considered an allowable medical deduction.

- Health and hospitalization insurance premiums (including dental, vision and nursing home insurance) used to cover medical expenses are allowable. This includes Workers with Disability (WWD) and Children with Disability (CWD) premiums and enrollment fees. The cost of health, accident, cancer, nursing home and ambulance policies which state that the monies will be used to cover medical expenses are an allowable medical expense.

EXCEPTION:

Disability, cancer, nursing home, or accident policies that are primarily for income maintenance or do not specify what the monies are intended to be used for are NOT allowable.

When health insurance premiums are an automatic deduction from a checking or savings account, the service fee charged by the bank is **not** an allowable deduction.

- The incurred client share from Health Care Coverage Programs (Medicaid).

Medical expenses from the three prior months may not be indicative of combination Medicaid cases when the full recipient liability is not being met. The worker must thoroughly discuss this with the household to establish what the household anticipates as ongoing medical expenses.

- Medicare premiums, deductibles, and co-pays.

Part A and B Medicare premiums for an individual who is QMB/SLMB, QI-1 or Buy-In eligible are **not** allowable medical expenses.

The actual out-of-pocket **Part D** Medicare premium is an allowable medical expense.

- Medical needs including but not limited to:
 - Dentures
 - Hearing aids
 - Prosthetics

- Prescription eyewear
- Securing and maintaining a service animal, including the cost of food and veterinarian bills.
- Reasonable cost of transportation and lodging to obtain medical treatment or services including trips to a pharmacy, dental office, optometrist, etc. The current Medicaid rates are used to determine the cost of transportation and lodging.

EXCEPTION:

Meals are not an allowable expense for households who must travel to obtain medical care.

- Maintaining an attendant, homemaker, home health aide, child care services or housekeeper necessary due to age, disability or illness.
- Child care expenses for a child receiving SSI which are necessary and identifiable.

Example:

Mom is not working and stays home to care for her disabled child receiving SSI. Mom takes the child to a child care facility while she runs errands, medical appointments, etc. The child care expense incurred is an allowable medical expense deduction.

- Monthly phone fees for the medic alert system. The basic fee for the phone is allowed as a medical expense.
- Payments on loans for one-time medical expenses or medical expenses billed on a credit card are deductible, but the **interest** must not be allowed as part of the deduction.

Calculating Medical Expenses

Allowable medical expenses are annualized as follows:

- **Recurring** medical expenses are averaged from a prior three-month period if that is indicative of what the household anticipates to have as ongoing medical expenses. Multiply the average monthly amount by 12 to arrive at an annual expense.

If a recurring medical expense does not have a three-month history

(ex: new prescription) but the worker can establish what the household anticipates as a monthly ongoing expense, the expense can be annualized (x12).

- For **non-recurring** medical expenses only the actual amounts paid between the previous June 1 and the following May 31 are allowed as an expense.

Non ACA Medicaid:

Income Deductions 510-05-85-35

This section applies to individuals residing in their own home or in a specialized facility, to the Medicare Savings Programs, and to the Workers with Disabilities and Children with Disabilities coverages. For individuals receiving psychiatric or nursing care services in a nursing facility, the state hospital, the Prairie at St. John's center, Red River Behavioral Health System, a Psychiatric Residential Treatment Facility (PRTF), an intermediate care facility for the intellectually disabled (ICF-ID), or receiving swing-bed care in a hospital, refer to the Post Eligibility Treatment of Income, Section 05-85-25.

The following income deductions are allowed in determining Medicaid eligibility:

1. Except in determining eligibility for the Medicare Savings Programs, the cost of premiums for health insurance may be deducted from income in the month the premium is paid or prorated and deducted from income in the months for which the premium affords coverage. The Workers with Disabilities coverage enrollment fee and premium as well as the Children with Disabilities coverage premium are allowed deductions except the Workers with Disabilities premium is not allowed when determining eligibility for the Workers with Disabilities coverage and the Children with Disabilities premium is not allowed when determining eligibility for the Children with Disabilities coverage. For purposes of this deduction, premiums for health insurance include payments made for insurance, health care plans, or nonprofit health service plan contracts which provide benefits for hospital, surgical, and medical care, but do not include payments made for coverage which is:

- a. Limited to disability or income protection coverage;
- b. Automobile medical payment coverage;
- c. Supplemental to automobile liability insurance;
- d. Designed solely to provide payments on a per diem basis, daily indemnity, or nonexpense-incurred basis; or
- e. Credit accident and health insurance.

(If questionable, contact the Third party Liability unit for assistance in determining whether a policy fits into one of the above categories.)

2. Except in determining eligibility for the Medicare Savings Programs, medical expenses for necessary medical or remedial care claimed for deduction must be documented in a manner which describes the service, the date of the service, the amount of cost incurred, and the name of the service provider. A medical expense may be deducted only if it is:

- a. Incurred:
 - i. By a member of a Medicaid unit in the month for which eligibility is being determined; or
 - ii. By a member of the Medicaid unit (or a spouse or child they were legally responsible for) in a prior month, but was actually paid in the month for which eligibility is being determined, and was not a previous month's client share (recipient liability), or was not previously allowed as a deduction or offset of client share;
- b. Provided by a medical practitioner licensed to furnish the care;
- c. Not subject to payment by any third party, including Medicaid and Medicare;
- d. Not incurred for nursing facility services, swing bed services, or HCBS during a period of ineligibility because of a disqualifying transfer
- e. Claimed.

Examples of expenses that cannot be used to reduce countable income and affect client share:

- i. Extra amounts paid on glasses, such as more expensive frames, tint, etc.;
- ii. Expenses that are considered medically necessary, but are applied to client share;
- iii. Costs for Lifeline;
- iv. Over the counter medications and supplies that Medicaid does not pay for, even if prescribed*;
- v. Other medications and services that Medicaid does not pay for, such as DESI drugs, such as Midrin (for Migraines), Tigan (for nausea). (DESI drugs -- Drug Efficacy Study Implementation --are determined by the federal government to be safe but less than effective);
- vi. Expenses from visiting a provider who is not the individual's Coordinated Services Program (CSP) "lock-in" provider;
- vii. Drugs from Canada prescribed by someone other than a United States physician;
- viii. Transportation costs for out of state medical care provided to recipients that have not been prior approved;
- ix. Up to 15 bed-hold days in a long term care facility that neither Medicare nor Medicaid will cover; or
- x. Any amount of an expense for which the Medicaid Unit will be reimbursed, to the extent of the reimbursement.

Examples of expenses that can be used to reduce countable income and affect client share:

- i. Medications and services Medicaid does not pay for only because the provider is not enrolled;
- ii. *Over-the-counter medications that Medicaid does cover, such as Antacids (for stomach acid), analgesics (for

pain), iron supplements (for anemia), artificial tears (for severe dry eye diseases). Also, those payable because of rebates, such as Maalox and Advil. (Non-payable are Mylanta and CVS generics). Medicaid covers drugs with a NDC code on the bottom of the bottle label. (<http://nddrug.rxexplorer.com/ND> Dept. of Human Services is a website that workers may use to inquire whether ND Medicaid covers a specified drug.);

- iii. Other over-the-counter supplies that Medicaid covers, such as diabetic supplies;
- iv. Nicotine patches;
- v. Drugs from Canada when prescribed by a US physician;
- vi. Co-pays; or
- vii. Transportation costs:

(a) Lodging up to the limit. Hotels can bill the difference to the client if they stay at a hotel that charges more. (As with meals, we pay per diem and client can eat where they want.)

(b) Allow the difference to reduce client share if reasonable. (If they choose to stay in a penthouse suite when other less costly rooms are available, not reasonable.)

(c) Transportation costs are not paid or allowed as a deduction if the medical services are available locally but client travels elsewhere, even if referred by a physician. The provider must be within the nearest service area, client has choice of providers.

- 3. Reasonable expenses, such as food and veterinarian expenses, necessary to maintain a dog that is trained to detect seizures for a member of the Medicaid unit.
- 4. Except in determining eligibility for the Medicare Savings programs, the cost of premiums for long term care insurance carried by an individual or the individual's spouse may be deducted from income in the month the premium is paid or prorated and deducted from income in the months for which the premium affords coverage.

5. Except in determining eligibility for the Medicare Savings Programs, the cost of remedial care for an individual residing in a specialized facility is limited to the difference between the recipient's cost of care at the facility (e.g. remedial rate in a basic care facility) and the regular medically needy income level may be deducted.

Example:

Recipient's remedial rate at the facility	\$980
Less the medically needy income level for one	<u>- 834</u>
Remedial Care Deduction	\$146

6. Except in determining eligibility under the Medicare Savings Programs, transportation expense may be deducted if necessary to secure medical care provided for a member of the Medicaid unit. Transportation expenses are not allowed for recipients in a facility that provides nursing care services, or to the extent the transportation cost is paid by any third party. The amount to allow cannot exceed <http://www.nd.gov/dhs/services/medicalserv/medicaid/docs/fee-schedules/2016-non-emergency-transportation-fee-schedule.pdf>
7. Non-voluntary child and spousal support payments (including surcharges and arrearages) may be deducted if actually paid by a member of the Medicaid unit. If the support payment is withheld from an extra check that is disregarded, the support payment withheld from that check is not allowed as a deduction.
8. Reasonable child care expenses, not otherwise reimbursed, that the Medicaid unit is responsible to pay, may be deducted if necessary to engage in employment or training. Reasonable child care expenses do not include payments to parents to care for their own children. The child must be a member of the Medicaid unit for the deduction to be allowed. This expense may only be allowed as a deduction from the income of the child or those individuals who are responsible for the child, such as a parent or caretaker.
9. Reasonable adult dependent care expenses may be deducted. These are costs for care of an incapacitated or disabled adult who is living in the home so a caretaker or a spouse can work or attend training.

The incapacitated or disabled adult must be a member of the Medicaid unit for the deduction to be allowed.

10. The cost to purchase or rent a car safety seat for a child through age ten is allowed as a deduction if a seat is not otherwise reasonably available. This deduction is not allowed if any third party, including TANF, pays the cost.
11. A disregard of \$20 per month is deducted from any income, except income which is based on need, such as SSI, and need-based veterans' pensions. This deduction applies to all aged, blind and disabled applicants or recipients provided that:
 - a. When more than one aged, blind, or disabled persons live together, no more than one \$20 disregard may be deducted;
 - b. When both earned and unearned income is available, apply the \$20 disregard to the unearned income; and
 - c. When only earned income is available, the \$20 disregard must be applied before the deduction of sixty-five dollars plus one-half of the remaining monthly gross income.
12. A deduction may be made for the cost of services of an applicant's or recipient's guardian or conservator, up to a maximum equal to five percent of countable gross monthly income excluding nonrecurring lump sum payments.
13. With respect to each individual in the Medicaid unit who is employed or in training, but who is not aged, blind, or disabled, thirty dollars may be deducted as a work or training allowance, but only if the individual's income is counted in the eligibility determination.
14. The deductions described in this subsection may be allowed only on earned income.
 - a. For all individuals, except for aged, blind, or disabled applicants or recipients:
 - i. Mandatory payroll deductions and union dues withheld, or ninety dollars, whichever is greater;
 - ii. Mandatory retirement plan deductions;

- iii. Union dues actually paid; and
 - iv. Expenses of a non-disabled blind person, reasonably attributable to earning income. (This provision applies to individuals who are eligible for Medicaid under the children and family category.)
- b. For all aged, blind, or disabled applicants or recipients, sixty-five dollars plus one-half of the remaining monthly gross earned income; provided that, when more than one aged, blind, or disabled person lives together, no more than sixty-five dollars, plus one-half of the remaining combined earned income, may be deducted.

15. Medical marijuana is not federally recognized as legal and as such is not considered an allowable medical deduction.

SNAP:

Allowable Medical Expenses 430-05-55-20-20

The following is a **partial** listing of allowable medical costs:

1. Medical care provided by a licensed practitioner.
2. Dental care, including dentures and orthodontics.
3. Hospitalization, outpatient treatment and nursing care, including Home and Community Based Services (HCBS).
4. Nursing home care including payments by a **legally responsible** household member for an individual who was a household member immediately prior to entering a nursing home.
5. Prescription drugs when **prescribed** by a licensed practitioner and over-the-counter medication (including insulin) when approved by a licensed practitioner. This includes postage and handling costs associated with mail order prescription drugs.

Exception:

Medical marijuana is not federally recognized as legal and as such is not considered an allowable medical deduction.

6. The co-pays that Medicaid allows as a deduction in determining the monthly Client Share.
7. The costs of prescribed medical supplies are allowed as a deduction. The following is a partial list:

- Sick-room equipment (including rental).
- Equipment added to a vehicle or home for a handicapped person.
- The cost of building a ramp for a wheelchair.
- Amplifiers and warning signals for handicapped individuals (medic-alert).
- Typewriter equipment connected to a telephone for deaf individuals.

Exception:

Computer purchased by a handicapped individual for learning purposes is not an allowable medical expense.

8. Health and hospitalization insurance premiums.

Only the portion of a medical insurance premium assigned to the elderly or disabled household member is allowed when computing the deductible amount. If the policy does not define how much of the premium is for each insured household member, the **worker** must prorate the premium amount among all members insured on the policy. Only the prorated amount for the eligible elderly or disabled household member is allowed as a deduction. When health insurance premiums are an automatic deduction from a checking or savings account, the service fee charged by the bank is not an allowable deduction.

The cost of health, accident, cancer, nursing home and ambulance policies which state that the monies will be used to cover medical expenses are allowable medical expenses.

Exception:

The costs of accident, cancer, or nursing home policies that do not state that the monies are intended for use to cover medical expenses.

Health or income maintenance policies payable in lump sum settlements for death or dismemberment or that continue mortgage or loan payments while the beneficiary is disabled are not allowed as a deduction.

9. Medicare premiums, co-insurance, and deductibles.

Exceptions:

If an individual is approved for QMB, SLMB, Buy In, or Qualifying Individual 1 (QI-1) in the same month a SNAP application is approved; the Medicare premium would be an allowable expense for the month of application and not allowed for the following month based on anticipated changes.

If a new application for SNAP and QMB, SLMB, Buy In, or QI-1 is processed in the second beginning month and they are approved for any of the coverages in the second beginning month, the premium would be an allowable expense for the month of application, second beginning month, and not allowed for the following month based on anticipated changes.

In an ongoing SNAP case, if the household applied for QMB, SLMB, Buy In, or QI-1 and is approved, the premium is an allowable expense until a system generated alert is received indicating the client is no longer paying the premium.

10. Hearing aids and prosthetics.
11. Securing and maintaining a service animal specifically trained to assist handicapped individuals, including the cost of food and veterinarian bills.
12. Eyeglasses and contact lenses prescribed by a licensed practitioner.

13. Reasonable cost of transportation and lodging to obtain medical treatment or services, including trips to a pharmacy, dental office, optometrist, etc. can be counted as a medical deduction SNAP will follow the medical transportation allowances Medicaid defines and these costs must be verified.

Exception:

Meals are not an allowable expense for households who must travel to obtain medical care.

14. Maintaining an attendant, homemaker, home health aide, child care services or housekeeper necessary due to age, infirmity, or illness. In addition, an amount equal to the Thrifty Food Plan for one-person is deducted if the household furnishes the majority of the attendant's meals.

The Thrifty Food Plan for this meal related deduction must be the benefit in effect at the time of initial certification. The **worker** is required to update the benefit amount at the next scheduled review. The **worker** has the option to do so earlier if the benefit changes before the next scheduled review.

If a household incurs attendant care costs that could qualify under both the [medical deduction](#) and [dependent care deduction](#), the **worker** must treat the cost as a medical expense.

15. Child care expenses for a child receiving SSI that are necessary and identifiable.

Example:

Mom is not working and stays home to care for her disabled child receiving SSI. Mom takes the child to a child care facility while she runs errands, medical appointments, etc. The child care expense incurred is an allowable medical expense deduction.

16. Payments on loans for one-time medical expenses or medical expenses billed on a credit card are deductible, but the **interest** must not be allowed as part of the deduction.
17. Monthly Phone Fees for Medic Alert systems. The basic fee for the telephone which the system uses is handled as a utility expense.

Example:

Individual is charged \$20.00 per month by the phone company for a Medic Alert system and \$15.00 per month for basic phone service. The \$20.00 is allowed as a medical expense. The \$15.00 for basic telephone services is allowed as a utility expense.

18. Enrollment fees and monthly premiums paid by the household for the Medicaid Workers with Disabilities coverage.
19. Premiums, co-payments, co-insurance and deductibles paid by the household for Medicare Part D.
20. Premiums, paid by households for children with disabilities coverage.