

October 25, 2019

RE: Proposed amendments to N.D. Admin. Code chapter 75-03-38
Autism Spectrum Disorder Voucher Program

TO WHOM IT MAY CONCERN:

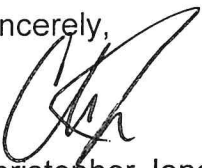
The Department of Human Services is proposing amendments to N.D. Admin. Code chapter 75-03-38, Autism Spectrum Disorder Voucher Program. The department has adopted procedures to assure public input into the formulation of the rules prior to adoption.

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 Monday, December 23, 2019.

The department has scheduled an oral hearing for Thursday, December 12, 2019. 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,



Christopher Jones,
Executive Director

CDJ/rv

Enclosures

cc: Vonette Richter, Legislative Council
Caprice Knapp, Medical Services
Katherine Barchenger, Medical Services

EXECUTIVE OFFICE

GOVERNOR
Doug Burgum

EXECUTIVE DIRECTOR
Christopher Jones

NOTICE OF INTENT TO AMEND
ADMINISTRATIVE RULES RELATING TO
N.D.A.C. CHAPTER 75-03-38
AUTISM SPECTRUM DISORDER VOUCHER PROGRAM

TAKE NOTICE that the North Dakota Department of Human Services will hold a public hearing to address proposed amendments to N.D. Admin. Code chapter 75-03-38 at 2:30 p.m. on Thursday, December 12, 2019, in Bismarck, N.D. in AV Room 212, located on the second floor of the Judicial Wing of the State Capitol.

The proposed amendments to N.D. Admin. Code chapter 75-03-38, Autism Spectrum Disorder Voucher Program, are necessary to comply with an appropriations measure passed during the 2019 legislative session, as directed by Senate Bill No. 2012. Changes were also made to clarify and reduce confusion in understanding the voucher process from eligibility to termination, and to make it possible to assist more families in dealing with an autism spectrum disorder diagnosis.

The proposed changes are as follows:

Section 75-03-38-02 is amended to remove the following conditions on participation of a child in the autism spectrum disorder voucher program: that the child has been recommended for voucher support by a qualified professional and that the item or support requested is cost effective in meeting the child's needs. The section is amended to remove language stating that voucher support approved for a child with an autism spectrum diagnosis may not exceed \$12,500 per state fiscal year to section 75-03-38-04. This section is also amended to remove language stating that the department shall only approve voucher applications based on the voucher slots available.

Sections 75-03-38-04 is amended to remove language stating that the division may approve a voucher application for one state fiscal year and language stating that division shall review the application for completeness and will determine the child's eligibility for voucher supports. Language from 75-03-38-02 is added here identifying the maximum amount of funding allowed for voucher support annually. The section replaces references to "multiple purchases" with "recurring purchases". Language is added stating that division may approve a voucher request for a one-time purchase or a recurring purchase not to exceed the maximum amount in subsection 1 of section 75-03-38-04 (which currently stands at \$12,500).

LEGAL ADVISORY UNIT

600 E Boulevard Ave Dept 325 | Bismarck ND 58505-0250

701.328.2311 | Fax 701.328.2173 | 800.472.2622 | 711 (TTY) | www.nd.gov/dhs

It then clarifies that the difference between the maximum amount of funding permitted in subsection 1 of section 75-03-38-04 and the amount approved may be used to fund additional voucher requests. The section is amended to change the amount of time to make a purchase from 180 days to 60 days, to ensure items are purchased within a shorter time period. The section also clarifies that voucher funds may not be used for duplicate items or services that address identical deficit goals, except for disposable items. The section also adds language providing that voucher funds may not be used for items that would cause a parent, custodian, or legal guardian to have additional or recurring costs, as well as service animals or emotional support animals and related items. New language also provides that: items or supports requested through the voucher program must be cost-effective in meeting the child's needs; and that voucher funds are not available until the division approves the purchase request form.

The proposed amendments are not 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, December 23, 2019.

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 25th day of October, 2019.

CHAPTER 75-03-38
AUTISM SPECTRUM DISORDER VOUCHER PROGRAM

Section	
75-03-38-01	Definitions
75-03-38-02	Eligibility
75-03-38-03	Application
75-03-38-04	Voucher Services <u>Administration</u>
75-03-38-05	Denials - Terminations - Appeals

SECTION 1: Section 75-03-38-02 is amended as follows:

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 has been recommended for voucher support by a qualified professional;~~
 - f. ~~—~~ The child's support need cannot be obtained through insurance or through other service systems, including educational and behavioral health systems;
 - g. ~~—~~ ~~The item or support requested is cost effective in meeting the child's needs;~~
 - ~~h-f.~~ The child's needs cannot be met by a generic service or support;
 - ~~i-g.~~ The child lives with the child's parent, custodian, or legal guardian; and
 - ~~j-h.~~ The child is currently a North Dakota resident for at least six months.

2. ~~Voucher support approved for a child with an autism spectrum diagnosis under this chapter may not exceed twelve thousand five hundred dollars per state fiscal year.~~
3. ~~The department shall review complete voucher applications in the order received, and shall only approve voucher applications based on the voucher slots available and within the limits of legislative appropriations.~~

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

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 23-01-41, 50-06-32.1

SECTION 2: Section 75-03-38-04 is amended as follows:

75-03-38-04. Voucher servicesadministration.

1. ~~The division may approve an application for one state fiscal year.~~
2. ~~The division shall review the application for completeness and will determine the child's eligibility for voucher supports~~Voucher support approved for a child with an autism spectrum diagnosis under this chapter may not exceed twelve thousand five hundred dollars per state fiscal year.
3. ~~2.~~ Upon approval of the application, the division shall issue a voucher request form to be completed by the parent, custodian, or legal guardian of the eligible child indicating the specific item or service being requested. A description of each item or service requested, from a provider working with the eligible child, must accompany the voucher request form, stating how the item or service will compensate for a deficit created by an autism spectrum disorder.
4. ~~3.~~ The division may approve a voucher request for a one-time purchase or for multiple purchasesa recurring purchase 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 voucher requests.
5. ~~4.~~ If a voucher is approved for multiplerecurring purchases, the division will monitor the voucher for activity.
6. ~~5.~~ If the voucher is not used for ~~one hundred eighty~~sixty 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. AnyUnspent funds from a terminated voucher ~~that are unspent must~~

~~be~~must be returned to the voucher program and the division may distribute the funds to another applicant.

~~7-6.~~ 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.

~~8-7.~~ The voucher funds may not be used for:

- a. Items or services that are parental responsibilities, including daily clothing, upkeep of residence, fences, internet, or utilities.
- b. Duplicate items or services that address identical deficit goals, except for disposable items;
- c. Items or services that are not age appropriate;
- d. Items or services that are not connected to the child;
- e. Items or services covered by insurance;
- f. Items or services if the voucher is terminated;
- g. Items or services that put the health and safety of the child at risk;
- h. Replacement items, except for disposable products, such as sensory or tactile stimulation items;~~and~~
- i. Items that are restricted within property rental agreements or are the responsibility of landlords, tenants, or the homeowner;
- j. Items that would cause a parent, custodian, or legal guardian to have additional or recurring costs; and
- k. Service animals or emotional support animals and related items.

~~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 purchase request form.

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

General Authority: NDCC 50-06-32.1

Law Implemented: NDCC 50-06-32.1