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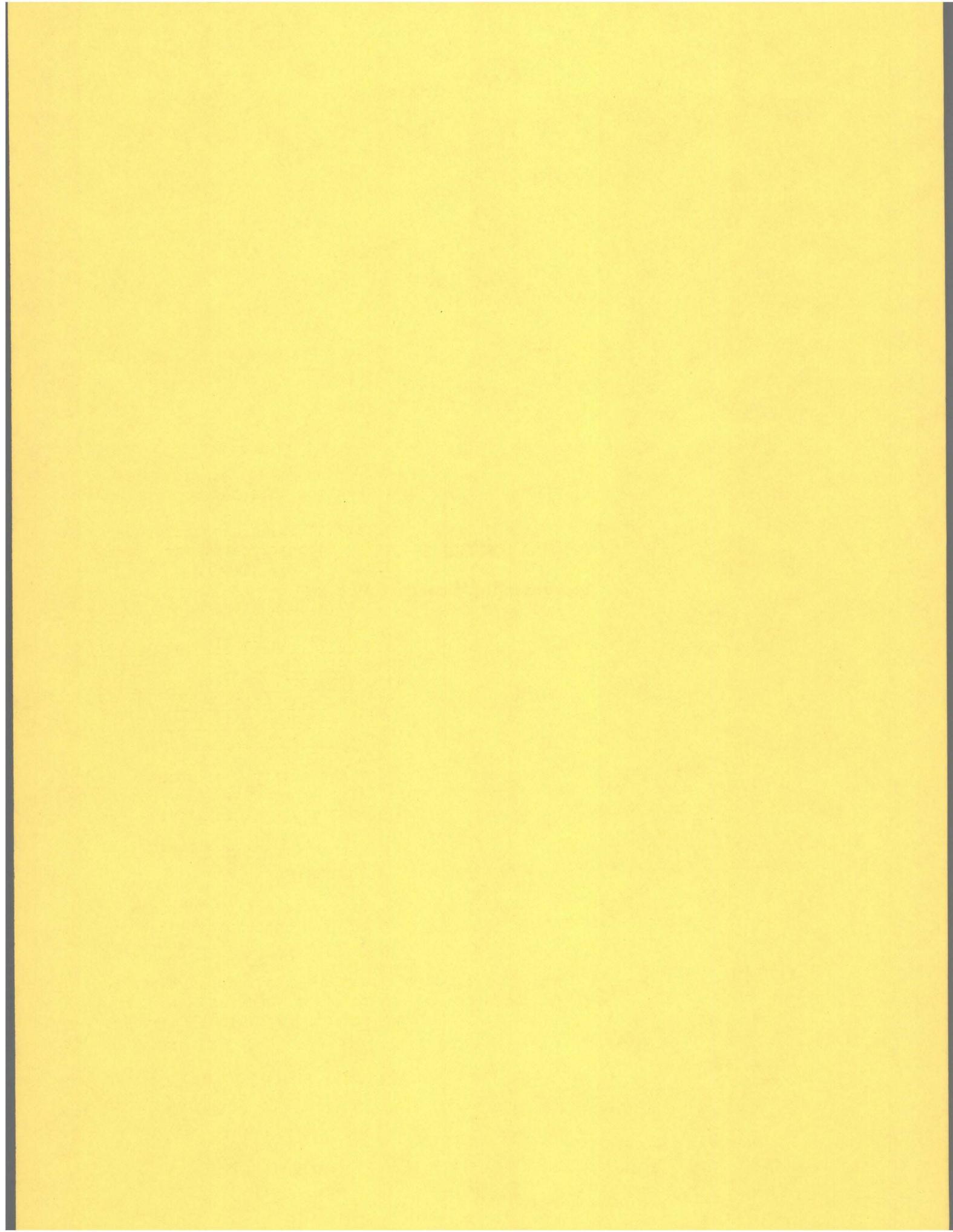
TABLE OF CONTENTS

Accountancy, Board of Public	1
Agriculture, Commissioner of	11
Attorney General	17
Dietetic Practice, Board of	139
Health and Consolidated Laboratories, Department of	149
Insurance, Commissioner of	247
Milk Stabilization Board	281
Nursing, Board of	285
State Personnel Board	289
Public Instruction, Superintendent of	295
Public Service Commission	305
Securities Commissioner	345
Seed Commission	353
Human Services, Department of	359
Social Work Examiners, Board of	485
Tax Commissioner	509
Veterans' Affairs, Administrative Committee on	513
Water Commission	539



TITLE 3

Accountancy, Board of Public



JANUARY 1987

3-01-02-01. Definitions. Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Accountant" means either a certified public accountant or a licensed public accountant certified to practice under North Dakota Century Code chapter 43-02.1.
2. "Board" means the state board of public accountancy.
3. "Bookkeeping" means the maintaining of financial records and preparation of tax returns. Bookkeeping does not include the preparation of any financial statement or similar such documents on which language similar to that utilized by certified public accountants or licensed public accountants is placed including compilation and review language.
4. "Client" means the person, persons, or entity that retains an accountant or an accountant's firm, engaged in public accounting, for the performance of professional services.
5. "Council" means the council of the American institute of certified public accountants.
6. "Enterprise" means any person, persons, or entity, whether or not organized for profit, for which an accountant provides services.
7. "Firm" means a proprietorship, partnership, corporation, or professional corporation or association engaged in the practice of public accounting, including individual partners or shareholders thereof.
8. "Financial statements" means statements, and footnotes related thereto, that purport to show financial position that relates

to a point in time or changes in financial position that relate to a period of time, and statements that use a cash or other incomplete basis of accounting. Balance sheets, statements of income, statements of retained earnings, statements of changes in financial position, and statements of changes in owners' equity are financial statements. Incidental financial data included in management advisory services, reports to support recommendations to a client, and tax returns and supporting schedules do not, for these purposes, constitute financial statements. The statement, affidavit, or signature of preparers required on tax returns neither constitutes an opinion on financial statements nor requires a disclaimer of such opinion.

9. "Institute" means the American institute of certified public accountants.
10. "Practice of public accounting" means holding oneself out to be an accountant and at the same time or performing for a client one or more types of services or giving the appearance of performing any form of reporting or attest functions of the type generally rendered by certified public accountants or licensed public accountants including the rendering of any report or intimating that a report is being given with respect to any financial statements whether audited, reviewed, or compiled including a reference to the fact that the financial statements or other documents were prepared in accordance with generally accepted accounting principals or similar language indicating that the standards of the accounting profession have been followed. Practice of public accounting does not include mere bookkeeping as defined by this section. The terms shall not be limited by a more restrictive definition that might be found in the accountancy law under which a member practices.
11. "Professional services" means one or more types of services performed in the practice of public accounting.

History: Amended effective January 1, 1987.

General Authority: NDCC 43-02.1-02(6)(d)

Law Implemented: NDCC 43-02.1-02(6)(e)

JULY 1987

3-02-02-01. Examination fees. The following examination fees have been established by the board for the certified public accountants examination:

1. Not to exceed one hundred ~~twelve~~ twenty-five dollars and ~~fifty cents~~ at the time an applicant files an application to take the examination.
2. ~~Fifty-five~~ Sixty dollars for each reexamination in accounting practice.
3. ~~Twenty-seven~~ Thirty dollars and ~~fifty cents~~ for each reexamination in the other subjects provided the applicant has already passed accounting practice or two other parts of the examination.

History: Amended effective July 1, 1981; July 1, 1985; July 1, 1987.

General Authority: NDCC 43-02.1-02(6)(d)

Law Implemented: NDCC 43-02.1-03(3)

3-02-02-04. Fee for annual registration and licensure. The annual registration fee for every person legally certified to practice as a certified public accountant and every person legally licensed to practice as a licensed public accountant within this state shall be ~~forty~~ fifty dollars. The fee for nonresidents shall be ~~thirty~~ forty dollars.

History: Amended effective August 1, 1981; October 1, 1982; July 1, 1987.

General Authority: NDCC 43-02.1-02(6)(d)

Law Implemented: NDCC 43-02.1-06

3-03-01-02. How credits determined.

- 1- A one-day continuing professional education program should be considered to equal eight hours for continuing professional education purposes.
- 2- Measurement is to be in full hours only, with a fifty-minute period equaling one hour.
- 3- Only class hours or the equivalent, and not preparation hours, are to be counted.
- 4- Service as a lecturer or a discussion leader will be counted to the extent it contributes to the individual's professional competence. Repetitious presentations are not to be counted.

1. Continuing professional education programs are measured in full-hour increments only, with one hour of credit awarded for each full fifty minutes of instruction.
2. Only class hours or self-study equivalents, and not preparation hours, are to be counted.
3. Service as a lecturer or discussion leader will receive credit to the extent that it contributes to the individual's professional competence, to a total credit limit equal to twice the program's credit allowance for enrolled participants. Credit for lecturer or discussion leader service is further limited to not more than half the total hours claimed for any one reporting year. Repetitious presentations are not to be counted.

History: Amended effective July 1, 1987.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

3-03-02-01. General determination. The overriding consideration in determining if a specific program qualifies as a continuing professional education program under the requirements of North Dakota Century Code chapter 43-02.1 is if it is a formal program of learning which contributes directly to the professional competence of an individual after the individual has been licensed to practice public accounting a licensee's professional competence and further meets the specifications delineated below.

History: Amended effective July 1, 1987.
General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-02(6)(d)

3-03-02-02. Formal programs.

1. Formal programs requiring class attendance ~~will~~ may qualify under North Dakota Century Code chapter 43-02.1 only if:
 - ~~1-~~ a. An outline is prepared in advance and is preserved.
 - ~~2-~~ b. The program is at least one continuing professional education credit hour ~~(a fifty-minute period)~~ in length.
 - ~~3-~~ c. The program is conducted by a qualified instructor.
 - ~~4-~~ d. A record of registration or attendance is maintained.
2. Formal programs not requiring class attendance, subsequently referred to herein as self-study programs, may qualify only if:
 - a. A program syllabus is prepared in advance and is preserved.
 - b. The program is at least one continuing professional education credit hour in length.
 - c. Program materials are prepared by qualified authors.
 - d. The program is offered and administered by an appropriate sponsor.
 - e. Records of registration and documented completion are maintained.

History: Amended effective July 1, 1987.

General Authority: NDCC 43-02.1-02(6)(d)

Law Implemented: NDCC 43-02.1-02(6)(d)

3-03-02-03. Programs deemed approved. Provided the criteria listed in sections 3-03-02-01 and 3-03-02-02 are met, the following are deemed to qualify for continuing professional education:

1. Professional development programs of the American institute of certified public accountants, the national society of public accountants, the national association of state boards of accountancy, and state certified public accountant and licensed public accountant societies.
2. Technical sessions at meetings of the American institute of certified public accountants, the national society of public accountants, the national association of state boards of accountancy, state societies, and local chapters.
3. University or college courses.

- a. In credit courses, each semester hour credit shall equal fifteen hours toward continuing professional education requirements. Each hour on the quarter basis shall equal ten continuing professional education hours. Courses taken for university or college credit may receive continuing professional education credit at the rate of fifteen hours per semester hour of institutional credit, or ten hours per quarter hour of institutional credit, subject to a total limit of not more than half the total hours claimed for any one reporting year.
- b. Noncredit short courses. Licensees teaching a specific university or college level accounting course for the first time may be granted credit for preparation and instruction to the extent that it contributes to the individual's professional competence, up to a limit of twice the continuing professional education course credit available for licensees taking the course. No credit is available for repetitious teaching of the course or for subsequent teaching of courses with similar content. Total credit for these activities during any one reporting year is limited to not more than half the total hours claimed for any one reporting year.
- c. Noncredit short courses.
4. Formal, organized in-firm educational programs.
 5. Programs in other organizations (accounting, professional, industrial, etc.).

History: Amended effective July 1, 1987.

General Authority: NDCC 43-02.1-02(6)(d)

Law Implemented: NDCC 43-02.1-02(6)(d)

3-03-02-04. Correspondence and individual study programs. Formal correspondence courses or other individual study programs that require registration and provide evidence that an individual has satisfactorily completed them will qualify for continuing professional education. The board will determine the amount of credit to be granted for such study. Self-study programs. Provided the criteria listed in sections 3-03-02-01 and 3-03-02-02 are met, formal correspondence courses or other self-study programs will be deemed to qualify for continuing professional education. Total credit for self-study program hours during any one reporting year is limited to not more than half the total hours claimed for any one reporting year.

History: Amended effective July 1, 1987.

General Authority: NDCC 43-02.1-02(6)(d)

Law Implemented: NDCC 43-02.1-02(6)(d)

3-03-02-05. Board may seek assistance. The board may look to the North Dakota ~~state~~ society of certified public accountants, the ~~state~~ North Dakota society of licensed public accountants, the national society of public accountants, ~~or to~~ the American institute of certified public accountants, or the national association of state boards of accountancy for assistance in interpreting the acceptability of, and credit to be allowed for, individual continuing professional education courses.

History: Amended effective July 1, 1987.

General Authority: NDCC 43-02.1-02(6)(d)

Law Implemented: NDCC 43-02.1-02(6)(d)

3-03-03-04. Noncompliance. ~~Upon failure of any accountant to comply with the board's continuing professional education requirements, the board may suspend or revoke either a certificate or a license, or both, to practice.~~ Documentation. Formal evidence of course registrations and written records of course sponsorships, titles, dates, times, locations, and instructors must be maintained by licensees for all continuing professional education credit hours claimed for participation in formal courses and programs.

All documentations must be maintained for a period of at least three calendar years beyond the year of participation.

History: Amended effective July 1, 1987.

General Authority: NDCC 43-02.1-02(6)(d)

Law Implemented: NDCC ~~43-02-1-05(1)~~ 43-02.1-02(6)(d)

3-03-03-05. Compliance monitors. Continuing professional education reporting forms filed by licensees must be examined annually by the state board of public accountancy or an appointed agent thereof, on a sampling basis, to confirm eligibilities and qualifications of credit hours claimed. Licensees claiming ineligible hours will be notified, and the hours will be disqualified. Flagrant violations of reporting standards, and situations where bad faith in compliance appears likely, will be reviewed by the board for possible action as noncompliance.

History: Effective July 1, 1987.

General Authority: NDCC 43-02.1-02(6)(d)

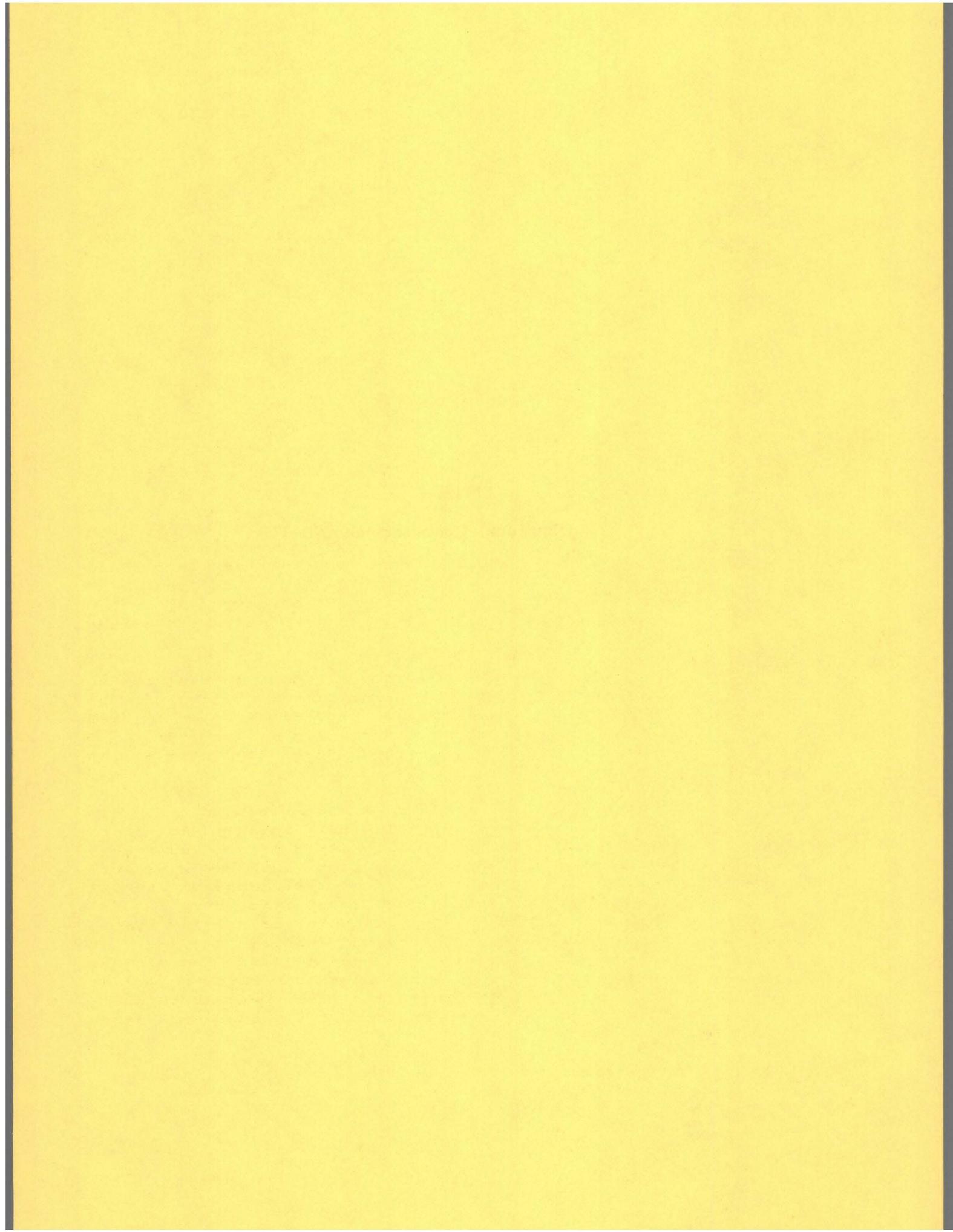
Law Implemented: NDCC 43-02.1-02(6)(d)

3-03-03-06. Noncompliance. Upon failure of any accountant to comply with the board's continuing professional education requirements, the board may suspend or revoke either a certificate or a license, or both, to practice.

History: Effective July 1, 1987.

General Authority: NDCC 43-02.1-02(6)(d)
Law Implemented: NDCC 43-02.1-05(1)(d)

TITLE 7
Agriculture, Commissioner of



APRIL 1987

7-02-02-10. Honeybee tracheal mite infested apiaries -
Statement of purpose - Inspection upon request.

- 1- All apiaries determined to be infested with the honeybee tracheal mite, acarpis woodi, shall be placed under quarantine by the state bee inspector. The beekeeper will be notified that the apiary is under quarantine, and may be given specified instructions by the state bee inspector concerning the quarantine.
- 2- If a chemical approved by the environmental protection agency is available, control of the honeybee tracheal mite by chemical will be allowed if the label instructions are followed. The quarantine will be lifted when the mite is no longer detectable.
- 3- If no approved chemical is available, the beekeeper will be notified that the apiary is under quarantine and that the beekeeper may either remove the bees of the infested apiary from North Dakota within thirty days, under the direction of the state bee inspector, or cause the bees in the infested apiary to be destroyed. If, within thirty days, the beekeeper does not destroy the bees of the infested apiary, the department may immediately cause the bees of the infested apiary to be destroyed. The quarantine will be removed after destruction has been documented to the satisfaction of the department.
- 4- Any certificates of health issued to a beekeeper whose apiaries are found to be mite infested shall

state on the certificate that the bees are known to be infested with the honeybee tracheal mite, unless the bees of the infested apiary have been destroyed or successfully treated with approved chemicals.

5. For the purposes of this section, if the state bee inspector places a quarantine on apiaries, neither the beekeeper nor any other person may remove any bees from the apiary without the permission of the state bee inspector.
6. When an apiary is placed under quarantine, the beekeeper will be notified of the location of the infested apiary, and the date when the thirty-day period of notice will expire. If an infested apiary is located within two miles {3.22 kilometers} (from the perimeters of each quarter section) of any other registered apiary of another beekeeper, the inspector may order the infested apiary moved to another specified location. If the infested apiary is not moved to the specified location as ordered by the state bee inspector, the department may cause the bees of the infested apiary to be destroyed immediately.
7. For the purposes of this section, after a quarantine has been imposed, a detectable level for the honeybee tracheal mite will be determined by sampling, one sample taken for every fifty colonies, one hundred bees examined in every sample. The presence of any mites in the bees examined shall be considered an infestation. The department reserves the right to change the method of determining a detectable level, if other more appropriate detection methods are developed.

1. The commissioner of agriculture recognizes that large numbers of bees belonging to migratory beekeepers from various states that come to North Dakota for the beekeeping season are infested with the honeybee tracheal mite, such infestation being apparently widespread. No chemicals currently exist or have been approved to control infestations of the honeybee tracheal mite. The exact detrimental effects of the tracheal mite are not currently known, although research is continuing to determine those effects.

2. The state bee inspector may accept certificates of health from other states or countries that do not indicate information about whether the bees have been inspected for the honeybee tracheal mite or that the bees are free of infestation by the honeybee tracheal mite. The state inspector will not sample or inspect for the honeybee tracheal mite unless specifically requested by a beekeeper and the state bee inspector

determines that it is necessary for the requesting beekeeper's bees to be inspected for the mite before the return of those bees to another state or country. The cost of sampling for the honeybee tracheal mite is the responsibility of the requesting beekeeper.

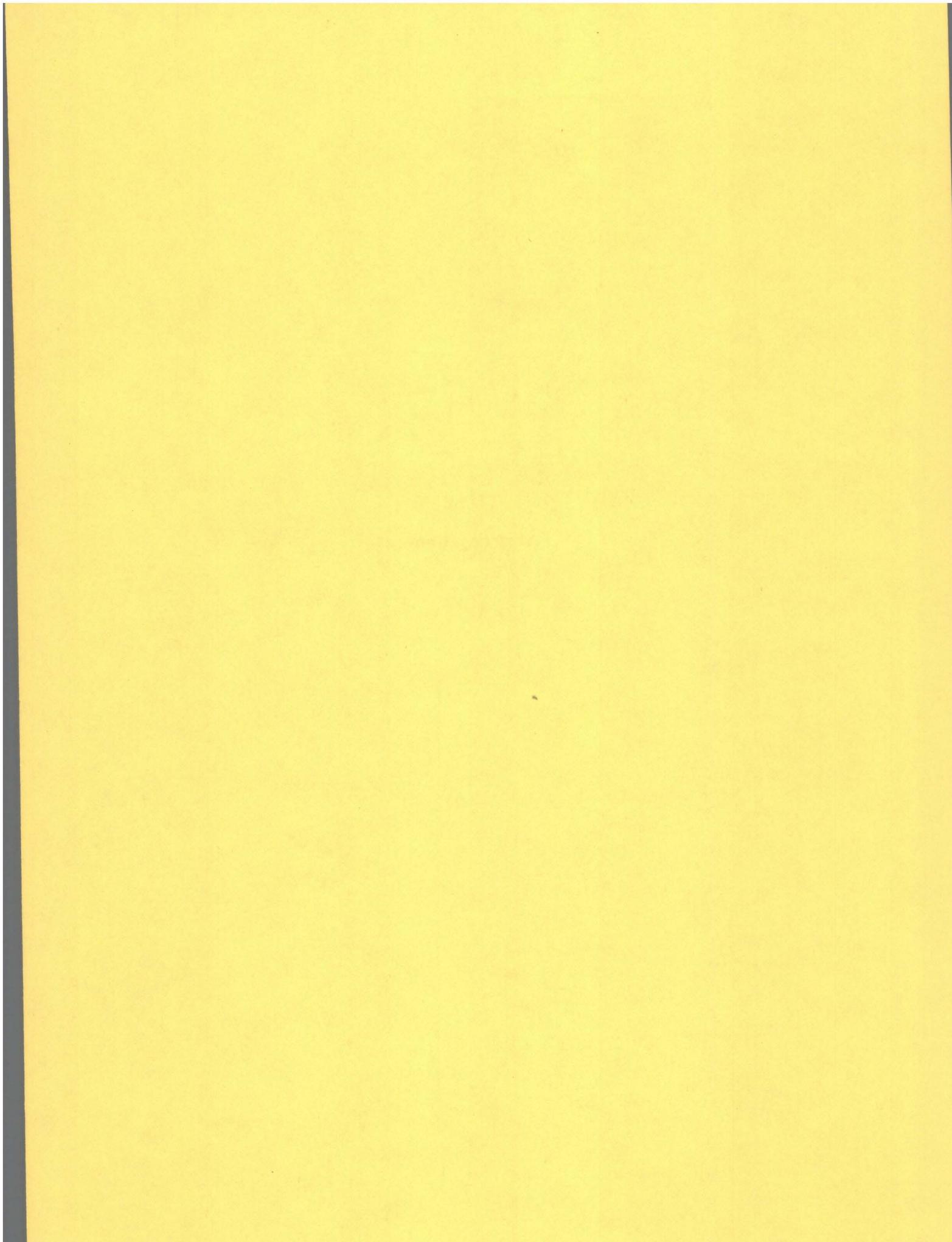
3. If the beekeeper requests inspection, and the apiaries are found to be mite infested, any certificates of health issued to the beekeeper must state on the certificate that the bees are known to be infested with the honeybee tracheal mite, unless the bees of the infested apiary have been destroyed or successfully treated with approved chemicals. However, no health certificates will be issued to the beekeeper pursuant to inspection if the destination country, state, or county of the beekeeper requires honeybee tracheal mite free certification.
4. No beekeeper may use any chemical to control the honeybee tracheal mite unless the chemical has been approved by the United States environmental protection agency and the label instructions of the chemical are followed.

History: Effective June 1, 1986; amended effective April 1, 1987.

General Authority: NDCC 4-12.1-02

Law Implemented: NDCC 4-12.2-16, 4-12.2-18, 4-12.2-19, 4-12.2-21

TITLE 10
Attorney General



NOVEMBER 1986

STAFF COMMENT: Article 10-04.1 contains all new material but is not underscored so as to improve readability.

ARTICLE 10-04.1

GAMES OF CHANCE

Chapter	
10-04.1-01	Definitions
10-04.1-02	Eligible Organizations
10-04.1-03	Licensing Qualifications
10-04.1-04	General Rules
10-04.1-05	General Accounting Rules
10-04.1-06	Bingo
10-04.1-07	Raffles
10-04.1-08	Charitable Gaming Tickets and Punchboards
10-04.1-09	Professional Sports Pools
10-04.1-10	Twenty-One
10-04.1-11	Gaming Tax and Tax Returns
10-04.1-12	Devotion of Net Proceeds
10-04.1-13	Audit and Violations
10-04.1-14	Rules Governing Distributors

CHAPTER 10-04.1-01
DEFINITIONS

Section	
10-04.1-01-01	Definitions

10-04.1-01-01. Definitions.

1. "Adjusted gross proceeds" - refer to subsection 1 of North Dakota Century Code section 53-06.1-01.
2. "Admissions" means the price paid to enter a site to play games of chance.
3. "Bingo session" means a single gathering at which a series of one or more successive bingo games is played.
4. "Blackjack" - see "natural twenty-one".
5. "Bona fide guest" - refer to subsection 2 of North Dakota Century Code section 53-06.1-01.
6. "Capital cost" means a disbursement for tangible personal property, excluding security devices, the useful economic life of which is expected to extend beyond one year and which has a net cost greater than one hundred dollars. Capital cost equipment normally includes, but is not limited to, twenty-one table, chips, stools, bingo machine, flashboard, public address system, coin-operated dispensing device, and jar bar.
7. "Cash prize" means coin, currency, marketable securities, and any other similar item that can be readily redeemed or converted into legal tender and that is not volatile.
8. "Charitable gaming ticket" means the paper pull-tab or jar ticket used in games of pull-tabs and jar tickets.
9. "Charitable organization" - refer to subsection 3 of North Dakota Century Code section 53-06.1-01.
10. "Checker" means a person who records the number of bingo cards played during each game and records the prizes awarded, but does not collect the gross proceeds for the bingo cards nor make the award of the prizes.
11. "Civic and service club" - refer to subsection 4 of North Dakota Century Code section 53-06.1-01.
12. "Compensation" means wages, salaries, bonuses, benefits, and all other forms of remuneration for services rendered, including employer paid taxes.
13. "Conduct of games of chance" means the actual operation of games of chance. The term "conduct" includes, but is not limited to, the selling of charitable gaming tickets, bingo cards, dealing of twenty-one, calling of bingo numbers, purchasing of equipment and supplies, and paying of expenses and eligible use contributions. Conduct does not include the playing of any game of chance.
14. "Deal":

- a. In charitable gaming tickets means each separate package, series of packages, or card consisting of one game of charitable gaming tickets, or lines with the same game serial number purchased from a distributor. Games of "club specials", tip boards", and "seal boards" which use a seal are included in this definition.
 - b. In twenty-one means the distributing of the playing cards among the players.
15. "Dealer" in twenty-one is the general term for the eligible organization's employee or volunteer that the players bet against.
 16. "Devoted" means the unrestricted disbursement to an eligible use, by check from the general gaming bank account provided in subsection 1 of North Dakota Century Code section 53-06.1-11, or for class B organizations it means a transfer of net proceeds to the charitable gaming trust fund bank account.
 17. "Distributor" - refer to subsection 5 of North Dakota Century Code section 53-06.1-01.
 18. "Doubling-down" in twenty-one means the act of a player doubling the amount of the player's original wager on any two card count. When the player doubles-down the player must draw one and only one card.
 19. "Educational, charitable, patriotic, fraternal, religious, or other public-spirited uses" - refer to subsection 6 of North Dakota Century Code section 53-06.1-01.
 20. "Educational organization" - refer to subsection 7 of North Dakota Century Code section 53-06.1-01.
 21. "Eligible organization" - refer to subsection 8 of North Dakota Century Code section 53-06.1-01.
 22. "Entire net proceeds" or "net proceeds" - refer to subsection 9 of North Dakota Century Code section 53-06.1-01.
 23. "Equipment" - see gaming equipment.
 24. "Flare" is the posted display with the North Dakota state gaming stamp affixed which sets forth the rules and prizes of a specific game of punchboards, professional sports-pool boards, and deals of charitable gaming tickets, including club specials, tip boards, and seal boards. The flare for a punchboard is the face sheet of the punchboard. The flare for a professional sports-pool board is the sports-pool board itself. The flare for a tip board is the tip board itself. The flare for a seal board is the seal board itself.

25. "Fraternal organization" - refer to subsection 10 of North Dakota Century Code section 53-06.1-01.
26. "Gaming equipment" means any device, apparatus, or implement usable in the conduct of games of chance, specifically designed for the purpose, but excluding tables and chairs normally used in the occupancy of a premise. The term "equipment" includes, but is not limited to, twenty-one table, chip tray, dealing shoe, drop box, chips, table playing surface, bingo machine, flashboard, bingo cards, decks of twenty-one cards, coin-operated dispensing device, jar bar, punchboards, professional sports-pool boards, and deals of charitable gaming tickets, including club specials, tip boards, and seal boards.
27. "Gross proceeds" - refer to subsection 11 of North Dakota Century Code section 53-06.1-01.
28. "Insurance bet" in twenty-one means a wager by a player that a dealer holds a natural twenty-one when the dealer has an ace showing.
29. "Licensed organization" means an organization licensed by the attorney general to conduct games of chance.
30. "Licensee" - refer to subsection 12 of North Dakota Century Code section 53-06.1-01.
31. "Licensing authority" - refer to subsection 13 of North Dakota Century Code section 53-06.1-01.
32. "Manufacturer" is any person who converts, modifies, adds to or removes parts or a portion from any item, device, or assembly, or assembles from raw materials or subparts a completed piece of gaming equipment or pieces of gaming equipment to further its promotion, sale, or use in authorized gaming activities, including but not limited to punchboards, professional sports-pool boards, deals of charitable gaming tickets, including club specials, tip boards, and seal boards, coin-operated dispensing devices, twenty-one tables, bingo machines, and flashboards, and who sells or otherwise furnishes the same to any distributor. Provided, that a person adding only promotional flares to advise the public of the prizes available, the rules of play and the consideration required is not deemed a manufacturer.
33. "Member" - refer to subsection 14 of North Dakota Century Code section 53-06.1-01.
34. "Natural twenty-one" is the highest ranking hand in the game of twenty-one consisting of an ace and a ten-count card on the first two cards dealt.

35. "Other public-spirited organization" - refer to subsection 15 of North Dakota Century Code section 53-06.1-01.
36. "Person" - refer to subsection 15.1 of North Dakota Century Code section 53-06.1-01.
37. "Religious organization" - refer to subsection 16 of North Dakota Century Code section 53-06.1-01.
38. "Security device" means personal property used to prevent or detect unauthorized access to or use of gaming equipment, cash, books and records. Includes equipment designed to deter and detect players and employees from making errors or committing irregularities. The term "security device" includes, but is not limited to, cash register, safe, black light, electronic count scale, micrometer, electronic bingo card validator, bingo master check book, metal drop box, video camera, and twenty-one locking chip carrying case.
39. "Shoe" in twenty-one means a card-dealing box, capable of holding two hundred eight regular playing cards, which is constructed of a transparent material except that the face of the shoe may be opaque.
40. "Supplies" - see gaming equipment.
41. "Veterans organization" - refer to subsection 17 of North Dakota Century Code section 53-06.1-01

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-17

CHAPTER 10-04.1-02 ELIGIBLE ORGANIZATIONS

Section

10-04.1-02-01	Purpose of Organization
10-04.1-02-02	Civic and Service Clubs
10-04.1-02-03	Other Public-Spirited Organizations
10-04.1-02-04	Processing of City and County Resolutions

10-04.1-02-01. Purpose of organization. An organization is ineligible to conduct games of chance if the sole purpose of that organization is to conduct such games of chance, whether or not the organization is carrying out that purpose for one or more otherwise eligible organizations. Therefore, every organization desiring to conduct games of chance must manifest itself by veterans, charitable, educational, religious, fraternal, civic and service, or other public-spirited programs.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-02

10-04.1-02-02. Civic and service clubs.

1. An organization is a civic and service club only if its primary purpose is a civic and service purpose. A "civic and service purpose" is the promotion of the common good and social welfare of the community and public at large (i.e., affecting an indefinite number of people). Purposes which benefit only a portion of the community, which are limited to one or a few substantive activities, or which are otherwise narrow in scope are not civic or service purposes. Private athletic, social, hobby, trade, business, professional or other similar clubs or associations are generally not civic and service clubs.
2. Before passing a resolution recognizing an organization as a civic and service club, a city or county governing body shall determine the primary purpose of the organization, the manner in which this purpose has been carried out in the past, and the intended uses of the net proceeds generated by the contemplated games of chance. The following items must be examined by the governing body in order to make these determinations:
 - a. Statements of receipts and expenditures for at least the two previous years which specifically outline the projects and other activities to which all of the organization's funds have been devoted and which are attested to by the financial officer and the president or other similar officer of the organization.
 - b. A copy of the organization's charter, constitution, bylaws, articles of incorporation, or similar documents which help to establish its primary purpose and its date of origin.
 - c. A copy of the minutes of the organization's meetings which includes a resolution which specifically states the intended uses of funds generated by games of chance and which is attested to by the secretary or other similar officer of the organization.
 - d. Any other relevant materials submitted by the organization or by any other party.
3. The resolution passed by the city or county governing body recognizing an organization as a civic and service club must include the following findings of the governing body:

- a. A statement of the primary purpose of the organization and the specific items relied upon in concluding that the purpose is a "civic and service purpose" as defined by subsection 1 of section 10-04.1-02-02.
 - b. A statement which specifically outlines the manner in which this primary purpose has been achieved in the past and how the purpose will be achieved by the granting of the games of chance license.
 - c. A statement which specifically outlines the intended uses of the net proceeds generated by the contemplated games of chance and the conclusion that all of these uses are eligible uses under subsection 6 of North Dakota Century Code section 53-06.1-01, and the rules issued thereunder.
 - d. A statement of the organization's date of origin and the conclusion that the organization has actively existed for at least the two previous years.
 - e. A statement that the governing body has examined all of the materials which are required to be examined.
 - f. A clause recognizing the organization as a civic and service club.
4. Organizations recognized by resolution as "civic and service clubs" shall devote the net proceeds of games of chance only to those eligible uses specifically outlined in the resolution.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-02, 53-06.1-17

10-04.1-02-03. Other public-spirited organizations.

1. For the purpose of administering subsection 15 of North Dakota Century Code section 53-06.1-01, the term "other public-spirited organization" does not include veterans, charitable, educational, religious, fraternal organizations, or civic and service clubs. Therefore, "other public-spirited organization" does not include an organization which would satisfy any of the definitions of these terms in North Dakota Century Code section 53-06.1-01, except for its failure to meet a requirement of two years of existence or functioning or its failure to obtain the resolution required under subsection 4 of North Dakota Century Code section 53-06.1-01.
2. For the purpose of administering subsection 15 of North Dakota Century Code section 53-06.1-01, the term "other public-spirited organization" means an organization whose primary

purpose is consistent with subdivision c, e, f, g, h, or i of subsection 6 of North Dakota Century Code section 53-06.1-01.

3. An organization whose primary purpose is consistent with subdivision h or i of subsection 6 of North Dakota Century Code section 53-06.1-01 must have one or more individuals affected by a specific event which has transpired as of the time of the application for a license.
4. In order to allow a city or county to protect and promote the public interest, an organization, except one whose primary purpose is consistent with subdivision h or i of subsection 6 of North Dakota Century Code section 53-06.1-01, must have actively been in existence and maintained its same qualifying primary purpose for at least the two previous years before it can be licensed as an other public-spirited organization.
5. Before passing a resolution recognizing an organization as a public-spirited organization which is eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1, a city or county governing body shall determine the primary purpose of the organization, the manner in which its purpose has been carried out, and the intended uses of the net proceeds generated by games of chance. The following items must be examined by the governing body in order to make these determinations:
 - a. Statements of receipts and expenditures for at least the two previous years, except for organizations whose primary purpose is consistent with subdivision h or i of subsection 6 of North Dakota Century Code section 53-06.1-01, which specifically outline the projects and other activities to which all of the organization's funds have been devoted and which are attested to by the financial officer and president or other similar officer of the organization.
 - b. A copy of the organization's charter, constitution, bylaws, articles of incorporation, or similar documents which help to establish its primary purpose and its date of origin.
 - c. A copy of the minutes of the organization's meetings which includes a resolution which specifically states the intended uses of funds generated by games of chance and which is attested to by the secretary or other similar officer of the organization.
 - d. Any other relevant materials submitted by the organization or by any other party.
6. The resolution passed by the city or county governing body recognizing an organization as a public-spirited organization

which is eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1, must include the following findings of the governing body:

- a. A statement that the organization is not a veterans, charitable, educational, religious, or fraternal organization, or a civic and service club.
 - b. A statement of the primary purpose of the organization.
 - c. A statement specifying the specific provision of subdivision c, e, f, g, h, or i of subsection 6 of North Dakota Century Code section 53-06.1-01, with which the primary purpose of the organization is consistent.
 - d. A statement which specifically outlines the manner in which this primary purpose has been achieved and how the purpose will be achieved by the granting of the games of chance license.
 - e. A statement which specifically outlines the intended uses of the net proceeds generated by the contemplated games of chance and the conclusion that all of these uses are eligible uses under subdivision c, e, f, g, h, or i of subsection 6 of North Dakota Century Code section 53-06.1-01, and the rules issued hereunder.
 - f. A statement that the governing body has examined all of the materials which are required to be examined.
 - g. A clause recognizing the organization as public-spirited and eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1.
7. If the resolution states that the primary purpose of the organization is within subdivision g of subsection 6 of North Dakota Century Code section 53-06.1-01 (lessening the burden of government), it must also state either that the city or county (as applicable) operated and funded the project the organization intends to benefit or that it is a project the city or county wants to undertake but that it cannot do so without receiving financial help from the organization. Copies of city or county records sufficient to establish either of these statements will be sent to the attorney general by the organization.
 8. Organizations recognized by resolution as public-spirited organizations eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1 shall devote the net proceeds of games of chance only to those eligible uses specifically outlined in the resolution.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-02, 53-06.1-17

10-04.1-02-04. Processing of city and county resolutions.

1. A copy of the "civic and service club" or "other public-spirited organization" resolution passed by the city or county governing body, along with copies of all the materials which must be examined by the governing body under section 10-04.1-02-02 or 10-04.1-02-03, will be sent to the attorney general by the organization.
2. As the final licensing authority, the attorney general shall review the resolution, the materials submitted with it, the license application, and any other evidence concerning the organization. The attorney general may also examine any other materials concerning an organization which the attorney general determines are necessary in order to process the application. If the attorney general determines that the findings made by the governing body are not supported by the available facts, that the resolution does not meet the requirements of the law or is incorrect or internally inconsistent, that the governing body has failed to undertake a sufficient examination of the organization or has acted in an arbitrary or capricious fashion, or that any other requirement of the law has not been complied with, the attorney general shall return the resolution to the city or county governing body.
3. If, after the organization has received a license to conduct games of chance, the attorney general determines at any time that the organization's primary purpose is not equivalent to the statement of its primary purpose contained in the resolution or that a use of the net proceeds generated by games of chance is outside the uses outlined in the resolution, the attorney general shall revoke that organization's license.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-02, 53-06.1-03, 53-06.1-17

**CHAPTER 10-04.1-03
LICENSING QUALIFICATIONS**

Section

10-04.1-03-01	Licenses
10-04.1-03-02	Site Authorizations
10-04.1-03-03	Closely Connected Organizations Prohibited
10-04.1-03-04	License Application Information

10-04.1-03-05	Required Training for Newly Licensed Organizations
10-04.1-03-06	Required Training for New Bookkeepers
10-04.1-03-07	Employee Information
10-04.1-03-08	Reporting Changes in Information
10-04.1-03-09	Bingo - Authorization by Local Governing Body Only
10-04.1-03-10	Raffles - Authorization by Local Governing Body Only
10-04.1-03-11	Professional Sports Pools - Authorization by Local Governing Body Only

10-04.1-03-01. Licenses.

1. Every organization eligible for a license must first receive an authorization for a gaming site or sites within a city from the city governing body or for a gaming site or sites within a county, exclusive of city limits, from the county governing body. The eligible organization shall then apply to the attorney general for a separate license for each city or county, or both, for which it holds an authorization for a gaming site or sites.
2. A class A organization wishing to obtain a special permit from the attorney general for an alternate location, pursuant to subdivision a of subsection 3 of North Dakota Century Code section 53-06.1-03, shall first obtain a site authorization from the governing body of the location of the alternate site. No fee may be charged for this authorization by the governing body. The class A organization shall then apply to the attorney general for a special permit.
3. All class A and class B applications are subject to the approval of the attorney general. At the discretion of the attorney general, temporary permits, revocable on demand, may be issued pending review or investigation, or both, of the application.
4. The information provided on the license application by the organization must meet all the requirements of the administrative rules and law, otherwise the license application may be denied.
5. Class A and class B licenses are effective for a period of one year beginning July first and ending June thirtieth.
6. There may be no proration of the fees set out in subsection 1 of North Dakota Century Code section 53-06.1-03, for any organization commencing a game of chance after July first.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-06, 53-06.1-11,
53-06.1-15.1, 53-06.1-17

10-04.1-03-02. Site authorizations.

1. Site authorizations are issued at the discretion of the city or county governing body. Site authorizations may have certain restrictions applied to them by the governing body. Such restrictions may include types of games of chance and designation of an area at a site where games of chance will be conducted. An applicant has no absolute right to receive a site authorization from the governing body. The governing body, therefore, may reject or may not approve reapplications for a site authorization or may restrict a site authorization in order to limit the gaming activity within its jurisdiction. However, nothing in this rule may be construed as allowing the governing body to restrict the disbursement of gaming net proceeds.
2. No applicant may be denied approval of a site authorization on the grounds of the race, color, religion, sex, or national origin of the membership of the applicant.
3. The local governing body may enact ordinances to allow a revocation or suspension of an issued site authorization.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-05.1, 53-06.1-17

10-04.1-03-03. Closely connected organizations prohibited.

1. Organizations closely connected to a licensed organization may not be licensed nor receive local authorization for the conduct of bingo, raffles, or professional sports pools except as specifically authorized by the attorney general. Such authorization must be based on the conditions set forth by the attorney general.
2. An otherwise eligible organization is determined to be connected to another eligible organization if any one or more of the following conditions are present:
 - a. Membership in one organization automatically qualifies an individual as a member of another organization.
 - b. Membership in one organization is dependent upon membership in another organization, including social memberships.

- c. The existence of an organization is dependent upon the existence of another organization.
3. Any affiliation of two or more organizations, contractual or otherwise, the substance of which is the circumvention of North Dakota Century Code chapter 53-06.1 regarding the required use of net proceeds or payment, or both, of the tax is prohibited.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-17

10-04.1-03-04. License application information. The application must be on a form prescribed by the attorney general and must contain such necessary and reasonable information as the attorney general requires. The application must include at least the information required by this section on or attached to the application.

1. **Acknowledgment of local law enforcement.** Every eligible organization shall notify the city chief of police or county sheriff, as appropriate, of the intended site or sites at which games of chance are to be conducted and obtain local law enforcement acknowledgment. Every eligible organization shall also consent in advance that local law enforcement officers or the attorney general and the attorney general's agents may, at any time games of chance are being conducted, enter upon the site to observe the playing of games of chance and to enforce the law for any unauthorized game or practice. The acknowledgment by the chief of police or sheriff and the consent by the eligible organization must be completed on forms provided by the attorney general.
2. **Rental agreements.** Copies of all rental agreements between the organization and the owner or person who has the responsibility and authority to execute such contracts for the premises upon which the gaming activity will be conducted.
3. **Sources of funds.** The general sources and approximate amount of funds available to the organization to reimburse the general gaming bank account for any excess gaming expenses.
4. **Acknowledgment of games of chance committee.** The games of chance committee form must be signed by each member of the games of chance committee. Each member shall acknowledge that the member understands the member's legal responsibility for the fair and lawful operation of all licensed gaming activities that the organization conducts.
5. **Authorization to inspect bank records.** An "authorization to inspect bank records" of the general gaming bank account, all other accounts controlled by the organization, and, for

appropriate class B organizations, the charitable gaming trust fund bank account, must be completed on forms provided by the attorney general. The organization shall grant the attorney general a consent in accordance with North Dakota Century Code sections 6-08.1-03, 6-08.1-04, and 6-08.1-05 to enable a financial institution to disclose customer information to the attorney general.

6. **Articles of incorporation and bylaws.** Copy of corporate articles of incorporation and bylaws or, if not a corporation, a copy of any bylaws and other documents which set out the organizational structure and purposes of the organization.
7. **Internal revenue service tax exemption letter.** For organizations that use the gaming net proceeds for uses benefiting their own organization as provided by subdivision a of subsection 6 of North Dakota Century Code section 53-06.1-01, copy of an internal revenue service letter that evidences exemption from federal taxation under section 501(c)(3) of the Internal Revenue Code. If a tax exemption letter has not been obtained, attach an explanation.
8. **Secretary of state solicitation license.** If applicable, copy of a current solicitation license issued by the North Dakota secretary of state that evidences registration to solicit contributions under North Dakota Century Code chapter 50-22.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-17

10-04.1-03-05. Required training for newly licensed organizations. An organization first licensed by the attorney general to conduct games of chance on November 1, 1986, and thereafter, shall within the first quarter of the commencement of conducting games of chance request training from the attorney general. The training must take place at a location chosen by the attorney general and must include games of chance administrative rules and law, recordkeeping requirements, internal control, and preparation of the gaming tax return. The organization shall provide the attorney general with a copy of its written internal accounting and administrative control system as provided by section 10-04.1-05-02. At a minimum, the organization's games of chance committee or the person responsible for the recordkeeping, or both, must participate in the training.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-03-06. Required training for new bookkeepers. An organization that employs, for compensation or not, a new bookkeeper who

is principally responsible for complying with the recordkeeping requirements of North Dakota Century Code chapter 53-06.1 and of these rules, shall within ninety days of the date of the bookkeeper's employment request training from the attorney general. The training must take place at a location chosen by the attorney general and must include games of chance administrative rules and law, recordkeeping requirements, internal control, and preparation of the gaming tax return. At a minimum, the organization's new bookkeeper shall participate in the training.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-03-07. Employee information.

1. In order to ensure fair and honest games of chance and to preserve the integrity of the administration of the games of chance law, every class A and class B licenseholder shall complete and submit an employee information report to the attorney general within fourteen days after receipt of a class A or class B license.
2. The employee information report shall contain such necessary and reasonable information as the attorney general may require.
3. Additions or deletions, or both, to this report must be furnished to the attorney general each quarter period.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-03-08. Reporting changes in information. When information filed with the attorney general becomes inaccurate in a material way, or material additions or deletions are necessary to reflect changes in circumstances of the organization, the organization shall submit in writing full details of such change or correct any inaccuracy, or both, together with copies of any new required documents, with the attorney general within fourteen days following the change.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-03-09. Bingo - Authorization by local governing body only. The provisions of chapter 10-04.1-06 apply to the conduct and play of bingo unless otherwise exempted by these rules.

1. In order to protect and promote the public interest, licensure by a city or county governing body for the purpose of conducting bingo shall apply only when all of the following criteria are met:
 - a. The organization is an eligible organization.
 - b. The organization will conduct only bingo, raffles, professional sports pools, or any combination thereof, throughout the entire fiscal year beginning July first and ending June thirtieth.
 - c. The frequency of the bingo session does not exceed once per week, unless the license is issued for a single specific session which does not last over two weeks.
 - d. The market value of a single bingo merchandise prize or cash prize for each game on each session does not exceed one thousand dollars and the total market value of the aggregate of the bingo merchandise prizes and cash prizes for the entire locally authorized period does not exceed two thousand dollars.
 - e. The bingo session is conducted upon a site which either does not have a retail alcoholic beverage licensee thereon, or does have a retail alcoholic beverage licensee thereon but the licensee is not dispensing alcoholic beverages during the conduct of the bingo session or the conduct of the bingo session is in an area of the site which is physically separated from the area where retail alcoholic beverages are being dispensed.
2. An applicant failing to comply with any of the items in subdivisions b through e of subsection 1 may not conduct bingo without first obtaining a class A or class B license unless exempted by the attorney general.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-07, 53-06.1-17

10-04.1-03-10. Raffles - Authorization by local governing body only. The provisions of chapter 10-04.1-07 apply to the conduct and play of raffles unless otherwise exempted by these rules.

1. In order to protect and promote the public interest, licensure by a city or county governing body for the purpose of conducting raffles shall apply only when all of the following criteria are met:
 - a. The organization is an eligible organization.

- b. The organization will conduct only raffles, bingo, or professional sports pools, or any combination thereof, throughout the entire fiscal year beginning July first and ending June thirtieth.
 - c. The frequency of the raffle drawing occasion does not exceed once per week, unless the license is issued for a single specific occasion which does not last over two weeks.
 - d. The market value of a single merchandise prize for a raffle does not exceed one thousand dollars and the total market value of the aggregate of the merchandise prizes and cash prizes for a raffle, including a calendar raffle, does not exceed two thousand dollars. Cash prizes for a raffle may not exceed five hundred dollars in the aggregate during one day.
 - e. The raffle drawing occasion is conducted upon a site which either does not have a retail alcoholic beverage licensee thereon, or does have a retail alcoholic beverage licensee thereon but the licensee is not dispensing alcoholic beverages during the conduct of the raffle drawing occasion or the raffle drawing occasion is in an area of the site which is physically separated from the area where retail alcoholic beverages are being dispensed.
2. An applicant failing to comply with any of the items in subdivisions b through e of subsection 1 may not conduct raffles without first obtaining a class A or class B license unless exempted by the attorney general.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-07, 53-06.1-10.1, 53-06.1-17

10-04.1-03-11. Professional sports pools - Authorization by local governing body only. The provisions of chapter 10-04.1-09 apply to the conduct and play of professional sports pools unless otherwise exempted by these rules.

1. In order to protect and promote the public interest, licensure by a city or county governing body for the purpose of conducting professional sports pools shall apply only when all of the following criteria are met:
 - a. The organization is an eligible organization.
 - b. The organization will conduct only professional sports pools, bingo, or raffles, or any combination thereof,

throughout the entire fiscal year beginning July first and ending June thirtieth.

- c. The maximum wager on any professional sports pool is five dollars per square.
 - d. The total wagers do not exceed five hundred dollars for each professional sports pool.
 - e. The amounts paid to professional sports-pool participants in prizes may not exceed ninety percent of the gross proceeds.
 - f. The sports-pool board is conducted upon a site which either does not have a retail alcoholic beverage licensee thereon, or does have a retail alcoholic beverage licensee thereon but the licensee is not dispensing alcoholic beverages during the conduct of the sports-pool board or the conduct of the sports-pool board is in an area of the site which is physically separated from the area where retail alcoholic beverages are being dispensed.
2. An applicant failing to comply with the items in subdivisions b and f of subsection 1 may not conduct professional sports pools without first obtaining a class A or class B license unless exempted by the attorney general.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-09, 53-06.1-17

CHAPTER 10-04.1-04 GENERAL RULES

Section	
10-04.1-04-01	Only Those Games as Defined Allowed
10-04.1-04-02	Inspection of Rules
10-04.1-04-03	Games of Chance Committee
10-04.1-04-04	Specific Location
10-04.1-04-05	Organizations to Purchase Only From Licensed Distributors
10-04.1-04-06	Equipment Acquisitions
10-04.1-04-07	Promotion of Games of Chance
10-04.1-04-08	Lessor of Gaming Site - Restrictions
10-04.1-04-09	Lessor of Gaming Site - Suspension of Licensed Games of Chance at a Site
10-04.1-04-10	Rental Agreements
10-04.1-04-11	Person in Charge
10-04.1-04-12	Restriction of Gaming Manager
10-04.1-04-13	Age Limitation
10-04.1-04-14	House Rules

10-04.1-04-15	Display of Licenses
10-04.1-04-16	List of Employees to be Available on the Site
10-04.1-04-17	Employees and Volunteers to Wear Identification Tags
10-04.1-04-18	Currency of Play
10-04.1-04-19	Credit Play Prohibited
10-04.1-04-20	Borrowing From Gaming Funds Prohibited
10-04.1-04-21	Use of Twenty-One Chips as Payment for Drinks May be Allowed
10-04.1-04-22	Employees or Volunteers Should Not Play Games of Chance
10-04.1-04-23	Immediate Family and Common Household Members Should be Prohibited From Playing Games of Chance
10-04.1-04-24	Employees and Volunteers Prohibited From Providing Any Inside Information
10-04.1-04-25	More Strict House Rules Permitted
10-04.1-04-26	Waiver of Administrative Rules

10-04.1-04-01. Only those games as defined allowed. Notwithstanding descriptions of various games of chance, only those defined in this article shall be permitted to be conducted by eligible organizations.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07

10-04.1-04-02. Inspection of rules. Every eligible organization shall have a current copy of the North Dakota games of chance law and rules readily available for inspection by any individual at each site authorized to conduct games of chance.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-17

10-04.1-04-03. Games of chance committee.

1. Every eligible organization shall establish as an integral part of its organizational structure, a committee which consists of no less than three individuals all of whom must be bona fide members whose association with the organization is not for purposes of conducting or assisting in games of chance only.
2. The committee is the organization's responsible governing board for all phases of gaming activity conducted by the eligible organization including its members, auxiliary

components, employees, and agents. Gaming activity includes the use of the net proceeds.

3. The minutes or other proper records of the organization must annually reflect the name and address and title of each member of this committee.
4. It is recommended that members of this committee not conduct or assist in the conduct of their organization's games of chance. However, members of this committee are prohibited from conducting or assisting in the conduct of their organization's games of chance if it is determined by the attorney general that the organization's permissive policy has resulted in questionable activity.
5. In order to preserve the integrity of the administration of the games of chance law, the attorney general may determine that the provisions of North Dakota Century Code section 53-06.1-16 are applicable to this committee or any member thereof.
6. Each organization shall have its games of chance committee make available in writing to its membership and board of directors at least once a quarter the organization's total adjusted gross proceeds; cash long or short; net proceeds; excess expenses, if any; reimbursement of excess expenses, if applicable; and eligible use contributions. Such information must also be included in the minutes or other proper records of each organization.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-17

10-04.1-04-04. Specific location. For the purpose of subdivision d of subsection 3 of North Dakota Century Code section 53-06.1-03, "specific location" does not include the site of a fair, carnival, exposition, or similar occasion.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03

10-04.1-04-05. Organizations to purchase only from licensed distributors. An organization licensed by the attorney general or authorized by the local governing body shall purchase gaming equipment and supplies only from North Dakota licensed distributors. However, the purchase of a jar bar is exempt from this requirement.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-04-06. Equipment acquisitions.

1. Eligible organizations are prohibited from renting, lending, or exchanging gaming equipment with any licensed organization or person (person includes any entity - refer to North Dakota Century Code sections 1-01-28 and 53-06.1-01).
2. An eligible organization anticipating the printing, manufacture, or construction of any gaming equipment, excluding jar bars, for games of chance shall first notify the attorney general of its intention and shall have the finished product approved by the attorney general before being placed in service.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-06, 53-06.1-14

10-04.1-04-07. Promotion of games of chance. Free games, door prizes, discounts to certain age groups, drinks, chips, transportation to the gaming site, or other inducements given directly or indirectly to players to participate in games of chance, are prohibited. Bingo cards or packages discounted up to fifty percent are not considered inducements.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-04-08. Lessor of gaming site - Restrictions.

1. Any advertising done, by the lessor or any other person, related to games of chance at a site must contain a statement identifying the organization licensed to conduct games of chance at that site. This requirement includes, for example, advertising signs and billboards.
2. The lessor, lessor's spouse, management, officers, or any employee or agent of the lessor who is in a position, individually or collectively, to approve or deny the lease, may not directly or indirectly participate in the selling, distributing, conducting, assisting, or playing of games of chance at the site leased. If the site is a public building, this prohibition applies to the building manager and staff and all officials in a position, individually or collectively, to approve or deny the lease.

3. It is recommended that all employees of the lessor not be allowed to play games of chance at the site leased. However, in no instance may any employee of the lessor directly or indirectly participate in the selling, distributing, conducting, or assisting in the conduct of games of chance at the site leased.
4. No game of chance may be set up or otherwise operated in conjunction with the conduct of the lessor's business operations.
5. No officer or board member of a licensed organization may have any financial interest in any site leased by that organization.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-09. Lessor of gaming site - Suspension of licensed games of chance at a site. The attorney general may not license games of chance at a site for a period of ninety days if the lessor of the gaming site terminates a rental agreement with an organization without good cause.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-10. Rental agreements.

1. Every eligible organization conducting games of chance at a site that is not owned by that organization shall have in writing the conditions under which it is permitted the use and occupancy of that site. Such agreement must be attested to by both the grantor and grantee.
2. At a minimum, every such agreement entered into pursuant to this section must contain, by affirmative or negative statement, the following information:
 - a. Name of grantor or lessor, whichever is applicable, who must be the legal owner of the site. If the organization is to be a sublessee, then the lessee name must also be included.
 - b. Name of the eligible organization.
 - c. Term of the agreement which must be on a fiscal year basis from July first to June thirtieth.

- d. Monetary consideration, if any.
 - e. Brief description of the general area being granted or leased within the facility.
 - f. The inclusion of the following statement with appropriate selections made for class B licensee applicants: "The (grantor, lessor) does hereby agree that (he, she), (his, her) spouse, management, officers, and any employee or agent of the (grantor, lessor) who is in a position, individually or collectively, to approve or deny the lease shall not directly or indirectly participate in the selling, distributing, conducting, assisting, or playing of games of chance at the site herein (granted, leased)."
 - g. The number of twenty-one tables, if any, upon which the monthly rent is based.
3. Payment of rent pursuant to the agreement must be for a fixed dollar rate per month or other agreed upon duration.
- a. Graduated rate arrangements are prohibited.
 - b. Other remuneration, in lieu of money, is prohibited.
 - c. Percentage rates are prohibited.
 - d. For purposes of enforcing the maximum rent of one hundred fifty dollars for each table on which the game of twenty-one is played, the phrase "the number of tables on which the game of twenty-one is played" means the maximum number of tables set up and necessary for the playing of the game of twenty-one at that site. If the number of tables necessary changes, so as to necessitate a change in the maximum rent which may be charged, the appropriate change must be made in the lease and a copy of the amended lease sent to the attorney general. There may be no additional rent for any other purpose such as capital improvements, office space, and storage space associated directly or indirectly with games of chance at the site.
- If the game of twenty-one is played by licensed organizations at special occasions for five days or less per month and the site is a public or private building, the maximum rent the lessor can charge is twenty-five dollars per twenty-one table and fifty dollars per jar bar, per special occasion.
4. Renegotiated agreements must be furnished to the attorney general on or before fourteen days prior to the effective date of the new agreement.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-06, 53-06.1-17

10-04.1-04-11. Person in charge. Every licensed organization shall designate an individual at each site location as the person in charge. The games of chance committee specified in section 10-04.1-04-03 is responsible for being aware of the conduct of the games at that site and the adherence to the law and regulations by the employees, lessor, members, and participants. Violation of the law and regulations must be made known immediately by the person in charge to the attorney general or a local enforcement agency if circumstances dictate.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-12. Restriction of gaming manager. A person may not act in the capacity of gaming manager for more than one licensed organization simultaneously. A gaming manager is a person who is responsible for the gaming operation of the organization. Responsibilities may include personnel recruitment and termination, site selection, management, marketing, employee training, administrative and accounting control, budgeting, public relations, supervision, and compliance with the administrative rules and law. This rule does not apply to a gaming manager of an organization whose total actual gross proceeds for the previous fiscal year's four quarters, for which gaming tax returns were filed, averaged twenty-five thousand dollars or less per quarter.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-13. Age limitation. Individuals under the age of twenty-one may not conduct, assist, or play any games of chance except for the games of bingo and raffles.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.1, 53-06.1-17

10-04.1-04-14. House rules. No house rule may conflict with state law or this article. All house rules must be posted in a conspicuous location so that any player of that game to which the rules apply can readily read such rules.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-15. Display of licenses. All licenses and site authorizations granted by a local governing body or the attorney general must be prominently displayed at all times upon the licensed site in such position as they may be observed by persons participating in gaming activities on the site.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-16. List of employees to be available on the site. The organization conducting games of chance shall prepare and have available on the site or sites a current list of all employees participating in the management or operation of the games of chance. Such list must contain the name, complete address, and telephone number. The list must be made available to the attorney general and law enforcement officials upon request.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-17. Employees and volunteers to wear identification tags. Each employee or volunteer conducting or assisting in the conduct of games of chance of a licensed organization shall wear an identification tag at all times while working in the gaming area on the site. The identification tag must display at least the employee's or volunteer's first name and first initial of the last name, or employee or volunteer number, and the name of the organization. All information on the identification tag must be clear and easily visible to the players in the gaming area. The identification tag must be worn on the upper one-third of the employee's or volunteer's body. It must be furnished to the employee or volunteer by the organization who is equally responsible with the employee or volunteer to ensure the identification tag is displayed as required by this section. A city or county work permit must meet at least the requirement of this section. This section does not apply to employees or volunteers of an organization whose total actual gross proceeds for the previous fiscal year's four quarters, for which gaming tax returns were filed, averaged twenty-five thousand dollars or less per quarter.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-18. Currency of play. All playing of games of chance must be in United States of America currency or coinage. The exchange of foreign currency or coinage into United States of America currency or coinage must be done in advance of any play. The exchange rate must be that rate at which the foreign currency or coinage is exchanged for United States of America currency or coinage at the bank where the organization established the general gaming bank account for that licensed site. The organization may account for the exchange rate by rounding to the nearest nickel.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-19. Credit play prohibited. All playing of games of chance must be on a cash basis. Cash includes checks. Credit may not be extended to any player. The consideration to play a game of chance must be collected in full, by cash or check, in advance of any play. No organization may grant a loan or gift of any kind at any time to a player. Organizations may establish policy concerning acceptance of checks, and need not accept checks. No organization may hold checks, or accept postdated checks.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-20. Borrowing from gaming funds prohibited. No person may borrow or use gaming funds as a personal loan of any kind whatsoever.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-21. Use of twenty-one chips as payment for drinks may be allowed. The organization and the lessor of the gaming site may mutually agree to allow players to use twenty-one chips as payment for drinks. The organization shall redeem those twenty-one chips for cash in accord with subsection 5 of section 10-04.1-10-10.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-22. Employees or volunteers should not play games of chance. It is recommended that the organization not allow any employee or volunteer to play games of chance at the organization's sites. No organization may allow any employee or volunteer to play games of chance

while on duty. An organization that does allow any employee or volunteer to play games of chance at other times shall post that fact on the site in a form that is clear and legible, and at a location that is easily visible to the players.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-23. Immediate family and common household members should be prohibited from playing games of chance. It is recommended that the organization establish a house policy that prohibits a person, who is a spouse, child, parent, brother, sister, or member of a common household of any of the organization's employees or volunteers working at that site on that day, from playing games of chance at that site on that day. An organization that does allow such a person to play games

of chance shall post that fact on the site in a form that is clear and legible, and at a location that is easily visible to the players.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-24. Employees and volunteers prohibited from providing any inside information. No employee or volunteer of the organization may provide any inside information to any person, by any means whatsoever, related to any game of chance, including tipoffs, buyables, and dumpables.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-25. More strict house rules permitted. The organization may establish house rules that are more strict than the provisions of article 10-04.1 and North Dakota Century Code chapter 53-06.1. Examples of more strict house rules are:

1. The organization's gaming employees or volunteers may not play games of chance at the organization's sites.
2. No player may be a spouse, child, parent, brother, sister, or member of a common household of any of the organization's gaming employees or volunteers working at that site on that day.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-26. Waiver of administrative rules. The attorney general may waive the application of any administrative rule when the attorney general considers it necessary for the interest of the public, organization, or distributor.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

**CHAPTER 10-04.1-05
GENERAL ACCOUNTING RULES**

Section	
10-04.1-05-01	General Accounting Records
10-04.1-05-02	System of Internal Control
10-04.1-05-03	Internal Control Objectives
10-04.1-05-04	General Gaming Bank Account - Class A and Class B
10-04.1-05-05	Charitable Gaming Trust Fund Bank Account - Class B
10-04.1-05-06	Method of Accounting
10-04.1-05-07	Expenses
10-04.1-05-08	Expense Limitation
10-04.1-05-09	Payment and Reconciliation of Expenses
10-04.1-05-10	Reconciliation of Net Proceeds Carryover and Trust Fund Carryover
10-04.1-05-11	Valuation of Prizes
10-04.1-05-12	Use of Net Proceeds - Reports

10-04.1-05-01. General accounting records. Every eligible organization shall maintain complete, accurate, and legible general accounting records with detailed, supporting, subsidiary records sufficient to furnish information regarding all transactions pertaining to games of chance, including gross proceeds, prizes, adjusted gross proceeds, actual cash profit, bank deposits, cash long and short, expenses, eligible use contributions, and all other accounting transactions. Such records must be retained for a period of three years from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement as to any particular records.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-05-02. System of internal control. In order to adequately determine its liability for taxes under North Dakota Century Code section 53-06.1-12, and the proper determination of net proceeds to be devoted under subsection 7 of North Dakota Century Code section 53-06.1-06, the games of chance committee of every licensed organization shall prior to the commencement of the actual operation of games of chance establish and have available for review, a system of internal accounting and administrative controls relative to gaming operations. When requested by the attorney general, an organization shall file a copy of their internal accounting and administrative control system with the attorney general. The attorney general may require that the organization revise its internal accounting and administrative control system if the system does not meet the internal control objectives provided by section 10-04.1-05-03.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-05-03. Internal control objectives.

1. The system of accounting control relative to gaming operations must provide a plan of organization and a description of the procedures and records which are designed to provide reasonable assurance that the following general objectives will be attained:
 - a. Transactions are executed in accordance with management's general or specific authorization.
 - b. Transactions are recorded as necessary to properly record gaming proceeds, and to maintain accountability for assets.
 - c. Access to assets is permitted only in accordance with management's authorization.
 - d. The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to differences.
2. The system of administrative control relative to gaming operations must provide a plan of organization which includes appropriate segregation of functional responsibilities and sound practices to be followed in the performance of these duties by competent and qualified personnel. The plan of organization must be diagrammatic and narrative in describing the interrelationship of functions and the division of responsibilities upon which the system of internal control relative to gaming operations is based.

3. Should the attorney general determine that a system of internal control or any amendment thereto is inadequate, the attorney general shall give written notice to the organization of such inadequacy. Upon receipt of such notice the organization shall take immediate steps to remedy the inadequacy and shall notify the attorney general in writing of such steps, including the filing of any necessary amendments to the system. Should the organization fail to remedy the inadequacy within sixty days following receipt of such notice it is deemed to be in violation of this article and is subject to disciplinary actions in accordance with the rules and law. The attorney general shall publish and make available to the licensed organizations general guidelines for the organizations' use in developing internal control systems.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-05-04. General gaming bank account - Class A and class B.

1. Every eligible organization shall maintain one checking account at a financial institution, located within the state of North Dakota for each license issued.
2. Every organization shall furnish an "authorization to inspect bank records" to the attorney general (subsection 5 of section 10-04.1-03-04).
3. Interest earned on this account's funds must be included in gross proceeds.
4. Service fees are an eligible expense within subdivision d of subsection 1 of section 10-04.1-05-07.
5. Class A organizations must maintain the general gaming bank account for the devotion of net proceeds for the actual eligible uses. These disbursements are subject to the time limitation provided by subsection 2 of section 10-04.1-12-01. Transfers may not be made to the general fund of the organization but must be made to the ultimate use. Gaming expenses or capital costs associated with gaming activity are not an eligible use.
6. Class B organizations must also maintain a charitable gaming trust fund bank account. See section 10-04.1-05-05.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

**10-04.1-05-05. Charitable gaming trust fund bank account -
Class B.**

1. In order to ensure that the entire net proceeds are devoted to eligible uses, class B organizations that file a tax return under section 10-04.1-11-01 shall establish a charitable gaming trust fund bank account as a separate bank account. This account must receive the transfers from the special gaming bank account established for each license number (section 10-04.1-05-04). Such transfers constitute the devoting of net proceeds (section 10-04.1-12-01). From this account the disbursements for the actual eligible uses must be made and in no instance may the balances of this account be used for any other purpose. These disbursements are not subject to any time limitations provided that the organization reapplies for a license to conduct games of chance before July first of each year or does not relinquish the license; otherwise, the disbursements must occur within ninety days of the expiration or relinquishment of the license unless an extension is requested in writing of the attorney general and an extension is granted. Transfers may not be made to the general fund of the organization but must be made to the ultimate use. Gaming expenses or capital costs associated with gaming activity are not an eligible use.
2. Interest earned on this account's funds must be included in the account and disbursed for eligible uses.
3. Service fees must be an adjustment to the account.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-02, 53-06.1-11, 53-06.1-17

10-04.1-05-06. Method of accounting.

1. Every eligible organization shall determine its gross proceeds on the cash basis.
2. Every eligible organization shall determine its expenses on the cash basis, except:
 - a. Punchboards, sports-pool boards, deals of charitable gaming tickets, including club specials, tip boards, and seal boards, and paper bingo cards must be determined on the accrual basis. Every licensed organization shall furnish a listing of state gaming stamps, respective game serial numbers, and other relevant game information related to the deals of charitable gaming tickets, punchboards, and sports-pool boards removed from play or otherwise disposed of during the tax return reporting period to the attorney general.

- b. The tax imposed by North Dakota Century Code section 53-06.1-12 must be deducted on the accrual basis.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-05-07. Expenses.

1. For the purpose of administering subsection 4 of section 53-06.1-11, for an organization that uses any of the net proceeds for that organization's own purposes, the following terms found in that subsection have the following meaning:
 - a. "The purchase of necessary goods, wares, and merchandise" means the reasonable cost of all equipment for games of chance, except capital costs, for the conduct of any game of chance permitted in accordance with chapter 10-04.1-02. Items of a minor nature such as pencils, crayons, tickets, envelopes, and paper clips, necessary to conduct such games and all sales taxes paid herewith are included in this term. Capital cost items which are leased or rented may not be expensed but are considered as a capital cost.
 - b. "The securing of services reasonably necessary for repair of equipment, and for operating or conducting games of chance" means:
 - (1) The reasonable labor and material charges for the repair of equipment for games of chance.
 - (2) The reasonable compensation, employer paid benefits, and payroll taxes paid for employees directly or indirectly engaged in conducting or assisting in conducting games of chance. Compensation includes wages, salaries, bonuses, and all other forms of remuneration for services rendered, and reasonable and necessary traveling expenses incurred in the course of duty, which benefits only the organization. The organization may pay bonuses through an incentive program. Where the employee performs other services unrelated to gaming activities, an allocation based on hours worked in each activity must be made. The payment to any employee of compensation which is other than reasonable based upon the local prevailing wage scale for a similar position creates a presumption of a violation of this section.
 - (3) No organization may conduct any gaming activity if the compensation to any employee taking part in the management or operation of such gaming activity is

based upon a percentage of the adjusted gross proceeds or net proceeds.

- c. "The rent if the premises or equipment are rented, or for janitorial services if premises are not rented" means:
- (1) The reasonable rent for a particular site location as shown in the rental agreement, except that no rent can be paid by an organization determined to be closely connected in accordance with section 10-04.1-03-03. Factors to consider in determining reasonable rent are time, floor space, local prevailing rates, availability of space, and available services.
 - (2) The reasonable rental fee for equipment used to conduct games of chance on a specific occurrence. (For example, tables and chairs at a bingo event.) This expense does not include the rental fee for equipment used exclusively in the conduct of games of chance.
 - (3) The reasonable rental fee for additional space, the use of which is directly attributable to the ancillary functions necessary for the conduct of games of chance, including purchasing of equipment and supplies, the paying of expenses and donations, and the preparation and maintenance of required records.
- d. "For accountant's fees" means the reasonable accounting and bookkeeping fees, directly attributable to games of chance accounting and administrative functions.
- e. "For license fees" means the fees paid to the attorney general by eligible organizations applying for a gaming license pursuant to subsection 1 of North Dakota Century Code section 53-06.1-03.
- f. "Additional overhead expenses not to exceed the sum of two hundred dollars per month" means the general continuing expenses incurred involving administrative and operational activities associated with games of chance. The expenses are incidental to the conduct of games of chance and can be attributable to gaming by factors such as time, floor space, and usage. The overhead expense is limited to two hundred dollars per organization per month.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-11, 53-06.1-17

10-04.1-05-08. Expense limitation. If the dollar amount of the percentage limitation for expenses is less than the actual expenses for a fiscal year, the excess of the actual expenditures is required to be reimbursed to the general gaming bank account by the general operating account of the licensed eligible organization by the due date of the North Dakota gaming tax return for the quarter ended June thirtieth. Funds given to the licensed eligible organization by its own gaming operation, or any other gaming operation in this state, may not be used to pay the excess of expenses over the percentage limitation. The organization is ultimately liable for any unreimbursed excess gaming expenses.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-05-09. Payment and reconciliation of expenses. Where allowable expenditures are not paid directly from the general gaming bank account, as in the case of the allocation of salary expenses, reimbursement to the disbursing fund from the general gaming bank account must be made by the due date of the North Dakota gaming tax return. Such reimbursement must be supported by a detailed reconciliation of the difference.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-05-10. Reconciliation of net proceeds carryover and trust fund carryover.

1. In order for the organization to timely identify and resolve any imbalance between the organization's general gaming bank account check register balance and the net proceeds carryover, the organization shall do a reconciliation on at least an annual basis. The attorney general shall provide a reconciliation form to the organization for the organization's optional use.
2. For a class B organization, in order to timely identify and resolve any imbalance between the organization's charitable gaming trust fund bank account check register balance and the trust fund carryover, the organization shall do a reconciliation on at least an annual basis. The attorney general shall provide a reconciliation form to the organization for the organization's optional use.
3. When requested by the attorney general, the organization shall file a copy of the reconciliation as provided by subsections 1 and 2 of section 10-04.1-05-10 with the attorney general.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-05-11. Valuation of prizes. For purposes of computing adjusted gross proceeds, noncash prizes must be valued at actual cost to the organization.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-05-12. Use of net proceeds - Reports. Every class A licensee shall file a quarterly report reflecting all contributions of gaming funds made to eligible uses. Every class B licensee shall file a quarterly report reflecting the activity of the charitable gaming trust fund bank account. These reports must be filed with the attorney general with the quarterly tax return.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-02, 53-06.1-11, 53-06.1-17

CHAPTER 10-04.1-06 BINGO

Section	
10-04.1-06-01	Bingo
10-04.1-06-02	Bingo Equipment to be Used
10-04.1-06-03	Manner of Conducting Bingo
10-04.1-06-04	Free Games Prohibited
10-04.1-06-05	Employees and Volunteers Age Requirement
10-04.1-06-06	Receipting Method Required for Recording Gross Proceeds in Bingo Games
10-04.1-06-07	Cash Register Receipts for Recording Gross Proceeds
10-04.1-06-08	Ticket Receipts for Recording Gross Proceeds
10-04.1-06-09	Paper Bingo Cards for Receipting Gross Proceeds
10-04.1-06-10	Floorworker Sales Report for Receipting Gross Proceeds
10-04.1-06-11	Use of Checkers for Recording Gross Proceeds
10-04.1-06-12	Register Required for Prizes
10-04.1-06-13	Record of the Win
10-04.1-06-14	Recordkeeping System Required
10-04.1-06-15	Actual Cash Profit Bank Deposit Required by Licensed Organizations

10-04.1-06-01. Bingo. "Bingo" is that game of chance in which each player receives one or more cards, for which consideration has been paid, each of which is marked off into squares arranged in vertical and horizontal rows. Each playing square is designated by a preprinted number, letter, or combination of numbers and letters. The organization preannounces the prize prior to the start of each game unless a fixed schedule of games and their prizes is posted on the site in a form that is clear and legible and at a location that is easily visible to the players. Except for the conduct of "bonanza bingo" (see subsection 20 of section 10-04.1-06-03, the players cover squares as the operator of such game announces the number, letter, or combination of numbers and letters either displayed by an electronic random number generator or appearing on a ball selected by chance, either manually or mechanically, from a receptacle in which have been placed balls bearing numbers, letters, or combinations of numbers and letters corresponding to the system used for designating the squares. The winner of each game is the player or players first properly covering a predetermined pattern of squares on a card being used by the player or players. In the event that a sharing of the designated prize is required as a result of multiple winners on the last immediately called number, the following governs:

1. If the designated prize consists of cash, the total amount of the prize must be divided equally between or among the verified winners, provided, however, that the organization has the option of rounding fractional dollars to the next higher dollar.
2. If the designated prize consists of an item of tangible personal property, merchandise, or other things other than cash, the bingo organization shall award, if the designated prize cannot be divided, substitute prizes to each verified winner; provided, however, that the substitute prizes must, insofar as possible, be of equal value to each other and as a whole, equal the current retail price of the original prize. No merchandise prize is redeemable or convertible into cash directly or indirectly.
3. Notwithstanding the foregoing, an organization may establish minimum prizes.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-07, 53-06.1-17

10-04.1-06-02. Bingo equipment to be used. The conduct of bingo must include the following items:

1. A machine or other device from which balls are withdrawn or an electronic random number generator.

2. If an electronic random number generator is not used, a set of balls bearing the numbers, letters, or combinations of numbers and letters corresponding to the bingo cards in play, either seventy-five or ninety balls. The balls must be available for inspection by the players before a bingo session begins to determine that all are present and in operating condition. Each numbered ball must be essentially equal as to size, weight, shape, and balance and as to all other characteristics that may control their selection and all must be free from any defects and be present in the receptacle before each game is begun.
3. Hard cards and paper bingo cards (synonymous with specials, throwaways, and disposables) must be preprinted, manufactured cards.
4. Other equipment may be used for the purpose of displaying numbers and letters called to the public, and such furniture and sound amplification system as is necessary for the convenience and comfort of the players and the organization.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-03. Manner of conducting bingo. The conducting of a bingo session must be according to the following rules:

1. The organization shall post a clear and legible sign on the site where bingo is played containing the rules governing the conduct of bingo.
2. No organization may reserve, or allow to be reserved, any bingo card for use by players except braille cards or other cards for use by legally blind or disabled players.
3. Legally blind players may use their personal braille cards when an organization does not provide such cards. The organization has the right to inspect, and to reject, any personal braille card. A legally blind or disabled person may use a braille card or reserved hard card in place of a purchased paper bingo card.
4. If an organization does not restrict duplicate hard cards or paper bingo cards from being in play for a game, regardless of the series number for paper bingo cards, the organization shall conspicuously post that fact or notify all players prior to their purchase of bingo cards for a game or number of games that there is a possibility that duplicate bingo cards will be in play.

5. No organization may have advance sales of bingo cards, sell gift certificates towards the purchase of bingo cards, or award gift certificates as prizes unless at least all of the following requirements are met:
 - a. The advance sales and gift certificates must be accounted for by the organization.
 - b. The organization shall issue a receipt to the purchaser or bingo winner to evidence the sale or win.
 - c. The player shall redeem the receipt and the receipt must be retained by the organization.
 - d. The player is issued the bingo cards when the receipt is redeemed (subsection 6 of section 10-04.1-06-03).
6. All issuances of bingo cards to the players must take place upon the site immediately preceding or during the bingo session for which the cards were purchased.
7. Two or more sets of paper bingo cards may not intentionally be used at the same time if they have identical series numbers when paper bingo cards are being used for receipting gross proceeds for a particular bingo game.
8. Bingo cards must be sold and paid for prior to the start of a specified game or specified number of games when they are progressive. Cards may not be sold for a game in progress after the first number of that game is called.
9. No player may separate a paper bingo card when there are two or more cards on one sheet.
10. No player may play more bingo cards than were actually paid for. This rule does not prohibit a player from sharing purchased cards with another person.
11. No bingo game may be conducted to include a prize determined other than by the matching of letters and numbers on a bingo card with letters and numbers called by the organization, in competition among all players in a bingo game.
12. The particular arrangement of numbers required to be covered in order to win a bingo game must be clearly described and announced to the players immediately before each game is begun unless the description of the game is the same as the preceding game.
13. Immediately following the drawing of each ball in a bingo game, the caller shall manually display the letter and number on the ball to the players in that room. If an electronic random number generator is used in a bingo game, the

organization shall ensure that the letter and number displayed is physically seen by the players in that room.

14. The letter and number either on the ball or displayed by an electronic random number generator must be called out prior to the drawing of the next ball or prior to the display of the next letter and number by an electronic random number generator.
15. After the letter and number are called, the corresponding letter and number must be lit on the organization's flashboard for player viewing. The use of a flashboard is optional and the number and letter lit is not necessarily official.
16. A winner is determined when a specified pattern of called numbers appears on a card.
17. Immediately upon a bingo player declaring a winning combination of letters and numbers, the winning card number must be stated aloud by an organization employee or volunteer. The winning card must be verified by an organization employee or volunteer and at least one neutral player unless an electronic bingo card validator is used.
18. Upon a bingo player declaring a winning bingo, if the next ball is out of the machine, it must be removed from the machine and must be the next ball to be called in the event the declared winning bingo is not valid.
19. Cash register receipts and ticket receipts for bingo must be kept in view at all times. A player's bingo is void if the player has more bingo cards than that represented by the cash register receipt or ticket.
20. No organization may conduct "bonanza bingo" unless at least all of the following requirements are met:
 - a. The organization calls a predesignated quantity of bingo numbers (for example - 50 numbers) before the actual playing of that bonanza bingo game.
 - b. Bonanza bingo cards shall be sealed when they are sold to the players.
 - c. Bonanza bingo cards can be sold throughout the bingo session. However, no bonanza bingo cards may be sold after the organization calls the next continuous number (for example - 51st number) during the actual bonanza bingo game, following the certain quantity of bingo numbers first called.

- d. No player wins unless all the numbers for the predetermined bingo pattern on the player's bonanza bingo card have been called.
- e. If a player bingos before the next continuous number (for example - 51st number) is called, the player or players must be awarded the designated prize. During the actual bonanza bingo game, the organization shall call the next continuous number, if necessary, (for example - 51st number) and so on until a player successfully bingos and is awarded the designated prize.
- f. A bonanza bingo game may not extend overnight.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-06-04. Free games prohibited. No organization may allow a person to play in a bingo game for free. No free bingo cards may be awarded or given to a person as a prize for, or conditioned upon, winning a bingo game.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-06-05. Employees and volunteers age requirement. No organization may allow a person under sixteen years of age to conduct or assist in the conduct of the game of bingo.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-07

10-04.1-06-06. Receipting method required for recording gross proceeds in bingo games. All gross proceeds from bingo games must be receipted by the organization. Gross proceeds include admissions. Gross proceeds must be receipted by the use of either cash register receipts, ticket receipts, paper bingo cards, floorworker sales report, checkers, or a combination of several receipting methods.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-06-07. Cash register receipts for recording gross proceeds. The cash register receipting method is normally used by an organization to record the bingo gross proceeds by the issuance of

consecutively numbered cash register receipts to account for the sale of bingo card packages, bingo hard cards, and bingo paper cards, excluding any floorworker sales.

1. If a cash register is used, a consecutively numbered receipt containing at least the following information must be provided to the player:
 - a. Name of the organization.
 - b. Date of the bingo session.
 - c. Amount of money paid for the opportunity to play.
 - d. Type of bingo cards purchased.
 - e. Consecutive customer receipt number.
2. The cash register must have at least a consecutive four digit customer receipt number which does not return to zero at the conclusion of any period of use. Further, any cash register used must retain its transaction count between uses whether or not its power source is interrupted.
3. The cash register must have sufficient keys to record separately each type of sale and must provide a total for each type of sale recorded.
4. All cash register receipts for voids, overrings, no sales, and any other related receipts must be retained with the daily bingo records.
5. All transactions, customer receipt numbers, and control totals must be recorded on the tape retained in the cash register. The internal tape, showing these transactions, must be retained with the daily bingo records. If the cash register is used by the organization for purposes other than recording the receipts from bingo, the internal cash register tapes from the other uses must also be retained for at least three years.
6. Written approval must be first obtained from the attorney general for use of a cash register which does not meet the requirements of this section but may contain adequate control features.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-08. Ticket receipts for recording gross proceeds.
The ticket receipting method is normally used by an organization to record the bingo gross proceeds by the issuance of consecutively

numbered tickets as receipts to account for the sale of bingo card packages, bingo hard cards, and bingo paper cards, including any floorworker sales. If tickets are used for receipting, the following conditions must be met:

1. All tickets on a roll must be preprinted with a consecutive number.
2. Once a roll of tickets has been started, tickets must be issued consecutively off of that roll.
3. A log must be maintained, listing the date each roll of tickets is purchased or obtained by the organization, the color, the beginning ticket number, the ending ticket number, and the number of tickets on that roll. All tickets received must be entered in the log upon being received.
4. The organization shall record in its daily records, the color of the ticket, the value of the ticket, the lowest numbered ticket, and the highest numbered ticket issued as a receipt from each separate roll of tickets used. Tickets issued for each type of sale must be recorded separately. Any ticket not issued as a receipt during a session that bears a number falling below the highest numbered ticket issued must be retained by the organization as a part of its daily records, along with any leftover tickets not issued from the end of a roll, and must not be otherwise used or disposed of by the organization.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-09. Paper bingo cards for receipting gross proceeds.

The paper bingo card receipting method is normally used by an organization to record the bingo gross proceeds from the sale of paper bingo cards which are not accounted for by any other receipting method. Paper bingo cards themselves may be used as the receipt required by this rule provided that:

1. Each set of paper bingo cards must be consecutively numbered through the set, from the first card to the last card. Each paper bingo card must have printed on its face both its individual card number and the series number assigned by the manufacturer.
2. Each paper bingo card sold represents a specific amount of money which has been paid to the organization.
3. Each paper bingo card from the same series is consecutively issued and sold for the same price as each other card in the same series being used during any particular bingo game.

4. A log must be maintained, listing the date each set of paper bingo cards is purchased or obtained by the organization, series number, color, number of faces per card, beginning card number, and number of cards per set. All paper bingo cards received must be entered in the log upon being received.
5. The organization shall record in its daily records the information required by either of the following:
 - a. The number of paper bingo cards taken from inventory and issued for the bingo session, the color of the paper bingo cards, and the selling price of the card. Paper bingo cards issued for each type of sale must be recorded separately. The number of paper bingo cards issued but not sold must, prior to the bingo cards being returned to inventory, be verified by at least two persons who shall sign or initial such verification. The daily records must include the total number of paper bingo cards issued, returned to inventory, sold, and the total amount of actual gross proceeds and cash long or short.
 - b. The series number, the color of the paper bingo card, the selling price of the card, the beginning card number, and the ending card number issued as a receipt for each separate set of paper bingo cards used. Paper bingo cards issued for each type of sale must be recorded separately. Provided, that when more than one individual card number appears on a paper bingo card issued, then the lowest card number must be used to determine the beginning number sold and the ending number sold. Each time the numbering of the paper bingo cards breaks in the series a separate entry must be made in the records. Paper bingo cards which were not issued as receipts during a session, that bear a number below the highest numbered card issued must be retained by the organization as a part of its daily records, and must not be otherwise used or disposed of by the organization. Any leftover cards not issued from the end of a series must be accounted for by the organization.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-10. Floorworker sales report for receipting gross proceeds. The floorworker sales report receipting method is normally used by an organization to record the gross proceeds from the sale of paper bingo cards, by floorworkers, which are not accounted for by any other receipting method. A floorworker sales report must be completed for each game receipted by this method by an employee or volunteer who is not a floorworker and the report shall at least contain all the following information:

1. Game number.
2. Floorworkers' names or assigned numbers.
3. Sales value of each paper bingo card "single" and "packet".
4. Number of paper bingo card "singles" and "packets" issued to each floorworker for sale, including signing or initialing by each floorworker to evidence the issuance. However, if an organization sells several paper bingo card "singles" to a player at a discount (for example, 3 "singles" for the price of 2 "singles"), the number of discounted sets must be predetermined and separately accounted for when issued to the floorworker for sale.
5. Number of paper bingo card "singles" and "packets" returned by each floorworker as unsold.
6. Number of paper bingo card "singles" and "packets" sold by each floorworker computed as the difference between the number issued and returned.
7. Amount of actual gross proceeds returned by each floorworker, including signing or initialing by each floorworker to evidence the amount.
8. Amount of cash long or short by each floorworker computed as the difference between the value of the number of "singles" and "packets" sold and the actual gross proceeds returned.
9. Total number of paper bingo card "singles" and "packets" issued, returned, sold, and the total amount of actual gross proceeds and cash long or short.
10. The counts as required by this section must be done by both the floorworker and an employee or volunteer who is not a floorworker.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-11. Use of checkers for recording gross proceeds.

The checker receipting method is normally used by an organization that sells each bingo hard card or bingo paper card prior to the start of each individual bingo game and that does not record the bingo gross proceeds by any other receipting method.

1. When using the checker system to account for bingo gross proceeds, at least one checker must be engaged for each bingo session. The checker shall record on a control report:

- a. Number of cards played in each game.
- b. Prizes awarded to the recorded cards for each game.
2. The checker must certify that the figures are correct to the best of the checker's knowledge.
3. The gross proceeds and prizes of each bingo session must be compared to the checker's records by an employee or volunteer of the organization who did not sell cards or pay prizes for the bingo session. Any variance must be explained in the organization's daily records.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-12. Register required for prizes. All prizes issued in bingo games that use either cash register receipts, ticket receipts, paper bingo cards, or floorworker sales report must be accounted for by the organization on a register at the time the prize is issued to each player. Each register for prizes must include at least the following information:

1. Name of the gaming site.
2. Date of the bingo session.
3. Game number.
4. Type of game.
5. Amount of the cash prize or a description of the merchandise prize won.
6. Name and address of the winner.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-13. Record of the win.

1. When any player wins a cash prize greater than one hundred dollars, the organization shall make a record of the win. The record of the win must consist of a sequentially numbered check drawn from the general gaming bank account or a sequentially numbered receipt and the check or receipt must include at least the information required by section 10-04.1-06-12.

2. The organization shall determine the real identity of the payee and shall require such proof of identification from a reliable source as is necessary to establish the payee's identity prior to the payout of the cash prize.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-06-14. Recordkeeping system required.

1. A licensed organization shall retain specific records or information, or both, with regard to bingo games for a period of three years from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement as to any particular record. The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following records for each bingo session:
 - a. The gross proceeds collected for each separate type of sale, of any kind, for bingo games including, but not limited to, regular games, early bird games, blackout games, or special games. These gross proceeds are to be supported by proper receipting records as required.
 - b. The amount paid out for prizes on each bingo game supported by the organization's prize register or checker control report.
 - c. Records documenting the starting and ending cash bank which shall be verified by at least two persons who shall sign or initial such verification.
 - d. Records providing a reconciliation, by site, of gross proceeds, prizes (cash and merchandise), adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.
 - e. Inventory records documenting the date each set of paper bingo cards is purchased or obtained by the organization, including series number, color, number of faces per card, beginning card number, number of cards per set, and issuances to a site.
 - f. Record of the win as required by section 10-04.1-06-13.
 - g. The number of players in attendance, time the attendance count was taken, a copy of the schedule of games and their prizes, and the number and price of cards sold by type.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-06-15. Actual cash profit bank deposit required by licensed organizations. For bingo, the actual cash profit, less the increase or plus the decrease in the normal starting cash bank for the next session's activity, plus the amount of prizes paid by check that were not cashed at the site and the actual cost of any merchandise prizes previously paid by check, must be deposited intact in the organization's general gaming bank account no later than the fifth banking day following the day of the bingo session. The validated bank deposit slip or receipt representing the inclusion of bingo gaming activity must be included as part of the accounting records. The deposit slip or a reconciling schedule must contain a reference to bingo and the date of the bingo session.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

CHAPTER 10-04.1-07 RAFFLES

Section	
10-04.1-07-01	Raffles
10-04.1-07-02	Raffle Tickets - Limitations and Requirements for Use
10-04.1-07-03	Raffle Prizes Prohibited
10-04.1-07-04	Control of Raffle Prizes
10-04.1-07-05	Disclosure of Prizes and Rules
10-04.1-07-06	Prizes Must be Awarded
10-04.1-07-07	Reporting of Raffle Gross Proceeds and Prizes
10-04.1-07-08	Record of the Win
10-04.1-07-09	Recordkeeping System Required
10-04.1-07-10	Actual Cash Profit Bank Deposit Required by Licensed Organizations

10-04.1-07-01. Raffles. A "raffle" is a game of chance in which the prize or prizes are won by one or more of numerous persons buying raffle tickets. The winner or winners is determined by drawing a ticket stub or other detachable section from a receptacle holding the ticket stubs or other detachable sections corresponding to all tickets sold. The conduct of a raffle is the date of the raffle drawing occasion.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-07, 53-06.1-17

10-04.1-07-02. Raffle tickets - Limitations and requirements for use.

1. Tickets for entry into a raffle drawing occasion must be sold separately and each constitutes a separate and equal chance to win with all other tickets sold. No person may be required to purchase more than one ticket, or to pay for anything other than the ticket, in order to enter any such raffle.
2. All tickets for use in any raffle must have a stub or other detachable section, be consecutively numbered, and be accounted for separately. The ticket stub or other detachable section of the ticket must bear a duplicate number corresponding to the number on the ticket and must contain the purchaser's name, complete address, and telephone number. Both parts must be imprinted with sequential numbers.
3. No raffle ticket may be awarded or given to a person as a prize that would provide an opportunity to participate in the drawing of any other raffle.
4. No person may be required to be present at a raffle drawing occasion in order to be eligible for the prize drawing. A statement setting forth this condition must be set forth conspicuously on each raffle ticket and on all promotional material concerning the raffle.
5. In conducting a drawing in connection with any raffle, each ticket seller shall return to the organization the stub or other detachable section of all tickets sold. The organization shall then place each stub or other detachable section into a receptacle out of which the winning stubs or other detachable sections are to be drawn. Such receptacle must be designed so that each stub or other detachable section placed therein has an equal opportunity with every other stub or other detachable section to be the one withdrawn.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-03. Raffle prizes prohibited.

1. No raffle prize may consist in whole or in part of any interest in real estate, or of tickets for entry into any other raffle.
2. Prizes for raffles may include any property which may be legally owned and possessed, but may not include real estate. Cash prizes may be awarded in raffles conducted under this chapter provided the value of no single cash prize exceeds five hundred dollars, and provided further that no eligible

organization may award cash prizes totaling more than five hundred dollars in the aggregate during any day.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10.1, 53-06.1-17

10-04.1-07-04. Control of raffle prizes. An organization conducting a raffle in which merchandise prizes are to be awarded shall have paid for in full or otherwise become the owner, without lien or interest of others, of all such merchandise prior to the drawing at which the winners of such prizes are to be determined.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-05. Disclosure of prizes and rules. The following information, at a minimum, must be clearly printed upon each raffle ticket prior to their being sold:

1. Name of organization.
2. Ticket number.
3. Price of the ticket.
4. Prize or prizes to be awarded.
5. Name of the licensing or authorizing authority.
6. License or city or county permit number.
7. A statement that the purchaser is not required to be present at the raffle drawing in order to win.
8. Date and approximate time of the drawing.
9. Location of the drawing.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-06. Prizes must be awarded. All raffle prize winners must be determined on the date indicated on the raffle ticket unless a different date is requested in writing and approved by the attorney general. The attorney general may extend the date for the drawing if:

1. Weather has caused a postponement of the event at which the drawing was to occur; or
2. Not enough raffle tickets are sold to cover the cost of the prizes and an extension will make a material difference. The fact that a desired level of profit will not be attained is not a basis for an extension of the date of the drawing.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-07. Reporting of raffle gross proceeds and prizes.

1. When the sales price of a raffle ticket relates partly to admission for a meal, dance, or other such activity, the organization shall allocate the gross proceeds between the gaming and nongaming activity. The allocation to the nongaming activity may not exceed the organization's actual cost of the activity. The allocation to the gaming activity may not be less than the organization's actual cost of the raffle prizes.
2. When an organization conducts a raffle in which the raffle tickets are sold during one or more quarters and the raffle prize drawings occur in one quarter, the organization shall report that raffle's total actual gross proceeds, actual prizes, and actual adjusted gross proceeds in the one quarter in which the raffle prize drawings are held.
3. When an organization conducts a raffle in which the raffle tickets are sold during one or more quarters and the raffle prize drawings occur in more than one quarter, such as a calendar raffle, the organization shall report that raffle's total actual gross proceeds, actual prizes, and actual adjusted gross proceeds as follows:
 - a. Gross proceeds - Report the gross proceeds in the quarters in which the prize drawings are held. Gross proceeds must be computed as follows:
 - (1) Calculate the amount of actual gross proceeds received to date from the sale of raffle tickets for the present and all previous quarters. Multiply this amount by the ratio of the actual prizes that have been drawn in the present and all previous quarters to the total prizes to be drawn in all the quarters. Then, from this balance subtract the amount of actual gross proceeds reported in all previous quarters. The result is the amount of actual gross proceeds to be reported for the present quarter.

EXAMPLE:

QUARTER	VALUE OF TICKETS SOLD		VALUE OF PRIZES DRAWN	
	This Quarter	To Date	This Quarter	To Date
1	\$500	\$500	\$100	\$100
2	300	800	100	200
3	100	900	100	300
4	<u>0</u>	900	<u>500</u>	800
Totals	\$900		\$800	

QUARTER	GROSS PROCEEDS RECEIVED	RATIO OF PRIZES	BALANCE	ACTUAL GROSS PROCEEDS		ACTUAL PRIZES	ACTUAL ADJUSTED GROSS PROCEEDS
				Previous Quarters	Present Quarter		
1	\$500	x (100/800)	= \$ 62.50	- 0	= \$ 62.50	\$100.00	(\$ 37.50)
2	\$800	x (200/800)	= \$200.00	- 62.50	= 137.50	100.00	37.50
3	\$900	x (300/800)	= \$337.50	- 200.00	= 137.50	100.00	37.50
4	\$900	x (800/800)	= \$900.00	- 337.50	= <u>562.50</u>	<u>500.00</u>	<u>62.50</u>
Totals					\$900.00	\$800.00	\$100.00

b. Prizes - Report the prizes in the quarters in which the prize drawings are held. The actual prizes reported for a quarter is the dollar value of all prizes drawn during that quarter.

c. Adjusted gross proceeds - Report the adjusted gross proceeds in the quarters in which the prize drawings are held. The actual adjusted gross proceeds is calculated as the amount of actual gross proceeds minus actual prizes.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-08. Record of the win.

1. When any player wins a cash prize greater than one hundred dollars, the organization shall make a record of the win. The record of the win must consist of a sequentially numbered check drawn from the general gaming bank account or a

sequentially numbered receipt and the check or receipt must include at least the following information:

- a. Date of the raffle drawing.
 - b. Amount of the cash prize won.
 - c. Winning raffle ticket number.
 - d. Name and address of the winner.
2. The organization shall determine the real identity of the payee and shall require such proof of identification from a reliable source as is necessary to properly establish the payee's identity prior to the payout of the cash prize.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-07-09. Recordkeeping system required.

1. A licensed organization shall retain specific records or information, or both, with regard to raffles for a period of three years from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement as to any particular record. The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following records for each raffle drawing occasion conducted:
 - a. Records documenting the distribution of raffle tickets for selling, including the ticket seller's name and the range of ticket numbers on the raffle tickets issued to that seller.
 - b. Records providing a reconciliation of the actual cash received from each ticket seller based on the number of raffle tickets sold.
 - c. Records providing sufficient detail to determine the cost of the prizes awarded.
 - d. Records providing a schedule of bank deposits for the raffle ticket sales.
 - e. A sample of the printed raffle ticket and the ticket stubs of all sold tickets.
 - f. Record of the win as required by section 10-04.1-07-08.

- g. Records providing a reconciliation, by site, of gross proceeds, prizes, adjusted gross proceeds, actual cash profit, and bank deposit.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-10. Actual cash profit bank deposit required by licensed organizations. For a raffle, the actual cash profit, plus the amount of prizes paid by check that were not cashed at the site and the actual cost of any merchandise prizes previously paid by check, must be deposited in the organization's general gaming bank account no later than the fifth banking day following the day of the raffle drawing. The validated bank deposit slip or receipt representing the inclusion of raffle gaming activity must be included as part of the accounting records. The deposit slip or a reconciling schedule must contain a reference to a raffle and the date of the raffle drawing occasion.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

CHAPTER 10-04.1-08 CHARITABLE GAMING TICKETS AND PUNCHBOARDS

Section	
10-04.1-08-01	Charitable Gaming Ticket and Punchboard
10-04.1-08-02	Single Game
10-04.1-08-03	Commingled Game
10-04.1-08-04	State Gaming Stamp Number and Game Serial Number
10-04.1-08-05	Play of Games - Restriction
10-04.1-08-06	Gross Proceeds and Cash Banks for Single Games - Restriction
10-04.1-08-07	Operation of the Games
10-04.1-08-08	Record of the Win
10-04.1-08-09	Disposal of Games
10-04.1-08-10	Recordkeeping System Required
10-04.1-08-11	Actual Cash Profit Bank Deposit Required by Licensed Organizations

10-04.1-08-01. Charitable gaming ticket and punchboard.

1. A "charitable gaming ticket", commonly referred to as a "paper slot", is a single-folded or banded ticket or is a card, the face of which is initially covered or otherwise hidden from view to conceal a number, symbol, or set of symbols, some of which numbers or symbols out of every deal have been

designated in advance and at random as prize winners. A player buys a charitable gaming ticket from the licensed organization and opens it to determine if the charitable gaming ticket is an instant winner or a potential winner if the game includes the use of a seal such as club specials and tip boards which may then require the player to sign the player's name on numbered lines provided. The player with a winning charitable gaming ticket, or numbered line receives the prize stated on the flare from the licensed organization. The prize must be clearly and fully described on the flare. The maximum price per charitable gaming ticket cannot exceed two dollars. Only cash prizes can be awarded. For deals of club specials and tip boards, the maximum seal prize value is one hundred dollars cash.

A seal board is a deal which is a card consisting of horizontal lines arranged in a column. Numerical designations are assigned consecutively to each of the lines. A seal conceals a number which has been designated in advance and at random as the prize winner. A player buys a "line" from the licensed organization and writes the player's name on it. When the seal is removed, if the player's line number corresponds to the winning number that was concealed by the seal, the player receives the prize stated on the flare (seal board) from the licensed organization. The prize must be clearly and fully described. The maximum price per line cannot exceed two dollars. Only merchandise prizes can be awarded. For a seal board, the maximum seal prize value, at retail, is one hundred dollars. There must be placed conspicuously on the seal board the following information which must be completed by the organization:

COST PER PLAY \$ _____

RETAIL VALUE OF PRIZE \$ _____

2. A "punchboard" is a board or device containing a number of holes or receptacles of uniform size in which are placed mechanically and at random serially numbered slips of paper which may be punched or drawn from said hole or receptacle. A player upon payment of a consideration, may punch or draw such numbered slips of paper from such holes or receptacles and obtain the prize stated on the flare if the number drawn corresponds to a winning number or a potential winning number if the punchboard includes the use of a seal. No punchboard may be taken out of play once such punchboard has been offered for sale unless all of the highest denomination of winners have been sold. However, if a punchboard has been in play for at least ninety days and all of the highest denomination of winners have not been sold, the punchboard may be taken out of play only if written approval is first obtained from the attorney general. For purposes of this section, a last sale feature may not be considered one of the highest denomination

of winners if it is of equal value. The value of the last sale may not exceed the value of the highest denomination of winners. The maximum price per punch cannot exceed two dollars. Cash or merchandise prizes can be awarded.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-08, 53-06.1-17

10-04.1-08-02. Single game.

1. For all single deal games, the flare, with the state gaming stamp attached, for the deal of charitable gaming tickets in play must be affixed to the receptacle containing that deal of charitable gaming tickets. If a coin-operated dispensing device is used, the flare must be affixed to the device in a manner that it cannot be easily removed by a player.
2. No single deal of charitable gaming tickets, including club specials and tip boards, must be taken out of play once such deal has been offered for sale unless all the highest denomination of winners have been sold. However, if a single deal has been in play for at least ninety days and all of the highest denomination of winners have not been sold, the deal may be taken out of play only if written approval is first obtained from the attorney general. For purposes of this section, a last sale feature may not be considered one of the highest denomination of winners if it is of equal value. The value of the last sale may not exceed the value of the highest denomination of winners.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-03. Commingled game.

1. Deals of charitable gaming tickets may be commingled in one receptacle, including a coin-operated dispensing device, subject to all of the following provisions:
 - a. Two or more deals are placed in play at the same time at the start of a commingled game. Deals added to the commingled game must be intermixed in the receptacle with the deals in play.
 - b. The deals are identical as to a particular type, name of game, and number of charitable gaming tickets.
 - c. Each deal is identified by its own flare displaying the state gaming stamp and game serial number.

- d. The flares applicable to each deal are identical as to:
 - (1) Price per ticket.
 - (2) Amount of prizes except for a last sale feature.
 - (3) Denominations of prizes.
 - e. The flares for all the deals inserted for which any charitable gaming tickets remain in play must be displayed in the immediate vicinity so that the state gaming stamp with the game serial number is readily available to the players.
- 2. The commingled game is placed into play and removed from play either at least at the end of each quarter when one hundred twenty or less deals have been placed in play in one or more commingled games, or at least once a month when more than one hundred twenty deals have been placed in play in one or more commingled games. The reporting of the results of the commingled game must be made in the same quarter period gaming tax return.
 - 3. The organization is prohibited from putting into play commingled games of charitable gaming tickets if it is determined by the attorney general that such play has resulted in abnormal cash shortages for that organization.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-04. State gaming stamp number and game serial number.

- 1. No deal of charitable gaming tickets, including club specials, tip boards, and seal boards, punchboards, or sports-pool boards, may be put out for play unless the flare has a North Dakota state gaming stamp attached which had been previously affixed thereto by a licensed distributor. Once affixed, such state gaming stamp may not be tampered with by any person.
- 2. No organization may modify or otherwise change the game serial number that was written on the state gaming stamp by the distributor.
- 3. No organization may intentionally place a deal, punchboard, or sports-pool board in play unless the game serial number of such deal, punchboard, or sports-pool board corresponds to the game serial number written on the state gaming stamp by the distributor. If the two numbers do not correspond, the organization shall immediately:

- a. Notify the distributor from whom the game was purchased.
- b. Notify local law enforcement officials.
- c. Complete a standard form prescribed by the attorney general which must contain such necessary and reasonable information as the attorney general requires. The organization shall attach this form to the flare of the deal or punchboard in play.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-05. Play of games - Restriction.

1. No organization may place a deal of charitable gaming tickets, including club specials and tip boards, or punchboard in play:
 - a. Unless the flare of such deal or punchboard as received from the distributor describes the name of the game, cost per play, number of winners by denomination, and winning number, symbol, or set of symbols.
 - b. Which has been prohibited by the attorney general from play within this state.
2. No organization may, independent of a distributor, design a deal's or punchboard's ideal gross proceeds, ideal prizes, or ideal adjusted gross proceeds, including a last sale feature. However, this rule does not apply to seal boards.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-06. Gross proceeds and cash banks for single games - Restriction. Gross proceeds for single games must be separately maintained for each deal of charitable gaming tickets, including club specials, tip boards, and seal boards, or punchboard in play. Cash banks for single games must be used according to this section. No organization is exempt from this requirement for use of any alternate cash bank method unless approval is first requested in writing of the attorney general and approval is granted. An alternate cash bank method must meet the specific control objective of accurately determining each deal's or punchboard's actual cash profit. When a cash bank for a single game is used by the organization, it must meet either of the following three requirements:

1. A separate cash bank must be maintained for each deal or punchboard in play.

2. A central cash bank must be maintained for use by several deals or punchboards in play to determine each deal's or punchboard's actual cash profit. The central cash bank must be used as a source of cash for borrowing to each game.
3. A cash register must be used for one or more deals or punchboards in play.
 - a. The cash register must have the capability to issue consecutively numbered receipts containing at least the following information which must be provided to the player:
 - (1) Name of the organization.
 - (2) Date of the sale or prize redemption.
 - (3) Amount of money paid for the purchase or prize redemption of charitable gaming tickets, or punchboard punches.
 - (4) Code representing the type of sale or prize redemption.
 - (5) Consecutive customer receipt number.
 - b. The cash register must have at least a consecutive four-digit customer receipt number which does not return to zero at the conclusion of any period of use. Further, any cash register used must retain its transaction count between uses whether or not its power source is interrupted.
 - c. The cash register must have sufficient keys to record separately each type of sale and prize redemption, and must provide a total for each type of sale and prize redemption recorded.
 - d. All cash register receipts for voids, overrings, no sales, and any other related receipts must be retained with the daily deal and punchboard records.
 - e. All transactions, customer receipt numbers, and control totals must be recorded on the tape retained in the cash register. The internal tape, showing these transactions, must be retained with the daily deal and punchboard records. If the cash register is used by the organization for purposes other than recording the sales and prize redemptions of charitable gaming tickets, and punchboards, the internal cash register tapes from other uses must also be retained for at least three years.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-07. Operation of the games.

1. Charitable gaming tickets may be dispensed from a coin-operated dispensing device provided that at least all of the following requirements are met:
 - a. The organization in using the device shall meet the requirements of this state's laws and rules, including formal directives of the attorney general, regarding the conduct and play of games of chance in regard to charitable gaming tickets. These must include, but not be limited to, requirements of:
 - (1) Affixing of flare to the coin-operated dispensing device (subsection 1 of section 10-04.1-08-02).
 - (2) Using proper cash banks (section 10-04.1-08-06).
 - (3) Placing an entire deal of charitable gaming tickets in play at the same time (subsection 9 of section 10-04.1-08-07).
 - (4) Establishing a time limitation for redeeming a winning charitable gaming ticket (subsection 11 of section 10-04.1-08-07).
 - (5) Not paying a prize to any player who is redeeming a charitable gaming ticket that has left the gaming site (subsection 18 of section 10-04.1-08-07).
 - (6) Maintaining a recordkeeping system (section 10-04.1-08-10).
 - b. The organization shall make a coin-operated dispensing device inoperable for use for any play unless both of the following requirements are met:
 - (1) An organization's employee is on the site and available to redeem winning charitable gaming tickets.
 - (2) Gaming activity is conducted only during the hours when alcoholic beverages may be dispensed in accordance with applicable regulations of the state or the political subdivision.
 - c. The organization shall maintain key control of a coin-operated dispensing device.

- d. The organization may not allow a person under twenty-one years of age to purchase a charitable gaming ticket from a coin-operated dispensing device. This rule does not prohibit a device from being placed in a site where persons under the age of twenty-one may be present (for example, bingo site).
2. No employee or volunteer of the organization may provide any inside information to any person, by any means whatsoever, related to deals of charitable gaming tickets, including club specials, tip boards, and seal boards, or punchboards, including tipoffs, buyables, and dumpables.
3. No organization may modify or otherwise change the flare, including a last sale feature, related to a deal or punchboard once the deal or punchboard has been received from a distributor, or use a flare that arrives in an altered or defaced condition.
4. No organization may permit the display or operation of any deal or punchboard which may have in any manner been marked, defaced, tampered with or otherwise placed in a condition, or operated in manner, which may deceive the public or which affects the chances of winning or losing upon the taking of any chance thereon.
5. No deal or punchboard may be placed out for play unless the cost to the player for each charitable gaming ticket or punchboard is clearly posted on the flare.
6. No deal or punchboard may be placed out for play where the value of the prizes to be awarded by the organization differs from the flare.
7. No charitable gaming ticket or punchboard punch may be sold for a price different than the price stated on the deal's or punchboard's flare.
8. No deal may be placed out for play in the original packages, boxes, or other containers in which it was received from the distributor.
9. When a deal is received from the distributor in two or more packages, boxes, or other containers, all of the deal's charitable gaming tickets from the respective packages, boxes, or other containers must be placed out for play at the same time.
10. The organization shall conspicuously post a notice on the site containing the organization's special policies related to the conduct of deals and punchboards. The notice must be clear and legible, and posted at a location that is easily visible to the players. The policies, for example, may consist of

monetary limits on check writing, time limits on player redemptions of winning charitable gaming tickets (subsection 11 of section 10-04.1-08-07), and freezing games (subsection 12 of section 10-04.1-08-07). The organization's special policies must indicate that either freezing of a game is allowed or freezing of a game is not allowed.

11. The organization shall establish a policy that requires a player to redeem a winning charitable gaming ticket within a maximum time limit of fifteen minutes from the time the charitable gaming ticket was purchased by the player.
12. No organization may allow the freezing of a game for a particular player unless at least all of the following requirements are met:
 - a. There may be no freezing of the game unless the player has wagered at least double the amount of the highest denomination of the winner or winners of the game, or five hundred dollars, whichever is less, in continuous play.
 - b. There shall be no freezing of the game when two or more players are actively purchasing charitable gaming tickets from the game unless there is mutual agreement.
 - c. The organization shall establish a special policy that specifies the minimum dollar amount of charitable gaming tickets that must be purchased by the player from the game in order for the organization to allow the game to be frozen.
 - d. The player must be involved in continuous play in the game whereby that player is either opening charitable gaming tickets, or is in the process of purchasing charitable gaming tickets from the game.
 - e. There may be no freezing of the game overnight.
13. No employee or volunteer may assist players in the opening of purchased charitable gaming tickets except in the assistance of a handicapped player.
14. No organization may purchase a merchandise prize for a cost that exceeds the usual cost to any normal customer.
15. All merchandise prizes must be displayed in full view in the immediate vicinity of the deal or punchboard and such merchandise prizes must be in full view of any player prior to that player purchasing the opportunity to play. Upon a determination of a winner of a merchandise prize, the organization shall immediately remove that prize from any display and provide it to the winner.

16. The jar operator may not pay a prize to any player who is redeeming a winning charitable gaming ticket that has in any manner been marked, defaced, tampered with, or otherwise placed in a condition which may deceive the organization.
17. The jar operator may not pay a prize to any player unless the player redeems an actual winning charitable gaming ticket; however, a prize payout may be made to a player for no more than the amount of one lost or unredeemed charitable gaming ticket from a single game provided that at least all of the following requirements are met:
 - a. The jar operator must delay the prize payout until a minimum time limit of fifteen minutes has elapsed from the time the game is bought out or dumped by the player.
 - b. The jar operator must make a record of the win in accordance with section 10-04.1-08-08.
18. The jar operator may not pay a prize to any player who is redeeming a winning charitable gaming ticket that has left the gaming site where the deal is in play. The organization shall define the physical location of the "gaming site" in its posted special policies (subsection 10 of section 10-04.1-08-07).
19. The jar operator may not pay a prize to any player who is redeeming a winning charitable gaming ticket after the time limit set by the organization's policy (subsection 11 of section 10-04.1-08-07).
20. The jar operator shall deface the winning number, symbol, or set of symbols of each winning charitable gaming ticket redeemed.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-16.1, 53-06.1-17

10-04.1-08-08. Record of the win. When any player wins a cash prize greater than one hundred dollars from the play of any deal of charitable gaming tickets, or, when subdivision b of subsection 17 of section 10-04.1-08-07 applies with respect to a prize payout for a lost or unredeemed charitable gaming ticket, the organization shall make a record of the win. The record of the win must consist of either a sequentially numbered check drawn from the general gaming bank account or a sequentially numbered receipt. The check or receipt must include at least the following information:

1. The jar operator shall legibly print, in ink, on the face or back of the check or receipt the following:

- a. Name of the gaming site.
- b. Gaming stamp number.
- c. Game serial number.
- d. Name of the game.
- e. Month, day, and year represented by the check or receipt date.
- f. Prize amount represented by the check or receipt amount.
- g. If the payee is actually known by the jar operator, the payee's name and driver's license number.

If the payee is not known by the jar operator, the payee's name and driver's license number, including state of license registration. This information must be identified by the jar operator directly from the payee's driver's license. If the payee does not have a driver's license, the jar operator must indicate the payee's full name and correct address which will include the street address, city and state, which must be taken from another form of identification. The organization shall determine the real identity of the payee and require such additional proof of identification from a reliable source as is necessary to properly establish the payee's identity. The organization may not pay out any prize unless and until the payee has fully and accurately furnished to the organization all information required by this section.

2. The check or receipt must be either legibly signed or initialed, in ink, by the jar operator issuing the check. However, when subdivision b of subsection 17 of section 10-04.1-08-07 applies, it is recommended that at least a second gaming employee or volunteer also sign or initial, in ink, the check or receipt to acknowledge the prize payout.
3. The jar operator shall legibly print, in ink, the check or receipt number on the winning charitable gaming ticket. However, this particular rule is not applicable when subdivision b of subsection 17 of section 10-04.1-08-07 applies.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-08-09. Disposal of games. The organization shall manage and control the disposal of played deals of charitable gaming tickets, including club specials, tip boards, and seal boards, and punchboards

when the retention period expires. The disposal must be by a manner that will assure complete destruction such as shredding, burying, or burning.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-10. Recordkeeping system required.

1. Except as provided by subdivision a of subsection 2 of section 10-04.1-08-10, a licensed organization shall retain specific records or information, or both, with regard to deals of charitable gaming tickets, including club specials, tip boards, and seal boards, and punchboards for a period of three years from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement as to any particular record. The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following items for each deal or punchboard played:
 - a. The flare, with the state gaming stamp affixed, together with all player redeemed opened winning charitable gaming tickets or punches and all unopened and unsold charitable gaming tickets or punches which must be segregated by game serial number, except, if these items relate to a commingled game of charitable gaming tickets, they are not required to be segregated by game serial number. The organization may not open any unsold or defective charitable gaming tickets, or punch any unsold or defective punchboard punches. The specific records or information, or both, referenced by this section must be retained by the organization for a period of one year from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement as to any particular record. The attorney general may require that the specific records or information, or both, be retained for an extended period if certain questionable conditions prevail.
 - b. Records documenting the daily starting and ending cash on hand. It is recommended that the count of the cash be verified by at least two persons who shall sign or initial such verification.
 - c. For commingled games, records documenting the daily activity of games placed and removed from play, by gaming stamp number and game serial number.

- d. Inventory records documenting the purchases, issuances to and from a site, playings, reportings on the gaming tax return, and disposals of games, by gaming stamp number and game serial number.
 - e. Record of the win as required by section 10-04.1-08-08.
 - f. Records providing a reconciliation, by site, of each game's actual gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.
3. All daily activity records must be retained at the site or be readily available as long as the deal or punchboard is in play.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-11. Actual cash profit bank deposit required by licensed organizations.

1. For single games of charitable gaming tickets, including club specials, tip boards, and seal boards, and punchboards, the actual cash profit, less the increase or plus the decrease in the starting cash bank for the next deal, plus the amount of prizes paid by check that were not cashed at the site and the actual cost of any merchandise prizes previously paid by check, must be deposited in the organization's general gaming bank account no later than the fifth banking day following the day the deal or punchboard is removed from play. The validated bank deposit slip or receipt representing the inclusion of charitable gaming ticket and punchboard gaming activity must be included as part of the accounting records. The deposit slip or a reconciling schedule must contain a reference to a deal or punchboard and include the respective state gaming stamp numbers for each amount appearing thereon.
2. For a commingled game of charitable gaming tickets, the ending cash on hand less the starting cash bank and less the increase or plus the decrease in the starting cash bank for the next day's activity, must be deposited intact in the organization's general gaming bank account no later than the fifth banking day following the day a commingled game is out of play. The validated bank deposit slip or receipt representing the inclusion of each commingled game of charitable gaming tickets must be included as part of the accounting records. The deposit slip or a reconciling schedule must contain a reference to a commingled game, and include the name of the game and the date of the commingled game gaming activity.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

CHAPTER 10-04.1-09
PROFESSIONAL SPORTS POOLS

Section	
10-04.1-09-01	Sports Pool
10-04.1-09-02	Record of the Win
10-04.1-09-03	Recordkeeping System Required
10-04.1-09-04	Actual Cash Profit Bank Deposit Required By Licensed Organizations

10-04.1-09-01. Sports pool. "Sports pool" is a sheet of paper, cardboard, or similar material on which is printed a square.

1. A sports-pool board may be either:
 - a. Ten number sports-pool board divided into ten horizontal lines arranged in a column. Along the left side of the column the numerical designations zero, one, two, three, four, five, six, seven, eight, and nine are randomly assigned to each of the ten lines.
 - b. Twenty-five number sports-pool board divided equally into twenty-five squares consisting of five rows of squares running both horizontally and vertically. Along the exterior line on the top of the master square, the numerical designations zero, one, two, three, four, five, six, seven, eight, and nine are randomly assigned, two numbers to each of the rows (for example, 4-7). The same procedure is applied to the left side of the master square for the horizontal rows.
 - c. One hundred number sports-pool board divided equally into one hundred squares consisting of ten rows of squares running both horizontally and vertically. Along the exterior line on the top of the master square, the numerical designations zero, one, two, three, four, five, six, seven, eight, and nine are randomly assigned to each of the vertical rows. The same procedure is applied to the left side of the master square for the horizontal rows.
2. Each of the horizontal and vertical numerical assigns or column assigns are to be covered by a tape of such design so that once disturbed any other recovering is conspicuously noticeable.

8. No organization may modify or otherwise change the game serial number that was written on the state gaming stamp by the distributor.
9. The organization operating the sports pool shall determine the method of prize payout to the players. The method of payout must be indicated on the sports-pool board in a form that is clear and legible, and must be done so prior to the start of the sports event associated with the sports pool. The total payout may not exceed ninety percent of the actual gross proceeds of the sports pool. (For example, winners of a sports pool conducted for a particular professional football game may be determined at the end of each quarter of the game according to the score at that point. The payout each quarter need not be in direct proportion to the total ninety percent payout.) Only cash prizes can be awarded.
10. Gross proceeds must be separately maintained for each sports-pool board in play in order to determine each sports-pool board's actual cash profit.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-09, 53-06.1-17

10-04.1-09-02. Record of the win.

1. When any player wins a cash prize greater than one hundred dollars, the organization shall make a record of the win. The record of the win must consist of a sequentially numbered check drawn from the general gaming bank account or a sequentially numbered receipt and the check or receipt must include at least the following information:
 - a. Name of the gaming site.
 - b. Gaming stamp number.
 - c. Game serial number.
 - d. Date of the professional sporting event.
 - e. Amount of the cash prize won.
 - f. Name and address of the winner.
2. The organization shall determine the real identity of the payee and shall require such proof of identification from a reliable source as is necessary to properly establish the payee's identity prior to the payout of the cash prize.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-09-03. Recordkeeping system required.

1. Except as provided by subdivision a of subsection 2 of section 10-04.1-09-03, a licensed organization shall retain specific records or information, or both, with regard to professional sports-pool boards for a period of three years from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement as to any particular record. The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following records for each professional sports-pool board played:
 - a. The completed, sold sports-pool board indicating the winning squares or lines. The sports-pool board must be retained by the organization for a period of one year from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement.
 - b. Records documenting the daily starting and ending cash on hand. It is recommended that the count of the cash be verified by at least two persons who shall sign or initial such verification.
 - c. Records providing a reconciliation, by site, of actual gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.
 - d. Record of the win as required by section 10-04.1-09-02.
 - e. Inventory records documenting the purchases, issuances to and from a site, playings, reportings on the gaming tax return, and disposals of sports pools by gaming stamp number and game serial number.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-09-04. Actual cash profit bank deposit required by licensed organizations. For a professional sports-pool board, the actual cash profit plus the amount of prizes paid by check that were not cashed at the site, must be deposited in the organization's general gaming bank account no later than the fifth banking day following the day of the professional sporting event. The validated bank deposit slip

or receipt representing the inclusion of professional sports-pool board gaming activity must be included as part of the accounting records. The

deposit slip or a reconciling schedule must contain a reference to a professional sports-pool board and include the respective state gaming stamp number for each amount appearing thereon.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

CHAPTER 10-04.1-10 TWENTY-ONE

Section	
10-04.1-10-01	Twenty-One
10-04.1-10-02	Twenty-One Table - Physical Characteristics
10-04.1-10-03	Twenty-One Drop Box - Physical Characteristics
10-04.1-10-04	Twenty-One Cards - Physical Characteristics
10-04.1-10-05	Twenty-One Chips - Value and Physical Characteristics
10-04.1-10-06	Wagers to be Made With Twenty-One Chips Only
10-04.1-10-07	Person Not to Bring Their Own Cards or Twenty-One Chips
10-04.1-10-08	Procedure for Distributing Twenty-One Chips to the Twenty-One Table
10-04.1-10-09	Procedure for Removing Twenty-One Chips From the Twenty-One Table
10-04.1-10-10	Chip Bank Services
10-04.1-10-11	Procedure for Accepting Cash at the Twenty-One Table
10-04.1-10-12	Use of a Cash Register May Be Authorized in Lieu of a Twenty-One Drop Box
10-04.1-10-13	Procedure for Accounting for Currency Transactions at the Twenty-One Table in Lieu of a Two-Member Count Team for Counting the Drop Box Cash - Use of a Cash Receipts/Payout Register
10-04.1-10-14	Number of Players
10-04.1-10-15	Shuffle and Cut of the Cards
10-04.1-10-16	Betting
10-04.1-10-17	The Deal
10-04.1-10-18	The Play
10-04.1-10-19	Posting of Rules
10-04.1-10-20	Twenty-One Drop Box - Transportation From the Twenty-One Table and Storage
10-04.1-10-21	Drop Box Cash Count by a Two-Member Count Team
10-04.1-10-22	Recordkeeping System Required
10-04.1-10-23	Actual Cash Profit Bank Deposit Required By

Licensed Organizations

10-04.1-10-01. Twenty-one.

1. "Twenty-one" is a card game played by a maximum of seven players and one dealer. The object of the game is for a player to obtain a higher total card count than the dealer by reaching twenty-one or as close to twenty-one as possible without exceeding that count. The cards have the following value:
 - a. Aces count either one or eleven.
 - b. Kings, queens, and jacks each have a count of ten.
 - c. All other cards are counted at their face value.
2. The rules in sections 10-04.1-10-02 through 10-04.1-10-23, either complementing or in addition to those enumerated by law, must be followed in the playing of twenty-one.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-10, 53-06.1-17

10-04.1-10-02. Twenty-one table - Physical characteristics.

1. A playing surface covering the twenty-one table must permanently and clearly display seven separate and distinct betting spaces and the complete statements:

BLACKJACK PAYS 3 TO 2

and

DEALER MUST STAND ON 17 AND MUST DRAW TO 16

2. The playing surface may include special betting places used for the placement of tip bets.
3. Unless only one twenty-one table is used at a site, a table number must be either permanently imprinted, adhesively backed and impressed thereon, or attached to the twenty-one tables.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-03. Twenty-one drop box - Physical characteristics.

Unless exempted by section 10-04.1-10-12, each twenty-one table used must be equipped with a metal container known as a "drop box" into which must be deposited all issuance of duplicate fill slips, issuance of

original credit slips, and currency received from players for the purchase of chips. Each drop box must have:

1. Unless only one twenty-one table is used at a site, a number either attached, permanently imprinted, or adhesively backed and impressed thereon, and which corresponds to a twenty-one table number.
2. After play has commenced, a money plunger, which must remain in the drop box slot when the drop box is attached to the twenty-one table except for when currency and forms are inserted into the drop box.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-04. Twenty-one cards - Physical characteristics.

1. The cards used in the game of twenty-one must be four complete standard decks of fifty-two cards each, shuffled together and used as one, a total of two hundred eight cards dealt as a single packet from a card-dealing box called a shoe. Only four decks of the same size, shape, and design playing cards are to be used.
2. The color of the backs of the cards used at any twenty-one table must be either four decks of one predominate color, or two decks of one predominate color and two other decks of one different predominate color.
3. The design on the backs of each card in the four decks must be identical and no card may contain any marking, symbol, or design that will enable a person to know the identity of any element printed on the face of the card or that will in any way differentiate the back of that card from any other card in the deck. The backs of the cards may contain a logo.
4. The backs of all cards in the deck must be designed so as to diminish as far as possible the ability of any person to place concealed markings thereon.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-05. Twenty-one chips - Value and physical characteristics.

1. Each twenty-one chip issued by an organization must be round in shape and clearly and permanently impressed, engraved, or

imprinted on one side with the name of the organization issuing it and on the opposite side with the specific value of the chip. The name of the organization on the chip may be represented by a related design, symbol, abbreviation, or other identification which must differentiate the organization's chips from those being used by every other organization. This rule applies to all twenty-one chips purchased by an organization on or after November 1, 1986.

2. Twenty-one chips must be issued by an organization in denominations of only fifty cents, one dollar, and two dollars.
3. Each denomination of a twenty-one chip must have a different primary color from the other denominations of chips. Each organization may at its discretion utilize contrasting secondary colors for any inlays on each denomination of twenty-one chip.
4. Twenty-one chips must be designed so as to prevent to the greatest extent possible the counterfeiting of such chips.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-06. Wagers to be made with twenty-one chips only. All wagers must be made with twenty-one chips furnished by the organization. Currency must be exchanged for chips prior to the starting of play. No money, or other thing of value, may be used as wagers or tips.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-07. Person not to bring their own cards or twenty-one chips. No person may bring onto a gaming site, nor introduce into any twenty-one game, any playing card or cards, nor any twenty-one chip or chips for use in wagering other than those obtained from the organization.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-08. Procedure for distributing twenty-one chips to the twenty-one table.

1. A fill slip must be prepared for the distribution of twenty-one chips from the chip bank cashier to the twenty-one table. The fill slip must be at least a two-part carbonless form. Access to the fill slips must, prior to use, be restricted to authorized personnel.
2. Fill slips must be serially prenumbered forms and must be used in sequential order. The serial numbers of all fill slips in the possession of the organization must be accounted for by employees with no incompatible functions. All original and duplicate void fill slips must be marked "VOID" and require the signature of the preparer.
3. A fill slip must be prepared by the chip bank cashier, pit boss, or site manager whenever twenty-one chips are distributed to the twenty-one table from the chip bank cashier.
4. On the original and duplicate fill slip, the following information, at a minimum, must be recorded:
 - a. The date and time.
 - b. The denomination of twenty-one chips.
 - c. The total dollar value, for each denomination, of twenty-one chips.
 - d. The grand total dollar value of the twenty-one chips.
 - e. The table number, if required by section 10-04.1-10-02.
 - f. The signature of the chip bank cashier unless the dealer is the only gaming employee or volunteer on duty.
5. After preparation of the fill slip, the original copy of such fill slip must be retained by the chip bank cashier.
6. The duplicate copy of the fill slip must be signed by the dealer assigned to the twenty-one table to which the twenty-one chips are to be received.
7. Unless exempted by subsection 6 of section 10-04.1-10-12, the duplicate copy of the fill slip must be deposited in the twenty-one drop box by the dealer.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-09. Procedure for removing twenty-one chips from the twenty-one table.

1. A credit slip must be prepared for the removal of twenty-one chips from the twenty-one table to the chip bank cashier. The credit slip must be at least a two-part carbonless form. Access to the credit slip must, prior to use, be restricted to authorized personnel.
2. Credit slips must be serially prenumbered forms and must be used in sequential order. The serial numbers of all credit slips in the possession of the organization must be accounted for by employees with no incompatible functions. All original and duplicate void credit slips must be marked "VOID" and require the signature of the preparer.
3. Unless exempted by subsection 8 of section 10-04.1-10-12, a credit slip must be prepared by the chip bank cashier, pit boss, or site manager whenever twenty-one chips are returned from the twenty-one table to the chip bank cashier.
4. On the original and the duplicate credit slip, the following information, at a minimum, must be recorded:
 - a. The date and time.
 - b. The denomination of twenty-one chips.
 - c. The total dollar value, for each denomination, of twenty-one chips.
 - d. The grand total dollar value of the twenty-one chips.
 - e. The table number, if required by section 10-04.1-10-02.
 - f. The signature of the dealer assigned to the twenty-one table from which the twenty-one chips are to be removed.
5. After preparation of the credit slip and unless exempted by subsection 7 of section 10-04.1-10-12, the original copy of such credit slip must be deposited by the dealer in the twenty-one drop box.
6. The duplicate copy of the credit slip must be signed and retained by the chip bank cashier unless the dealer is the only gaming employee or volunteer on duty.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-10. Chip bank services.

1. The value at which the three colors of twenty-one chips are sold and redeemed must be conspicuously posted and visible to each person prior to that person purchasing chips.
2. Unless exempted by subsection 9 of section 10-04.1-10-12, the organization shall sell twenty-one chips at the twenty-one table. See section 10-04.1-10-10.
3. Twenty-one chips must be sold for cash only and no credit of any nature may be extended by an organization to a person purchasing chips. Checks may not be accepted for purchase of chips at a twenty-one table.
4. Cash taken in on twenty-one chips sold must be kept completely separate and apart from all other cash received by the organization until such time as it is counted.
5. The organization shall redeem its own chips for cash at the value for which they were sold. The cash bank used by the organization to redeem its own chips must be kept completely separate and apart from all other cash of the organization.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-11. Procedure for accepting cash at the twenty-one table. Each dealer of the organization who receives currency from a player at a twenty-one table for exchange for twenty-one chips shall observe the following procedures and requirements:

1. The currency must be spread on the top of the twenty-one table, by the dealer accepting it, in full view of the player who presented it.
2. The amount of currency must be verbalized by the dealer accepting it.
3. Immediately after an equivalent amount of twenty-one chips has been given to the player, the currency must be taken from the top of the twenty-one table and placed by the dealer into the drop box.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-12. Use of a cash register may be authorized in lieu of a twenty-one drop box. The organization may use a cash register at a site in lieu of a twenty-one drop box to account for gross proceeds only if the organization's use of a cash register meets the requirements

of the attorney general. These requirements include all of the provisions of this chapter unless otherwise exempted, including:

1. The cash register must have the capability to issue consecutively numbered receipts containing at least the following information which must be provided to the player:
 - a. Name of the organization.
 - b. Date of the sale of the twenty-one chips.
 - c. Amount of currency paid for the twenty-one chips.
 - d. Consecutive customer receipt number.
2. The cash register must have at least a consecutive four-digit customer receipt number which does not return to zero at the conclusion of any period of use. Further, any cash register used must retain its transaction count between uses whether or not its power source is interrupted.
3. It is recommended that the cash register have sufficient keys to record each twenty-one chip denomination of each sale and provide a total for each denomination of sale recorded.
4. All cash register receipts for voids, overrings, no sales, and any other related receipts must be retained with the daily twenty-one records.
5. All transactions, customer receipt numbers, and control totals must be recorded on the tape retained in the cash register. The internal tape, showing these transactions, must be retained with the daily twenty-one records. If the cash register is used by the organization for purposes other than recording the receipts from twenty-one, the internal cash register tapes from the other uses must also be retained for at least three years.
6. The duplicate copy of the fill slip must be retained by the cash bank cashier.
7. The original copy of the credit slip must be retained by the cash bank cashier.
8. A credit slip must be prepared by the cash bank cashier, pit boss, or site manager whenever twenty-one chips are returned from the twenty-one table to the chip bank cashier.
9. The organization shall sell twenty-one chips through the use of a cash register by the chip bank cashier who may not be the same person as the cash bank cashier.

10. The organization shall redeem its own chips by the cash bank cashier who may not be the same person as the chip bank cashier. The chip redemption must be in accord with subsection 5 of section 10-04.1-10-10.
11. The organization is not required to determine the win and loss results for each table.
12. Written approval must be first obtained from the attorney general for use of a cash register or alternate accounting controls which do not meet the requirements of this section but may contain adequate control features or procedures.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-13. Procedure for accounting for currency transactions at the twenty-one table in lieu of a two-member count team for counting the drop box cash - Use of a cash receipts/payout register. It is recommended that an organization that has only one gaming employee or volunteer on duty use a cash receipts/payout register for accounting for currency transactions at the twenty-one table (see also section 10-04.1-10-21). It is recommended that:

1. The cash receipts/payout registers be serially prenumbered forms and be used in sequential order. The organization should account for all used and unused registers.
2. A cash receipts/payout register should be completed each day, in ink, to account for all of the currency taken in on the sale of chips and for the cash paid out on chips redeemed during the twenty-one gaming activity. The register should contain at least the following information:
 - a. Name of the organization.
 - b. Date of the gaming activity.
 - c. Name of the dealer.
 - d. Time span of the gaming activity.
 - e. Amount of currency taken in on the sale of the chips, by player.
 - f. Amount of cash paid out on the redemption of the chips, by player.

3. The dealer should record the amount of currency taken in on the sale of chips and cash paid out on chips redeemed on the register.
4. When the player purchases chips, the player should either sign or initial, in ink, on the register to acknowledge the purchase of chips and evidence the amount of the drop box cash.
5. When the player redeems chips, the player should legibly sign and write the player's driver's license number, in ink, on the register to acknowledge the redemption of chips and the player's identity. Only the player who actually purchased chips should redeem the player's chips.
6. When the twenty-one gaming activity is concluded, the dealer should legibly sign or initial and date the register as a verification of the accuracy of the cash receipts/payout register.
7. The drop box cash should not be counted by the dealer, rather, by a person who is an authorized agent of the bookkeeper or is independent of the bookkeeper. The key to the lock securing the contents of the drop box should be maintained and controlled by this person.
8. If the drop box cash is counted by the dealer, the dealer should count the drop box cash and legibly sign or initial and date, in ink, the twenty-one drop box cash count report. This report along with the cash receipts/payout register should be forwarded to the bookkeeper.
9. If the drop box cash is counted by a person who is an authorized agent of the bookkeeper or is independent of the bookkeeper, at least the following requirements should be met:
 - a. The dealer should forward the cash receipts/payout register directly to the bookkeeper and in no instance should any of the information represented by the register be available to the person who actually counts the drop box cash.
 - b. The person who is an authorized agent of the bookkeeper or is independent of the bookkeeper should count the drop box cash and legibly sign or initial and date, in ink, the twenty-one drop box cash count report. This report should be forwarded to the bookkeeper.
10. The bookkeeper should verify the information provided by the cash receipts/payout register to that provided by the twenty-one drop box cash count report. Any variance should be explained in the organization's daily records.

11. The responsibilities of the players as stated by this section should be posted on the site in a form that is clear and legible, and at a location that is easily visible to the players.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-14. Number of players.

1. There must be one to seven players. A player may play two hands if there is a second betting space available and if the two hands are adjacent to each other at the same table. However, a player must give up a second betting space if a nonplaying person requests that available space and no other betting space is available on that table or any other table at the site.
2. No outsiders may wager on a player's hand.
3. No player may wager on another player's hand.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-15. Shuffle and cut of the cards.

1. Immediately prior to commencement of play, and after each shoe of cards is dealt, the dealer shall, in front of the players, shuffle all two hundred eight cards so that they are randomly intermixed.
2. After the cards have been shuffled, the dealer shall offer the stack of cards, with backs facing away from the dealer, to the players to be cut.
3. It is recommended that the player designated by the dealer cut the cards by placing the cutting card in the stack at least ten cards in from either end to show where the cards are to be cut. If the designated player or any other player refuses to cut the cards, a representative of the organization shall cut the cards.
4. Once the cutting card has been inserted by the player or representative, it is recommended that the dealer either take all the cards in front (towards the dealer) of the cutting card and place them to the back of the stack or take all the cards in back (away from the dealer) of the cutting card and the cutting card and place them to the front of the stack.

The cutting card will then go to the bottom of the stack. The dealer shall then insert an indicator card in a position approximately fifty cards from the bottom of the stack. The stack of cards must then be inserted into the dealing shoe facedown for commencement of play.

5. When the indicator card inserted by the dealer makes its appearance at the face of the shoe and enough cards have been dealt to complete the hand in progress, the deal ends - and the dealer must begin a new shuffle and again repeat the procedure described by this section.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-16. Betting.

1. Each original wager must either be one dollar or two dollars in the form of chips. A wager of one dollar must be accepted at each table. The original wager is the amount bet per hand and is exclusive of splitting, doubling-down, insuring, and tip betting. The original wager for each hand is made by placing a chip inside a betting space provided on the playing surface before the first card is dealt. Once the first card has been dealt to a betting space, the original wager may not be altered by any player.
2. Each separate wager must either be one dollar or two dollars, except tip bets which may not exceed two dollars. All wagers must be in the form of chips. Each split or double-down is a separate wager limited to the amount of the original wager which may not exceed two dollars. Each insurance bet is a separate wager equal to one-half of the original wager.
3. Splitting is permitted as follows:
 - a. On any pair or any two 10-count value cards.
 - b. When splitting, the player is allowed a maximum of four hands per betting space. The player's right-hand card in the split must be played to completion before the adjacent split hand is dealt a second card. The player must take at least one card on each split hand.
 - c. The wager on each hand must equal the player's wager on the player's original hand.
 - d. Split aces draw only one card each. Aces may not be resplit.

- e. A two-card twenty-one after a split is not a natural twenty-one.
4. Doubling-down is permitted as follows:
- a. On the first two cards dealt to a betting space or the first two cards of any split hand, except on split aces.
 - b. The additional wager must equal the original wager on that hand.
 - c. One additional card must be dealt to a hand on which a player has elected to double-down.
5. The eligible organization may determine whether or not to permit insurance betting. That determination must be posted. Insurance betting is permitted as follows:
- a. The insurance bet is placed when the dealer's face up card is an ace.
 - b. The player's wager must be half the player's wager on the player's own hand.
 - c. There may be no insurance bet on a tip wager.
6. The eligible organization may determine whether or not to permit tip betting. That determination must be posted. Tip betting does not preclude the player from awarding the dealer a regular tip. The wager for a tip bet is made by placing a chip outside the betting space, but with the chips touching the lower left edge of the betting space, from the dealer's perspective, on the playing surface before the first card is dealt. Tip betting is permitted as follows:
- a. The tip bet is made by the player at the time the player makes the original wager.
 - b. Each betting space is limited to one tip bet regardless of splitting.
 - c. The tip bet does not have to equal the player's original wager. The tip bet must be either fifty cents, one dollar, one dollar and fifty cents, or two dollars.
 - d. The tip bet may not be increased beyond its original amount. It cannot be doubled-down.
 - e. There may be no insurance wager on a tip bet.
 - f. On a split hand, the tip bet is assigned to the specific split hand located at the foremost left of the player, from the dealer's perspective.

- g. The payoff on all tip bets must be one-to-one regardless if the player has a natural twenty-one.
- h. If a player's hand wins, the tip bet is paid off at an equal amount and the tip bet and the payoff become the possession of the dealer. If the dealer's hand wins, the tip bet becomes the possession of the organization. If a player's hand ties the dealer's hand, the tip bet is a standoff (push) and the player may either take back the tip bet or leave the tip bet on the playing surface for the next round of play.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-17. The deal.

1. All cards used to play at twenty-one must be dealt from a dealing shoe specifically designed for such purpose and located on the table to the immediate left of the dealer.
2. After each stack of cards is placed in the dealing shoe, the dealer shall remove the first card therefrom face downwards and place it in the discard holder without showing its face value. The discard holder must be located on the twenty-one table to the immediate right of the dealer. Each new dealer who comes to the twenty-one table shall also burn one card as described herein before the new dealer deals any cards to the players.
3. Either of the following methods must be used for the deal of twenty-one at any twenty-one table:
 - a. Hole-card-no-peek. The dealer may not look at the face of the dealer's hole card until after all other cards requested by the players, pursuant to these rules, are dealt to them.
 - b. No-hole-card. The dealer may not deal a second card (hole card) to the dealer until after all other cards requested by the players, pursuant to these rules, are dealt to them.
4. It is recommended that each dealer remove cards from the dealing shoe with the dealer's left hand, turn them face upwards, and then place them on the appropriate area of the playing surface with the dealer's right hand, and that the dealer have the option to deal cards to the first two betting spaces with the dealer's left hand. A player's second card and any hit card should be placed on top of the preceding card covering approximately the lower left-hand quarter of the

preceding card, from the dealer's perspective. Exceptions to this recommended rule would apply to a handicapped dealer and an organization that establishes a standard procedure for use by all the twenty-one dealers at the site.

5. At the commencement of each round of play, or immediately after the first card has been drawn and either burned or used as the player's first card, the dealer shall, starting on the dealer's left and continuing around the table, deal the cards according to either of the two prescribed methods of dealing subsection 3.
 - a. Hole-card-no-peek method of dealing. The cards must be dealt in the following order:
 - (1) One card face upwards to each betting space on the layout or diagram in which a wager is contained.
 - (2) One card either face upwards or face downwards (hole card) to the dealer.
 - (3) A second card face upwards to each betting space in which a wager is contained.
 - (4) A second card face upwards to the dealer if the card referenced in paragraph 2 was dealt face downwards; or, a second card face downwards (hole card) to the dealer if the card referenced in paragraph 2 was dealt face upwards.
 - b. No-hole-card method of dealing. The cards must be dealt in the following order:
 - (1) One card face upwards to each betting space on the playing surface in which a wager is contained.
 - (2) One card face upwards to the dealer.
 - (3) A second card face upwards to each betting space in which a wager is contained.
 - (4) No second card is dealt to the dealer. See subsection 10 of section 10-04.1-10-18.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-18. The play.

1. After the first two cards have been dealt to each betting space in which a wager is contained and the dealer's faceup

card is an ace, the dealer must ask the players if they desire to make an insurance bet. It is recommended that if a player does desire to make an insurance bet, the player should place a chip on the "insurance" line on the playing surface. The dealer should then reposition the chip on the playing surface at a location below the lower right-hand corner of the first card dealt and to the immediate right of the second card dealt, from the dealer's perspective. When the chips have been placed or repositioned, the dealer should announce "insurance bets are closed". However, this particular rule is not applicable to an organization that does not permit insurance betting.

2. The dealer shall, beginning from the dealer's left, announce the point total of each player's hand. It is recommended that as each player's hand point total is announced, such player should indicate whether the player desires to split or double-down, or both, by properly placing a chip as follows:
 - a. It is recommended that a wager for a split be made by placing a chip beside and horizontal to the original wager on that hand on the playing surface.
 - b. It is recommended that a wager for a double-down bet be made by placing a chip behind and vertical to the original wager on that hand on the playing surface.
 - c. It is recommended that if the dealer is unsure of the player's intent to either split or double-down due to an improper chip placement by the player, the dealer should ask the player whether the player desires to split or double-down. Based on the player's response, the dealer should properly position the chip accordingly.
3. If a player has split or doubled-down, or both, the dealer shall play each hand as follows:
 - a. When a player places a wager for a split, the cards must be split by the dealer, not the player, side by side. If such a player has also placed a tip bet, the dealer shall assign the tip bet and reposition the tip bet on the playing surface to the specific split hand located at the foremost left of the player, from the dealer's perspective. Each split hand must be played separately starting with the specific split hand located at the foremost left of the player, from the dealer's perspective. If aces are split, only one additional card shall be dealt to each of the two split hands. In such circumstances, it is recommended that the one additional card be dealt face upwards and placed on the playing surface at a right angle to the first card dealt.

- b. Each doubled-down hand must be dealt one additional card. It is recommended that the one additional card be dealt face upwards and placed on the playing surface at a right angle to the first two cards dealt.
4. The dealer may not take any hit card from the dealing shoe for a player until the player has first indicated the player's request for a hit card by hand signal, nor may the dealer bypass a player unless the player has first indicated the player's request to stand by hand signal.
5. The player shall indicate whether the player desires to stand or draw a hit card by hand signal. Hit cards are dealt only to players indicating their request by hand signal - vertical motion toward themselves. Likewise, players must indicate their intention to stand by hand signal - horizontal motion away from themselves.
6. As each player indicates the player's decision to stand or draw a hit card on hands other than split aces or double-down, the dealer shall deal face upwards (see subsection 4 of section 10-04.1-10-17) whatever additional cards are necessary to effectuate such decision consistent with this chapter and shall announce the new point total of such player's hand after each additional card is dealt. It is recommended that each player at the twenty-one table be responsible for correctly computing the point total of the player's hand and no player should rely on the point total required to be announced by the dealer under this section without the player checking the accuracy of such announcement.
7. If a player did not split, did not double-down, nor place an insurance bet, and busts, that is, the player's count in course of being dealt cards exceeds a count of twenty-one, the player loses the player's original wager and any tip bet, regardless of the value of the dealer's faceup card. The dealer must then immediately collect the player's chips, including any tip bet, and cards and place the chips in the chip tray and the cards in the discard holder.
8. If the dealer's faceup card is not an ace or a ten-count card and a player did split or double-down and busts, the player loses the player's wager for that split or double-down hand and any tip bet assigned to it. The dealer must then immediately collect the player's chips, including any tip bet, and cards and place the chips in the chip tray and the cards in the discard holder.
9. If the dealer's faceup card is an ace or a ten-count card and a player did split, double-down, or place an insurance bet and busts, the dealer shall then gather the player's cards of that hand and place them in the betting space under the player's wagered chips which must be kept in the same betting position.

Any tip bet for such a split or double-down hand that busts is lost. The dealer must immediately collect the tip bet chips and place the chips in the chip tray.

10. After the decisions of each player have been implemented, all additional cards have been dealt, and the player's chips and cards of certain busted hands properly positioned according to subsection 9, the dealer shall either turn up the dealer's facedown card (hole-card-no-peek method) or deal a second card face upwards to the dealer provided, however, that such card must not be removed from the dealing shoe until the dealer has first announced "dealer's card" (no-hole-card method). The dealer shall play the dealer's hand as follows:
 - a. If the dealer's faceup card is an ace and the dealer's hand is not a natural twenty-one (blackjack), the dealer must immediately collect all of the players' insurance bet chips and place the chips in the chip tray. Then the dealer must immediately collect all of the players' busted hands and related chips and place the chips in the chip tray and the cards in the discard holder.
 - b. If the dealer's faceup card is a ten-count card and the dealer's hand is not a natural twenty-one (blackjack), the dealer must immediately collect all of the players' busted hands and related chips and place the chips in the chip tray and the cards in the discard holder.
 - c. If the dealer's faceup card is an ace and the dealer's hand is a natural twenty-one (blackjack) and a player has insured the player's hand pursuant to subsection 5 of section 10-04.1-10-16, the player wins the insurance wager at the rate of two to one.
 - d. If the dealer's faceup card is an ace or a ten-count card and the dealer's hand is a natural twenty-one (blackjack), the dealer wins all original wagers and tip bets (organization wins the tip bet), unless a player's original hand also is a natural twenty-one in which case a standoff exists between the dealer's hand and that player's hand. All other players lose.

If a player has doubled-down or split against the dealer's faceup card of an ace or a ten-count card and the dealer's hand is a natural twenty-one (blackjack), only the amount of the player's original wager is lost. All separate wagers resulting from splitting and doubling-down are voided and the dealer must return the players' separately wagered chips to the players.
 - e. If the count of the dealer's hand is sixteen or under, the dealer must draw a hit card until such time as the count exceeds sixteen. It is recommended that any additional

cards authorized to be dealt to the hand of the dealer be dealt face upwards to the immediate right of the dealer's first two cards dealt, from the dealer's perspective, and the dealer shall announce the total point count.

- f. If the count of the dealer's hand exceeds sixteen but does not exceed twenty-one, the dealer must stay, that is, the dealer's hand has ended. If the dealer's hand contains an ace and a count of seventeen, eighteen, nineteen, twenty, or twenty-one can be obtained by including the ace as an eleven, the dealer shall value the dealer's hand as such and must then stay.
 - g. If the dealer's hand busts, the remaining players win their wagers.
11. If a player's original hand is a natural twenty-one (blackjack) and the dealer's faceup card is not an ace or a ten-count card, the player's hand wins and is paid off immediately at a rate of three to two, unless the player chooses to double-down. If the dealer's faceup card is an ace or a ten-count card, the player's natural twenty-one is not paid off until the dealer determines that the dealer does not have a natural twenty-one.
 12. Wagers are won or lost on an individual hand basis by comparing the count of each player's hand with the dealer's hand. The dealer wins if the count of the dealer's hand exceeds the count of the player's hand. If the count of the dealer's hand is less than the count of the player's hand, the player wins. Wagers are paid off at an equal amount, including tip bets. All ties are a standoff (push), that is, no payoff is made, including tip bets.
 13. If the player's hand loses against the dealer's hand, the organization wins the tip bet. The dealer must immediately collect the player's chips, including any tip bet, and cards and place the chips in the chip tray and the cards in the discard holder.
 14. If the player's hand wins against the dealer's hand and the player placed a tip bet, the dealer wins the tip bet and the one-to-one payoff from the chip tray. The dealer then shall reposition the tip bet in the inner table area. The winning tip bets repositioned in this inner area are not to be stacked.
 15. If the player's hand wins against the dealer's hand, it is recommended that the dealer make the chip payoff of the players' winning wagers as follows:

- a. Normal hand payoff - The chip should be placed beside the original wager in the betting space. The chip should not be placed on top of the original wager.
 - b. Split hand payoff - The chip should be placed beside the wager in the betting space. The chip should not be placed on top of the wager.
 - c. Double-down hand payoff - The chips should be placed beside the two wagered chips in the betting space. The chips should not be placed on top of the wager.
 - d. Insurance bet payoff - The chip should be first placed beside the insurance bet, then placed on top of the insurance bet and both chips pushed in front of the player.
 - e. Tip bet payoff - The chip should be placed beside the tip bet. However, a winning tip bet must be placed in the inner table area prior to the dealer placing the winning wager in the dealer's tip receptacle.
 - f. Natural twenty-one (blackjack) payoff - The chips should be pyramided with the higher denomination chip placed beside the wager in the betting space and the smaller denomination chip placed on top over the center of the other two chips.
16. It is recommended that at the conclusion of a round of play, all cards still remaining on the playing surface be picked up by the dealer in order and in such a way that they can be readily rearranged to indicate each player's hand in case of question or dispute. The dealer should pick up the cards beginning with those of the player to the dealer's far right and moving counterclockwise around the table. After all the players' cards have been collected, the dealer should pick up the dealer's cards against the top of the players' cards and place them in the discard holder face downwards.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-19. Posting of rules. The following rules must be posted in a clear, legible manner at each twenty-one table or in such a conspicuous location so that the player at a twenty-one table can readily read such rules.

HOUSE MUST

Use 4 decks of cards (208 cards)

Use last hand indicator card

Use Hole-Card-No-Peek method of dealing

-or-
Use No-Hole-Card method of dealing
Deal from a shoe

PLAYER RULES

Must be twenty-one years of age or older
Hand signals must be used
No touching of cards
Two hands maximum
\$1.00 or \$2.00 wagers only
No side bets
No credit
No payoff on tie counts
Splitting on any pair and any two 10-count
value cards and limited to a maximum
of 4 hands per betting space
Doubling-down on the first 2 cards dealt
or the first 2 cards of any split
hand, except on split aces

Insurance not permitted (Choose one when posting)
- or -
Insurance permitted - pays 2 to 1

Tip betting permitted (Choose one when posting)
- or -
Tip betting not permitted

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-10, 53-06.1-17

10-04.1-10-20. Twenty-one drop box - Transportation from the twenty-one table and storage. Unless the drop box cash is counted immediately when the drop box is removed from the twenty-one table, the drop box removed must be transported by the pit boss or site manager and, it is recommended, escorted by the cash bank cashier, directly to and secured in a safe place. The drop box, when not in use, may be stored on the twenty-one table provided that there is adequate security. If adequate security is not provided during this time, the drop box must be stored in a safe place.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-21. Drop box cash count by a two-member count team.

1. Except for organizations whose total actual gross proceeds for the previous fiscal year's four quarters, for which gaming tax

returns were filed, averaged twenty-five thousand dollars or less per quarter, the drop box is to be opened by at least a two-member count team. For those organizations at or below twenty-five thousand dollars per quarter, it is recommended that the method in section 10-04.1-10-13 be utilized. For the two-member count team, it is recommended that the count team consist of one member who is from the organization's accounting department or an authorized agent of the accounting department and a second member who is independent of the accounting department.

2. The key utilized to unlock the drop box from the twenty-one table must be maintained and controlled by the site manager or pit boss. It is recommended that the key to one lock securing the contents of the drop box be maintained and controlled by the accounting department or an authorized agent of the accounting department. If there are two separate locks which secure the contents of the drop box, the key to the second lock of the drop box should be maintained and controlled by the independent member of the count team.
3. The organization shall maintain daily records as provided by subdivisions c and d of subsection 2 of section 10-04.1-10-22.
4. The two-member count team shall count the drop box cash and legibly sign or initial and date in ink, the twenty-one drop box cash count report. This report must be forwarded to the bookkeeper.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-22. Recordkeeping system required.

1. A licensed organization shall retain specific records or information, or both, with regard to twenty-one for a period of three years from the end of the quarter for which the records are kept unless the organization is released by the attorney general from this requirement as to any particular record. The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following records for each day of twenty-one gaming activity:
 - a. Records documenting the starting and ending twenty-one cash bank and chip bank. It is recommended that the count of the cash bank and chip bank be verified by at least two persons who shall sign or initial such verification.

- b. Records providing sufficient detail to reconcile changes in the cash bank to the chip bank activity.
- c. Fill slips and credit slips containing verifying signatures or initials must document the transfer of twenty-one chips between the chip bank cashier and the twenty-one table.
- d. Records providing sufficient detail to determine the amount of currency in the drop box or cash register. These records must include win and loss results for each table, unless exempted by subsection 11 of section 10-04.1-10-12.
- e. Records providing a reconciliation, by site, of gross proceeds, prizes, adjusted gross proceeds, and bank deposit.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-23. Actual cash profit bank deposit required by licensed organizations. For twenty-one, the actual cash profit, less the increase or plus the decrease in the starting cash bank for the next day's activity, must be deposited intact in the organization's general gaming bank account no later than the fifth banking day following the day of play. The validated bank deposit slip or receipt representing the inclusion of twenty-one gaming activity must be included as part of the accounting records. The deposit slip or a reconciling schedule must contain a reference to twenty-one and the date of the twenty-one activity.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

CHAPTER 10-04.1-11 GAMING TAX AND TAX RETURNS

Section	
10-04.1-11-01	Due Date for Filing Tax Returns
10-04.1-11-02	Incomplete Tax Returns
10-04.1-11-03	Consolidated Return
10-04.1-11-04	Extensions for Good Cause
10-04.1-11-05	Attorney General To Determine Accuracy of Return

10-04.1-11-01. Due date for filing tax returns.

1. A North Dakota gaming tax return and payment of the tax due must be postmarked, or if hand-delivered, received in the attorney general's office by the last business day of the month following the end of a quarter year. Business days are defined as Monday through Friday not including state holidays.
2. Quarters must be identified and begin and end as follows:

<u>QUARTER NUMBER</u>	<u>BEGINS</u>	<u>ENDS</u>
1	July 1	September 30
2	October 1	December 31
3	January 1	March 31
4	April 1	June 30

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-12, 53-06.1-17

10-04.1-11-02. Incomplete tax returns. An incomplete tax return will not be considered timely filed unless correctly completed and returned by the due date for filing or an extended date as approved by the attorney general. Delays in mailing, mail pickups, and postmarking are the responsibility of the eligible organization.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-11-03. Consolidated return.

1. Only one return per quarter may be filed for each eligible organization licensed by the attorney general.
2. Operations of an auxiliary, holding company, or other closely connected organization as defined in section 10-04.1-03-03 are subject to the supervision of the games of chance committee of the licensed organization and the reporting by that organization.
3. Class B licensees shall file an attachment to the tax return disclosing the operations at each gaming site. The attachment must use the format of the tax return.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-12, 53-06.1-17

10-04.1-11-04. Extensions for good cause. Extensions for filing the North Dakota gaming tax return may be granted for good cause with

the approval of the attorney general by filing a written request setting forth the reason for the extension. A request must be postmarked on or before fourteen days prior to the regular due date for filing the tax return to enable the attorney general to consider and act on the request. Extensions to file do not extend the date for devoting the net proceeds.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-12, 53-06.1-17

10-04.1-11-05. Attorney general to determine accuracy of return.

The attorney general has the authority to verify and determine the accuracy of any or all items reported on the return; to ascertain the propriety of any or all prizes, expenses, deductions, and distributions of net proceeds; to determine the current tax liability; and to prepare delinquent returns.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-12, 53-06.1-17

**CHAPTER 10-04.1-12
DEVOTION OF NET PROCEEDS**

Section	
10-04.1-12-01	Period Within Which Net Proceeds to be Disbursed
10-04.1-12-02	Licensed Organizations Not to Receive Special Consideration From Donees
10-04.1-12-03	General Guidelines for Eligible Uses

10-04.1-12-01. Period within which net proceeds to be disbursed.

1. For purposes of administering subsection 7 of North Dakota Century Code section 53-06.1-06, the term "the date such proceeds were earned" found in that subsection means the last day of the quarter in which earned.
2. Net proceeds earned during any quarter must be devoted by the last day of the following quarter unless an extension is requested in writing of the attorney general and an extension is granted.
3. Quarters must be identified and begin and end as follows:

<u>QUARTER NUMBER</u>	<u>BEGINS</u>	<u>ENDS</u>
1	July 1	September 30
2	October 1	December 31

3
4

January 1
April 1

March 31
June 30

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-06

10-04.1-12-02. Licensed organizations not to receive special consideration from donees.

1. Organizations licensed by the attorney general to conduct games of chance may not accept any payment, gift, or other thing of material value from a recipient or potential recipient of net proceeds of its games of chance whether it be before or after such net proceeds are devoted, nor may a licensed organization devote funds to a recipient on the condition that the licensed organization receive a payment, gift, or other thing of value from the recipient.
2. A person or organization, whether or not licensed to conduct games of chance, that is a donee or potential donee of net proceeds from a licensed organization may not give, or offer to give, any payment, gift, or other thing of material value to a donor organization or potential donor organization for that organization's own use.
3. Any eligible organization that devotes net proceeds and, within a period beginning one year before the disbursement and ending one year after the disbursement, sells or enters into an agreement to sell property, real or personal, to that same donee, then such contribution is deemed a contribution of property by the nonprofit donor organization and not a devoting of net proceeds.
4. Contributions of property encumbered by liens, chattels, mortgages, or any other forms of indebtedness are considered a sale of property for purposes of subsection 3.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-12-03. General guidelines for eligible uses. For the purpose of administering subsection 6 of North Dakota Century Code section 53-06.1-01, the following criteria must be generally applied to each item enumerated in that subsection:

1. The contribution must be a current irrevocable remittance not contingent upon future occurrences, and specific as to recipient and use.

2. The intended use must be broad in scope affecting an indefinite number of people, except for recipients of educational scholarships and those individuals as permitted under subdivisions h and i.
3. Private athletic, social, hobby, trade, business, professional or other similar clubs or associations generally are not eligible recipients, in and of themselves, unless the specific use of the intended contribution meets the criteria set forth in this section.
4. A use of funds for adult activities is restricted to uses based on criteria determined by the attorney general.
5. In applying subdivisions h and i of subsection 6 of North Dakota Century Code section 53-06.1-01, the events causing the eligible use must have occurred and the expense incurred must be uncompensated by insurance. Accumulations for future occurrences are not permitted.
6. A use of funds for the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property owned by an eligible organization is an eligible use only if the eligible organization agrees that, upon abandoning the exclusive use of the property which is stated in subsection 6 of North Dakota Century Code section 53-06.1-01, it will grant its interest in the property to a governmental unit or to an organization which will use it exclusively for the purposes stated in subsection 6 of North Dakota Century Code section 53-06.1-01. However, if a disposition of the property is made and the net proceeds resulting from the disposition are either placed into the charitable gaming trust fund bank account or reinvested into like property within one year, the disposition will not be considered an abandonment of the exclusive use of the property. The eligible organization shall, in its minutes or other proper records, acknowledge the requirement related to the abandonment of the exclusive use of the property as referenced in this subsection.
7. In applying subdivisions a and b of subsection 6 of North Dakota Century Code section 53-06.1-01, the disbursement of funds for eligible uses must go directly from the "charitable gaming trust fund account" to the particular use benefiting that licensed organization. The funds may not go to the general operating fund of the licensed organization. Gaming expenses or capital costs associated with gaming are not a use benefiting the organization.
8. In applying subsection 6 of North Dakota Century Code section 53-06.1-01, the disbursement of funds for eligible uses must go directly from the general gaming bank account of class A organizations or directly from the charitable gaming trust fund bank account of class B organizations to the ultimate use

or to a fund designated as an eligible use for temporary holding by the recipient organization.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-11, 53-06.1-17

CHAPTER 10-04.1-13 AUDIT AND VIOLATIONS

Section

10-04.1-13-01	Ineligible Use of Net Proceeds by Donee
10-04.1-13-02	Records Subject to Audit
10-04.1-13-03	Inspection of Premises and Records
10-04.1-13-04	Denial, Suspension, or Revocation of Licenses
10-04.1-13-05	Investigative Powers of the Attorney General
10-04.1-13-06	Investigative Hearings
10-04.1-13-07	Return of License Revoked

10-04.1-13-01. Ineligible use of net proceeds by donee.

1. In order to ensure that the entire net proceeds of games of chance are devoted to eligible uses, the attorney general has the power to cause a donee individual or organization to produce records sufficient to determine the actual use of the net proceeds received.
2. Any person or organization receiving gaming proceeds from an eligible organization for a permissible use, and subsequently using such proceeds for a nonpermissible use, shall reimburse the donor organization for all funds which the attorney general determines is a nonpermissible use under subsection 6 of North Dakota Century Code section 53-06.1-01.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-13, 53-06.1-17

10-04.1-13-02. Records subject to audit.

1. Any and all records of any organization operating any gaming activity authorized by North Dakota Century Code chapter 53-06.1, or any licensed distributor or manufacturer of gaming equipment, is subject to an audit by the attorney general, without notice, and performed either at the site, upon the premises of the organization or distributor where the records are located, in the attorney general's office, or at a location chosen by the attorney general.

2. In the event of an audit by the attorney general, the organization, distributor, or manufacturer shall immediately provide all such records to the attorney general, provide a place where such audit may be performed if necessary, and render such assistance to the attorney general in auditing such records as may be requested.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-13, 53-06.1-17

10-04.1-13-03. Inspection of premises and records.

1. All sites licensed, or any premises in any way connected physically or otherwise with an organization, must at all times be open to inspection by the attorney general.
2. At any time during which games of chance are being conducted at a site, the attorney general may enter upon the site without advance notice and:
 - a. Make a count of all moneys received during which games of chance are being conducted at a site, inspect all receipts for gross proceeds issued by the organization, and inspect all receipts for prizes which have been awarded by the organization.
 - b. Inspect any records of the organization, or of any member that directly participates in the management, operation, or promotion of the gaming activity, or of any employee or volunteer of the organization.
 - c. Inspect, including the dismantling of, all pieces of equipment or parts thereof, which are being used to conduct games of chance.
 - d. When the attorney general finds cause to believe that there is a reasonable probability that the provisions of North Dakota Century Code chapter 53-06.1, including any amendments thereto, or any of the administrative rules, have been or are being violated by the organization, or its employees or volunteers, remove to another location or locations for further inspection and investigation, any and all records and any and all equipment, parts thereof, and devices of any nature located upon the premises related to the operation of the licensed gaming activity, or any other gaming activity.
3. A receipt must be issued to the organization licensed at the site which must list and describe each record and each piece of equipment, or part thereof, which has been removed from the site.

4. Each such record, piece of equipment, or part thereof, so removed must be returned to the site or to the address of the organization within a reasonable period of time after its removal in as good a condition as it was in when removed, unless the attorney general determines that the record or equipment so removed are necessary for an ongoing investigation of possible violations of the law or administrative rules of the attorney general by the organization.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-15.1, 53-06.1-17

10-04.1-13-04. Denial, suspension, or revocation of licenses.

The attorney general may deny a license to any applicant, or may suspend or revoke any and all licenses of any organization or distributor when such organization or distributor:

1. Has violated, failed, or refused to comply with the provisions, requirements, conditions, limitations, or duties imposed by North Dakota Century Code chapter 53-06.1 and any amendments thereto, or any rules adopted or formal directives issued by the attorney general pursuant thereto.
2. Knowingly causes, aids, abets, or conspires with another to cause, any person to violate any of the laws of this state or the rules of the attorney general.
3. Has obtained a license by fraud, trick, misrepresentation, concealment, or through inadvertence or mistake.
4. Denies the attorney general access to any site where games of chance are conducted or who fails promptly to produce to the attorney general for inspection or audit any book, record, or document required by law or administrative rule.
5. Fails to display its license on the site where games of chance are conducted at all times during the operation of the gaming activity.
6. Makes a misrepresentation of, or fails to disclose, a material fact to the attorney general.
7. Fails to provide at the office of the attorney general any information requested under the administrative rules or law within the time required therefor by applicable administrative rule or law, or if no maximum time has been established respecting the particular kind of information by other rule then within fourteen days after receiving a written request therefor from the attorney general.

8. Has engaged in any act, practice, or course of operation as would operate as a fraud or deceit on any person, or has employed any device, scheme, or artifice to defraud any person.
9. The organization has again violated, failed, or refused to comply with any of the provisions, requirements, limitations, or duties imposed by North Dakota Century Code chapter 53-06.1 and any amendments thereto, or any administrative rules adopted by the attorney general pursuant thereto, after having been previously notified by the attorney general or by local law enforcement officials, that a violation or violations of the same or similar provisions had been, or were being, committed by the organization.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-14, 53-06.1-17

10-04.1-13-05. Investigative powers of the attorney general.

When it appears to the attorney general that a person has engaged in, or is engaging in any practice declared to be unlawful by North Dakota Century Code chapter 53-06.1, or any of the provisions of these rules, or when the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in, any such practice, the attorney general may:

1. Require such person to file on such forms as the attorney general prescribes a statement or report in writing, under oath or otherwise, as to all the facts and circumstances and such other data and information as the attorney general may deem necessary.
2. Examine under oath any person in connection with the investigation.
3. Impound any gaming or financial record, book, document, account, or paper material to such practice and retain the same in the attorney general's possession until the completion of all proceedings undertaken under this article or in the courts.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-13-06. Investigative hearings. To accomplish the objectives and to carry out the duties prescribed by North Dakota Century Code chapter 53-06.1, and the provisions of these rules, the attorney general, in addition to other powers conferred upon the

attorney general by North Dakota Century Code chapter 53-06.1, and the provisions of these rules, may issue subpoenas to any person, administer an oath or affirmation to any person, and conduct hearings in aid of any investigation or inquiry.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-13-07. Return of license revoked. Upon revocation of any license issued by the attorney general, the organization or distributor shall immediately return the license and site authorization to the attorney general.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

CHAPTER 10-04.1-14 RULES GOVERNING DISTRIBUTORS

Section

10-04.1-14-01	License Required
10-04.1-14-02	License Application Information
10-04.1-14-03	License Fee and Reapplication Date
10-04.1-14-04	Distributor Personnel Supplemental
10-04.1-14-05	Restrictions on Distributorship Interest
10-04.1-14-06	Changes in Ownership-Personnel
10-04.1-14-07	Restrictions of Distributor Employee
10-04.1-14-08	No Division of Territories Allowed
10-04.1-14-09	Manufacture
10-04.1-14-10	Special Purchases Restrictions
10-04.1-14-11	Special Sales Restrictions - Charitable Gaming Tickets
10-04.1-14-12	Special Sales and Rent Restrictions - Coin-operated Dispensing Device
10-04.1-14-13	Special Sales Restrictions - Twenty-One Drop Box
10-04.1-14-14	Sales Promotion
10-04.1-14-15	Gifts From Distributors Prohibited
10-04.1-14-16	Prices Charged by Distributors Not to be Fixed by Agreement
10-04.1-14-17	Distributors to Sell Only to Licensed or Authorized Organizations
10-04.1-14-18	Marking and Identification of Equipment and Supplies for Games of Chance
10-04.1-14-19	Distributors' Sales to Indian Tribes, and Tribal Reservation and Out-of-State Purchasers
10-04.1-14-20	Sales Invoice Required

10-04.1-14-21	Rebate of Purchase Prices by Distributor
10-04.1-14-22	Return of Merchandise - Voiding of State Gaming Stamp
10-04.1-14-23	Recordkeeping System Required
10-04.1-14-24	Distributors' Information Reports
10-04.1-14-25	Examination of Books and Records

10-04.1-14-01. License required. No person may sell, offer for sale, or otherwise provide gaming equipment and supplies, for use in connection with games of chance in this state without first obtaining a distributor license from the attorney general.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-02. License application information. Annual application must be made for a distributor's license. The annual licensing period is from April first through March thirty-first. The application must be on a form prescribed by the attorney general and must contain such necessary and reasonable information as the attorney general requires, including the following information, as well as all other information required elsewhere in this article:

1. List of all employees, agents, owners, stockholders, partners, officers, directors, and other persons engaged in the business of the distributor. A "distributor personnel supplemental" must be completed for each of these persons.
2. If the business is a corporation, for each stockholder the number of shares and the respective percentage of total shares issued that are owned, by all classes of stock of the corporation. If the business is a partnership, for each partner the percentage of equity interest in the partnership.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-03. License fee and reapplication date.

1. The annual distributor license fee is one thousand dollars.
2. All distributor licenses must be reapplied for on April first of each year. There may be no proration of the license fee.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-04. Distributor personnel supplemental. The "distributor personnel supplemental" form must include at least the following information:

1. Name of person completing the form.
2. Name of distributor.
3. Address, county of citizenship, date of birth, place of birth, and name of spouse of person completing the form.
4. All other current occupations along with the employer's name, address, type of business, and the position held within that business.
5. List of all criminal convictions, if any.
6. List of all places of residence in the last ten years.
7. Information on this form must be submitted as an affidavit.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-05. Restrictions on distributorship interest.

1. No organization which is licensed or authorized to conduct games of chance may be a distributor.
2. No person who is an officer, director, manager, gaming manager, or member of the games of chance committee of any licensed or authorized eligible organization may be an officer, director, shareholder, (directly or indirectly) proprietor, consultant, or employee of a distributorship, nor may such person have any financial interest whatsoever in such distributorship.
3. No person who is an officer, director, shareholder (directly or indirectly), partner, or proprietor of a wholesale alcoholic beverage business may be an officer, director, shareholder, partner, proprietor, or employee of a distributorship, nor may such person have any financial interest whatsoever in such distributorship.
4. No distributor or person having a financial interest in a distributorship may be a lessor of premises, directly or indirectly, to a licensee.
5. The distributor shall establish a permanent office in the state of North Dakota. The distributor's records required to be maintained by this article must be kept at that location.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-06. Changes in ownership-personnel. Additions or deletions of any employees, agents, or other personnel engaged in the business of the distributor or any change in the management, directorship, or equity ownership of the distributorship must be reported monthly to the attorney general on forms supplied by the attorney general.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-07. Restrictions of distributor employee.

1. No employee of a distributorship may be a gaming employee, consultant, or volunteer of an organization unless such employee has first made a full written disclosure of the employee's distributorship employment to the organization.
2. It is recommended that no employee of a distributorship play games of chance at any of the sites of an organization if that organization is a customer of the distributorship.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-14-08. No division of territories allowed. No distributor may enter into any agreement, expressed or implied, with any other distributor that either of them is restricted in the operation and carrying on of business to a specific geographic area, or areas, and such a restriction may not be a condition of any sales between a distributor and any other distributor.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-14-09. Manufacture. Any person manufacturing equipment or supplies for games of chance within the state of North Dakota shall first register such manufacturing activity with the attorney general before selling, marketing, or otherwise distributing such equipment, in or out of state. Any licensed or authorized organization which manufactures equipment or supplies for games of chance for its own use shall also first register such manufacturing activity with the attorney general.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-10. Special purchases restrictions. A distributor may not purchase or be provided any deal of charitable gaming tickets, including club specials, tip boards, and seal boards, or punchboard from a manufacturer of deals or punchboards unless both of the following conditions are met:

1. The manufacturer has first registered its label or trademark with the attorney general.
2. Each individual charitable gaming ticket or punchboard manufactured shall have conspicuously set forth thereon the name of the manufacturer or label or trademark which identifies its manufacturer.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-14-11. Special sales restrictions - Charitable gaming tickets. No distributor, with knowledge or in circumstances where the distributor reasonably should have known, may possess, display, sell or otherwise provide to any licensed organization any deal of charitable gaming tickets, including club specials and tip boards:

1. In which the winning charitable gaming tickets have not been completely and evenly distributed and mixed among all other charitable gaming tickets in the deal.
2. In which the location, or approximate location, of any of the winning charitable gaming tickets can be determined in advance of opening the charitable gaming tickets in any manner or by any device, including but not limited to, any pattern in the manufacture, assembly, or packaging of the charitable gaming tickets by the manufacturer, by any markings on the charitable gaming tickets or container, or by the use of a light.
3. Which does not conform in any other respect to the requirements of this article as to manufacture, assembly, or packaging of charitable gaming tickets.
4. Which has been prohibited by the attorney general from sale or play within this state.

History: Effective November 1, 1986.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-14-12. Special sales and rent restrictions - Coin-operated dispensing device.

1. A distributor may not sell or otherwise provide to any licensed organization any coin-operated dispensing device for the dispensing of charitable gaming tickets that does not conform to all requirements of this state's laws and rules, including formal directives of the attorney general. A coin-operated dispensing device sold or otherwise provided must:
 - a. Be constructed so as to allow a player to clearly see the majority of the charitable gaming tickets within the dispensing device prior to purchasing a charitable gaming ticket.
 - b. Be constructed with permanent lines or markings on the face of the device and clearly visible to the player which effectively divides the charitable gaming tickets remaining in the dispensing device into divisions of approximately twenty-five charitable gaming tickets so that the player can determine how many charitable gaming tickets remain within the device.
 - c. Be constructed to enable an organization to easily render the dispensing device inoperable by the use of a locking device, security cover or latch, or any other control mechanism. See subdivision b of subsection 1 of section 10-04.1-08-07.
2. A distributor may not rent to any licensed organization any coin-operated dispensing device unless the payment of rent stipulated in the rental agreement is for a fixed dollar rate per month or other agreed duration. Graduated rate arrangements and percentage rates (for example, based on gaming activity) are prohibited.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-13. Special sales restrictions - Twenty-one drop box.

No distributor may sell or otherwise provide to any licensed organization any twenty-one drop box that does not conform to the requirements of this section. A drop box must be metal and have:

1. A lock that secures the drop box to a twenty-one table, and a separate lock which secures the contents placed into the drop box. The key to each lock must be different from each other.
2. It is recommended that the drop box have two separate locks which secure the contents placed into the drop box. The key

to each lock must be different from each other, including the key which secures the drop box to a twenty-one table.

3. A slot opening through which currency and forms can be inserted into the drop box. The slot of the drop box may not exceed three and one-half inches [88.90 millimeters] in length and one-half inch [38.10 millimeters] in width.
4. A spring-loaded mechanical device that will automatically close and lock the slot opening upon removal of the drop box from a twenty-one table. The spring-loaded mechanism may not be accessible from outside the drop box in a manner that would jeopardize the security of the drop box.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-14. Sales promotion. No distributor may use as a sales promotion any statement, demonstration, or implication that any certain portion of a deal of charitable gaming tickets, including club specials and tip boards, contains more winners than other portions of the deal or that any deal may be played by an organization in a particular manner that would give the organization any advantage in selling more of the charitable gaming tickets before having to pay out winners.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-15. Gifts from distributors prohibited. Distributors may not directly or indirectly give gifts, trips, prizes, loans of money (excluding credit), premiums, or other such gratuities to licensed organizations, or their employees.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-16. Prices charged by distributors not to be fixed by agreement. No distributor may enter into any agreement, expressed or implied, with any other distributor to fix the price at which any gaming equipment or supplies for games of chance may be sold, or for which services in connection therewith may be rendered. The price of these items in the competitive marketplace must be established by each distributor for the gaming equipment, supplies, and services offered by each and must not be established, directly or indirectly, in concert with one another.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-17. Distributors to sell only to licensed or authorized organizations. With the exception of section 10-04.1-14-19, no distributor may sell or otherwise provide any equipment or supplies for games of chance to any organization which has not first been licensed by the attorney general, or authorized by the local governing body to conduct bingo, raffles, or sports-pool boards in accordance with this article. The distributor is responsible for determining whether an organization is a licensed or authorized organization.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-18. Marking and identification of equipment and supplies for games of chance.

1. The manufacturer's game serial number must appear on all gaming charitable gaming tickets, punchboards, and sports-pool boards. The name of the organization, organization post or lodge number, or other information may appear on such devices but only in addition to and not in replacement of, the manufacturer's game serial number. Game serial numbers may not be special ordered, but must be as provided by the manufacturer in its ordinary course of business.
2. Consecutively numbered state gaming stamps will be furnished to each distributor by the attorney general. The state gaming stamps must be maintained in the state of North Dakota at the North Dakota office and may not be taken out of state for any reason.
3. The distributor shall write in a legible manner the manufacturer's game serial number in ink in the space provided on the state gaming stamp. If the sports-pool board does not have a manufacturer's game serial number assigned to it, the distributor then shall assign a game serial number to it. The distributor is responsible for placing a state gaming stamp directly upon the front of the flare of each deal of charitable gaming tickets, including club specials, tip boards, and seal boards, and upon the flare of each punchboard, and upon the sports-pool board that is sold or otherwise distributed to licensed organizations. The affixing of the state gaming stamp must be done in the state of North Dakota at a North Dakota premise. This rule does not apply to sales by distributors to certain purchasers as provided by section 10-04.1-14-19.

4. A printed flare will be furnished to the organization with each deal of charitable gaming tickets, including club specials and tip boards, and punchboard. Each flare must fully describe the name of the game, cost per play, number of winners by denomination, and winning number, symbol, or set of symbols.
5. The distributor shall indicate the following information on each deal of club specials and tip boards:
 - a. Cost per play.
 - b. Ideal prizes.
6. The distributor shall indicate the following information on each sports-pool board sold if such information is known to the distributor:
 - a. Cost per play.
 - b. Ideal prizes.
7. The phrases "cost per play \$_____" and "retail value of prize \$_____" are to be conspicuously printed on each seal board sold.
8. State gaming stamps must be placed by a distributor only on items which conform to all requirements of this state's laws and rules and may not be placed upon items prohibited by the attorney general from sale or play within this state.
9. State gaming stamps must be placed by the distributor only on items which the distributor sells or provides, and may not be transferred or provided to any other distributor.
10. No person other than a licensed distributor may obtain state gaming stamps from any source, nor may the distributor affix such a state gaming stamp to any deal of charitable gaming tickets, punchboard, or sports-pool board.
11. If and at the time of a liquidation, bankruptcy, or closing of a distributorship by any other means, including a nonrenewal of a license to be a distributor, or a relinquishment of the license, the distributor shall return any and all unused state gaming stamps in the distributor's possession to the attorney general within five days after cessation of business.
12. If a distributor is notified by an organization that the game serial number of a deal, punchboard, or sports-pool board does not correspond to the game serial number written on the state gaming stamp by the distributor, the distributor shall immediately:

- a. Correct the game serial number written on the state gaming stamp.
- b. Sign or initial a form prescribed by the attorney general (see subdivision c of subsection 3 of section 10-04.1-08-04 acknowledging that the distributor corrected the game serial number written on the state gaming stamp.
- c. Notify the attorney general of the corrected game serial number corresponding to the respective state gaming stamp number pursuant to established procedures of the attorney general.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-19. Distributors' sales to Indian tribes, and tribal reservation and out-of-state purchasers. Gaming equipment and supplies sold by distributors to Indian tribes, and tribal reservation and out-of-state purchasers for use on the Indian reservation or out of state must either be shipped to the Indian reservation or out-of-state site or the distributor must verify that the purchaser is from the Indian reservation or out of state.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-20. Sales invoice required. No distributor may sell or otherwise provide to a licensed organization or accept from an organization any gaming equipment or supplies without recording the transaction on a sales invoice.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-21. Rebate of purchase prices by distributor. Rebates of purchase prices or discounts allowed by a distributor must be separately stated on the original sales invoice or separately invoiced on a credit memo referenced to the original sales invoice.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-22. Return of merchandise - Voiding of state gaming stamp. If an organization returns a purchased deal of charitable gaming tickets, including club specials, tip boards, and seal boards, punchboard, or sports-pool board to a distributor for whatever reason, the distributor shall void the North Dakota gaming stamp and notify the attorney general of the voiding and the reason for, on a form prescribed by the attorney general. The distributor shall return all voided North Dakota gaming stamps to the attorney general. If the distributor resells or reissues the merchandise, the distributor shall place a new North Dakota gaming stamp upon the flare of the deal, punchboard, or sports-pool board that is sold or otherwise provided to the organization.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-23. Recordkeeping system required. Every licensed distributor shall maintain complete, accurate, and legible general accounting records with detailed, supporting, subsidiary records sufficient to furnish information regarding all transactions pertaining to the purchase and sale of gaming equipment and supplies. These records must be retained for a period of three years unless the distributor is released by the attorney general from this requirement as to any particular record. The records must be maintained in the state of North Dakota. These records must be prepared on the same basis as the distributor's federal income tax return, and must include the following records as a minimum by month:

1. Purchase invoices for all equipment and supplies for games of chance purchased for distribution to licensed or authorized organizations.
2. Sales invoices for all equipment, supplies, and services for games of chance distributed or rendered to licensed or authorized organizations. Gaming equipment and supplies provided to licensed or authorized organizations at no charge must be recorded on a sales invoice. The sales invoices must be prepared legibly on a standard form prescribed by the attorney general, and must include the following information as a minimum:
 - a. License number of the distributor.
 - b. The complete business name and address of the licensed or authorized eligible organization.
 - c. License or permit number of the organization.
 - d. Invoice number.

- e. Invoice date.
 - f. Date shipped.
 - g. Purchase order number, if available.
 - h. An indication for a credit memo.
 - i. Quantity (by deals for charitable gaming tickets, by the number of boards for punchboards and sports pools).
 - j. A complete description of each item of equipment or supplies sold.
 - k. Gaming stamp numbers.
 - l. The ideal gross proceeds for each different deal or board.
 - m. The ideal adjusted gross proceeds for each different deal or board.
3. Sales invoices must meet the following criteria:
- a. Prenumbered consecutively using a number not less than four digits/characters. The sales invoice number must be preprinted by automated printing equipment or printed by data processing equipment.
 - b. The sales invoice must be prepared in at least three parts and distributed and maintained as follows:
 - (1) One must be issued to the customer.
 - (2) One must be retained in an invoice file by customer name.
 - (3) One must be sent to the attorney general in a manner that accounts for each invoice numerically, including voids.
 - c. Credit memos for returned items must be prepared in the same detail as provided by subdivisions a and b of subsection 3. Credit memos must represent only returned items.
4. Sales journal which must include the following as a minimum by month:
- a. The date of the sale.
 - b. The sales invoice number of the sale.

- c. The name of the organization or distributor remitting the payment.
 - d. Total amount of the sales invoice.
5. Cash receipts journal which must record in an original book of entry whether it be a sales journal, cash payments journal, or a separate cash receipts journal, a recording of not only cash sales, but also cash received from all sources, and must include the following as a minimum by month:
- a. The date the payment was received.
 - b. The name of the organization or distributor remitting the payment.
 - c. The amount of payment received.
6. Cash payments journal (check register) which must include a recording of all checks issued by the distributor, cash payments made by the distributor or payment made by any other means and must include the following as a minimum by month:
- a. The date the check was issued or payment made.
 - b. The number of the check issued.
 - c. The name of the payee.
 - d. Expenses shall be categorized by type.
- All expenses by the distributor must be documented by purchase invoices or other appropriate supporting documents.
7. Gaming stamp log in which the North Dakota gaming stamp numbers and the manufacturer's game serial numbers are legibly recorded must be maintained on a standard form prescribed by the attorney general.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-24. Distributors' information reports. Each distributor shall file a copy of each sales invoice, as described in subsection 2 of section 10-04.1-14-23, along with the gaming stamp log described in subsection 7 of section 10-04.1-14-23, with the attorney general on a semimonthly basis. They must be filed by the fifth business day of the week following the semimonthly period in which each sales invoice and gaming stamp log were prepared. A catalog of all equipment and supplies for games of chance offered to eligible

organizations must be furnished to the attorney general and must be updated monthly by the distributors.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-25. Examination of books and records. The attorney general and the attorney general's agents have the power to examine or cause to be examined the books and records of any distributor to the extent that such books and records relate to any transaction connected to the sale of gaming equipment and supplies in the state of North Dakota or to information that is required to be furnished to the attorney general under the statutes and regulations pertaining to games of chance. No distributor may prohibit, interfere with, or otherwise impede such examination, but shall cooperate and assist with such examination, and provide such information to the attorney general as may be requested.

History: Effective November 1, 1986.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-15.1, 53-06.1-17

CROSS REFERENCE

Law	Law Section Title	Administrative Rules
Section 53-06.1-01	Definitions	10-04.1-01-01, 10-04.1-02-02, 10-04.1-02-03, 10-04.1-02-04, 10-04.1-12-03
Section 53-06.1-02	Organizations Eligible Under Chapter - Use of Net Proceeds	10-04.1-02-01, 10-04.1-02-02, 10-04.1-02-03, 10-04.1-02-04, 10-04.1-05-05, 10-04.1-05-12
Section 53-06.1-03	Licensure - Exceptions for Raffles and Bingo - City and County Licensure - Fees - Suspension and Revocation	10-04.1-02-04, 10-04.1-03-01, 10-04.1-03-02, 10-04.1-03-03, 10-04.1-03-04, 10-04.1-03-09, 10-04.1-03-10,

		10-04.1-03-11, 10-04.1-04-02 10-04.1-13-04
Section 53-06.1-04	College Fraternities and Sororities Allowed to Conduct Raffles and Bingo - Use of Net Proceeds	None
Section 53-06.1-05	Local Approval for Education Organizations, College Fraternities, and Sororities for Raffles and Bingo	None
Section 53-06.1-05.1	Regulation by City or County of Number of Twenty-One Tables Per Site and Number of Sites Per Eligible Organization	10-04.1-03-02
Section 53-06.1-06	Persons Permitted to Conduct Games of Chance - Premises - Equipment - Expenses - Compensation	10-04.1-03-01, 10-04.1-04-03, 10-04.1-04-06, 10-04.1-04-10, 10-04.1-05-07, 10-04.1-06-01, 10-04.1-12-01, 10-04.1-13-03
Section 53-06.1-06.1	Work Permits	None
Section 53-06.1-07	Games of Chance Allowed	10-04.1-03-09, 10-04.1-03-10, 10-04.1-04-01, 10-04.1-06-01, 10-04.1-07-01, 10-04.1-08-01, 10-04.1-09-01, 10-04.1-10-01, 10-04.1-10-19
Section 53-06.1-07.1	Limitations on Hours and Participation in Games of Chance	10-04.1-04-13
Section 53-06.1-08	Punchboards and Jars - Sale of Chances - Maximum Price Per Ticket	10-04.1-08-01
Section 53-06.1-09	Sports Pools - Control	10-04.1-03-11,

	by Licensee - Rules Posted - Limitation on Prizes	10-04.1-09-01
Section 53-06.1-10	Twenty-One - Sale of Chips - Redemption - Wager - Limit - Rules of Play	10-04.1-10-01, 10-04.1-10-05, 10-04.1-10-06, 10-04.1-10-10, 10-04.1-10-14, 10-04.1-10-16, 10-04.1-10-18, 10-04.1-10-19
Section 53-06.1-10.1	Raffles - Limitation - Prizes	10-04.1-03-10, 10-04.1-07-03
Section 53-06.1-11	Statement of Receipts - Expenses	10-04.1-03-01, 10-04.1-05-04, 10-04.1-05-05, 10-04.1-05-07, 10-04.1-05-08, 10-04.1-05-09, 10-04.1-05-12, 10-04.1-06-06, 10-04.1-06-13, 10-04.1-07-08, 10-04.1-08-08, 10-04.1-09-02, 10-04.1-12-02, 10-04.1-12-03
Section 53-06.1-12	Tax Based on Adjusted Gross Proceeds	10-04.1-11-01, 10-04.1-11-03, 10-04.1-11-04, 10-04.1-11-05
Section 53-06.1-12.1	Allocation of Games of Chance Tax	None
Section 53-06.1-13	Examination of Books and Records	10-04.1-13-01, 10-04.1-13-02
Section 53-06.1-14	Distributors - Licensure	10-04.1-04-06, 10-04.1-13-04, 10-04.1-14-02, 10-04.1-14-03, 10-04.1-14-05, 10-04.1-14-06, 10-04.1-14-09, 10-04.1-14-17, 10-04.1-14-18
Section 53-06.1-15	Form and Display of License	None

Section 53-06.1-15.1	Powers and Duties of the Attorney General	10-04.1-03-01, 10-04.1-03-03
Section 53-06.1-15.2	Attorney General May Bring Action for Collection of Fees and Tax and to Force Compliance	None
Section 53-06.1-16	Violation of Chapter or Rule - Misdemeanor - Forfeiture of Licensure - Ineligibility	None
Section 53-06.1-16.1	Bogus Chips, Marked Cards, Cheating Devices, or Fraudulent Schemes Unlawful - Penalty	10-04.1-08-07
Section 53-06.1-16.2	License Suspension or Revocation by Attorney General - Ineligibility for Local Authorization	None
Section 53-06.1-17	Rules	10-04.1-01-01, 10-04.1-02-02, 10-04.1-02-03, 10-04.1-02-04, 10-04.1-03-01, 10-04.1-03-03, 10-04.1-03-04, 10-04.1-03-05, 10-04.1-03-08, 10-04.1-03-09, 10-04.1-03-10, 10-04.1-03-11, 10-04.1-04-02, 10-04.1-04-03, 10-04.1-04-05, 10-04.1-04-07, 10-04.1-04-08, 10-04.1-04-09, 10-04.1-04-10, 10-04.1-04-11, 10-04.1-04-12, 10-04.1-04-13, 10-04.1-04-14, 10-04.1-04-15, 10-04.1-04-16, 10-04.1-04-17, 10-04.1-04-18, 10-04.1-04-19, 10-04.1-04-20,

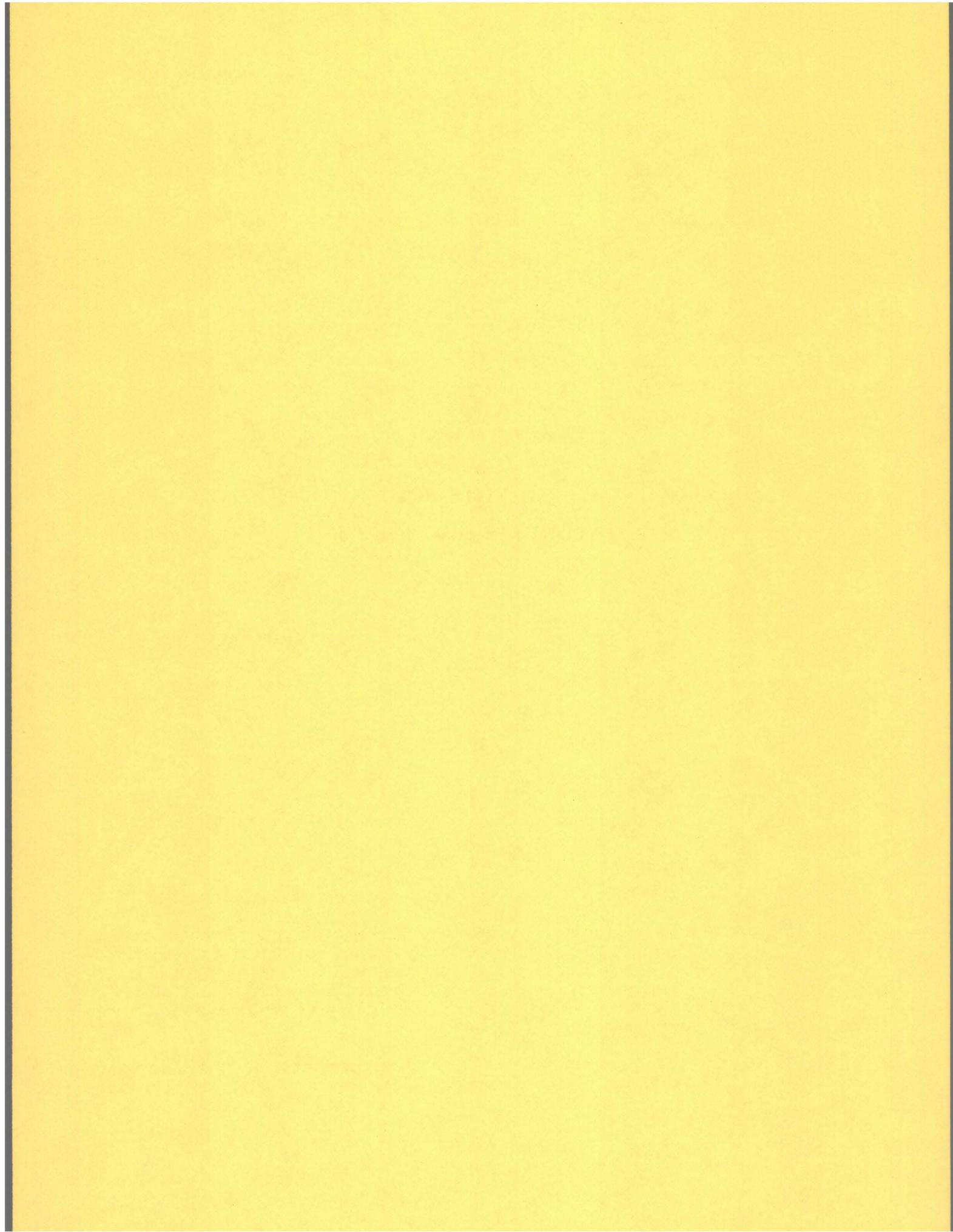
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10-04.1-14-25



TITLE 20.5
Dietetic Practice, Board of



DECEMBER 1986

STAFF COMMENT: Title 20.5 contains all new material but is not underscored so as to improve readability.

ARTICLE 20.5-01

GENERAL ADMINISTRATION

Chapter
20.5-01-01 Organization of the Board

CHAPTER 20.5-01-01
ORGANIZATION OF THE BOARD

Section
20.5-01-01-01 Organization of the Board of
Dietetic Practice

20.5-01-01-01. Organization of the board of dietetic practice.

1. **History and function.** The 1985 legislative assembly passed legislation to license dietitians and nutritionists, codified as North Dakota Century Code chapter 43-44. This chapter requires the governor to appoint a state board of dietetic practice. It is the responsibility of the board to license dietitians.
2. **Board membership.** The board consists of five members appointed by the governor. Three members must be licensed

registered dietitians, one other member must be either a licensed registered dietitian or a licensed nutritionist, and one member represents consumer interests. Each board member serves a term of three years. No member may serve more than two successive terms on the board.

3. **Officers.** Officers are elected annually. The board may hire an executive secretary and other employees as it deems necessary.
4. **Inquiries.** Inquiries regarding the board may be addressed to:

North Dakota Board of Dietetic Practice
2015 Eighth Avenue North
Grand Forks, North Dakota 58201

or

North Dakota Board of Dietetic Practice
c/o Division of Legal Services
North Dakota State Department of Health
1200 Missouri Avenue
P.O. Box 5520
Bismarck, North Dakota 58502-5520

History: Effective December 1, 1986.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 43-44-03

ARTICLE 20.5-02

INITIAL LICENSURE AND RENEWALS

Chapter	
20.5-02-01	Initial Licensure and Renewals
20.5-02-02	Code of Ethics
20.5-02-03	Grievances

CHAPTER 20.5-02-01 INITIAL LICENSURE AND RENEWALS

Section	
20.5-02-01-01	Licensure Application
20.5-02-01-02	Initial Licensure
20.5-02-01-03	Licensure Renewal
20.5-02-01-04	Fees
20.5-02-01-05	Continuing Education

20.5-02-01-01. Licensure application. An application for a license for dietetic practice must be made to the state board of dietetic practice on forms approved by the board. The application must contain such information as the board may reasonably require.

1. Each application for a license as a licensed registered dietitian must be accompanied by:
 - a. The prescribed fee.
 - b. A copy of the certificate indicating registration by the commission on dietetic registration of the American dietetic association.
2. Each application for a license as a licensed nutritionist must be accompanied by:
 - a. The prescribed fee.
 - b. An official transcript verifying completion of an academic program in dietetics, or food and nutrition in a program approved through rules as promulgated by the board; proof of a master's or doctorate degree in human nutrition, nutrition education, foods and nutrition, or public health nutrition from an accredited college or university; or proof of a master's or doctorate degree in a related field that meets eligibility requirements of the commission on dietetic registration of the American dietetic association.
3. All applications must be signed by the applicant and notarized.
4. The board may request such additional information or clarification of information provided in the application as it deems necessary.
5. If any licensee allows his or her license to lapse for a period of more than two years, the licensee may be required to reapply for licensure.

History: Effective December 1, 1986.

General Authority: NDCC 43-44-03

Law Implemented: NDCC 43-44-07, 43-44-08

20.5-02-01-02. Initial licensure. Any person who has maintained membership in one of the following organizations: American institute of nutrition, American society for clinical nutrition, or the American board of nutrition, prior to July 1, 1985, and who can present evidence to the board regarding employment and competence as a nutritionist, will

be granted a license as a licensed registered dietitian or a licensed nutritionist upon application and proof of certification or registration to the board.

History: Effective December 1, 1986.

General Authority: NDCC 43-44-03

Law Implemented: NDCC 43-44-09

20.5-02-01-03. Licensure renewal. Licenses are renewable annually.

1. Applications for renewal of license will be mailed by the board on or before August thirty-first to all licenseholders. Fees are payable to the board on or before September thirtieth of the year preceding the renewal year.
2. License fees are considered delinquent and a late charge is assessed if the renewal application is not postmarked on or before September thirtieth of the year preceding the renewal year.
3. Licenses will be revoked if the renewal form and fees are not received within sixty days, from October thirty-first of the renewal year. To reapply for licensure, an applicant must submit:
 - a. An application form;
 - b. The initial license fee; and
 - c. Late charges assessed by the board.
4. Renewal licenses must be mailed on or before October thirty-first of the renewal year if the renewal request is complete and postmarked on or before September thirtieth.
5. The initial license period runs from October 1, 1986, through September 30, 1987.

History: Effective December 1, 1986.

General Authority: NDCC 43-44-03

Law Implemented: NDCC 43-44-03

20.5-02-01-04. Fees. The board has adopted the following fee payment schedule:

1. Initial license fee:

Licensed registered dietitian	\$ 60.00
Licensed nutritionist	60.00

2. License fees for renewal are:

Licensed registered dietitian	\$ 60.00
Licensed nutritionist	60.00
Limited permits	25.00

3. Late fees in the amount of five dollars per month must be charged for all applications received by the board which are postmarked after September thirtieth of the year prior to the year of renewal.
4. Dietetic practitioners who initially become licensed after August first of any year are exempt from licensure renewal for a period of one year.

History: Effective December 1, 1986.

General Authority: NDCC 43-44-03

Law Implemented: NDCC 43-44-03

20.5-02-01-05. Continuing education. To renew a license a person must present proof of having attended at least twelve clock hours of continuing education approved by the board. This yearly requirement may be waived upon a showing by the licensee of having attended at least seventy-five hours of continuing education in a consecutive five-year period. The applicant must submit evidence to the board of having attended the required number of continuing education hours.

Continuing education courses must be related to or increase the professional competence of the attendee. This determination will be made by the board through approval of requested courses. If any licensee allows his or her license to lapse for a period of more than two years, the licensee may be required to submit proof of completion of at least twelve clock hours of continuing education for each year that their license has lapsed up to a total of sixty hours.

History: Effective December 1, 1986.

General Authority: NDCC 43-44-03

Law Implemented: NDCC 43-44-03

CHAPTER 20.5-02-02 CODE OF ETHICS

Section

20.5-02-02-01 Code of Ethics

20.5-02-02-01. Code of ethics. The board has adopted and incorporated into these rules by reference, the standards of professional responsibility of the American dietetic association, as amended January 1, 1985.

History: Effective December 1, 1986.
General Authority: NDCC 43-44-03
Law Implemented: NDCC 43-44-03

**CHAPTER 20.5-02-03
GRIEVANCES**

Section
20.5-02-03-01 Grievance Procedure

20.5-02-03-01. Grievance procedure. Grievances must be processed in accordance with the provisions of North Dakota Century Code chapter 28-32.

History: Effective December 1, 1986.
General Authority: NDCC 43-44-03
Law Implemented: NDCC 28-32-05

MAY 1987

20.5-02-01-01. Licensure application. An application for a license for dietetic practice must be made to the state board of dietetic practice on forms approved by the board. The application must contain such information as the board may reasonably require.

1. Each application for a license as a licensed registered dietitian must be accompanied by:
 - a. The prescribed fee.
 - b. A copy of the certificate indicating registration by the commission on dietetic registration of the American dietetic association.
2. Each application for a license as a licensed nutritionist must be accompanied by:
 - a. The prescribed fee.
 - b. An official transcript verifying completion of an academic program in dietetics, or food and nutrition in a program approved through rules as promulgated by the board; proof of a master's or doctorate degree in human nutrition, nutrition education, foods and nutrition, or public health nutrition from an accredited college or university; or proof of a master's or doctorate degree in a related field that meets eligibility requirements of the commission on dietetic registration of the American dietetic association.
 - c. A person must have a baccalaureate degree and a minimum of nine semester hours or twelve quarter hours of academic nutrition credits with at least two semester hours or three quarter hours in advanced nutrition. Such advanced

nutrition must have human physiology and organic chemistry as a prerequisite.

3. All applications must be signed by the applicant and notarized.
4. The board may request such additional information or clarification of information provided in the application as it deems necessary.
5. If any licensee allows his or her license to lapse for a period of more than two years, the licensee may be required to reapply for licensure.

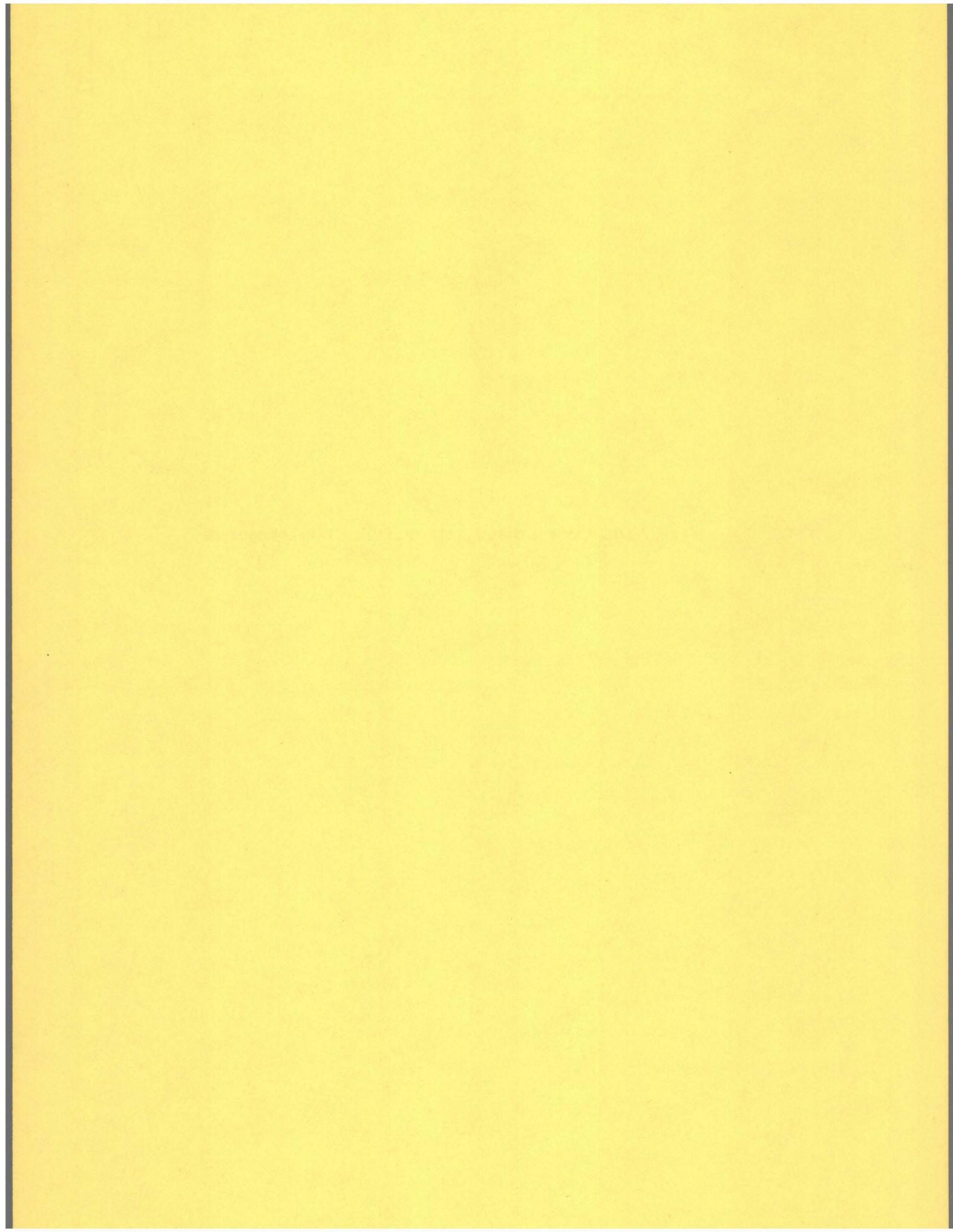
History: Effective December 1, 1986; amended effective May 1, 1987.

General Authority: NDCC 43-44-03

Law Implemented: NDCC 43-44-07, 43-44-08

TITLE 33

Health and Consolidated Laboratories, Department of



DECEMBER 1986

33-06-01-01. Reportable diseases. All reportable diseases shall be confidential and not open to inspection. The following diseases are hereby declared to be reportable in this state.

1. Acquired Immune Deficiency Syndrome (A.I.D.S.).
2. Amebiasis.
3. Anthrax.
4. Blastomycosis.
5. Botulism.
6. Brucellosis.
7. Campylobacter enteritis.
8. Chancroid.
9. Chickenpox (varicella).
10. Chlamydial infections.
11. Cholera.
- ~~11-~~ 12. Diphtheria.
- ~~12-~~ 13. Encephalitis (specify etiology).
- ~~13-~~ 14. Foodborne or waterborne outbreaks.
- ~~14-~~ 15. Giardiasis.

- ~~15-~~ 16. Gonorrhoea.
- ~~16-~~ 17. Granuloma inguinale.
- ~~17-~~ 18. Hepatitis (specify type).
- ~~18-~~ 19. Herpes simplex (genital).
- ~~19-~~ 20. Histoplasmosis.
- ~~20-~~ 21. Influenza.
- ~~21-~~ 22. Legionellosis.
- ~~22-~~ 23. Leprosy.
- ~~23-~~ 24. Leptospirosis.
- ~~24-~~ 25. Lymphogranuloma venereum.
- ~~25-~~ 26. Malaria.
- ~~26-~~ 27. Measles (rubeola).
- ~~27-~~ 28. Meningitis (specify etiology).
- ~~28-~~ 29. Mumps.
- ~~29-~~ 30. Nosocomial infections.
- ~~30-~~ 31. Ornithosis (Psittacosis).
- ~~31-~~ 32. Pertussis.
- ~~32-~~ 33. Plague.
- ~~33-~~ 34. Poliomyelitis.
- ~~34-~~ 35. Rabies.
- ~~35-~~ 36. Reye's syndrome.
- ~~36-~~ **Rheumatic fever, acute-**
- 37. Rocky Mountain spotted fever.
- 38. Rubella.
- 39. Salmonellosis.
- 40. Scabies (in institutions).
- 41. Shigellosis.

42. Syphilis.
43. Tetanus.
44. Toxic-shock syndrome.
45. Trichinosis.
46. Tuberculosis.
47. Tularemia.
48. Typhoid fever.

History: Amended effective May 1, 1984; December 1, 1986.

General Authority: NDCC 23-07-01

Law Implemented: NDCC 23-07-01

STAFF COMMENT: Chapters 33-07-03 and 33-07-04 were superseded by Chapters 33-07-03.1 and 33-07-04.1.

STAFF COMMENT: Chapters 33-07-03.1 and 33-07-04.1 contain all new material but are not underscored so as to improve readability.

CHAPTER 33-07-03.1 LONG-TERM CARE FACILITIES

Section	
33-07-03.1-01	General Provisions
33-07-03.1-02	Governing Body and Management
33-07-03.1-03	Residents Under Physician's Care
33-07-03.1-04	Medical Staff
33-07-03.1-05	Nursing Department
33-07-03.1-06	Dietary Department
33-07-03.1-07	Clinical Records
33-07-03.1-08	Pharmaceutical Services
33-07-03.1-09	Diagnostic Services
33-07-03.1-10	Social Services
33-07-03.1-11	Specialized Rehabilitative Services
33-07-03.1-12	Resident Activities
33-07-03.1-13	Sanitary Environment
33-07-03.1-14	Housekeeping Services
33-07-03.1-15	Laundry Services
33-07-03.1-16	Disaster Plan
33-07-03.1-17	Adult Day Care
33-07-03.1-18	Respite Care
33-07-03.1-19	Emanating Services
33-07-03.1-20	Waiver Provision

33-07-03.1-01. General provisions.

1. **Institutions covered by the Medical Hospital Licensure Act.**
The following types of institutions have been so designated for the purpose of rules and are deemed to come within the provisions of North Dakota Century Code section 23-16-01 which provides for licensure of any institution which maintains and operates organized facilities for the diagnosis, treatment, or care of two or more nonrelated persons suffering from illness, injury, or deformity or where obstetrical or other care is rendered over a period exceeding twenty-four hours.
 - a. Hospitals, including general, medical, and specialized hospitals.
 - b. Long-term care facilities.
 - (1) Skilled nursing facilities.
 - (2) Intermediate care facilities.
 - c. Infirmaries.
 - d. Maternity homes.
 - e. Outpatient facilities, including ambulatory surgical centers (excluding physicians' clinics).
2. **Institutions not covered by the Medical Hospital Licensure Act.** The following types of institutions which provide some medical or nursing service are deemed not to come within the meaning of the Medical Hospital Licensure Act, North Dakota Century Code chapter 23-16.
 - a. Any institution which is regularly licensed by the department of human services such as homes for unmarried mothers and homes providing custodial care for the aged.
 - b. Federal and state institutions. (In the case of state institutions, the primary purpose of which is the provision of medical care, the department has the responsibility for inspection on the same basis as those made of institutions which are covered by North Dakota Century Code chapter 23-16. Upon the findings of such inspections, recommendations will be formulated by the department.)
 - c. Chiropractic hospitals. (These hospitals are licensed under the provisions of North Dakota Century Code chapter 23-17.)
 - d. Homes in which the only persons receiving nursing care are those related to the householder by blood or marriage.

- e. Homes in which only one person receives care at any one time except maternity homes which receive more than one patient in six months. Such maternity homes are deemed to come under North Dakota Century Code chapter 23-16 and are required to be licensed.
 - f. First aid stations and emergency care facilities which do not provide accommodations for hospitalization as herein defined.
3. **Definitions.** The following terms are defined for purposes of North Dakota Century Code chapter 23-16.
- a. "Ambulatory surgical center" means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization.
 - b. "Bed capacity" means:
 - (1) All spaces designed for resident bedrooms even if currently closed or assigned to easily convertible nonresident uses such as storage or staff quarters.
 - (2) Space in areas originally designed as solaria, waiting rooms, offices, conference rooms, and classrooms which have necessary fixed equipment (nurses' call, lighting, etc.) and are accessible to a nurses' station exclusively staffed for resident care.
 - (3) Space under construction designed as resident bedrooms or designed to be readily convertible to resident bedrooms if planned for immediate completion (excludes unfinished shelled-in floors).

Bed capacity is determined by the floor area (square feet) in the following manner:

- (4) In measuring the floor area of spaces usable as resident bedrooms for the purpose of determining bed capacity, only the net usable space in the room may be considered. Space in toilet rooms, washrooms, closets, vestibules, and corridors may not be counted as part of the net usable space (square feet).
- (5) Resident bedrooms must have adequate floor space to conveniently house necessary furniture and equipment, to provide for efficient resident care, and to provide for convenient movement of stretchers, and for the transfer of residents to and from beds. Adequate floor space is defined as:

- (a) In single resident rooms the least dimension free of fixed obstructions must not be less than ten feet [3.05 meters], and the floor area must not be less than one hundred twenty-five square feet [11.61 square meters], nor more than one hundred forty-five square feet [13.47 square meters].
 - (b) Resident rooms having two or more beds must have as a minimum floor area, eighty square feet [7.43 square meters] of space free of fixed obstructions per bed. The least dimension of a rectangular multiple resident room must not be less than eleven feet six inches [3.50 meters] free of fixed obstructions, except in especially arranged rectangular rooms such as, for example, in the toe-to-toe arrangement where the minimum clear width must not be less than ten feet [3.05 meters] and the minimum clear length must not be less than seventeen feet six inches [5.33 meters] free of fixed obstructions.
 - (c) In the case of other than rectangular shaped rooms, there must be adherence to the principles of specified minimum dimensions and areas per bed in rectangular rooms.
- c. "Department" means the state department of health.
 - d. "Emanating services" means services which originate out of and are provided out of a licensed skilled nursing facility or intermediate care facility to facilities not subject to licensure by the department for which the governing body of a licensed skilled nursing facility or intermediate care facility has responsibility.
 - e. "General hospital" means an establishment with organized medical staffs; with permanent facilities that include inpatient beds; and with medical services including physician services and continuous nursing services to provide diagnosis and treatment for a variety of medical conditions, both surgical and nonsurgical, and services including rehabilitation services.
 - f. "Governing body" means the individual or group in whom the ultimate authority and legal responsibility is vested for the conduct of the long-term care facility.
 - g. "Hospital" means an institution, the principal activity or business of which is the reception of a person for diagnosis, care, and treatment of human illness through the maintenance and operation of organized facilities therefor.

- h. "Hospitalization" means the reception and care of any person for a continuous period longer than twenty-four hours, for the purpose of consultations, diagnosis, or treatment including rehabilitation bearing on the physical and mental health of such person.
- i. "Infirmery" means those special inpatient facilities which are established in connection with an educational or penal institution, or an industrial or commercial establishment for persons who during their attendance, confinement, or employment in such institution or establishment, require nursing service or physician treatment. Applicable requirements of North Dakota Administrative Code chapter 33-07-01 apply.
- j. "Level of care" means the classification of a resident in accordance with the resident's medical and nursing needs generally expressed as a skilled, intermediate, or basic level of care dependent upon the degree of care necessitated to adequately care for the needs of the resident.
- k. "Licensee" means the governing body of the hospital, related institution, skilled nursing facility, or intermediate care facility.
- l. "Long-term care facilities" are the following:
 - (1) "Intermediate care facility" means an institution in which nursing care is rendered for compensation at any one time to two or more persons not related to the licensee by blood or marriage. An intermediate care facility shall serve persons suffering from prolonged physical or mental illness or defect or persons recovering from some injury or disease requiring less than twenty-four hours per day of nursing service provided by licensed personnel. Care given in an intermediate care facility must include procedures commonly employed in waiting on the sick, such as administration of medication, preparation of special diets, giving of bedside care, applications of dressings and bandages, and carrying out treatments prescribed by a licensed physician. An intermediate care facility may not provide for any higher level of care.
 - (2) "Skilled nursing facility" means an institution in which nursing care is rendered for compensation at any one time to two or more persons not related to the licensee by blood or marriage. A skilled nursing facility must serve persons suffering from a prolonged physical or mental illness or defect or persons recovering from some injury or disease and

requiring twenty-four-hour nursing services provided by licensed personnel. Care given in a skilled nursing facility must provide all of the procedures commonly employed in waiting on the sick, such as administration of medicines, preparation of special diets, giving of bedside care, applications of dressings and bandages, and carrying out of treatments prescribed by a licensed physician. A skilled nursing facility may not provide for any higher level of care.

- (3) If a facility is established for the provisions of custodial and personal care, but it develops that two or more persons usually served by such institutions require nursing care, such institutions are deemed to come within the meaning of North Dakota Century Code chapter 23-16 and such facility must conform to this chapter and chapter 33-07-04.1 or the institution shall transfer such patients to facilities properly staff and equipped to care for such persons.
- m. "Maternity home" means an institution of private dwelling type in which care for maternity patients is rendered. Any such home which receives more than one maternity patient (exclusive of those related to the licensee by blood or marriage) within a period of six months is deemed to be a maternity home. A maternity home which regularly provides accommodations for two or more patients at any one time must be classified as a maternity hospital and is required to meet the requirements for a specialized hospital. Applicable requirements of chapter 33-07-01 apply.
 - n. "Medical hospital" means an establishment with organized medical staff; with permanent facilities that include inpatient beds; and with medical services, including physician services and continuous nursing services, to provide diagnosis; and to provide nonsurgical treatment.
 - o. "Medical staff" means a formal organization of physicians (and dentists, where appropriate) with the delegated authority and responsibility to maintain proper standards of medical care and to plan for continued improvement of that care. This does not preclude the establishment of other medical staff sections.
 - p. "Nursing services" means those services pertaining to the curative, restorative, or preventive aspects of nursing care that are performed or supervised by a registered professional nurse at the direction of a physician.
 - q. "Outpatient facility" (including ambulatory surgical centers - excluding physician's clinic) means a facility

located in or apart from a hospital, providing community service for the diagnosis or diagnosis and treatment of ambulatory patients in need of physical or mental care:

- (1) Which is operated in connection with a hospital;
- (2) In which patient care is under the professional supervision of licensed physicians in various medical specialties in the state or, in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the state; or
- (3) Which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which makes provision for its patients to receive a reasonably full range of diagnostic and treatment services.

4. Application for long-term care facility license general provisions.

- a. No person or entity may establish, maintain, or operate a long-term care facility without first having obtained a license. Any person or entity who owns or leases a long-term care facility and desires to maintain or operate it shall apply to the department for a license in the form prescribed and shall obtain a license before accepting residents for care or treatment.
- b. Each long-term care facility applying for a license must be designated by a distinctive name consistent with the services offered to avoid public confusion or misrepresentation. The name may not be changed without department approval.
- c. In the case of a hospital, related institution, skilled nursing facility, or intermediate care facility, where two or more buildings are used in the care of residents, a separate license is required for each building. Separate licenses are required even though the buildings are operated under the same management.
- d. Every license application must be notarized and signed by an authorized corporate officer, general partner, or sole proprietor of the long-term care facility, as appropriate.
- e. Upon receipt of a completed license application, the department shall review the long-term care facility to determine compliance with this chapter and chapter 33-07-04.1, including onsite inspections, as appropriate.

- f. The license must be displayed in a conspicuous place. Each license is valid only in the hands of the person to whom it is issued and is not subject to sale, assignment or other transfer, voluntary or involuntary, nor is a license valid for any premises other than those for which originally issued.
 - g. The department may require submission of periodic reports including, but not limited to, staffing reports, census data, statistical information, and such business records as the department may reasonably require for the performance of its licensure functions.
 - h. The holder of each license issued by the department shall surrender the license immediately upon suspension, revocation, refusal to renew, or discontinuance of the operation of the long-term care facility.
 - i. The department may summarily suspend a license pending proceedings for revocation of or refusal to renew the license in cases of deliberate or willful violation, or where the public health, safety, or welfare imperatively requires emergency action.
 - j. The department and any duly authorized representative thereof have the right to enter upon and into the premises of any long-term care facility in order to determine the state of compliance with North Dakota Century Code chapter 23-16 and this chapter and chapter 33-07-04.1 and initially identify themselves to the person in charge of the long-term care facility at the time.
5. **Application for an initial long-term care facility license.** An application for an initial license must include the following information:
- a. Bylaws and articles of incorporation or partnership agreement, as appropriate, must accompany the initial application. Changes must be reported to the department within thirty days of occurrence.
 - b. If a partnership, the name, address, and ownership share (expressed as a percentage), and legal status (general or limited) of each partner.
 - c. If a corporation, the address, and ownership share of each shareholder who directly or indirectly owns or controls five percent or more of the shares of the corporation, and the name, address, and corporate title of each officer and director. In addition, copies of all documents of incorporation filed with the North Dakota secretary of state must be filed with the department.

- d. If a sole proprietorship or any form of business entity, the name and address, title, and ownership share (expressed as a percentage) of each person with a financial interest therein, and the name, address, and title of every person who controls, directs, or operates the business entity.
- e. If the applicant is the lessee of the long-term care facility, it shall furnish the information required for an initial license for itself and the lessor. A copy of the relevant lease must be submitted to the department.
- f. The applicant's legal name and other names under which it does business.
- g. Each applicant shall furnish to the department a signed and notarized statement at the time of initial application, describing and dating every proceeding in the United States within five years of the date of application, in which the applicant was involved, the result of which was a limitation upon or a suspension, revocation, or refusal to grant or renew a long-term care facility license, certification for medicaid or medicare, or contract for participation in medicaid or medicare.
- h. Each applicant shall furnish a signed and notarized statement to the department at the time of initial application, describing every criminal proceeding within five years of the date of the application in which the licensee or any of its shareholders owning an interest of five percent or more, officers, directors, partners, or other controlling or managing persons, has been convicted, or nolo contendere plea accepted, of a criminal offense related to the operation, management, or ownership of a long-term care facility.
- i. Each applicant shall furnish to the department the information required for an initial license with respect to any management company with which it contracts for management services for the long-term care facility.
- j. The department may not approve an application for an initial license unless:
 - (1) The application and all required attachments and statements submitted by the applicant meet the requirements of this chapter and chapter 33-07-04.1.
 - (2) The department has conducted an inspection or investigation of the long-term care facility to determine compliance with this chapter and chapter 33-07-04.1.

- (3) The department has conducted an investigation of the fitness of the applicant. In the determination of this fitness, the department shall consider the following:
 - (a) Whether the applicant has legal capacity demonstrated by such documents as articles of incorporation to provide the services for which the license is sought.
 - (b) Whether financial resources and sources of revenue for the specific long-term care facility of the applicant appear adequate to provide staff, services, and the physical environment sufficient to comply with North Dakota Century Code chapter 23-16 and this chapter and chapter 33-07-04.1.
 - (c) Whether a substantially consistent and adequate level of care, as measured by compliance with this chapter and chapter 33-07-04.1 and other pertinent evidence, is being or was rendered by the applicant during the five-year period prior to the date of application in each institution in which the applicant exercised ownership, management, or operational functions.
6. **Application for license renewal.** The licensee shall submit a completed application to the department. The department may require reports including, but not limited to, staffing reports, census data, statistical information, and such business records as the department may reasonably require for the performance of its licensure functions.
7. **Provisional license.**
 - a. If the long-term care facility fails to conform to the requirements of North Dakota Century Code chapter 23-16 and this chapter and chapter 33-07-04.1, the department may refuse to issue a license, but may issue a provisional license to allow the long-term care facility to comply with licensing requirements, if the licensee makes a substantial good faith attempt to comply with such requirements and requires time to effect compliance.
 - b. The provisional license is valid for ninety days.
 - c. The provisional license may be renewed once, if the licensee demonstrates to the department that it has made further substantial progress towards compliance, and can effect compliance within the following ninety days.

- d. Before determining whether to issue a permanent license to a provisionally licensed long-term care facility, the department shall conduct a survey or such other investigation as it deems necessary to determine that the long-term care facility meets the requirements for licensure.
8. **Change or modification of license.** The holder of a license shall notify the department in writing thirty days in advance of any of the following changes:
- a. In the case of a partnership, transfer of ownership includes dissolution of the partnership and conversion thereof into any other entity or the removal, addition, or substitution of an individual or other entity for a general partner.
 - b. Transfer of ownership of a sole proprietorship (any business owned by a single individual) includes transfer of title and property to another person.
 - c. Transfer of ownership of a corporation does not, in itself, include transfer of corporate stock or merger of one or more corporations with the licensee surviving. Transfer of ownership of a corporation includes consolidation of two or more corporations resulting in the creation of a new corporate entity and formation of a corporation from a partnership or a sole proprietorship.
 - d. Transfer of operating rights of the licensee includes a lease of the long-term care facility where the lessor retains no control of the operation or management of the long-term care facility and where the lessor is paid by a contract which specifies the amount of the payment.
 - e. Change in bed capacity.
 - f. Change in levels of long-term care services.
 - g. Change in name of long-term care facility.
 - h. Change of administrator.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-02. Governing body and management.

1. There must be a governing body which assumes overall responsibility for the operation of the long-term care facility and the governing body's responsibilities must be in

writing. The governing body is responsible for approval of effective resident care policies, administrative policies and bylaws governing the operation of the long-term care facility. The policies and bylaws must be in writing, dated, and made available to all members of the governing body. The governing body shall assure such policies and bylaws are operational and review and revise them as necessary.

- a. Resident care policies must reflect awareness of and provision for meeting the medical and psychosocial needs of residents including admission, transfer, and discharge, and the range of services provided by the long-term care facility including frequency of physician visits to residents. These policies must be developed by the medical director or organized medical staff with the advice of a designated resident care committee composed of professional personnel including at least one or more physicians and one or more registered professional nurses. These policies must show evidence of at least annual review by the designated resident care committee.
- b. Only those persons whose needs can be met within the accommodations and services provided by the long-term care facility or through services provided by other qualified professionals may be admitted and retained by the long-term care facility.
- c. If the long-term care facility does not employ a qualified professional to render a specific service to a resident, the long-term care facility shall make arrangements in the form of a written agreement to have such service provided by an outside resource - a person or agency that will render direct service to the residents or act as a consultant to the long-term care facility. The outside resource, when acting as consultant, shall apprise the administrator of recommendations, plans for implementation, and continuing assessment through dated, signed reports.
- d. As changes occur in the physical or mental condition of residents and appropriate services or care is not regularly provided by the long-term care facility, residents must be transferred to other appropriate facilities.
- e. The resident, the resident's designated representative, the attending physician, and the responsible agency, if any, must be consulted in advance of transfer or discharge of any resident. Following such consultation, the resident must be promptly transferred or discharged.

- f. There may be no mistreatment, neglect, or abuse of residents, and provision must be made for registration of complaints.
 - g. Visiting hours must be established to permit and encourage visiting by friends and relatives.
2. Information describing the care and services provided by the long-term care facility must be accurate and not misleading.
3. Contagious tuberculosis.
- a. The governing body must not employ or keep in active employment anyone with contagious tuberculosis.
 - b. A tuberculin skin test must be given as part of preemployment medical evaluation and the results documented in the long-term care facility. Exception: independent documentation of a previous significant tuberculin reaction is available in the long-term care facility.
 - c. If the risk of exposure to tuberculosis is small or infrequent, it is not necessary to repeat skin tests on a routine basis as defined by the long-term care facility.
 - d. Routine chest X-rays are not necessary.
 - e. Significant tuberculin reactors must have preemployment chest X-rays unless results of an earlier negative X-ray within a reasonable period of time, not to exceed six months, are documented in the long-term care facility.
 - f. Each long-term care facility shall tailor an individualized surveillance plan to detect clinical signs and symptoms of tuberculosis for the following:
 - (1) Infected employees who have not completed a course of preventative treatment.
 - (2) Infected employees who have completed a course of preventative treatment.
 - (3) Employees having completed treatment for active tuberculosis.
 - g. The governing body, with participation of the medical staff or medical director, shall establish a policy identifying which diagnostic procedures, in addition to those for tuberculosis, will be included in preemployment medical evaluations. The policy must include the interval of employee medical evaluations and a clinical

surveillance program for evidence of contagious diseases and infected skin lesions.

4. The following persons may not be admitted to long-term care facilities:
 - a. Obstetrical patients.
 - b. Contagious disease patients, unless the long-term care facility is capable of caring for contagious disease patients without endangering the health of other residents.
 - c. Acutely ill patients.
 - d. Acutely mentally ill patients.
 - e. Acute alcohol or drug addicts.
 - f. Developmentally disabled persons, unless the long-term care facility is capable of delivering services through an acceptable individual plan of care that responds to the developmentally disabled person's needs. These include, but are not limited to, medical, developmental, and behavioral needs.
5. The long-term care facility shall develop written policies and procedures with approval of the governing body. These policies and procedures must include:
 - a. Written personnel policies and procedures.
 - b. Written policies on orientation for all new employees which include review of personnel policies, resident care policies, emergency and disaster instructions, and the employee's position and duties. There must be written evidence all new employees have received orientation in accordance with the long-term care facility's written policies and procedures governing orientation.
 - c. There must be written job descriptions for personnel positions in all departments. Job descriptions must include definition of title, qualifications, duties, and responsibilities.
 - d. Performance evaluations are due at least on an annual basis.
6. An ongoing educational program must be planned and conducted for the development and improvement of staff skills for all of the long-term care facility's personnel including training related to the problems and needs of the aged, ill, and disabled. Inservice training must be conducted at least

monthly for all nursing and dietary staff and at least quarterly for all other personnel. On an annual basis, all employees shall receive inservice training in at least the following:

- a. Fire prevention and safety.
 - b. Accident prevention.
 - c. Prevention and control of infections.
 - d. Resident personal and property rights.
 - e. Confidentiality of resident information.
 - f. Open admission policy.
7. Records of inservice training must be maintained which list the content of and attendance at staff development programs.
 8. The governing body shall appoint a qualified administrator who is responsible for the management of the long-term care facility. The administrator shall hold a valid North Dakota nursing home administrator's license. The administrator's authority and responsibilities must be clearly delineated and include, but not be limited to:
 - a. Enforcement of policies and procedures relating to the level of health care and safety of residents and to the protection of their personal and property rights.
 - b. Through meetings and reports, shall maintain ongoing liaison with the governing body, medical and nursing staffs, and other professional and supervisory staff of the long-term care facility. At least monthly department head meetings must be held.
 9. In the absence of the administrator, an employee must be authorized in writing to act on behalf of the administrator.
 10. The long-term care facility shall provide an annual operating budget and a capital expenditure plan approved by the governing body.
 11. The governing body of a long-term care facility shall require that physicians visit residents as often as medically indicated and documented on the resident record. Visits must be at least every sixty days for the first six months and thereafter as deemed necessary and documented for residents requiring intermediate care. At no time may physician visits exceed six months. Residents requiring skilled care must be seen every thirty days for the first ninety days and thereafter as deemed necessary and documented. At no time may

the physician visits exceed ninety days. Residents receiving services through medicare and medicaid programs must be seen as frequently as prescribed by the federal regulations.

12. The governing body is responsible for implementing a procedure whereby an ongoing evaluation of level of care required by all residents in a skilled nursing facility or intermediate care facility is made part of the records and must be available to the department.
 - a. Classification of each resident as to level of care required is essential for proper placement or retention of the resident and optimum utilization of beds. Staffing must meet the needs of the residents.
 - b. The governing body of a long-term care facility shall provide the highest level of care for which the long-term care facility is licensed and may provide lower levels of care as needed by the residents in its community, e.g., a licensed skilled nursing facility shall provide for skilled nursing level of care and may provide lower levels of care to its residents; however, it may not provide a higher level of care. A licensed intermediate care facility shall provide for intermediate level of care and may provide lower levels of care to its residents; however, it may not provide a higher level of care.
13. A licensed long-term care facility may not discriminate in its admission or retention policies against residents because of race, color, creed, or national origin. Long-term care facilities may not discriminate in their admission or retention policies against residents because of eligibility of benefits. A notice to this effect must be posted.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-03. Residents under physician's care.

1. The governing body is responsible for establishing a policy which requires that every resident in a long-term care facility must be under the supervision of a licensed physician. No person may be admitted to a licensed facility except by the order and under the care of a physician.
2. Prior to or at the time of admission, resident information which includes current medical findings, diagnosis, and orders from a physician for immediate care of the resident must be available to the long-term care facility.

3. The physician shall provide other pertinent information including family history, past medical history, rehabilitation potential, and prognosis within forty-eight hours of admission.
4. The physician shall perform a physical examination of the resident within forty-eight hours of admission unless such examination was performed within five days prior to admission.
5. Progress notes must be written and signed by the physician at the time of each visit, and all orders must be signed by the physician.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-04. Medical staff.

1. The skilled nursing facility shall have a medical director on a part-time or full-time basis, or shall have a medical staff organized under bylaws and rules approved by the governing body, and is responsible to the governing body. The medical director/medical staff is responsible for the quality of all medical care provided residents and for the ethical and professional practices of its members.
2. The duties and responsibilities of the medical director/medical staff must be delineated in a formal agreement with the governing body.
3. The medical director/medical staff is responsible for the development of written bylaws, rules, and regulations which are acceptable to the administrator and approved by the governing body, which delineate the responsibilities of attending physicians and physicians' extenders including, but not limited to, physician assistants and nurse practitioners.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-05. Nursing department.

1. Director of nursing service.
 - a. The director of nursing service must be a registered professional nurse, employed full time during the day, responsible for the nursing service of the long-term care facility.

- b. The director of nursing service must be experienced or trained in areas such as nursing service administration, rehabilitative nursing, psychiatric nursing, or geriatric nursing.
2. The director of nursing service is responsible for the following:
- a. Develop and maintain nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel.
 - b. Recommend to the administrator the number and levels of nursing personnel to be employed, participate in their recruitment and selection, and recommend termination of employment when necessary.
 - c. Assign and supervise all levels of nursing personnel, and is responsible for establishing a staffing pattern from which the work schedules are developed.
 - d. Participate in planning and budgeting for nursing care.
 - e. Participate in the development and implementation of resident care policies and bring resident care problems requiring changes in policy to the attention of the administrator and to the professional policy advisory group or groups.
 - f. Coordinate nursing services with other resident care services such as physician, physical therapy, occupational therapy, and dietary.
 - g. Participate in the selection of prospective residents in terms of nursing services they need and nursing competencies available.
 - h. Identify and make known to all nursing personnel nursing service goals. Written administrative and nursing care policies must be developed to guide the nursing care program toward these goals through realistic and attainable objectives. Nursing care policies and procedures must be consistent with professionally recognized standards of nursing practice. They must be developed on the basis of current scientific knowledge and must take into account new equipment and current practice. Policies must include statements relating to at least the following:
 - (1) Noting physician's orders.
 - (2) Assigning the nursing care of residents.

- (3) Assigning nursing personnel.
 - (4) Medication administration.
 - (5) Charting by nursing personnel.
 - (6) Infection control in conjunction with the infection control committee.
 - (7) Resident safety.
- i. Make available written copies of the procedure manual to the nursing staff in every nursing care unit and service area and to other services and departments of the long-term care facility. The nursing procedure manual should be used:
- (1) As a basis for training programs to enable new nursing personnel to acquire local knowledge and current skills.
 - (2) To provide a ready reference on procedures for all nursing personnel.
 - (3) To standardize procedures and equipment.
 - (4) To provide a basis for evaluation and study to ensure continued improvements in techniques.
- j. Develop, review, and revise annually the nursing policies and procedures by nursing representatives in cooperation with appropriate representatives from administration, the medical staff, and such other home services or departments as are concerned. They must be dated and signed to indicate the time of the most recent review. All pen and pencil changes must be dated with the date the change or revision was made and initialed by the director of nursing service.
- k. Assure that a resident care plan is established for each resident.
3. The director of nursing service may not serve as a charge nurse in a long-term care facility of sixty or more beds.
 4. If the director of nursing service has other duties, an assistant must be assigned.
 5. If the director of nursing service is in charge of a combined facility (acute and long-term care), there must be a registered professional nurse assigned to the skilled nursing facility or unit, or both, during the day tour of duty and

there there must be a licensed nurse assigned to the intermediate care facility during the day tour of duty.

6. Nursing coverage. The governing body shall establish and implement procedures which will assure the resident that adequate nursing care is provided by the long-term care facility. The department, through its surveys of the long-term care facility or through other means, shall make the determination of adequate licensed nurse coverage on each floor or unit, or both, consistent with the needs of the residents. The long-term care facility's health care and related services must be under the supervision of a sufficient number of staff members on duty qualified by training and experience to assure prompt, appropriate action in cases of injury, illness, fire, or other emergencies.
 - a. In the presence of minor illness and for temporary periods, bedside care under the direction of a resident's physician must be provided by a licensed professional nurse or licensed practical nurse so that all resident's health needs are met and each resident receives treatments, medications, diet, and other health services as prescribed and planned, all hours of each day and all days of each week.
 - b. Nursing personnel include registered nurses, licensed practical nurses, aides, and orderlies. The number of additional attendants required must be determined by the department and must be sufficient to properly care for the resident, consistent with the program offered. Nursing personnel may not be assigned housekeeping duties.
 - c. Skilled nursing facility.
 - (1) The skilled nursing facility shall provide twenty-four-hour-a-day licensed nurse coverage, on all shifts, seven days per week, to meet the nursing needs of all residents.
 - (2) There must be at least one registered nurse on duty, seven days a week, during the day shift, but the number of nurses it must have will be dependent upon the type and level of nursing care required by the residents.
 - (3) A registered nurse or a qualified licensed practical nurse must be designated as charge nurse by the director of nursing service for each shift; the charge nurse is responsible for supervision of the total nursing activities in the skilled nursing facility during the charge nurse's shift.
 - d. Intermediate care facility.

- (1) There must be at least one licensed nurse on duty during the day shift, seven days per week, but the number of nurses it must have will be dependent upon the type and level of nursing care required by the residents.
 - (2) Residents accepted by an intermediate care facility or an intermediate care unit may not require twenty-four-hour licensed nursing care.
7. In the case of a long-term care facility which is part of or attached to a hospital, there must be separate licensed nurse coverage for long-term care and for acute care.
8. Restorative nursing care. The long-term care facility is responsible to see that there is an active program of restorative nursing care directed toward assisting each resident to achieve and maintain the resident's highest level of self-care and independence. The long-term care facility shall establish and implement policies which assure the resident that:
- a. Restorative nursing care initiated in the hospital is continued immediately upon admission to the long-term care facility.
 - b. Nursing personnel are taught restorative nursing measures and practice them in their daily care of residents. These measures include:
 - (1) Maintaining good body alignment and proper positioning of bedfast resident.
 - (2) Assisting bedfast residents in changing positions at frequent intervals to prevent decubiti and deformities.
 - (3) Making every effort to keep residents active and out of bed for reasonable periods of time except when contraindicated by physician's orders, and encouraging residents to achieve independence in activities of daily living (such as feeding, dressing, grooming, oral hygiene, and toilet activities) by teaching self-care, transfer, and ambulation activities.
 - (4) Assisting residents to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary.
 - (5) Assisting residents to carry out prescribed physical therapy exercises between visits of the physical therapist.

9. Dietary supervision. The governing body shall adopt procedures that assure that nursing personnel are aware of the dietary needs and food and fluid intake of residents. Good dietary supervision consists of:
 - a. Nursing personnel observing that residents are served diets as prescribed.
 - b. Residents needing help in eating are given needed assistance promptly upon receipt of meals.
 - c. Adaptive self-help devices are provided to contribute to the resident's independence in eating.
 - d. Food and fluid intake of residents are observed and deviations from normal are reported to the charge nurse. Persistent unresolved problems must be reported to the physician.
10. Resident care plan.
 - a. In coordination with the other resident care services to be provided, a written resident care plan for each resident must be developed and maintained consistent with the attending physician's plan of medical care, and must be implemented upon admission. A written assessment by each discipline must be available in the resident's record before the initial care plan conference. The initial care plan must be developed within seven days of admission.
 - b. The plan must indicate care to be given, level of care and rationale for the level of care, goals to be accomplished, and which professional service is responsible for each element of care. Goals must be measurable, behavior oriented, time-limited, and achievable.
 - c. The resident care plan must be reviewed, evaluated, and updated as necessary by all professional personnel involved in the care of the resident. Plans must be reviewed and updated within thirty days of the development of the initial care plan and every ninety days thereafter.
 - d. Relevant nursing information from the resident plan is included with other medical information when residents are transferred.
 - e. For private pay residents, if any differences arise as to the level of care determination between the long-term care facility and the department representatives, the department will make the level of care determination.
11. Inservice educational programs. The long-term care facility shall establish and implement procedures which will assure

that there shall be continuing inservice educational programs in effect for all nursing personnel in addition to a thorough job orientation for new personnel. Each long-term care facility shall have an oriented procedural program for all new employees.

- a. Planned inservice programs must be conducted at least monthly for all nursing personnel. Summary of content and attendance must be recorded.
- b. All resident care personnel must be instructed and supervised in the care of emotionally disturbed and confused residents, and should be helped to understand the social aspects of resident care.
- c. Skill training includes demonstration, practice, and supervision of simple nursing procedures applicable in the individual long-term care facility. It also includes simple restorative nursing procedures.
- d. Orientation of new personnel must include a review of the procedures to be followed in emergencies.
- e. Opportunities must be provided for nursing personnel to attend training programs related to the care of long-term care residents.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-06. Dietary department.

1. A full-time qualified dietetic service supervisor must be designated by the administrator to be responsible for the total food service of the long-term care facility.
 - a. A qualified dietetic service supervisor:
 - (1) Is a qualified dietitian;
 - (2) Is a graduate of a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American dietetic association;
 - (3) Is a graduate of a state-approved course that provides ninety or more hours of classroom instruction in food service supervision in a health care institution with consultation from a dietitian; or

- (4) Has training and experience in the food service supervision and management in a military service equivalent in content to the program described in paragraph 2 or 3.
- b. If the dietetic service supervisor is not a qualified dietitian, regularly scheduled consultation from a qualified consultant dietitian must be obtained. A qualified consultant dietitian is one who:
- (1) Is eligible for registration in the American dietetic association; or
 - (2) Has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management, has one year of supervisory experience in the dietetic service of a health care institution, and participates annually in continuing dietetic education.
- c. The qualified dietitian or qualified consultant dietitian is responsible for:
- (1) Providing continuing liaison with medical and nursing staffs.
 - (2) Providing advice to the administrator.
 - (3) Counseling residents.
 - (4) Providing guidance to the supervisor of the dietetic service.
 - (5) Approving all menus, regular and therapeutic.
 - (6) Assisting with the development and annual review or revision of dietetic policies and procedures.
 - (7) Planning and conducting monthly inservice education programs, to include sanitation, personal grooming, kitchen safety, and diet modifications.
 - (8) Advising the dietetic service supervisor on the development of nutritional assessments and nutritional care plans (see subsection 10 of section 33-07-03.1-05).
- d. The dietetic service supervisor may also cook, provided sufficient time is allowed for managerial duties.
2. Adequacy of diet staff. The long-term care facility shall employ food service personnel and shall schedule their working hours so as to meet the dietary needs of the residents.

- a. There must be sufficient food service employees competent to carry out the functions of the dietetic service on duty over a period of twelve or more hours.
 - b. Food service employees must be trained to perform assigned duties and participate in selected inservice education programs.
 - c. In the event food service employees are assigned duties outside the dietary department, these duties must not interfere with the sanitation, safety, or time required for dietary work assignments.
 - d. Work assignments and duty schedules for dietary personnel must be posted in an appropriate place in the dietary department.
3. Hygiene of diet staff. Food service personnel and all personnel actively engaged in assisting residents with eating must be in good health and practice hygienic food handling techniques.
 - a. Food service personnel shall wear clean washable garments, and hairnets or clean caps that effectively restrain the hair. Hands and fingernails must be clean at all times.
 - b. Personnel having symptoms of communicable diseases or open infected wounds must not be permitted to work.
 - c. Food service personnel shall practice recognized hygienic food handling techniques in accordance with food handling practices in keeping with the food service sanitation manual.
 4. Adequacy of diet. The menus must be planned and followed to meet nutritional needs of residents in accordance with physician's orders and, to the extent medically possible, in accordance with the recommended dietary allowances of the food and nutrition board of the national research council - national academy of sciences.
 5. Therapeutic diets. Therapeutic diets must be prescribed by the attending physician. Therapeutic menus must be planned in writing, and served as ordered, with supervision or consultation from the dietitian and advice from the physician whenever necessary. A current diet manual must be readily available.
 6. Frequency of meals. At least three meals or their equivalent must be served daily, at regular times, with not more than a fourteen-hour span between a substantial evening meal and breakfast. A substantial evening meal is an offering of three or more menu items at one time, one of which includes a high

quality protein such as meat, fish, egg, or cheese. The meal must contain no less than twenty percent of the day's total nutritional requirements.

7. Planning of menus. Menus must be planned for all prescribed diets in advance and food sufficient to meet the nutrition needs of residents must be prepared as planned for each meal. When changes in the menu are necessary, substitutions must provide equal nutritive value. The change and the reason for the change must be noted in writing.
 - a. Menus must be written at least one week in advance. The current week's menus must be in one or more accessible places in the dietary department for easy use by personnel, purchasing, preparing, and serving foods.
 - b. Records of menus as served must be filed and maintained for thirty days.
 - c. A week's supply of food must be maintained on the premises.
 - d. Records of food purchased for preparation must be on file.
 - e. Menus must be adjusted to include seasonal foods.
8. Preparation of food. Foods must be prepared by methods that conserve nutritive value, flavor, and appearance, and must be attractively served at the proper temperatures and in a form to meet individual needs.
 - a. Food must be cut, chopped, or ground to meet the individual needs.
 - b. If a resident refuses foods served, substitutes of equal nutritive value must be offered.
 - c. Equipment must be provided and procedures established to maintain food above one hundred forty degrees Fahrenheit [60 degrees Celsius] during dishing. The food on the last tray served must be no less than one hundred twenty degrees Fahrenheit [48.89 degrees Celsius].
 - d. Table service must be provided for all who can and will eat at a table including wheelchair residents.
 - e. Trays provided bedfast residents must rest on firm supports such as overbed tables. Sturdy tray stands of proper height must be provided residents able to be out of bed.
9. Food service sanitation.

- a. Facilities must be provided for the general dietary needs of the residents and staff, and for the maintenance of sanitary conditions in the storage, preparation, service, and distribution of food.
- b. When food is provided by an outside source, the long-term care facility shall ensure that all federal, state, and local requirements are met.
- c. Dry or staple food items must be stored a minimum of twelve inches [304.80 millimeters] off of the floor in a ventilated room which is free of sewage or wastewater backflow or contamination by condensation, leakage, rodents or vermin, and separate from cleaning supplies.
- d. Effective procedures for cleaning all equipment and work areas must be developed and followed consistently.
- e. Dishwashing procedures and techniques must be carried out in compliance with state and local health codes.
- f. Waste which is not disposed of by mechanical means must be kept in leakproof nonabsorbent containers with close-fitting covers and must be disposed of daily in a manner that will prevent transmission of disease, a nuisance, a breeding place for flies, or a feeding place for rodents. Containers must be thoroughly cleaned inside and out each time they are emptied.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-07. Clinical records.

1. **Record procedures.** The governing body of the long-term care facility shall establish and implement procedures to ensure that a clinical record is maintained for each resident admitted, in accordance with accepted professional principles.
2. **Maintenance of clinical record.** The long-term care facility shall maintain a separate clinical record for each resident admitted with all entries kept current, dated, and signed. The record must include:
 - a. Identification and summary sheet or sheets including resident's name, social security number, marital status, age, sex, home address, and religion; names, addresses, and telephone numbers of referral agency (including hospital from which admitted), personal physician, dentist, and designated representative or other

responsible person; admitting, diagnosis, final diagnosis, conditions on discharge, and disposition.

- b. Initial medical evaluation including medical history, physical examination, diagnosis, and estimation of restoration potential. Physical examinations must be performed within five days prior to admission or within forty-eight hours after admission.
 - c. Authentication of hospital diagnosis, in the form of a hospital summary discharge sheet, a report from the physician who attended the resident in the hospital, or a transfer form used under a transfer agreement.
 - d. Physician's orders, including all medication, treatments, diet, restorative, and special medical procedures required for the safety and well-being of the resident.
 - e. Physician's progress notes describing significant changes in the resident's condition, written at the time of each visit.
 - f. Nurse's notes containing observations made by the nursing personnel.
 - g. Medication and treatment records including all medications, treatments, and special procedures performed for the safety and well-being of the resident.
 - h. Laboratory and X-ray report.
 - i. Consultation reports.
 - j. Dental reports.
 - k. Social service notes.
 - l. Resident care referral reports.
3. **Retention of records.** All clinical records of discharged residents must be preserved either in the original or any other method of preservation, such as by microfilm, for a period of ten years from date of discharge. Clinical records of deceased residents may be destroyed seven years following the date of death. In the case of minors, clinical records must be retained for the period of minority and ten years from the date of live discharge. It is the governing body's responsibility to determine which record has a research, legal, or medical value and to preserve such records beyond the ten-year requirement until such time in the governing body's determination the record no longer has a research, legal, or medical value.

4. **Confidentiality of records.** All information contained in the clinical records must be treated as confidential and may be disclosed only to authorized persons.
5. **Staff responsibility for records.** If the long-term care facility does not have a full-time or part-time accredited record technician or registered record administrator, an employee of the long-term care facility must be assigned the responsibility for assuring that records are maintained, completed, and preserved. The designated individual must be trained in keeping with the needs of the long-term care facility, and receive consultation at least annually from an accredited record technician or registered record administrator.
6. **Access to records.** Residents have the right to view and authorize release of their medical information. The long-term care facility shall develop policies which address access to clinical record information.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-08. Pharmaceutical services.

1. **Procedures for administration of pharmaceutical services.** The long-term care facility shall provide methods and procedures regarding drugs and biologicals in accordance with accepted professional practices.
2. **Conformance with physician's orders.**
 - a. All medications administered to residents must be ordered in writing by the resident's physician.
 - b. In case of emergencies, oral orders may be given only to licensed nursing personnel, immediately reduced in writing, signed by the nurse, and countersigned by the physician within forty-eight hours upon availability of the physician.
 - c. Verbal orders given in a long-term care facility where the availability of the physician is not likely within forty-eight hours for the physician's signature must be confirmed by the physician, giving the order in writing by letter, telegram, or other communication's media.
 - d. Medications not specifically limited as to time or number of doses, when ordered, must be automatically stopped in accordance with a written policy approved by the physician

or physicians responsible for advising the long-term care facility on its medical administrative policies.

- e. The resident's attending physician must be notified of stop order policies and contacted promptly for a decision concerning renewal of such orders so that continuity of the resident's therapeutic regimen is not inadvertently interrupted.
 - f. A pharmacist and a registered nurse shall review each resident's medications monthly and report any discrepancies to the resident's attending physician.
3. **Administration of medications.** All medications must be administered by licensed medical or nursing personnel in accordance with the medical and nurse practice procedures of this state. Each dose administered must be properly recorded in the clinical record.
4. **Labeling and storing medications.**
- a. Residents' medications must be properly labeled and stored in a locked cabinet or in a lockable medication room near the nurses' station.
 - b. Separately locked, securely fastened boxes (or drawers) within the medicine cabinet must be provided for storage of narcotics, barbiturates, amphetamines, and other dangerous drugs.
 - c. Cabinets must be well lighted and of sufficient size to permit storage without crowding.
 - d. Medications requiring refrigeration must be kept in a separate refrigerator in a lockable medication room near the nurses' station.
 - e. Poisons and medications for "external use only" must be kept in a locked cabinet and separate from other medications.
 - f. Medications no longer in use must be disposed of or destroyed in accordance with federal and state laws and rules.
 - g. Medications having an expiration date must be removed from use and properly disposed of after such date.
5. **Control of narcotics, etc.** The long-term care facility shall comply with all federal and state laws and rules relating to the procurement, storage, dispensing, administration, and disposal of narcotics.

History: Effective December 1, 1986.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-09. Diagnostic services. The long-term care facility shall have arrangements for obtaining diagnostic services consistent with the needs of the resident.

History: Effective December 1, 1986.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-10. Social services. The governing body shall provide, or arrange for, social services consistent with the needs of the residents.

1. The long-term care facility shall provide for, or arrange, for, social services to address the psychosocial needs of each resident.
2. The long-term care facility shall have clearly defined plans, policies, and procedures for the delivery of social services to address the psychosocial needs of residents.
3. If the long-term care facility has arrangements for the provision of social services, there must be a contract describing such arrangements, including:
 - a. Identification of the agency or individuals responsible for the provision of social services.
 - b. The types of social services to be provided.
 - c. When and how social services are to be provides.
 - d. Financial terms of the arrangements (cost of services and reimbursement procedure).
 - e. Method of accountability to the long-term care facility. All referrals from the long-term facility to social service resources, agencies, or individuals must be documented.
4. The long-term care facility shall provide for initial and ongoing assessments to include: social history and information gathering, personal observation of the resident's psychosocial needs, and psychological assessment when appropriate. Initial assessments must be in the resident's medical record within seven days of admission. Ongoing assessments must be provided as the resident's needs occur, but at least quarterly.

5. The long-term care facility shall have a designated staff member, trained in the assessment of residents' psychosocial needs, and in the provision of services to meet these needs. If the designee is not a qualified social worker as defined in North Dakota Century Code chapter 43-41, the designee shall receive consultation from a qualified social worker on a routine basis, depending on the quality of the social service program.
6. The long-term care facility shall provide staff with inservice and continuing education on the psychosocial needs of residents.
7. Policies and procedures must be established for ensuring the confidentiality of the residents' psychosocial information.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-11. Specialized rehabilitative services. The governing body shall establish and implement procedures whereby the long-term care facility is assured that these services are provided only upon a written order of a physician who shall indicate anticipated goals and be responsible for the general medical direction of such services as part of the total care of the resident.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-12. Resident activities.

1. The governing body shall employ personnel who will provide therapeutic and leisure time activities suited to the needs and interests of residents as an important adjunct to the active treatment program and encourage restoration to self-care and resumption of normal activities.
2. The long-term care facility shall provide an ongoing program of meaningful, stimulating, therapeutic, and leisure time activities that are suited to the needs and interests of each resident.
3. The long-term care facility shall employ a full-time qualified resident activities coordinator who is responsible for the direction and supervision of the activities program. A qualified resident activities coordinator is a person who:
 - a. Is a qualified therapeutic recreation specialist who is eligible for registration as a therapeutic recreation

- specialist by the national therapeutic recreation society (branch of national recreation and park association) under its requirements;
- b. Is a qualified occupational therapist as defined in North Dakota Century Code chapter 43-40 or certified occupational therapist assistant; or
 - c. Has at least two years' experience in a social or recreational program within the last five years, one year of which was full time in a patient activities program in a health care setting.
4. If the long-term care facility does not employ a qualified resident activities coordinator, it functions with frequent, regularly scheduled consultation from a qualified activities consultant. A qualified resident activities consultant is a person who:
 - a. Is an occupational therapist;
 - b. Is a therapeutic recreation specialist;
 - c. Is a certified occupational therapist assistant or a person who has a minimum of two years of continuous full-time experience as a resident activities coordinator within the last five years; or
 - d. Is an individual that has equivalent education and experience such as above, and who has been determined to be qualified by the department.
 5. Each resident's program must be approved in accordance with instructions of the attending or staff physician.
 6. An initial assessment of the interests and social activities of each resident must be developed within seven days of admission.
 7. The activity plan must be coordinated with the resident's overall plan of care and must be reviewed with the resident's participation, at least every ninety days, and altered as needed.
 8. Observations must be recorded as necessary, but at least every ninety days, and must be retained in the resident's medical record.
 9. Residents must be encouraged, but not forced, to participate in activities in designated areas.
 10. Residents who are able and who wish to do so must be assisted in attending religious services.

11. Residents' requests to see their clergymen will be honored and space must be provided for privacy during these visits.
12. There must be a minimum of one activity employee hour per week per licensed bed (occupied), but not less than one full-time activity employee. Volunteers may be used to assist, but not to replace required paid staff.
13. There must be adequate equipment and material to support independent and group activities.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-13. Sanitary environment.

1. The long-term care facility shall provide a sanitary environment to avoid sources and transmission of infections.
2. An infection control committee, composed of, but not limited to, representatives of administration, the nursing staff, dietary, housekeeping, laundry, maintenance, and pharmacy, with advice from a physician, must be established and is responsible for investigating, controlling, and preventing infections in the long-term care facility.
3. There must be written procedures governing the use of aseptic techniques and procedures in all areas of the long-term care facility.
4. To keep infections at a minimum, such procedures and techniques must be regularly reviewed by the infection control committee, particularly those concerning food handling, laundry practices, disposal of environmental and patient wastes, traffic control and visiting rules in high-risk areas, sources of air pollution, and routine culturing of autoclaves where appropriate.
5. Standard methods of control used in relation to the sterilization of supplies and water must be employed including a written policy requiring sterile supplies to be reprocessed at specified time intervals.
6. Formal provisions must be made to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing and scrubbing practices, proper grooming, masking and dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of resident care equipment and supplies.

7. Continuing education must be provided to all long-term care facility personnel on the cause, effect, transmission, prevention, and elimination of infections.
8. A continuing process must be enforced for inspection and reporting of any employee with an infection who may be in contact with residents, their food, or laundry.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-01-03, 23-16-01

33-07-03.1-14. Housekeeping services.

1. It is the responsibility of the long-term care facility to provide the housekeeping and maintenance services necessary to maintain a sanitary and comfortable environment.
2. The long-term care facility shall provide sufficient housekeeping and maintenance personnel to maintain the interior and exterior of the long-term care facility in a safe, clean, orderly, and attractive manner. The governing body shall establish and implement procedures whereby:
 - a. Housekeeping personnel shall use accepted practices and procedures to keep the long-term care facility free from offensive odors, accumulations of dirt, rubbish, dust, and safety hazards.
 - b. Floors must be cleaned. Polishes on floors must provide a nonslip finish. Throw or scatter rugs may not be used except for nonslip entrance mats.
 - c. Walls and ceilings must be maintained free from cracks and must be cleaned and painted regularly.
 - d. Deodorizers may not be used to cover up odors caused by insanitary conditions or poor housekeeping practices.
 - e. Storage areas, attics, and cellars must be kept safe and free from accumulations of materials such as refuse, discarded furniture, and old newspapers. Combustibles such as cleaning rags and compounds must be kept in closed metal containers.
 - f. The grounds must be kept free from refuse and litter. Areas around buildings, sidewalks, gardens, and patios must be kept clear of dense undergrowth.
3. The governing body shall require that the long-term care facility is maintained free from insects and rodents and that:

- a. A pest control program is in operation in the long-term care facility. Pest control services may be provided by maintenance personnel of the long-term care facility or by contract with a pest control company. Care is taken to use the least toxic and least flammable effective insecticides and rodenticides. These compounds must be stored in nonresident areas and in nonfood preparation and storage areas. Poisons must be under lock-in cabinets provided for this purpose.
- b. Windows and doors are appropriately screened to exclude insects.
- c. Harborages and entrances for insects and rodents are eliminated.
- d. Garbage and trash are stored in areas separate from those used for the preparation and storage of food and are removed from the premises in conformance with local practices but not less than twice a week in winter and three times a week during the summer. Containers are to be kept cleaned.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-15. Laundry services.

1. If the laundry is done within the long-term care facility, the governing body shall establish and implement proper provision for spacing, sizing, and placing of equipment to assure satisfactory service to meet the demands of the resident load, proper flow, and separation of soiled and clean linen.
2. Depending on the plan of equipment purchase, whether through contract on the open market, the owner, architect, or equipment supplier shall prepare a laundry layout showing location, sizes, and models of equipment in order to properly correlate space and equipment requirements. This layout must detail connections, etc., and must be submitted to the department for prior review and approval in accordance with North Dakota Century Code section 23-16-12.
3. When an outside laundry is used, it is the responsibility of the long-term care facility to determine that work is done in accordance with approved standards.
4. Laundry that has been used on isolation cases, or in suspect cases, must be handled with due respect for the hazards involved.

5. The governing body shall establish and implement procedures whereby the long-term care facility has available at all times a quantity of linen essential for the proper care and comfort of residents and that linens are handled, stored, and processed so as to control the spread of infection.
 - a. The linen supply must be at least three times the usual occupancy.
 - b. Clean linen and clothing must be stored in clean, dry, and dust-free areas easily accessible.
 - c. Soiled linen must be sorted and stored in well-ventilated areas, separate from other laundry spaces, and must not be permitted to accumulate. Soiled linen and clothing must be stored separately in suitable bags or containers. Contaminated and potentially infectious soiled linen must be handled with particular attention to avoid contamination of clean linen.
 - d. Soiled linen may not be sorted, laundered, rinsed, or stored in bathrooms, residents' rooms, kitchens, or food storage areas.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-16. Disaster plan. The long-term care facility shall have a written procedure to be followed in case of fire, explosion, or other emergency. It must specify persons to be notified, locations of alarm signals, and fire extinguishers, evacuation routes, procedures for evacuating helpless residents, frequency of fire drills (not less than four fire drills per year for each shift) and assignment of specific tasks and responsibilities to the personnel of each shift. The plan must be developed with the assistance of qualified fire and safety experts.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-17. Adult day care. Adult day care is the provision of daytime services to participants who return to their own home each night. Use of existing space and equipment to deliver adult day care services is acceptable provided services to the residents of the long-term care facility are not diminished, and their needs are being acceptably addressed.

1. Any long-term care facility that accepts persons for day care shall develop a policy/procedure manual for this program that covers all aspects of care.
2. The long-term care facility shall provide dining space for congregate dining of day care participants in addition to space required under section 33-07-04.1-07.
3. The long-term care facility shall provide activity and crafts space in addition to space required under section 33-07-04.1-07.
4. Services provided to day care participants may not diminish the services provided to the long-term care residents. The long-term care facility shall maintain a record indicating the amount of personnel time that is utilized in support of the day care program.
5. Medications and treatments may be provided only by order of a physician, and records must be maintained of services provided to individual day care participants.
6. An area allowing privacy for day care participants must be developed to allow for rest periods. Any furniture utilized to allow day care participants the opportunity to rest may not be used for overnight stays.
7. Any day care participants having a communicable disease may not participate in the day care program. (See subsection 4 of section 33-07-03.1-02.)
8. Any long-term care provider seeking to develop a day care service shall contact the department and receive advance approval as a condition of licensure.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-18. Respite care. A short-term placement to a long-term care facility utilizing a licensed bed for the purpose of providing temporary relief for the caregiver.

1. The admission process for an individual receiving respite care shall include, as a minimum, the following:
 - a. The name of the individual's physician.
 - b. A recent statement governing the individual's health status by the person's physician.

- c. Admission physician orders for any special diet, treatment, or medication the individual is receiving.
 - d. A medical chart must be established to record progress and treatments provided for the person receiving respite care.
2. A person seeking respite care must be admitted to a licensed bed within the long-term care facility.
 3. The long-term care facility shall develop an administrative policy and procedure manual governing respite care program.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-03.1-19. Emanating services. It is the governing body's responsibility to manage the services provided by the long-term care facility to persons occupying facilities not subject to licensure by the department.

1. Institution policies. It is the responsibility of the governing body to establish, implement, and maintain policies and written procedures acceptable to the department in regard to admissions, transfers, and discharge. When it appears care of long-term care residents is compromised because of staff time devoted to care in facilities not subject to licensure by the department, the department may require the long-term care facility to report such time in the form and frequency determined by the department.
2. Policies and procedures must be prepared by the applicant prior to the institution of emanating services so that the department can judge what impact, if any, the emanating services will have on the licensed long-term care facility.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-06, 28-32-02

33-07-03.1-20. Waiver provision. Rules promulgated pursuant to North Dakota Century Code chapter 23-16 may be waived by the state health council for a specified period in specific instances, provided such a waiver does not adversely affect the health and safety of the residents and would result in unreasonable hardship upon the long-term care facility.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

CHAPTER 33-07-04.1
GENERAL STANDARDS OF CONSTRUCTION AND
EQUIPMENT FOR LONG-TERM CARE FACILITIES

Section	
33-07-04.1-01	Site
33-07-04.1-02	Emanating Services
33-07-04.1-03	Equipment
33-07-04.1-04	Plans and Specifications
33-07-04.1-05	Codes and Standards
33-07-04.1-06	Nursing Unit
33-07-04.1-07	Dining and Recreation Areas
33-07-04.1-08	Therapy Units
33-07-04.1-09	Physical Restoration Room
33-07-04.1-10	Dietary Department
33-07-04.1-11	Administration Department
33-07-04.1-12	Laundry
33-07-04.1-13	Central Storage Rooms
33-07-04.1-14	Locker Rooms
33-07-04.1-15	Engineering Service and Equipment Areas
33-07-04.1-16	Details and Finishes
33-07-04.1-17	Elevators
33-07-04.1-18	Mechanical Requirements
33-07-04.1-19	Electrical Requirements

33-07-04.1-01. Site.

1. The site must be away from nuisances detrimental to the proposed project's program, such as commercial or industrial developments, or other types of facilities that produce noise or air pollution. A site plan must be submitted to the department.
2. The site of any medical facilities must be conveniently accessible to the community and to service vehicles such as fire protection apparatus.
3. Facilities must be located with due regard to access by public and private transportation.
4. Paved roads must be provided within the lot for access to all entrances, including loading and unloading docks for delivery trucks. Paved walkways must be provided for pedestrian traffic.
5. In the absence of a formal parking study, facilities designed after December 1, 1986, shall provide at least one space for each employee normally present during the day shift plus one space for every five beds. Consideration must be given to the availability of public transportation and public parking.

History: Effective December 1, 1986.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-02. Emanating services.

1. Facilities not licensed by the department and constructed on the site of and with the intention of receiving services from the long-term care facility must be arranged to minimize fire exposure to the long-term care facility. Sufficient information on the design of the facility not licensed by the department must be submitted so the department can determine that the safety from fire and the adequacy of the spaces and services of the long-term care facility are not compromised.
2. If adequate service space, i.e., dining, recreation, etc., exist in the long-term care facility, occupants of facilities not licensed by the department are urged to utilize such service space. If such adequate service spaces do not exist, facilities not licensed by the department must provide their own adequate space pursuant to the needs of the occupants and acceptable to their licensing authority, if any.

History: Effective December 1, 1986.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-01-03, 23-16-06

33-07-04.1-03. Equipment. The sponsor shall provide all equipment necessary for the operation of the facility as planned.

History: Effective December 1, 1986.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-04. Plans and specifications.

1. All construction, remodeling, and installation must be in accordance with the final completed plans and specifications as approved by the department. Modifications in or deviations from the approved plans and specifications must be preceded by change orders submitted to and approved by the department prior to making the construction or installation changes in compliance with North Dakota Century Code chapter 23-16.
2. Authorized representatives of the department may make inspections of health facility construction, installations, or remodeling and arrange conferences with the responsible owner and consultant to help assure conformance with approved plans and specifications.

3. The sponsor shall submit plans and specifications to the department for all construction, remodeling, and installations prior to construction or installation start. Preliminary plans, when prepared, must be submitted to the department for review. Plans for projects must be prepared by an architect or engineer, as appropriate, licensed in North Dakota.
4. Fast-tracking, which is defined as the start of construction prior to the completion and approval of construction documents, is not permitted.
5. The construction specifications shall require any contractor to perform tests to assure systems conform to plans and specification requirements.
6. Upon completion of the contract, the owner must be provided with a bound volume, containing operating instructions, manufacturer's catalog numbers, description, and parts lists for each piece of equipment.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-05. Codes and standards.

1. Long-term care facilities must be constructed to comply with:
 - a. This chapter.
 - b. The 1981 revision of the life safety code of the national fire protection association (NFPA 101-1981). However, existing long-term care facilities which, on December 1, 1986, comply with an earlier revision of the life safety code are deemed to meet this rule as long as compliance with the earlier revision is maintained. Exception: additions and remodeling must comply with national fire protection association 101-1981.
 - c. North Dakota Century Code section 48-02-19 which relates to facilities accessible to and usable by the physically handicapped.
 - d. Nothing stated herein relieves the sponsor from compliance with building codes, ordinances, and rules which are enforced by city, county, or state jurisdictions. NOTE: For the convenience of sponsors and designers some additional, but not necessarily all applicable, codes and rules are identified in other sections.
2. All long-term care facilities shall contain all the elements described herein and must be built in accordance with the

construction and requirements outlined. Elements that are available through proper affiliation with adjacent facilities need not be duplicated in the long-term care facility.

3. When long-term care facility licensing rules are amended, all affected facilities are to comply, within a reasonable time, with chapter 33-07-03.1 which relates to the operation of the long-term care facility. This chapter relates to the physical plant, and need not be complied with unless:
 - a. Noncompliance perpetuates a building situation which is a detriment, poses a threat to health, safety, or dignity of the residents; or
 - b. The long-term care facility elects to undertake remodeling or an addition involving a capital cost of more than twenty percent of gross revenues in the most recent completed fiscal year.
4. When a long-term care facility elects to undertake remodeling or an addition involving a capital cost of more than twenty percent of gross revenues in the most recent completed fiscal year, it must undertake remodeling of the entire building so it is brought into compliance with any amendments to chapter 33-07-03.1 and this chapter.
5. Plans for construction, remodeling, or installations must not be approved by the department unless the sponsor has obtained clearances as necessary for certificate of need pursuant to North Dakota Century Code chapter 23-17.2.
6. These minimum requirements are established to bring about a desired performance result. In all cases, where specific limits are described, equivalent solutions will be acceptable if they are approved by the department as meeting the intent of these minimum requirements.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-06. Nursing unit.

1. **Resident rooms.** Each resident room must include the following:
 - a. **Grade level.** No resident room may be located on a floor unless a portion of it is at or above grade level and no resident room may have any part of its floor more than thirty inches [76.2 centimeters] below the adjacent grade.

- b. Resident rooms must have adequate space to conveniently house necessary furniture and equipment to provide for efficient resident care and to provide for convenient movement of stretchers and for the transfer of residents to and from beds. See subdivision b of subsection 3 of section 33-07-03.1-01.
 - c. Multibed rooms must be designed to permit no more than two beds side-by-side parallel to the window wall nor more than four beds per room. Floor area must be consistent with space requirements established by definitions. See subdivision b of subsection 3 of section 33-07-03.1-01.
 - d. Window. Sill may not be higher than three feet [0.91 meters] above the floor and must be above grade. Each resident's room must be an outside room with a satisfactory amount of natural light. The area of the glazing material in the windows must be not less than one-tenth of the floor area of the room served by them.
 - e. Nurses' calling stations must be at each resident sleeping location.
 - f. Lavatory. In single and two-bed rooms, the lavatory may be located in a private toilet room.
 - g. Wardrobe or closet for each resident. Minimum clear dimensions: one foot ten inches [0.56 meters] deep by one foot eight inches [0.51 meters] wide with full-length hanging space; provide clothes rod, and shelf or drawers.
 - h. Cubicle curtains, or equivalent built-in devices, for privacy for each resident in multibed rooms.
 - i. No resident room may be located more than one hundred twenty feet [36.58 meters] from the nurses' station, the clean workroom, and the soiled workroom.
2. **Service areas in each nursing unit.** The size of each service area will depend on the number and types of beds within the unit. Although identifiable spaces are required for each of the indicated functions, consideration will be given to multiple-use design solutions which provide equal areas. Details of such proposals must be submitted for prior approval. Service areas may be arranged and located to serve more than one nursing unit, but at least one such service area must be provided on each nursing floor unless otherwise noted. A nursing unit may not exceed sixty beds, and must include the following:
- a. Nurses' station. For nurses' charting, doctor's charting, communications, storage for supplies, handwashing facilities, and chart racks.

- b. Nurses' toilet room. Convenient to nurses' station.
- c. Clean workroom. For storage and assembly of supplies for nursing procedures; must contain work counter, storage cabinets, and sink. Provide adequate circulation space.
- d. Soiled workroom. Must contain clinical sink, two compartment sink, work counter, two waste receptacles, and soiled linen receptacles. Provide adequate circulation space.
- e. Drug distribution station. Provision must be made for prompt, twenty-four hour availability of medicine for residents.
 - (1) This may be done in a medicine preparation room, from a self-contained medicine dispensing unit, or other approved systems. If used, the medicine preparation room must be a separate lockable room located for control from the nurses' station. It must contain a work counter with sink, refrigerator, and locked storage for controlled drugs, and must have a minimum area of fifty square feet [4.65 square meters].
 - (2) A medicine dispensing unit, if used, may be located at the nurses' station in the clean workroom, in an alcove, or in other space convenient for staff control. It must be adequately secured to preclude unauthorized removal. A medicine dispensing unit must contain all the characteristics of a medicine preparation room.
- f. Clean linen storage. A separate closet, or designated area, within the clean workroom must be provided. Exception: if a closed cart system is used, storage may be in a separate room where staff control can be assured.
- g. Nourishment station. For serving nourishments between meals, it must contain a refrigerator, food heating device, storage cabinets, and a sink. Ice for residents' consumption must be provided by icemaker/dispenser units. The nourishment station must provide space for trays and dishes used in nonscheduled meal service.
- h. Equipment storage room. For storage of air mattresses, walkers, and similar bulky equipment.
- i. Resident bathing facilities. Provide a minimum of one bathing fixture for each fifteen beds not served by bathing facilities at resident rooms. Provide at least one bathing fixture on each floor. Each bathtub or shower must be in an individual room or enclosure (cubicle curtains) which provide space for private use of the

bathing fixture. Provide at least one shower at least four feet square without curbs designed for use by wheelchair residents and arranged to accommodate assistance by staff. Provide a water closet in the central bath area.

- j. Stretcher and wheelchair parking area or alcove.
 - k. Janitor's closet. Size and location to be determined by the design of the facility. Floor receptors must be provided for each closet.
 - l. Visiting room. Appropriately furnished, where residents may visit privately with relatives, clergy, etc.
 - m. Examination room. This may be omitted if all resident rooms are single bedrooms. It must have a minimum floor area of one hundred twenty square feet [11.15 square meters]. It must contain a lavatory or sink equipped for handwashing, a work counter, storage facilities, and a desk, counter, or shelf for writing. The examination room may be in a central location to serve more than one floor or nursing unit, or both.
 - n. Lockers or compartments. In or near the nurses' station for the safekeeping of staff personal effects, such as handbags and other valuables.
 - o. Bedpan cleaning and sanitizing facilities. In addition to the facilities provided in the resident toilet room, bedpan cleaning and sanitizing facilities must be provided for each nursing floor. This may be located in the soiled workroom. Type and installation must minimize acoustical disturbance to residents.
3. **Resident toilet rooms.** A toilet room must be directly accessible from each resident room without going through the general corridor. One toilet room may serve two resident rooms but not more than four beds. (The lavatory may be omitted from the toilet room if one is provided in each resident room.)
- a. The minimum dimensions for any room containing only a water closet must be three feet [0.91 meters] by six feet [1.83 meters].
 - b. Water closets must be usable by wheelchair residents; grab bars must be provided at all water closets.
 - c. Doors to toilet rooms must have a minimum width of two feet ten inches [0.86 meters] to admit a wheelchair.

- d. At least one room must be provided for toilet training. This must be accessible from the nursing corridor and may serve the bathing area, and must provide at least three feet [0.91 meters] clearance at the front and sides of the water closet.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-07. Dining and recreation areas.

1. **Separate space.** The dining area and recreational activities area may not be the same space.
2. **Residents' dining area.** The total area set aside for this purpose may not be less than twenty square feet [1.86 square meters] per bed. In one-story facilities, the dining must be concentrated in one area with provisions for site barriers between the dining space for persons who require assistance in eating and those who do not require assistance. In multistory facilities, dining on the main floor must have space for the number of beds on that floor plus space for fifty percent of the beds on the upper floors. The balance of the twenty square feet [1.86 square meters] per bed must be divided among the upper floors in proportion to the number of beds per floor.
3. **Residents' recreation areas.** The total area set aside for this purpose must be a minimum of fifteen square feet [1.40 square meters] per bed.
4. **Crafts room.** A crafts room of at least three hundred square feet [27.87 square meters] in area must be provided. Provide source of water for crafts. Adequate storage space must be provided for recreational equipment and supplies in addition to the recreation space required. (This room is not required if a distinct occupational therapy unit is provided.)
5. **Dayroom.** A dayroom must be provided in each nursing unit.
6. **Toilet.** Provide a toilet in or adjacent to recreation and dining areas.
7. **Barber and beauty shop.** Both services may be provided in one room.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-08. Therapy units. These units are desirable but not mandatory.

1. **Physical therapy unit.** If provided, the following are required:
 - a. Office. (May also serve for occupational therapy.)
 - b. Exercise and treatment areas of at least three hundred square feet [27.87 square meters]. Provide sink or lavatory and cubicle curtains around treatment areas.
 - c. Hydrotherapy area. Provide cubicle curtains.
 - d. Storage for supplies and equipment.
 - e. Toilet room. Located for convenient access by physical therapy residents. (May also serve occupational therapy residents.)
 - f. Waiting space.
 - g. Resident dressing areas, showers, and lockers.
2. **Occupational therapy unit.** If provided, the following are required:
 - a. Office space. (May be provided in physical therapy unit.)
 - b. Therapy area of at least three hundred square feet [27.87 square meters]. Provide sink or lavatory.
 - c. Storage for supplies and equipment.
 - d. Toilet room. (Not required if other toilet facilities are convenient.)
 - e. Resident dressing areas, showers, and lockers.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-09. Physical restoration room. If neither a physical therapy or occupational therapy area is provided, then the following physical restoration area must be provided:

1. Physical restoration room having at least three hundred square feet [27.87 square meters] of floor space.

2. Toilet room. (Not required if other toilet facilities are convenient.)

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-10. Dietary department.

1. Equipment and facilities must comply with the standards of HEW FDA No. 78-2081, "Food Service Sanitation Manual". If a conventional food preparation system is used, the following facilities must be provided:
 - a. Food preparation center.
 - b. Food serving facilities.
 - c. Dishwashing room.
 - d. Potwashing facilities.
 - e. Refrigerated storage, medium temperature and freezer units.
 - f. Food storage.
 - g. Sanitizing facilities and parking area for carts.
 - h. Equipment storage areas.
 - i. Waste disposal facilities.
 - j. Canwashing facilities.
 - k. Dining facilities for visitors and staff.
 - l. Office for dietary service supervisor or dietitian.
 - m. Janitor's closet. Storage for housekeeping supplies and equipment; floor receptor.
 - n. Lavatories. In food preparation room and dishwashing room, without mirror.
 - o. Toilet rooms with lockers. Conveniently accessible for dietary staff but not opening directly into dietary area.
 - p. Self-dispensing icemaking facilities.

- q. Lockers or compartments in or near the dietary department for the safekeeping of staff personal effects, such as handbags or other valuables.
2. If a convenience food system is used, dietary areas and equipment must be designed to accommodate the requirements for sanitary storage, processing, and handling.

History: Effective December 1, 1986.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

33-07-04.1-11. Administration department. This department must include:

1. Business office.
2. Lobby and information center, with public telephone and drinking fountain.
3. Administrator's office.
4. Admitting and medical records area, including interviewing space.
5. Public toilet room; one for each sex.
6. Director of nurses' office.
7. Housekeeper's office or space. (Location optional and may be combined with clean linen room in long-term care facilities of less than one hundred beds.)
8. Multipurpose rooms for conferences, meetings, and health education purposes, including facilities for showing visual aids.
9. Entrance at grade level sheltered from weather and designed to accommodate wheelchairs.
10. Storage for office equipment and supplies.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-12. Laundry. The laundry must include:

1. Separate soiled linen room.
2. Clean linen and mending room.

3. Linen cart storage.
4. Lavatories. Accessible from soiled, clean, and processing rooms.
5. Laundry processing room. Commercial-type equipment must be sufficient to take care of seven days' needs within the workweek.
6. Janitor's closet. Storage for housekeeping supplies and equipment; floor receptor or service sink.
7. Storage for laundry supplies.
8. Facilities for cleaning and sanitizing of carts.

Subsections 5, 6, and 7 need not be provided if laundry is processed outside the facility.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-13. Central storage rooms. Central storage rooms shall provide at least ten square feet [0.93 square meters] per bed concentrated in one area. Separate storage space with provisions for locking and security control must be provided for residents' personal effects.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-14. Locker rooms. Separate male and female facilities must be provided with lockers, water closets, lavatories, and showers. Showers may be omitted in long-term care facilities of less than one hundred beds.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-15. Engineering service and equipment areas. The following must be provided:

1. Boilerroom.
2. Engineer's office. (May be omitted in nursing homes of less than one hundred beds.)

3. Mechanical and electrical equipment room or rooms.
4. Maintenance shop or shops. At least one room must be provided.
5. Storage room for building maintenance supplies. (May be part of maintenance shop in facilities of less than one hundred beds.)
6. Storage room for housekeeping equipment. (Need not be provided if space is available in janitor's closet elsewhere.)
7. Incinerator space. If provided, the incinerator must be in a separate room, or in a designated area within the boilerroom, or may be outdoors.
8. Refuse room. For holding trash prior to disposal. Must be located convenient to service entrance.
9. Yard equipment storage room. For yard maintenance equipment and supplies.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-16. Details and finishes. A high degree of safety for the occupants in minimizing the incidence of accidents must be provided. Hazards such as sharp corners must be avoided. All details and finishes must meet the following requirements:

1. Details.

- a. Doors to resident toilet rooms and other rooms needing access for wheelchairs must have a minimum width of two feet ten inches [0.86 meters].
- b. An appropriate number of water fountains must be available.
- c. Such items as doors (except closet doors), drinking fountains, telephone booths, and vending machines must be located so that they do not project into the required width of exit corridors.
- d. Handrails with ends returned to the walls must be provided on both sides of corridors used by residents in long-term care facilities with no more than one and one-half inches [38.10 millimeters] of clear space between handrail and wall.

- e. All doors to resident room toilet rooms and resident room bathrooms must swing out or be equipped with hardware which will permit access in any emergency.
- f. All doors opening onto corridors must be swing-type except elevator doors. Alcoves and similar spaces which generally do not require doors are excluded from this requirement.
- g. Thresholds, floor transitions, and expansion joint covers, if used, must be beveled or flush with the floor.
- h. Grab bars and accessories in resident toilet, shower, and bathrooms must have sufficient strength and anchorage to sustain a load of two hundred fifty pounds [113.40 kilograms] for five minutes.
- i. Lavatories intended for use by residents must be installed to permit wheelchairs to slide under.
- j. Mirrors must be arranged for convenient use by residents in wheelchairs as well as by residents in a standing position.
- k. Soap and paper towel dispensers must be provided at all lavatories and sinks used by personnel for handwashing.
- l. Windows and outer doors which may be frequently left open must have insect screens.
- m. Doors, sidelights, borrowed lights, and windows in which the glazing extends to within eighteen inches [457.20 millimeters] above the floor must be glazed with safety glass, wired glass, or plastic glazing material that will resist breaking and will not create dangerous cutting edges when broken. Similar materials must be used in wall openings in activity areas, such as recreation rooms and exercise rooms unless fire safety codes require otherwise. Glazing for shower doors and tub enclosures must be safety glass or plastic.
- n. Lavatories must be securely anchored to withstand a vertical load of not less than two hundred and fifty pounds [113.40 kilograms] on the front of the fixture.
- o. Food preparation center and laundries must be insulated and ventilated to prevent any floor or wall surface above from exceeding a temperature of eighty-five degrees Fahrenheit [29.44 degrees Celsius]. Boilerrooms must not be located under any portion of the facility.

2. Ceiling heights.

- a. Corridors, storage rooms, resident toilet rooms, and other minor rooms must not be less than seven feet six inches [2.29 meters].
- b. Building components and suspended tracks, rails, and pipes located in the path of normal traffic must not be less than seven feet six inches [2.29 meters] above the floor.
- c. Ceilings in spaces which are normally unoccupied may be reduced to seven feet zero inches [2.13 meters].
- d. All other rooms may not be less than eight feet [2.44 meters].

3. Finishes.

- a. Floors must be easily cleanable and must have the wear resistance appropriate for the location involved. Floors in kitchens and related spaces must be waterproof and greaseproof. In all areas where floors are subject to wetting, they must have a nonslip finish.
- b. Carpet and underlayment in resident areas must be stretched taut and maintained without loose edges or wrinkles which might create hazards or interfere with the operation of wheelchairs, walkers, wheeled carts, etc.
- c. Wall bases in areas subject to routine wet cleaning must be coved and tightly sealed.
- d. Floor and wall openings for pipes, ducts, and conduits must be tightly sealed. Joints of structural elements must be similarly sealed.
- e. Walls must be washable, and in the immediate area of plumbing fixtures, the finish must be moistureproof.
- f. Finishes in dietary areas must be free of spaces that can harbor insects.
- g. All exposed ceilings and ceiling structures in resident and staff work areas must be finished to be readily cleanable with equipment routinely used in daily housekeeping activities. Dietary and other areas where dust fallout may create a potential problem must have a finished ceiling that covers all conduits, pipe ductwork, and construction systems. Ceilings must be easily cleanable.
- h. Ceilings must be acoustically treated in corridors, resident areas, nurses' station, nourishment stations, and dining and recreation areas.

4. **Sound transmission limitations.** Noise reduction criteria shown in the following table apply to partition, floor, and ceiling assembly construction in resident areas:

Location	Airborne Sound Transmission Class (STC) *		Impact Insulation Class (IIC) **
	Partitions	Floors	Floors
Resident room to residents' room	45	45	51
Public space to residents' room ***	50	50	51 +
Service areas to residents' room ++	55	55	55 +

Footnotes:

* Sound transmission class (STC) must be determined by tests in accordance with methods set forth in ASTM Standard E 90 and ASTM Standard E 413.

** Impact insulation class (IIC) must be determined in accordance with criteria set forth in HUD FT/TS 24.

*** Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar spaces.

+ Impact noise limitation applicable only when corridor, public space or service area is over resident's room.

++ Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise or vibration or both. Mechanical equipment located on the same floor or above or below the residents' rooms, offices, nurses' stations, and similar occupied spaces must be effectively isolated from such spaces with respect to noise and vibration.

NOTE: The requirements set forth in this table assume installation methods which will not appreciably reduce the efficiency of the assembly as tested. Location of electrical receptacles, grilles, ductwork,

and other mechanical items, and blocking and sealing of partitions at floors and ceilings must not compromise the sound isolation required.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-17. Elevators. All multistory buildings must have electric or electrohydraulic elevators as follows:

1. At least one hospital-type elevator must be installed where resident beds or services are located on any floor other than the main entrance floor.
2. At least two (one of which must be hospital-type) must be installed where sixty to two hundred resident beds are located on floors other than the main entrance floor, or where the major inpatient services are located on a floor other than those containing resident beds.
3. At least three (one of which must be hospital-type) must be installed where two hundred one to three hundred fifty resident beds are located on floors other than the main entrance floor, or where the major inpatient services are located on a floor other than those containing resident beds.
4. For facilities with more than three hundred fifty resident beds, the number of elevators must be determined from a study of the facility plan and the estimated vertical transportation requirements.
5. An appropriate number, but at least one elevator, must be provided in all multistory buildings which comply with the provisions of ANSI A17.1-1971. All new hospital-type elevators must comply with this standard.
6. Cars and platforms. Cars of hospital-type elevators must have inside dimensions that will accommodate a resident bed and attendants, and must be at least five feet [1.52 meters] wide by seven feet six inches [2.29 meters] deep. The car door must have a clear opening of not less than three feet eight inches [1.14 meters].
7. Leveling. Elevators must be equipped with an automatic leveling device of the two-way automatic maintaining type with an accuracy of one-half inch [1.27 centimeters].
8. Operation. Elevators, except freight elevators, must be equipped with a two-way special service switch to permit cars to bypass all landing button calls and be dispatched directly to any floor.

9. Elevator call buttons, controls, and door safety stops must be of a type that will not be activated by heat or smoke.
10. Field inspection and tests. Inspections and tests must be made and the owner must be furnished written certification that the installation meets the requirements set forth in this section and all applicable safety regulations and codes including ANSI A117.1-1971.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-18. Mechanical requirements.

1. Incinerators must comply with North Dakota Administrative Code chapter 33-15-14 and must be designed for type four wastes.
2. Steam and hot water systems.
 - a. Boilers must have the capacity, based upon the published steel boiler institute or institute of boiler and radiator manufacturers' net ratings, to supply the normal requirements of all systems and equipment. The number and arrangement of boilers must be such that when one boiler breaks down or when routine maintenance requires that one boiler be temporarily taken out of service, the capacity of the remaining boiler or boilers must be seventy percent of the total required capacity.
 - b. Boiler accessories. Boiler feed pumps, condensate return pumps, fuel oil pumps, and circulating pumps must be connected and installed to provide standby service when any pump breaks down.
 - c. Valves. Supply and return mains and risers of space heating and process steam systems must be valved to isolate the various sections of each system. Each piece of equipment must be valved at the supply and return end, except condensate lines.
 - d. Boilers must be constructed and installed in accordance with boiler law, the rules adopted and enforced by the North Dakota workmen's compensation bureau pursuant to North Dakota Century Code sections 28-32-02 and 28-32-03. Boilers must also comply with chapter 33-15-14.
3. Insulation.
 - a. Insulation, including finishes and adhesives on the exterior surfaces of ducts and equipment, must have a flame spread rating of twenty-five or less and a smoke

developed rating of fifty or less as determined by an independent testing laboratory in accordance with NFPA 258. The smoke development rating for pipe insulation may not exceed one hundred fifty.

- b. Linings in air ducts and equipment must meet the erosion test method described in underwriters laboratories, inc. publication number 181. These linings, including coatings, adhesives, and insulation on exterior surfaces of pipes and ducts and building spaces used as air supply plenums, must have a flame spread rating of twenty-five or less and a smoke developed rating of fifty or less as determined by an independent testing laboratory in accordance with NFPA 258.
 - c. Asbestos insulation may not be used. Insulation of soft-type, spray-on, etc., may not be used where it is subject to air or mechanical erosion or where loose particles may create a maintenance problem.
 - d. Existing insulation of facilities to be modernized must be inspected, repaired, and replaced as appropriate.
4. Air-conditioning, heating, and ventilating systems. Air conditioning in long-term care facilities is optional.
- a. A minimum temperature of seventy-five degrees Fahrenheit [23.89 degrees Celsius] must be provided for all occupied areas at winter design conditions.
 - b. All air supply and air exhaust systems must be mechanically operated. Exception: gravity exhaust may be used in nonresident areas and in areas not normally occupied by staff such as boilerrooms.
 - c. All fans serving exhaust systems must be located at or near the point of discharge from the building. A ceiling exhaust fan may be used to ventilate a single isolated toilet room in an existing facility when a central exhaust system is not readily available.
 - d. Outdoor ventilation air intakes, other than for individual room units, must be located as far away as practicable but not less than twenty-five feet [7.62 meters] from the exhausts from any ventilating system, vent, or combustion equipment. The bottom of outdoor intakes serving central air systems shall be located as high as possible, but not less than six feet [1.83 meters] above the ground level or, if installed through the roof, three feet [.91 meters] above roof level.

- e. The ventilation systems must be designed and balanced to provide the general pressure relationship to adjacent areas shown in the ventilation table.
- f. Room supply air inlets, recirculation, and exhaust air outlets must be located not less than three inches [76.20 millimeters] above the floor.
- g. Corridors may not be used to supply air to or exhaust air from any room, except that exhaust air from corridors may be used to ventilate rooms such as bathrooms, toilet rooms, or janitor's closets which open directly on corridors.
- h. Access for maintenance must be provided at all dampers. Smoke dampers must be equipped with remote control reset devices. However, manual reopening will be permitted where dampers are located for convenient access.
- i. Boilerrooms must be provided with sufficient outdoor air to maintain equipment combustion rates and to limit work station temperatures to an effective temperature.
- j. Number of air changes may be reduced when the room is unoccupied if provisions are made to ensure that the required number of air changes indicated is reestablished at any time the space is being utilized, and that required air pressure relationships are being maintained.
- k. Unit ventilators may be used to ventilate individual rooms in existing facilities, and in additions to existing facilities not to exceed six beds. Such ventilators may only be used when a central ventilation system is unaccessible. Unit ventilators must be equipped with a filter having an efficiency of at least thirty percent.

5. Filters.

- a. All central ventilation or air-conditioning systems must be equipped with filters having efficiencies no less than those specified in the following table:

TABLE 1		
Area Designation	Minimum Number of Filter Beds	Filter Efficiencies (Percent) Main Filter Bed
Resident care, treatment, diagnostic, and related areas	1	30
Food preparation areas and laundries	1	30
Administrative, bulk storage and soiled holding areas	1	25

- b. The filter must be located upstream of the air-conditioning equipment, unless a prefilter is employed. In this case, the prefilter must be upstream of the equipment, and the main filter bed may be located further downstream.
 - c. All filter efficiencies must be average atmospheric dust spot efficiencies tested in accordance with ASHRAE standard 52-76.
 - d. Filter frames must be durable and carefully dimensioned and must provide an airtight fit with the enclosing ductwork. All joints between filter segments and the enclosing ductwork must be gasketed or sealed to provide a positive seal against air leakage.
 - e. A manometer must be installed across each filter bed serving central air systems.
6. Exhaust hoods.
- a. Exhaust hoods in food preparation center must have an exhaust rate of not less than fifty cubic feet [1.41 cubic meters] per minute per square foot of face area. Face area is defined for this purpose of the open area from the exposed perimeter of the hood to the average perimeter of the cooking surfaces. Cleanout openings must be provided every twenty feet [6.10 meters] in horizontal ducts exhausting kitchen hoods.

- b. All hoods over cooking ranges must be equipped with grease filters, fire extinguishing systems, and heat actuated fan controls.

TABLE 2
PRESSURE RELATIONSHIPS AND VENTILATION OF
CERTAIN AREAS OF LONG-TERM CARE FACILITIES

Area Designation	Pressure Relationship To Adjacent Areas	Minimum Air Changes of Outdoor Air Per Hour Supplied to Room	Minimum Total Air Changes Per Hour Supplied to Room	All Air Exhausted Directly to Outdoors
Resident room	E	2	2	Optional
Resident dining	E	2	2	Optional
Resident activities	E	2	2	Optional
Resident area corr.	E	Optional	2	Optional
Examination and treatment room	E	2	4	Optional
Physical therapy	N	2	4	Optional
Occupational therapy	E	2	4	Optional
Soiled workroom or soiled holding	N	2	6	Yes
Clean workroom or clean holding	P	2	4	Optional
Toilet room	N	Optional	10	Yes
Bathroom	N	Optional	10	Yes
Janitor's closet(s)	N	Optional	10	Yes

Sterilizer equipment room	N	Optional	10	Yes
Linen trash and chute room	N	Optional	10	Yes
Food preparation center	E	2	10	Optional
Warewashing room	N	Optional	10	Yes
Dietary day storage	V	Optional	2	Optional
Laundry, general	V	2	10	Yes
Soiled linen sorting and storage	N	Optional	10	Yes
Clean linen storage	P	Optional	2	Optional

All long-term care facilities built after December 1, 1986, must install central ventilating systems.

P = Positive N = Negative E = Equal V = Variable

7. Plumbing and other piping systems.

- a. Plumbing and piping systems must comply with the North Dakota state plumbing code.
- b. Systems must be designed to supply water to the fixtures and equipment on the upper floors at a minimum pressure of fifteen pounds per square inch [6.80 kilograms per 6.45 square centimeters] during maximum demand periods.
- c. Each water service main, branch main, riser, and branch to a group of fixtures must be valved. Stop valves must be provided at each fixture. Removable panels must be provided at all valves for access.
- d. Hot water distribution systems must be arranged to provide hot water at each fixture at all times.
- e. The hot water heating equipment must have sufficient capacity to supply the water at the temperatures and amounts indicated below:

TABLE 3

	Clinical	Dietary	Laundry
Gallons/hour/bed	3	3	3
Maximum temperatures	125° F	---	---
Maximum temperatures	---	180° F	160° F

- f. Dishwashing machines which rely on hot water for sanitizing must have final rinse water at one hundred eighty degrees Fahrenheit [82.22 degrees Celsius]. Machines which use chemicals for sanitizing are permitted, provided the temperature of the wash water must be at least one hundred twenty degrees Fahrenheit [48.89 degrees Celsius]; however, one hundred forty to one hundred sixty degrees Fahrenheit [60-71.11 degrees Celsius] is recommended. Utensils and equipment must be exposed to final chemical sanitizing rinse in accordance with the manufacturers' specifications for time and concentration.
 - g. Storage tank or tanks must be provided and must be fabricated of corrosion-resistant materials.
 - h. Building sewers must discharge into a community sewage system. Where such a system is not available, a facility providing sewage treatment which conforms to applicable local and department regulations is required.
 - i. All piping including heating, ventilation, gas, vacuum, and air-conditioning, except control line tubing must be color coded or otherwise marked for an easy identification. All valves must be tagged. Color and valve schedules must be provided to the facility for permanent record and reference.
8. Plumbing fixtures and trim.
- a. The material used for plumbing fixtures must be nonabsorptive acid-resistant material.
 - b. All lavatories and sinks required in resident care areas shall have the water supply spout mounted so that its discharge point is a minimum distance of five inches [12.7 centimeters] above the rim of fixtures. All fixtures must be trimmed with valves which can be operated without the use of hands. Where blade handles are used for this purpose, they may not exceed four and one-half inches [11.43 centimeters] in length, except that handles on

clinical sinks may be not less than six inches long [15.24 centimeters].

- c. Clinical sinks must have an integral trap in which the upper portion of a visible trap seal provides a water surface.
- d. Backflow preventers (vacuum breakers) must be installed on hose bibs and on all fixtures to which hoses or tubing can be attached such as janitor's sinks and bedpan flushing attachments.
- e. Flush valves installed on plumbing fixtures must be of a quiet operating type, equipped with silencers.
- f. In skilled nursing facilities, bedpan flushing devices must be provided in not less than half of the resident toilet rooms and in the soiled workroom. Rough-in plumbing for bedpan flushing devices in the remaining resident toilet rooms are required.
- g. In intermediate care facilities, bedpan flushing devices must be provided in not less than twenty-five percent of all resident toilet rooms. Plumbing rough-in for bedpan flushing devices in the remaining resident toilet rooms is required.
- h. Showers and tubs must have nonslip surfaces for residents.
- i. All showers must include pressure balancing valves.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

33-07-04.1-19. Electrical requirements.

1. All electrical installations must comply with the state electrical code adopted pursuant to article 24-02 as enforced by the state electrical board.
2. All material including equipment, conductors, controls, and signaling devices must be installed to provide a complete electrical system with the necessary characteristics and the capacity to supply the electrical facilities shown in the specifications or indicated on the plans. All materials must be listed as complying with applicable standards of underwriters' laboratories incorporated, or other similarly established standards.
3. Switchboard and power panels. Circuit breakers or fusible switches that provide disconnecting means and overcurrent

protection for conductors connected to switchboard and distribution panels must be enclosed or guarded to provide a dead-front type of assembly. The main switchboard must be located in a separate enclosure accessible only to authorized persons. The switchboard must be convenient for use, readily accessible for maintenance, clear of traffic lanes, and in a dry ventilated space devoid of corrosive fumes or gases. Overload protective devices must be suitable for operating properly in the ambient temperature conditions.

4. Lighting and appliance panels must be provided for the circuits on each floor. This requirement does not apply to emergency system circuits.
5. Lighting. All spaces occupied by people, machinery, and equipment within buildings, and the approaches thereto, and parking lots must have electric lighting.
 - a. Residents' bedrooms must have general lighting and night lighting. A reading light must be provided for each resident. At least one luminaire for night lighting must be switched at the entrance to each resident room. Residents' reading lights and other fixed lights not switched at the door must have switch controls convenient for use at the luminaire.
 - b. All switches for control of lighting in resident areas must be of the quiet operating type.
 - c. Nursing unit corridors must have general illumination with provisions for reduction of light levels at night.
 - d. Minimum lighting intensity for staff and resident needs must be as described in the following table with consideration in the design to minimize glare for elderly:

TABLE 4

Area	Foot-candles on Tasks*
Administrative and lobby areas, day	50
Administrative and lobby areas, night	20
Barber and beautician areas	50
Chapel or quiet area, general	5
Chapel or quiet area, local for reading	30
Corridors and interior ramps	20
Dining area	30
Doorways	10
Exit stairways and landings, on floor	5

Food preparation - dishwashing, serving	70
Dietary, other	30
Janitor's closet	15
Laundry - soiled and clean	30
Nurses' desk, for charts and records	70
Nurses' medicine cabinet	100
Nurses' station - general, day	50
Nurses' station - general, night	20
Occupational therapy	30
Pharmacy area, general	30
Pharmacy, compounding and dispensing area	100
Physical therapy	20
Recreation area	50
Resident care unit (or room), general	20
Resident care room, reading	30
Stairways other than exits	30
Toilet and bathing facilities	30
Utility room, general	20
Utility room, work counter	50
Worktable, coursework	100
Worktable, fine work	200

* Minimum on task at any time.

7. Receptacles (convenience outlets).

- a. Bedroom. Each resident bedroom must have duplex receptacles as follows: one on each side of the head of each bed (for parallel adjacent beds, two receptacles are required between the beds); receptacles for luminaires, television, and motorized beds, if used; and at least one receptacle on another wall.
- b. Corridors. Duplex receptacles for general use must be installed approximately fifty feet [15.24 meters] apart in all corridors and within twenty-five feet [7.62 meters] of ends of corridors.
- c. In long-term care facilities where only the required electrical circuits are served by onsite electrical generators (see subdivision d of subsection 9), all receptacles served by emergency power must have colored cover plates or be otherwise distinctively marked for easy identification.

8. Nurses' calling system.

- a. A nurses' calling station must be installed at each resident bed and in each resident toilet room, bathroom, and shower room.

- b. The nurses' call in toilet room, bathroom, or shower room must be an emergency call.
- c. All calls must register both visibly and audibly at the nurses' station and must actuate a visible signal in the corridor at the resident's door, in the clean workroom, soiled workroom, and nourishment station of the nursing unit. In multicorridor nursing units, additional visible signals must be installed at corridor intersections.
- d. If installed, nurses' call systems which provide two-way voice communication must be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operative.

9. Emergency electric service.

- a. General. To provide electrical power during an interruption of the normal electrical power supply, an emergency source of electrical power must be provided and as a minimum must be connected to the circuits for lighting and power listed in subdivision d.
- b. Sources. The source of this emergency electric service must be an emergency generating set under the control of the long-term care facility.
- c. Emergency generating set. The required emergency generating set, including the prime mover and generator, must be located on the premises and must be reserved exclusively for supplying the emergency electrical system. Exception: A system of prime movers which are ordinarily used to operate other equipment and alternately used to operate the emergency generator or generators will be permitted provided that the number and arrangement of the prime movers is such that when one of them is out of service (due to breakdown or for routine maintenance), the remaining prime mover or movers can operate the required emergency generator or generators and provided that the connection time requirements are met. The emergency generator set must be of sufficient capacity to supply all lighting and power load demands of the emergency system. The power factor rating of the generator must be not less than eighty percent.
- d. Emergency electrical connections. Emergency electric service must be provided to circuits as follows:
 - (1) Lighting.
 - (a) Exitways and all necessary ways of approach thereto including exit signs and exit direction

signs, exterior of exits, exit doorways, stairways, and corridors.

- (b) Dining and recreation rooms.
 - (c) Nursing station and medication preparation area.
 - (d) Generator set location, switch-gear location, and boilerroom.
- (2) Equipment. Essential to life safety and for protection of important equipment or vital materials:
- (a) Nurses' calling system.
 - (b) Refrigerators for dietary and medication needs.
 - (c) Alarm system including fire alarm actuated at manual stations, water flow alarm devices of sprinkler systems, fire detecting and smoke detecting systems, paging or speaker systems if intended for issuing instructions during emergency conditions, and alarms required for nonflammable medical gas system if installed.
 - (d) Fire pump, if installed.
 - (e) Sewerage or sump pump, if installed.
 - (f) All required duplex receptacles in resident corridors.
 - (g) One elevator, where elevators are used for vertical transportation of residents.
 - (h) Equipment such as burners and pumps necessary for operation of one or more boilers and their necessary auxiliaries and controls, required for heating and sterilization.
 - (i) Equipment necessary for maintaining equipment service.
- (3) Heating. Where electricity is the only source of power normally used for space heating, the emergency service must provide for heating of resident rooms. Emergency heating of resident rooms will not be required in areas where the long-term care facility is supplied by at least two utility service feeders, each supplied by separate generating sources, or a network distribution system fed by two or more generators, with the long-term care facility feeders so routed, connected, and protected that a fault any

place between the generators and the long-term care facility will not likely cause an interruption of more than one of the long-term care facility service feeders.

- e. Details. The emergency electrical system must be so controlled that after interruption of the normal electric power supply, the generator is brought to full voltage and frequency and connected within ten seconds through one or more primary automatic transfer switches to all emergency lighting; all alarms; nurses' call; equipment necessary for maintaining telephone service; and receptacles in resident corridors. All other lighting and equipment required to be connected to the emergency system must either be connected through the above-described primary automatic transfer switching or must be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system must be distinctively marked for identification. Storage, battery-powered lights, provided to augment the emergency lighting or for continuity of lighting during the interim of transfer switching immediately following an interruption of the normal service supply, may not be used as a substitute for the requirement of a generator. Where fuel is normally stored on the site, the storage capacity must be sufficient for twenty-four-hour operation of required emergency electric services. Where fuel is normally piped underground to the site from a utility distribution system, storage facility on the site will not be required.

History: Effective December 1, 1986.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 28-32-02

MAY 1987

STAFF COMMENT: Chapter 33-05-02 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-05-02
NOTIFICATION OF BLOOD AND BODY FLUID PRECAUTION

Section	
33-05-02-01	Definitions
33-05-02-02	Notification Required of Death From Post-Mortem Communicable Disease
33-05-02-03	Disclosure Limited
33-05-02-04	Violations Reported to Appropriate Licensing Board

33-05-02-01. Definitions. For purposes of this chapter, the term "post-mortem communicable disease" shall include the following:

1. Viral hepatitis (any etiology).
2. Tuberculosis.
3. Acquired Immune Deficiency Syndrome (AIDS).
4. Plague.
5. Creutzfeldt-Jakob.
6. Rabies.
7. Meningococcal meningitis.

History: Effective May 1, 1987.

General Authority: 23-01-03, 28-32-02

Law Implemented: 23-01-03

33-05-02-02. Notification required of death from post-mortem communicable diseases. When any person dies who has been diagnosed or suspected as having a post-mortem communicable disease, a written notice stating "BLOOD AND BODY FLUIDS PRECAUTIONS SHOULD BE OBSERVED" must be securely attached to the body in a prominent location thereon so it can be easily seen when the body is removed for disposition as follows:

1. If the person dies in a hospital or other health care facility, the notice must be prepared and placed by the attending physician or other health care professional or representative on behalf of the hospital or health care facility.
2. If the person dies outside of a hospital or health care facility, the notice must be prepared and placed by the attending physician, or in the absence of an attending physician, by the examining coroner.

Any person who removes a dead human body for disposition which has a notice attached pursuant to this chapter shall ensure that such notice remains attached to the dead body until the body is presented to any embalmer, funeral director, or other person taking possession of the dead body.

History: Effective May 1, 1987.

General Authority: 23-01-03, 28-32-02

Law Implemented: 23-01-03

33-05-02-03. Disclosure limited. Any notifications required to be made pursuant to section 33-05-02-03 are privileged and confidential and may be disclosed only if one of the following applies:

1. Disclosure is required by any state or federal law.
2. Disclosure is made by a physician pursuant to a state or federal law permitting disclosure.
3. Disclosure is for research purposes and does not reveal either the identity of the deceased or information by which the identity of the deceased could be determined.
4. Disclosure involves information regarding a deceased minor and the disclosure is made to the parent or guardian of that minor.
5. Disclosure is made to the person who removes the dead human body or is made in the ordinary course of business to any employee or agent of any person or entity authorized or

required under this chapter to receive or report that information.

History: Effective May 1, 1987.
General Authority: 23-01-03, 28-32-02
Law Implemented: 23-01-03

33-05-02-04. Violations reported to appropriate licensing board.
Any person practicing an occupation, trade, or profession for which the license, permit, certificate, or registration is required from any state agency, board, commission, or department who willfully violates any provision of this chapter must be reported to such agency, board, commission, or department for such action as it may determine appropriate.

History: Effective May 1, 1987.
General Authority: 23-01-03, 28-32-02
Law Implemented: 23-01-03

JULY 1987

STAFF COMMENT: Chapter 33-03-15 contains all new material but is not underscored so as to improve readability.

**CHAPTER 33-03-15
HOSPICE PROGRAMS**

Section	
33-03-15-01	General Provisions
33-03-15-02	Governing Body and Management
33-03-15-03	Physician Services
33-03-15-04	Nursing Services
33-03-15-05	Medical Social Services
33-03-15-06	Counseling Services
33-03-15-07	Bereavement Services
33-03-15-08	Volunteer Services
33-03-15-09	Home Health Aide Services
33-03-15-10	Interdisciplinary Team Services
33-03-15-11	Admission Criteria
33-03-15-12	Hospice Service Plan of Care
33-03-15-13	Medical Records
33-03-15-14	Patient and Family Rights
33-03-15-15	Quality Assurance
33-03-15-16	Utilization Review

33-03-15-01. General provisions.

1. A new hospice program is subject to certificate of need review pursuant to North Dakota Century Code chapter 23-17.2.
2. The department must be notified in writing when a change of ownership, operation, location, or when discontinued or

addition of a new service in a hospice program is contemplated.

3. The hospice program shall provide physician services, nursing services, medical social services, counseling services, bereavement services, volunteer services, home health aide and homemaker services, and short-term inpatient care. Two of these service must be provided directly. Direct services are those services provided by hospice program employees or volunteers. All other services may be provided through written contract or written agreement.
4. Nursing services and physician services shall be routinely available twenty-four hours a day seven days a week, as may be required in accordance with the hospice program service plan.
5. The home care component must be the primary form of care, and must be available on a part-time, intermittent, regularly scheduled basis, and on an on-call, around-the-clock basis according to patient and family needs.
6. Short-term general impatient care must be provided only in licensed hospitals or licensed skilled nursing facilities. If feasible, inpatient care must closely approximate a homelike environment and provide overnight family visitation within the facility.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-03-15-02. Governing body and management.

1. A hospice program must have a clearly defined, organized governing body that must assume full legal responsibility for the overall conduct and operation of the hospice program including quality of care and services.
2. The governing body shall adopt bylaws which include at least the following:
 - a. The purpose of the hospice program.
 - b. The powers and duties of the officers and committees of the governing body.
 - c. The qualifications, methods of selection, and terms of office of members and chairman of committees.
 - d. A mechanism for approval of the appointment to the medical staff, if applicable.

- e. Specifications of the frequency of governing body meetings and attendance requirements.
 - f. A provision for the taking of sufficient minutes of its meetings to record the business conducted and for making them available to all members.
3. There must be an organizational chart, description of services offered, and channels of authority for responsibility for care provided to patients and their families.
4. There must be policies and procedures for each department or service offered, which must be reviewed annually by the governing body, or appropriate administrative representative.
- a. Policies and procedures must be dated and signed to indicate the time of the most recent review.
 - b. All pen and pencil changes of policies and procedures must be dated with the date the change or revision was made and initialed by the department head.
5. When the hospice has services, including inpatient care, provided for under arrangement, there must be a current written agreement which must be signed and dated by the administrator of the hospice program, and the duly authorized official of the agency providing the service or resource. The agreement must clearly delineate the responsibilities of the parties involved and must include no less than the following:
- a. Identification of services to be provided.
 - b. A stipulation that services provided are consistent with the hospice service plan of care.
 - c. The manner in which the contracted services are coordinated, supervised, and evaluated.
 - d. A statement that the hospice program retains the responsibility for planning and coordinating services and care on behalf of the patient and family.
 - e. Procedures for submitting clinical and progress notes when applicable.
 - f. Assurance that personnel and services contracted for meet the requirements specified herein pertaining to personnel and services, including licensure, personnel qualifications, and attendance at care conferences.
 - g. Reimbursement mechanism, charges, and terms for the renewal or termination of the agreement.

6. The governing body shall approve an annual operating budget and capital expenditure plan.
7. The governing body or its appropriate administrative representative shall appoint a member of the hospice program team who is responsible for providing for coordination and administration of hospice program service plan for patients and families. The person appointed shall:
 - a. Develop, implement, and annually evaluate the policies and procedures for the total hospice program operation.
 - b. Provide a formal budget that reflects the organization of the hospice program.
 - c. Provide a designation, in writing, of a qualified individual to act in the administrator's absence.
 - d. Act as a liaison between the governing body, medical staff, and other hospice program staff.
 - e. Implement personnel policies and practice with orientation of all new employees, maintenance of complete personnel records for each employee, verification of applicable current licensure or registration of personnel, performance evaluation based on a job description, and current health requirements.
 - f. Provide an ongoing program of training including orientation and continuing education for all employees. Records of inservice training must be maintained which list the content of and attendance at staff development programs.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-03-15-03. Physician services.

1. Physician services must be provided by a physician licensed pursuant to North Dakota Century Code chapter 43-17 to meet the general needs of patients for management of the terminal illness and related conditions through palliative and supportive care and in accordance with hospice program policies.
2. The hospice program must have a medical director who is a physician licensed pursuant to North Dakota Century Code chapter 43-17.

3. The medical director has overall responsibility for medical policy in relation to the care and treatment of hospice program patients and their families provided by the hospice program care team.
4. Duties of the medical director include, but are not limited to:
 - a. Consulting and cooperating with the hospice program patient's attending physician.
 - b. Participating in the development of the hospice program service plan.
 - c. Serving as a liaison between the attending physician and the interdisciplinary team.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-03-15-04. Nursing services.

1. The hospice program must provide the services of a registered nurse, licensed pursuant to North Dakota Century Code chapter 43-12.1, to organize, supervise, and coordinate the palliative and supportive care for patients and families provided by the hospice program care team.
2. The nurse supervisor is responsible for the development, maintenance, and revision of nursing care policy and procedure manuals, written job descriptions for each level of personnel, methods of coordination of nursing service with other services, and shall recommend the number and levels of nursing personnel to be employed.
3. The nursing services supervisor shall designate a qualified registered nurse to act in the supervisor's absence.
4. Nursing services must be directed and staffed to assure the nursing needs of patients are met.
5. There must be staff development programs and educational opportunities for nursing personnel which include orientation and inservice education.
 - a. There must be documentation maintained of the staff development program which includes content of program, name of instructor, name of those in attendance, length of program, and date of presentation.

- b. Records must validate that initial orientation, including appropriate training to the tasks which personnel are expected to perform, and continual training is evident.
6. The hospice program must develop and maintain written policies and procedures for the administration and provision of pharmaceutical services consistent with the drug therapy needs of the patient. Policies and procedures must include, but not be limited to: the administration of treatment modalities, including intravenous procedures, chemotherapy, parenteral feedings, and injections; prescribing, preparing, administering, and recording of all drugs and biologicals; recording and reporting medication errors and adverse drug reactions.
 - a. The hospice program must have a policy for the disposal of controlled drugs maintained in the patient's home when these drugs are no longer needed by the patient.
 - b. Medications administered to patients must be ordered in writing, and the orders shall be authenticated by the person legally authorized to prescribe the medication.
 - c. A verbal medication order may be given to a licensed nurse, physician, or registered pharmacist. The hospice program shall initiate action to obtain the physician's signature for verbal orders within forty-eight hours.
 - d. Drugs and biologicals must be administered by the following:
 - (1) A licensed nurse or physician.
 - (2) The patient, a family member, or other caregiver, as specified in the patient's hospice program service plan.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-03-15-05. Medical social services.

1. Medical social services must be provided by a qualified social worker licensed under North Dakota Century Code chapter 43-41.
2. Policies and procedures pertaining to social services must be provided, approved, and reviewed annually.
3. Records of pertinent social data about personal and family problems medically related to the patient's illness and care

and action taken to meet the patient and family needs must be maintained in the patient's medical record.

4. Social services must be provided in accordance with the plan of care. The social worker shall assist and work with the hospice program care team in identifying significant social and emotional factors related to care. The scope of social work services must include, as a minimum:
 - a. Assisting in preadmission and discharge planning.
 - b. Conducting an assessment to determine the emotional and social needs of the patient and family.
 - c. Counseling the patient and family on an individual and group basis.
 - d. Identifying, utilizing, and working to develop appropriate community resources.
 - e. Maintaining adequate records relating to social work services which must be included in the patient's medical record.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-03-15-06. Counseling services.

1. Spiritual counseling services must be available, upon request, to the patient and family. The hospice program may not impose the dictates of any value or belief system on hospice program patients or their families.
2. Dietary counseling services must be available to the patient and family, and must be provided by a dietitian licensed under North Dakota Century Code chapter 43-44.
3. Spiritual, dietary, and other counseling services provided must be documented in the patient and family record.
4. All counseling services must be provided in accordance with written policies and procedures governing the delivery and documenting of such services.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-03-15-07. Bereavement services.

1. The hospice program must provide bereavement counseling and services to the patient's immediate family or primary caregiver. Bereavement services must be available for at least one year following the death of the patient.
2. Such services must be supervised by an individual qualified by training and experience for the development, implementation, and assessment of a hospice program service plan to meet the needs of the bereaved.
3. The individual supervising bereavement counseling may be a registered nurse, counselor, social worker, or other persons with documented evidence of training and experience in dealing with bereavement.
4. The hospice program must adopt written policies and procedures relating to this service.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-03-15-08. Volunteer services.

1. The hospice program must provide for appropriate orientation and training that is consistent with acceptable standards of hospice program practice. There must be a written orientation checklist that identifies the tasks the individual is expected to perform. The training and orientation program must include, as a minimum:
 - a. Hospice program goals, services, and philosophy.
 - b. Confidentiality and protection of patient and family rights.
 - c. Family dynamics, coping mechanism, and psychological issues surrounding terminal illness, death, and bereavement.
 - d. Procedures to be followed in an emergency and following the death of a patient.
 - e. Guidance related specifically to individual responsibilities.
2. The hospice program must establish a mechanism to assure volunteers are effectively performing the duties and responsibilities assigned.
3. A hospice volunteer may provide direct patient care only when the following provisions are met:

- a. Tasks and responsibilities are specified in writing and do not exceed the individual's capability.
- b. Care is consistent with the hospice service plan.
- c. The professional volunteer must be appropriately licensed or registered, if required.
- d. Services rendered must be recorded in the patient's record.
- e. The volunteer must have a clear understanding of the volunteer's duties and responsibilities.
- f. Volunteers must be informed to whom they report and whom to contact if assistance is needed in carrying out their responsibilities.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-03-15-09. Home health aide services.

- 1. The hospice program must provide homemaker and home health aide services as prescribed by the patient and family plan of care and consistent with policies of the hospice program.
- 2. The homemaker and home health aide may be assigned responsibilities and duties only after satisfactorily completing an organized education and training program consistent with and applicable to the hospice program.
- 3. The homemaker and home health aide shall provide care and other related services upon written instruction for patient care prepared by a registered nurse or therapist as appropriate. Duties of the home health aide include:
 - a. The performance of simple procedures as an extension of therapy services.
 - b. Personal care.
 - c. Ambulation and exercise.
 - d. Household services essential to health care at home.
 - e. Reporting changes in the patient's condition and needs.
 - f. Completing appropriate records.

4. A registered nurse must visit the homesite at least every two weeks when aide services are provided. Documentation in the patient's medical record must include an assessment of the aide service.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 38-32-02

33-03-15-10. Interdisciplinary team services.

1. The hospice program must designate interdisciplinary groups composed of individuals who provide or supervise the care and services offered by the hospice program.
2. The following individuals must be members of the interdisciplinary group or hospice program care team:
 - a. Patient and family.
 - b. Physician including the medical director and attending physician.
 - c. Registered nurse.
 - d. Medical social worker.
 - e. Trained volunteers.
 - f. Providers of special services including a spiritual counselor, a registered pharmacist, a registered dietitian, or professional in the field of mental health may be included in the hospice care team as determined appropriate by the hospice program.
3. Members of the hospice care team must have access to emotional support, as necessary, concerning job-related issues.
4. The interdisciplinary group is responsible to:
 - a. Participate in the establishment of the hospice service plan.
 - b. Provide for supervision of hospice care and services.
 - c. Review and update of the hospice service plan for each individual receiving hospice care.
 - d. Establish policies and procedures governing the day-to-day provision of hospice care and services.
 - e. Coordinate home and inpatient service.

5. The hospice program must identify a qualified member of the hospice care team who will be responsible for coordination and administration of the hospice service plan for patient and family. This person shall assure that adequate exchange of information, communication, and interaction occurs between all disciplines providing care.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-03-15-11. Admission criteria.

1. Admission criteria must be clearly defined in the hospice program policies. Decisions regarding admission must be made by the hospice care team.
2. Admission to the hospice program must be by request of the patient. If the attending physician certifies that the patient is unable to request admission, a family member may request admission on the patient's behalf.
3. Any request to the hospice program must include written evidence of an informed consent signed by the person making the request. The informed consent must specify the type of care and services provided as part of hospice care and must be understandable to the person signing the consent.
4. If the hospice program requires a primary caregiver for each admission, this must be specified in the admission criteria and discussed with the patient and family during the patient's initial assessment.
5. A hospice program may not deny acceptance to any patient and family for services of the hospice on grounds of race, color, national origin, age, sex, religion, or ethnic affiliation.
6. At the time of admission to the hospice program, the hospice program must obtain documentation from the attending physician that the patient is terminally ill with an anticipated life expectancy of six months or less.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-03-15-12. Hospice service plan of care.

1. After an initial assessment of patient and family needs, a written plan of care must be established by the hospice care

team for each patient and family admitted to the hospice program.

- a. At least a registered nurse or physician shall conduct an initial assessment of each patient and shall meet with one hospice care team member to develop the initial plan of care prior to admission.
 - b. Within seven days following admission of each patient and family, the hospice care team members shall meet to develop a comprehensive hospice service plan of care.
 - c. The hospice service plan of care must be developed with the participation of the patient and family and may include only those services which are acceptable to the patient and family. The family must be involved whenever possible in the implementation and continuous assessment of the hospice service plan of care.
2. The hospice service plan of care must include at least the following:
- a. Patient diagnosis.
 - b. Complete assessment of patient and family needs.
 - c. Appraisal of, and need for, symptom control.
 - d. Identification of problems and goals and the types of services required to meet the patient and family goals.
 - e. Frequency of the services, medication, treatments needed to meet patient and family needs and the discipline involved in the delivery of care.
3. There must be written policies and procedures relating to the development, review, and revision of the hospice service plan in the home care and inpatient services. The plan of care must be reviewed, updated, and documented as needed, but at least biweekly, by the hospice care team.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-03-15-13. Medical records.

1. The hospice program must keep accurate, current, and confidential records of all hospice patients and their families. The hospice program must safeguard the medical record against loss, destruction, and unauthorized use.

Overall responsibility for medical records must be assigned to an employee of the hospice program.

2. The medical record must be complete, and documented promptly, accurately, and legibly.
3. Each medical record must contain sufficient information on all services provided, whether furnished directly or under arrangement by the hospice program, and entries must be signed with the legally acceptable signature by the person making the entry. Each patient and family medical record must contain, but is not limited to, the following:
 - a. Complete identification of each patient, including information on the patient's next of kin and responsible person or agency.
 - b. The initial and subsequent assessments by each discipline involved with the patient and family.
 - c. A medical history obtained prior to the development of a hospice care plan.
 - d. A current hospice care team plan.
 - e. Complete documentation of all home visits and services rendered if the service is provided directly.
 - f. If home care is not provided directly, provision must be made for the hospice program to obtain, as a minimum, a summary of services provided that reflect pertinent information relevant to the patient's and family's care.
 - g. Consent and authorization forms.
 - h. Patient diagnosis and prognosis certified by the attending physician.
 - i. Legible therapeutic orders authenticated by the attending physician. Action must be initiated by the hospice program to obtain the physician's signature for verbal orders within forty-eight hours.
 - j. At the time of discharge or transfer, the hospice must provide those responsible for the patient's care with an appropriate summary of information, including the hospice service plan, about the patient to ensure the optimal continuity of care.
 - k. Bereavement care plan and progress notes including bereavement assessment and followup.

4. Pertinent information regarding patient needs must accompany the patient upon discharge from the inpatient setting, and must be included as part of the hospice medical record.
5. The medical record of a discharged patient must be completed within thirty days after discharge.
6. Records must be maintained by the agency for a period of not less than ten years following the date of discharge or death. In the case of a minor, the records must be maintained for a period of twelve years following the date of discharge or death.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-03-15-14. Patient and family rights.

1. Each hospice program must develop, adopt, implement, and make available for public review a statement of the rights and responsibilities of hospice patients and members of the hospice patient's family. This statement must be provided to the patient or family member designated by the patient, as evidenced by written acknowledgement, prior to or at the time of admission to the hospice program. The statement must include, but is not limited to, provisions assuring each patient and family the following minimum rights:
 - a. The right to be clearly informed of the responsibilities of the hospice program for care of the patient and family, including services to be provided.
 - b. The right to be fully informed, at the time of admission, of the materials and equipment available to the patient and family, any existing prepayment, refund and sliding scale fee policies, estimated cost, and of patient and family financial responsibility.
 - c. The right to participate in the development of the hospice service plan.
 - d. The right to be informed by a physician of the patient's medical condition.
 - e. The right to privacy in treatment and in caring for personal needs, and confidentiality in the treatment of personal and medical records.
 - f. The right to be treated courteously, fairly, and with the fullest measure of dignity.

2. Each program must prepare a written plan to implement this subsection.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-03-15-15. Quality assurance. Each hospice program must conduct a comprehensive self-assessment of the quality and appropriateness of care provided to the patient and family in the home and inpatient services.

1. The governing body shall delegate in writing responsibilities for implementation and maintenance of a planned process for reviewing and evaluating the appropriateness of patient and family care, as well as resolving identified problems.
2. The goals, objectives, methods for implementation, and responsibilities for monitoring and evaluating for effectiveness and efficiency of patient and family care must be specified in a written quality assurance plan which is reevaluated at least annually.
3. The hospice program, through the quality assurance program, must implement and report on activities and mechanisms for monitoring the quality of patient care, identify and resolve problems, and suggest improvements in patient care.
4. There must be documentation relating to the findings from and conclusions of the monitoring, evaluating, and problem solving activities, and the actions taken to resolve problems and improve patient and family services as defined in the quality assurance plan.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-03-15-16. Utilization review.

1. The hospice program must appoint a utilization review committee whose responsibilities are to provide an ongoing evaluation and review of the hospice program and to make recommendations to the administrator who shall report findings and recommendations to the governing body on a timely basis. The committee shall meet at least semiannually and provide the administrator with dated, signed minutes of the meetings.
2. There must be a written utilization review plan describing the process used to monitor the utilization of the hospice program service and to resolve identified problems.

3. There must be evidence that the plan is reviewed at least annually and revised as necessary.
4. The utilization review committee shall conduct regular, ongoing utilization review to include, but not be limited to, a random sample and defined number of hospice medical records to determine at least the following:
 - a. The appropriateness of admission to the hospice program.
 - b. Continued stay longer than six months.
 - c. If the hospice program service plan was directly related to the identified physical and social needs of the patient and family.
 - d. If the service, medication, and treatment prescribed were in accordance with the current hospice service plan.
 - e. If the hospice program of care appropriately utilized inpatient hospice care on a short-term basis only, and maintained itself primarily as a home care program.
5. In addition to the medical record review, the following sources of information may be obtained and reviewed:
 - a. Billing information.
 - b. Quality assurance findings.
 - c. Reimbursement.
6. When problems in the utilization of hospice program services are identified, there must be evidence that action is taken to correct the problems.

History: Effective July 1, 1987.

General Authority: NDCC 23-17.4, 28-32-02

Law Implemented: NDCC 23-17.4, 28-32-02

33-06-04-06. Rabies.

1. How reported. Whenever any physician or other person has knowledge that any person or animal has been bitten or injured by a dog or other animal infected or suspected of being infected with rabies and whenever the physician or person has knowledge of a case of rabies or suspected rabies in animals, the physician or person shall report the fact immediately to the state department of health and consolidated laboratories.
2. ~~When animals should be killed. When any dog or other animal shows clinical signs of rabies it~~

shall be immediately killed in such a manner as to preserve the brain intact.

Stray animals which have bitten an individual should be killed in such a manner as to preserve the brain intact.

Any domestic animal that bites a human or any domestic animal suspected of having rabies, regardless of the animal's immunization history, must be placed in strict isolation under the observation of a licensed veterinarian for ten days at the owner's expense. If the animal shows clinical signs of rabies during the period of isolation, it must be humanely destroyed immediately in a manner that preserves the brain intact, and the brain tissue shall be examined for rabies.

3. What to do with suspected animals. Do not kill the animal. If it is killed early in the disease the negri bodies may be so widely scattered or be so small as to be overlooked on microscopic examination. Thus it is always advisable to keep the suspected animal alive at least long enough to permit full development of symptoms. Put it in a secure pen, with plenty of feed and water or, preferably, place it in the hands of your veterinarian who is skilled in the diagnosis of rabies and other allied animal diseases. If the animal has rabies it will show progressive symptoms and die usually within three to five days. If it is alive and well at the end of fourteen days one can be fairly certain that rabies in a communicable state did not exist at time of human exposure. Any stray or unwanted domestic animal or wild animal that bites a person, must be humanely destroyed immediately in a manner that preserves the brain intact, and the brain tissue must be examined for rabies.
4. Delivery of the head to the laboratory. The best and quickest way to get the head to the laboratory is by personal messenger. When it is necessary to ship the head by common carrier every precaution should be taken to protect those who handle it enroute. Any domestic, vaccinated animal that is bitten or scratched by a rabid animal or exposed to a rabid animal in a manner that reasonably indicates a bite or scratch may have occurred, must be revaccinated immediately and observed by the owner for ninety days. If the animal shows clinical signs of rabies during the period of observation, it must be humanely destroyed immediately in a manner that preserves the brain intact, and the brain tissue must be examined for rabies.
5. Packaging. All senders must comply with these minimum packaging requirements.

- a- The specimen must be placed in a sealed plastic bag of heavy enough construction to prevent leakage of any fluids during transit.
- b- The refrigerant must be in a liquid-tight bag or container. This may be the same container as in subdivision e if it is watertight and of heavy construction.
- c- The specimen bag and refrigerant must then be placed in a sealed plastic, metal, or styrofoam container.
- d- The sealed plastic, metal, or styrofoam container must then be placed in a corrugated carton (minimum two hundred pounds {90.72 kilograms} test) for shipment.
- e- The exterior of the corrugated carton must be labeled "Perishable - Keep Away from Heat" and must show the sender's name and return address.
- f- The package must be addressed as follows if there is human exposure:

Public Health Laboratory
 Medical Center Rehabilitation Hospital
 1300 South Columbia Road
 Grand Forks, North Dakota 58202

- g- The package must be addressed as follows if there is no human exposure:

Veterinary Science Laboratory
 North Dakota State University
 Fargo, North Dakota 58102

- 6- Treatment for rabies. Any person who has been bitten by a rabid animal may secure rabies vaccine upon request by the person's personal physician to the state department of health. When the nature of the wound indicates antirabies serum is needed the serum will also be provided by the state department of health. The rabies vaccine and antirabies serum will be provided free of charge to the physician.
- 7- Rules of the state livestock sanitary board. The rules of the state livestock sanitary board pertaining to rabies or suspected rabies are hereby declared to be a part of this section when not in conflict therewith.

Any domestic, unvaccinated animal that is bitten or scratched by a rabid animal or exposed to a suspected rabid animal in a manner that reasonably indicates a bite or scratch may have occurred, must be destroyed immediately or, at the owner's expense, be placed in strict isolation under the observation of a licensed veterinarian for six months and vaccinated one month prior to being released. If the animal shows clinical signs of rabies during the period of isolation, it must be humanely destroyed immediately, in a manner that preserves the brain intact, and the brain tissue must be examined for rabies.

6. Specimens collected for examination for rabies must be packaged, not frozen, on wet ice or icepacks and must comply with the following requirements:

a. The specimen must be placed in a suitable sealed watertight container strong enough to prevent leakage during transit.

b. If wet ice is used as a refrigerant, it must be in a liquid-tight bag or container.

c. The specimen bag or container along with refrigerant must then be placed in a sealed plastic, metal, or styrofoam container.

d. The sealed plastic, metal, or styrofoam container must be placed in a corrugated or cardboard carton for shipment.

e. The exterior of the outside carton must be labeled "Perishable - Keep Away From Heat" and must include the sender's name and return address.

f. If there is human exposure, the package must be addressed to:

State Department of Health and
Consolidated Laboratories
Division of Microbiology
1205 Avenue A West
Box 5520
Bismarck, ND 58502-5520

If there is no human exposure, the package must be addressed to:

Veterinary Diagnostic Laboratory
North Dakota State University
Fargo, ND 58105

g. Accompanying the specimen, a data sheet must be completed and should include the following:

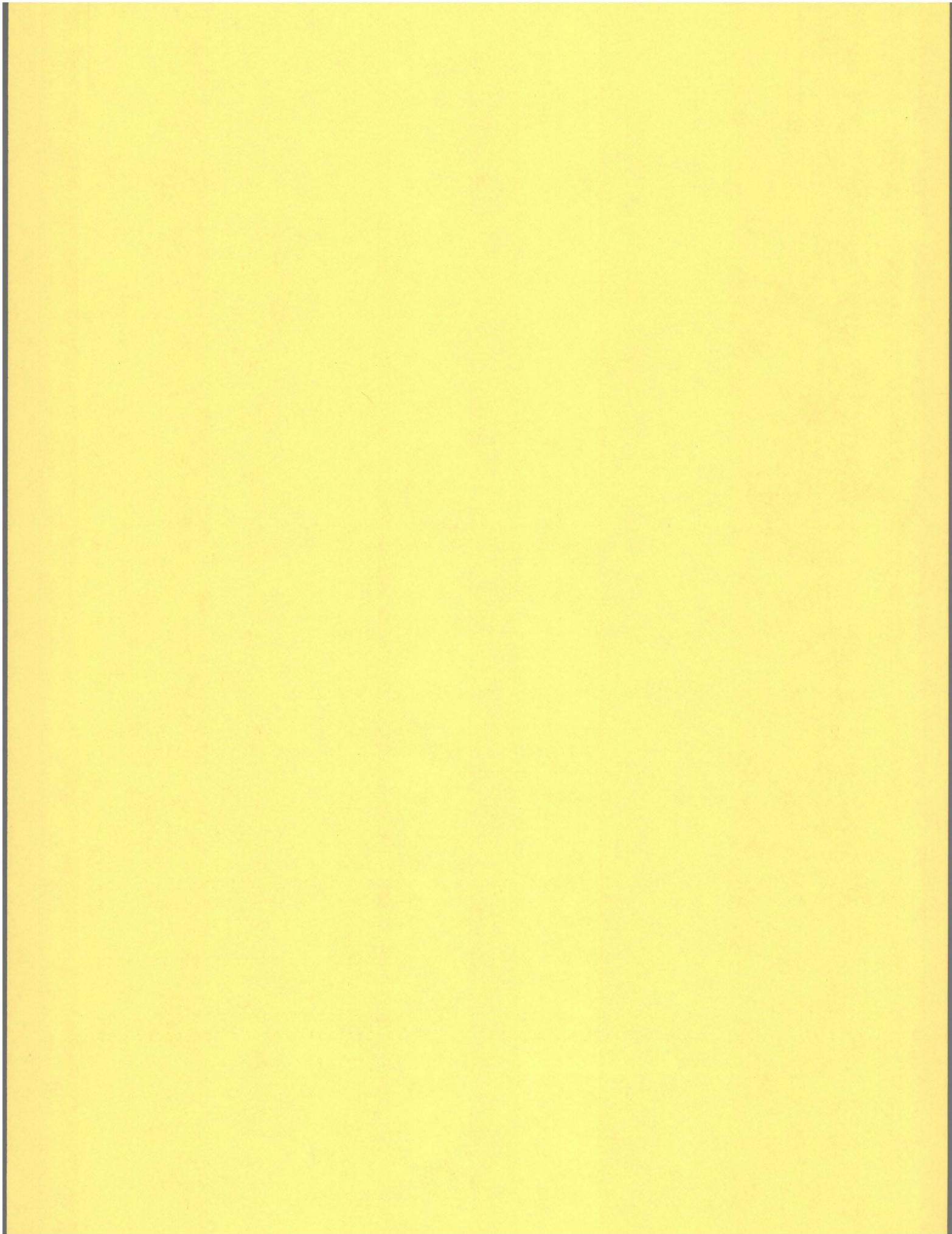
- (1) Name, phone number, and address of submitter.
- (2) Name and age of person exposed.
- (3) Date of exposure.
- (4) Date of collection.
- (5) Location of bite.
- (6) Type of animal.
- (7) Status of the animal.
 - (a) Vaccination history.
 - (b) Whether animal died or was destroyed.
 - (c) Whether animal was confined or observed before death.
- (8) Description of animal's behavior.
- (9) Circumstances surrounding the exposure (provoked or unprovoked).
- (10) Name, phone number, and address of medical and veterinary personnel to be informed of test results.

History: Amended effective July 1, 1987.

General Authority: NDCC 23-01-03, 23-01-18, 28-32-02

Law Implemented: NDCC 23-01-03

TITLE 45
Insurance, Commissioner of



JANUARY 1987

45-02-02-02. Applications for licenses.

1. Resident agents' applications.

- a. An application must be completed in accordance with the instruction sheet and submitted on the insurance department's application form.
- b. An application may be submitted prior or subsequent to the applicant's testing date.
- c. An application for an agent's license by a partnership must be accompanied by a certified copy of the agreement.
- d. An application for an agent's license by a corporation must be accompanied by a certified copy of the articles of incorporation.
- e. An applicant who is licensed as a nonresident agent in this state and seeks to be licensed as a resident agent must provide, with the application, a letter of clearance from the state in which the agent is currently or was most recently licensed as a resident agent. Additionally, the agent must have that state indicate whether the agent was so licensed within the preceding twelve months.
- f. An application for a corporate or partnership agent's license must be completed on the department form.
- g. A new application form is not required to add a new company unless adding an additional major category of insurance.

h. Every application must be accompanied by the appropriate fee.

2. Nonresident agents' applications.

a. An application for a nonresident agent's license must comply with subdivisions a, b, c, d, f, and h of subsection 1 and must contain a written designation of the commissioner and the commissioner's successors in office as that agent's true and lawful attorney for purposes of service of process.

b. An applicant for a nonresident agent's license must have the state which issued the agent's resident license, supply to the department a certificate showing the lines for which the agent is licensed and eligible to write in that state.

c. A new application form is not required to add a new company unless adding an additional major category of insurance.

3. Resident and nonresident brokers' applications.

a. An application must be completed in accordance with the instruction sheet provided by the department and submitted on the appropriate application form.

b. A broker's application must be accompanied by written proof of compliance with the requirement that the broker have in force a bond in the penal sum of not less than two thousand dollars and the appropriate fee.

c. An application for a broker's license may not be submitted unless the applicant is currently licensed in this state as an agent, and has had two years' experience as an insurance agent or in comparable employment for an insurance company, agency, or brokerage firm during the three years immediately next preceding the date of application.

4. Surplus lines brokers' applications. A surplus lines insurance broker's application must be submitted in accordance with chapter 45-09-01.

5. Consultants' applications.

a. An application for a consultant's license must be submitted in accordance with the instruction sheet provided by the department and submitted on the appropriate form.

- b. No person, firm, corporation, or partnership holding a license as an agent, broker, surplus lines broker, or limited insurance representative may obtain and simultaneously hold a license as a consultant. If the applicant ~~holding~~ holds such licenses at the time of application, the licenses must be terminated prior to obtaining a consultant's license.
- c. No person may apply for a consultant's license unless the applicant has had not less than five years' experience as an insurance agent or in comparable employment for an insurance company, agency, or brokerage firm, within the ten years immediately next preceding the date of application in the area of insurance in which the applicant intends to consult.
- d. An application may be submitted prior or subsequent to the applicant's testing date and must be accompanied by the appropriate fee.

6. Limited insurance representatives' applications.

- a. An application for a limited insurance representative must be submitted in accordance with the instruction sheet provided by the department and submitted on the appropriate form.
- b. The applicant must clearly indicate in writing the specific area of insurance in which the applicant intends to conduct business and which must be exempt from the examination requirement.

7. Temporary license applications.

- a. An application for a temporary insurance agent's or broker's license must be submitted in accordance with subdivisions a, b, c, d, e, and h of subsection 1, subsection 2, and subsection 3 and be accompanied by the appropriate fee.
- b. The application must be accompanied by a written statement of the reasons for requesting the issuance of a temporary license.
- c. A temporary license will not be granted for the sole reason that the applicant has failed to pass the agents' examination and desires to be licensed until such time as a passing examination score is obtained.

History: Effective September 1, 1983; amended effective October 1, 1984; January 1, 1987.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-12, 26.1-26-13

45-02-02-05. Effective date of license - New line - New company appointment - Renewals.

1. Resident agent.
 - a. An applicant who has filed a completed application for a resident agent's license with the department of insurance may first transact business under that license effective the date the applicant receives a passing test score report from the testing service the applicant's application is stamped approved by the insurance department.
 - b. An applicant who passes the examination prior to the filing of a completed application with the department may first transact business effective the date the company, through which the license is issued, signed the appointment. The company is responsible for notifying the agent of the appointment date and mailing the completed application to the department on that appointment date.
 - c. An agent who is adding a new line of insurance may first transact business in that new line effective the same date as the effective date if the agent were obtaining a new license under the provisions of subdivision a or b.
 - d. An agent who is adding a new company may first transact business under that new appointment effective the date of that appointment. An appointment form must be mailed to the department on the day the appointment is signed.
2. Nonresident agent.
 - a. An applicant who has filed a completed application for a nonresident license with the department may first transact business under the license when the license is physically in the possession of that applicant.
 - b. A nonresident agent who is adding a new line of insurance may first transact business in that new line effective the date the license with the new line added is physically in the possession of the agent.
 - c. A nonresident agent who is licensed for the appropriate category of insurance and who is adding a new company may first transact business under that new appointment effective the date of that appointment. An appointment form must be mailed on the day the appointment is signed.
3. A person obtaining a broker, surplus lines broker, limited representative, temporary, or consultant license may first transact business under that license effective the date the license is physically in the possession of that person.

History: Effective September 1, 1983; amended effective October 1, 1984; January 1, 1987.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-08, 26.1-26-12, 26.1-26-13, 26.1-26-32

45-05-01-01. Definitions. As used in this chapter:

1. "Certificate of self-insurance" means the certificate issued by the commissioner authorizing a person to be a self-insurer.
2. "Commissioner" means the commissioner of insurance of North Dakota.
3. "Person" or "persons" means any individual, partnership, corporation, or other legal entity who are owners of one or more motor vehicles operated in North Dakota by them or with their permission.
4. "Security requirement" means the financial ability of a person to make payment of basic no-fault benefits of ~~fifteen~~ thirty thousand dollars per person per accident; motor vehicle liability insurance of ~~ten~~ twenty-five thousand dollars per person, ~~twenty~~ fifty thousand dollars per accident and ~~five~~ twenty-five thousand dollars property damage; and uninsured motorist protection of ~~ten~~ twenty-five thousand dollars per person and ~~twenty~~ fifty thousand dollars per accident.
5. "Self-insurance" means any person who establishes a self-administered plan to meet the security requirements as required by the North Dakota Century Code chapter 26.1-41, the North Dakota Auto Accident Reparations Act.
6. "Self-insurer" means a person who has an approved plan of self-insurance and holds a certificate of self-insurance.
7. "Undertaking" means a continuing agreement by any person, or persons, or their duly authorized officers and agents, to pay basic no-fault benefits and the liabilities covered by motor vehicle liability insurance and to perform all other obligations imposed by North Dakota Century Code chapter 26.1-41.

History: Amended effective January 1, 1987.

General Authority: NDCC 26.1-41-05(3)

Law Implemented: NDCC 26.1-41-01

45-08-01-01. Coordination of benefit provisions. Group insurance policies, group-type individual policies (as described in the fourth paragraph of subdivision d of subsection 2); group subscriber policies, and individual or family nongroup subscriber policies issued in North Dakota

by nonprofit service corporations or health maintenance organizations, may contain coordination of benefit provisions for the control of over-insurance. No such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which they appear in this section. However, the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing herein or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve. Plans of coverage designed to be supplementary over the policyholder's underlying basic plan of coverage may provide that the coverage is in excess to that specific policyholder's plan of basic coverage from whatever source provided. Nothing in this section conflicts with North Dakota Century Code section 26-1-36-29.

- 1- Benefits subject to these provisions. All of the benefits provided under this policy are subject to these provisions.

(Note: Where the policy provides both integrated major medical expense benefits and the underlying basic benefits, but these provisions apply to major medical only, then use the following alternate wording. Only the major medical expense benefits provided under this policy are subject to these provisions.)

- 2- Definitions-

- a- "Allowable expense" means any necessary, reasonable, and customary item of expense, at least a portion of which is covered under one or more of the plans covering the person for whom claim is made or service is provided.

The difference between the cost of a private hospital room and the cost of a semiprivate hospital room may not be deemed to be an "allowable expense," except for the period of time during which the patient's confinement to a private hospital room is deemed medically necessary in terms of generally accepted medical practice.

If "medicare" or similar governmental benefits are included in the term "plan" such benefits

shall be taken into consideration without expanding this definition of allowable expense beyond the hospital, medical, and surgical benefits as may be provided under such governmental benefits.

Where a plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered shall be deemed to be both an allowable expense and a benefit paid.

b. "Claim determination period" means _____.

(Note: Insert here an appropriate period of time, such as "calendar year" or "benefit period as defined elsewhere in this policy".)

c. "Insurer", wherever used herein, means the applicable insurance company, nonprofit service corporation or health maintenance organization.

d. "Plan" means any plan providing benefits or services for or by reason of medical or dental care or treatment, which benefits or services are provided by (1) group, blanket, or franchise insurance coverage, (2) group subscriber policies and individual or family nongroup subscriber policies issued in North Dakota by nonprofit service corporations or health maintenance organizations, (3) a nonprofit hospital, medical, or dental service corporation, group practice, individual practice, and other prepayment coverage, (4) any coverage under labor-management trustee plans, union welfare plans, employer organization plans, or employee benefit organization plans, and (5) any coverage under governmental programs, and any coverage required or provided by a statute.

"Plan" does not include individual or family policies, or individual or family subscriber policies, except as provided in item (2) above and except as provided in the next succeeding paragraph.

"Plan" includes all group or group subscriber policies as well as such group-type policies as are not available to the general public and can be obtained and maintained only because of the covered person's membership in or connection with a particular organization or group.

Group-type policies answering this description shall be included in the term "plan" whether or not individual policy forms are used and whether the group-type coverage is designated as "franchise" or "blanket" or in some other fashion.

"Plan" shall be construed separately with respect to each policy, contract, or other arrangement for benefits or services and separately with respect to that portion of any such policy, contract, or other arrangement which reserves the right to take the benefits or services of other plans into consideration in determining its benefits, and that portion which does not.

The term "plan" does not include group or group-type hospital indemnity benefits, written on a non-expense-incurred basis, up to the first thirty dollars per day of such benefits. The amount of such hospital indemnity benefits, in excess of thirty dollars per day, shall be included in the term "plan".

School accident coverages, whether written on a blanket, group, or franchise basis, shall not be included in the term "plan". In this context, school accident coverages shall mean coverages covering grammar school or high school students for accidents only, including athletic injuries, either on a twenty-four-hour basis or on a "to and from school" basis, for which the parent pays the entire premium.

The term "plan" includes both group and individual automobile "no-fault" contracts for the purpose of coordination of benefits pursuant to subsection 3 of North Dakota Century Code section 26-1-41-13.

A plan may not coordinate or design benefits so that the benefits payable are altered solely on the basis that:

- (1) Another plan exists,
- (2) Except with respect to part B of medicare, that the claimant is or could have been covered under another plan, or
- (3) The claimant has elected an option under another plan providing a lower level of

benefits than another option for which the claimant was eligible.

- e. "Policy", wherever used herein, means policy or contract.
- f. "This plan" means that portion of this policy which provides the benefits that are subject to these provisions.

(Note: Any benefits provided under this policy that are not subject to these provisions shall constitute another plan.)

3. Effect on benefits.

- a. These provisions shall apply in determining the benefits as to a person covered under this plan for any claim determination period if, for the allowable expenses incurred as to such person during such period, the sum of the following would exceed such allowable expenses:
 - (1) The benefits that would be payable under this plan in the absence of these provisions, and
 - (2) The benefits that would be payable under all other plans in the absence therein of provisions of similar purpose to these provisions.
- b. As to any claim determination period with respect to which this provision is applicable, the benefits that would be payable under this plan in the absence of this provision for the allowable expenses incurred as to such person during such claim determination period shall be reduced to the extent necessary so that the sum of such reduced benefits and all the benefits payable for such allowable expenses under all other plans, except as provided in subdivision e, shall not exceed the total of such allowable expenses. Benefits payable under another plan include the benefits that would have been payable had claim been duly made therefor.
- c. If (1) another plan which is involved in subdivision b and which contains a provision coordinating its benefits with those of this plan would, according to its rules, determine its benefits after the benefits of this plan

have been determined, and (2) the rules set forth in subdivision d would require this plan to determine its benefits before such other plan, then the benefits of such other plan will be ignored for the purposes of determining the benefits under this plan. Plans coordinating benefits with "no-fault" coverage must follow the provisions of subsection 3 of North Dakota Century Code section 26-1-41-13.

d. For the purposes of subdivision e, the rules establishing the order of benefit determination are:

(1) The benefits of a plan which covers the person on whose expenses claim is based other than as a dependent shall be determined before the benefits of a plan which covers such person as a dependent.

(2) Until June 30, 1985, the benefits of a plan which covers the person on whose expenses claim is based as a dependent of a male person shall be determined before the benefits of a plan which covers such person as a dependent of a female person, except that in the case of a person for whom claim is made as a dependent child:

(a) When the parents are separated or divorced and the parent with custody of the child has not remarried, the benefits of a plan which covers the child as a dependent of the parent with custody of the child will be determined before the benefits of a plan which covers the child as a dependent of the parent without custody.

(b) When the parents are divorced and the parent with custody of the child has remarried, the benefits of a plan which covers the child as a dependent of the parent with custody shall be determined before the benefits of a plan which covers that child as a dependent of the stepparent, and the benefits of a plan which covers that child as a dependent of the stepparent will be determined before the benefits of a plan which covers that child as a dependent of the parent without custody.

Notwithstanding subparagraphs a and b, if there is a court decree which would otherwise establish financial responsibility for the medical, dental, or other health care expenses with respect to the child, the benefits of a plan which covers the child as a dependent of the parent with such financial responsibility must be determined before the benefits of any other plan which covers the child as a dependent child.

(3) Effective July 1, 1985-

- (a) Except for cases of a person for whom claim is made as a dependent child whose parents are separated or divorced, the benefits of a plan which covers the person on whose expenses claim is based as a dependent of a person whose date of birth, excluding year of birth, occurs earlier in a calendar year, must be determined before the benefits of a plan which covers such person as a dependent of a person whose date of birth, excluding year of birth, occurs later in a calendar year. If either plan does not have the provisions of this subparagraph regarding dependents, which results either in each plan determining its benefits before the other or in each plan determining its benefits after the other, the provisions of this subparagraph do not apply, and the rule set forth in the plan which does not have the provisions of this subparagraph determine the order of benefits.
- (b) In the case of a person for whom claim is made as a dependent child whose parents are separated or divorced and the parent with custody of the child has not remarried, the benefits of a plan which covers the child as a dependent of the parent with custody of the child will be determined before the benefits of a plan which covers the child as a dependent of the parent without custody.
- (c) In the case of a person for whom claim is made as a dependent child whose parents are divorced and the parent with custody of the child has remarried, the benefits of a plan which covers the

child as a dependent of a parent with custody must be determined before benefits of a plan which covers that child as a dependent of the stepparent, and the benefits of a plan which covers that child as a dependent of the stepparent will be determined before the benefits of a plan which covers that child as a dependent of the parent without custody.

(d) in the case of a person for whom claim is made as a dependent child whose parents are separated or divorced, where there is a court decree which would otherwise establish financial responsibility for the medical, dental, or other health care expenses with respect to the child, then, notwithstanding subparagraphs b and c, the benefits of a plan which covers the child as a dependent of the parent with such financial responsibility shall be determined before the benefits of any other plan which covers the child as a dependent child.

(4) When paragraphs 1 and 2 do not establish an order of benefit determination, the benefits of a plan which has covered the person on whose expenses claim is based for the longer period of time shall be determined before the benefits of a plan which has covered such person the shorter period of time, provided, that:

(a) The benefits of a plan covering the person on whose expenses claim is based as a laid-off or retired employee or dependent of such person, must be determined after the benefits of any other plan covering such person as an employee, other than a laid-off or retired employee, or dependent of such person, and

(b) if either plan does not have a provision regarding laid-off or retired employees which results in each plan determining its benefits after the other, then the provisions of subparagraph a do not apply.

e- (Note- This paragraph may be omitted if the plan provides only one benefit-)

Where these provisions operate to reduce the total amount of benefits otherwise payable as to a person covered under this plan during any claim determination period, each benefit that would be payable in the absence of this provision shall be reduced proportionately, and such reduced amount shall be charged against any applicable benefit limit of this plan.

- 4- Right to receive and release necessary information-
For the purposes of determining the applicability of and implementing the terms of these provisions of this plan or any provisions of similar purpose of any other plan, the insurer may, without the consent of or notice to any person, release to or obtain from any other insurance company or other organization or person any information, with respect to any person, which the insurer deems to be necessary for such purposes. Any person claiming benefits under this plan shall furnish to the insurer such information as may be necessary to implement these provisions.
- 5- Facility of payment- Whenever payments which should have been made under this plan in accordance with these provisions have been made under any other plans, the insurer shall have the right, exercisable alone and in its sole discretion, to pay over to any organizations making such other payments any amounts it shall determine to be warranted in order to satisfy the intent of these provisions, and amounts so paid shall be deemed to be benefits paid under this plan and, to the extent of such payments, the insurer shall be fully discharged from liability under this plan.
- 6- Right of recovery- Whenever payments have been made by the insurer with respect to allowable expenses in a total amount, at any time, in excess of the maximum amount of payment necessary at that time to satisfy the intent of these provisions, the insurer shall have the right to recover such payments, to the extent of such excess, from among one or more of the following, as the insurer shall determine: any persons to or for or with respect to whom such payments were made, any other insurance companies, or any other organizations.

History: Amended effective January 17, 1982, January 17, 1985.
General Authority: NDEC 26-1-36-10

Law Implemented: NDEC 26-1-36-10

Repealed effective January 1, 1987.

45-08-01-01.1. Purpose and scope. The purpose of this rule is to adopt the model group coordination of benefits regulation, with modifications, as promulgated by the national association of insurance commissioners. This rule is intended to establish uniformity in the permissive use of overinsurance provisions and to avoid claim delays and misunderstanding that could otherwise result from the use of inconsistent or incompatible provisions among plans.

1. General. A coordination of benefits provision is one that is intended to avoid claims payment delays and duplication of benefits when a person is covered by two or more plans providing benefits or services for medical, dental, or other care or treatment. It avoids claims payment delays by establishing an order in which plans pay their claims and by providing the authority for the orderly transfer of information needed to pay claims promptly. It avoids duplication of benefits by permitting a reduction of the benefits of a plan when, by the rules established herein, it does not have to pay its benefits first.

This rule permits, but does not require, plans to include coordination of benefits provisions.

If a group contract includes a coordination of benefits provision, it must be consistent with this section. A plan that does not include a coordination of benefits provision may not take the benefits of another plan as defined herein into account when it determines its benefits. There is one exception. A contractholder's coverage that is designed to supplement a part of a basic package of benefits may provide that the supplementary coverage must be excess to any other parts of the plan provided by the contractholder.

2. Definitions.

- a. "Allowable expense" means the necessary, reasonable, and customary item of expense for health care, when the item of expense is covered at least in part under any of the plans involved, except where a statute requires a different definition. However, items of expense under coverages such as dental care, vision care, prescription drug, or hearing aid programs may be excluded from the definition of allowable expense. A plan which provides benefits only for any such items of expense may limit its definition of allowable expenses to like items of expense.

When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered as both an allowable expense and a benefit paid.

The difference between the cost of a private hospital room and the cost of a semiprivate hospital room is not considered an allowable expense under this subdivision unless the patient's stay in a private hospital room is medically necessary in terms of generally accepted medical practice.

When coordination of benefits is restricted in its use to specific coverage in a contract (for example, major medical or dental), the definition of allowable expense must include the corresponding expenses or services to which coordination of benefits applies.

b. "Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

(1) Services (including supplies);

(2) Payment for all or a portion of the expenses incurred;

(3) A combination of (1) and (2) above; or

(4) An indemnification.

c. "Claim determination period" means the period of time, which must not be less than twelve consecutive months, over which allowable expenses are compared with total benefits payable in the absence of coordination of benefits to determine:

(1) Whether overinsurance exists; and

(2) How much each plan will pay or provide.

The claim determination period usually is a calendar year, but a plan may use some other period of time that fits the coverage of the group contract. A person may be covered by a plan during a portion of a claim determination period if that person's coverage starts or ends during the claim determination period.

As each claim is submitted, each plan is to determine its liability and pay or provide benefits based upon allowable expenses incurred to that point in the claim determination period. But that determination is subject to adjustment as later allowable expenses are incurred in the same claim determination period.

d. A "plan" means a form of coverage with which coordination is allowed. The definition of plan in the group contract must state the types of coverage which will be considered in applying the coordination of benefits provision of that contract. The right to include a type of coverage is limited by the rest of this subdivision.

The definition shown in the model coordination of benefits provision herein is an example of what may be used. Any definition which satisfies this subdivision may be used.

This rule uses the term "plan". However, a group contract may use "program" or some other term.

"Plan" does not include individual or family:

- (1) Insurance contracts;
- (2) Subscriber contracts;
- (3) Coverage through health maintenance organizations; or
- (4) Coverage under other prepayment, group practice and individual practice plans,

except as otherwise provided in this subdivision.

"Plan" may include:

- (1) Group insurance and group subscriber contracts;
- (2) Uninsured arrangement of group or group-type coverage;
- (3) Group or group-type coverage through health maintenance organizations and other prepayment, group practice and individual practice plans; and
- (4) Group-type contracts. "Group-type contracts" mean contracts which are not available to the general public and can be obtained and maintained only because of membership in or connection with a particular organization or group. Group-type contracts answering this description may be included in the definition of plan, at the option of the insurer or the service provider and its contract-client, whether or not uninsured arrangements or individual contract forms are used and regardless of how the group-type coverage is designated (for example, franchise or blanket). The use of payroll deductions by the employee, subscriber, or member to pay for the coverage is not sufficient, by itself, to make an individual contract

part of a group-type plan. This description of group-type contracts is not intended to include individually underwritten and issued, guaranteed renewable policies that may be purchased through payroll deduction at a premium savings to the insured.

"Plan" may include the medical benefits in group, group-type, and individual automobile no-fault and traditional automobile fault-type contracts.

"Plan" may include medicare or other governmental benefits. That party of the definition of "plan" may be limited to the hospital, medical, and surgical benefits of the governmental program. However, "plan" does not include a state plan under medicaid, and does not include a law or plan when, by law, its benefits are excess to those of any private insurance plan or other nongovernmental plan.

"Plan":

(1) May not be construed to include group or group-type hospital indemnity benefits of one hundred dollars per day or less; but

(2) May be construed to include the amount by which group or group-type hospital indemnity benefits exceed one hundred dollars per day.

"Hospital indemnity benefits" means those not related to expenses incurred. The term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

"Plan" does not include school accident-type coverages. These cover grammar, high school, and college students for accidents only, including athletic injuries, either on a twenty-four-hour basis or on a to-and-from school basis.

e. "Primary plan" means one whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if either paragraph 1 or 2 is true:

(1) The plan either has no order of benefit determination rules, or it has rules which differ from those permitted by this regulation.

(2) All plans which cover the person use the order of benefit determination rules required by this

regulation and under those rules the plan determines its benefits first.

There may be more than one primary plan (for example, two plans which have no order of benefit determination rules).

- f. "Secondary plan" means one which is not a primary plan. If a person is covered by more than one secondary plan, the order of benefit determination rules herein decide the order in which their benefits are determined in relation to each other. The benefits of each secondary plan may take into consideration the benefits of the primary plan or plans and the benefits of any other plan which, under the rules herein, has its benefits determined before those of that secondary plan.
- g. In a coordination of benefits provision, "this plan" means the part of the group contract providing the health care benefits to which the coordination of benefits provision applies and which may be reduced on account of the benefits of other plans. Any other part of the group contract providing health care benefits is separate from this plan.

A group contract may apply one coordination of benefits provision to certain of its benefits (such as dental benefits) coordinating only with like benefits, and may apply other separate coordination of benefits provisions to coordinate other benefits.

3. Model coordination of benefits contract provision.

- a. General. Subdivision d contains a model coordination of benefits provision for use in group contracts. That use is subject to the provisions of subdivisions b and c, and to the provisions of section 45-08-01-02.1, rules for coordination of benefits.
- b. Flexibility. A group contract's coordination of benefits provision does not have to use the words and format shown in this subsection. Changes may be made to fit the language and style of the rest of the group contract or to reflect the difference among plans:
- (1) Which provide services;
 - (2) Which pay benefits for expenses incurred; and
 - (3) Which indemnify.

Substantive changes are allowed only as set forth in this section.

c. Reduction of benefits. A group contract may not reduce benefits on the basis that:

- (1) Another plan exists;
- (2) Except with respect to part B of medicare, that a person is or could have been covered under another plan; or
- (3) A person has elected an option under another plan providing a lower level of benefits than another option which could have been elected.

No contract may contain a provision that its benefits are excess or always secondary to any plan defined in this section, except as noted in this section.

d. Text of the model coordination of benefits provision.

COORDINATION OF THE GROUP CONTRACT'S
BENEFITS WITH OTHER BENEFITS

- (1) Applicability. This coordination of benefits provision applies to this plan when an employee or the employee's covered dependent has health care coverage under more than one plan.

If this coordination of benefits provision applies, the order of benefit determination rules should be examined at first. Those rules determine whether the benefits of this plan are determined before or after those of another plan. The benefits of this plan:

- (a) May not be reduced when, under the order of benefit determination rules, this plan determines its benefits before another plan; but
- (b) May be reduced when, under the order of benefit determination rules, another plan determines its benefits first. The reduction is described in paragraph 4, effect on the benefits of this plan.

(2) Definitions.

- (a) "Allowable expense" means a necessary, reasonable, and customary item of expense for health care, when the item of expense is covered at least in part by one or more plans covering the person for whom the claim is made.

The difference between the cost of a private hospital room and the cost of a semiprivate

hospital room is not considered an allowable expense under this subparagraph unless the patient's stay in a private hospital room is medically necessary either in terms of generally accepted medical practice, or as specifically defined in the plan.

When a plan provides benefits in the form of services, the reasonable cash value of each service rendered will be considered both an allowable expense and a benefit paid.

(b) "Claim determination period" means a calendar year. However, it does not include any part of a year during which a person has no coverage under this plan, or any part of a year before the date this coordination of benefits provision or a similar provision takes effect.

(c) "Plan" means any of the following which provides benefits or services for, or because of, medical or dental care or treatment:

Group insurance or group-type coverage, whether insured or uninsured. This includes prepayment, group practice, or individual practice coverage. It also includes coverage other than school accident-type coverage.

Coverage under a governmental plan or required or provided by law. This does not include a state plan under medicaid (Title XIX, grants to states for medical assistance programs of the United States Social Security Act as amended from time to time). It also does not include any plan when, by law, its benefits are excess to those of any private insurance program or other nongovernmental program.

Each contract or other arrangement for coverage under subparagraph a is a separate plan. Also, if an arrangement has two parts and coordination of benefits rules apply only to one of the two, each of the parts is a separate plan.

(d) "Primary plan"/"secondary plan". The order of benefit determination rules state whether this plan is a primary plan or secondary plan as to another plan covering the person.

When this plan is a primary plan, its benefits are determined before those of the other plan

and without considering the other plan's benefits.

When this plan is a secondary plan, its benefits are determined after those of the other plan and may be reduced because of the other plan's benefits.

When there are more than two plans covering the person, this plan may be a primary plan as to one or more other plans, and may be a secondary plan as to a different plan or plans.

(e) "This plan" is the part of the group contract that provides benefits for health care expenses.

(3) Order of benefit determination rules.

(a) General. When there is a basis for a claim under this plan and another plan, this plan is a secondary plan which has its benefits determined after those of the other plan, unless the other plan has rules coordinating its benefits with those of this plan, and both those rules and this plan's rules in subparagraph b below, require that this plan's benefits be determined before those of the other plan.

(b) Order. This plan determines its order of benefits using the first of the following rules which apply:

Nondependent/dependent. The benefits of the plan which cover the person as an employee, member, or subscriber (that is, other than as a dependent) are determined before those of the plan which cover the person as a dependent.

Dependent child/parents not separated or divorced. Except as otherwise stated in this subparagraph, when this plan and another plan cover the same child as a dependent of different persons, called parents:

The benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year; but

If both parents have the same birthday, the benefits of the plan which covered the parent longer are determined before those of the plan

which covered the other parent for a shorter period of time.

However, if the other plan does not have the rule described immediately above, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of benefits, the rule in the other plan will determine the order of benefits.

Dependent child/separated or divorced parents. If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

First, the plan of the parent with custody of the child;

Then, the plan of the spouse of the parent with custody of the child; and

Finally, the plan of the parent not having custody of the child.

However, if the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. This paragraph does not apply with respect to any claim determination period or plan year during which any benefits are actually paid or provided before the entity has that actual knowledge.

Active/inactive employee. The benefits of a plan which covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan which covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule is ignored.

Longer/shorter length of coverage. If none of the above rules determines the order of benefits, the benefits of the plan which covered an employee, member, or subscriber longer are

determined before those of the plan which covered that person for the shorter time.

(4) Effect on the benefits of this plan.

(a) Application. This paragraph applies when, in accordance with paragraph 3 order of benefit determination rules, this plan is a secondary plan as to one or more other plans. In that event the benefits of this plan may be reduced under this section. Such other plan or plans are referred to as "the other plans" in subparagraph b.

(b) Reduction. The benefits of this plan will be reduced when the sum of:

The benefits that would be payable for the allowable expenses under this plan in the absence of this coordination of benefits provision; and

The benefits that would be payable for the allowable expenses under the other plan, in the absence of provisions with a purpose like that of this coordination of benefits provision, whether or not claim is made;

Exceeds those allowable expenses in a claim determination period. In that case, the benefits of this plan will be reduced so that they and the benefits payable under the other plans do not total more than those allowable expenses.

When the benefits of this plan are reduced as described above, each benefit is reduced proportionately. It is then charged against any applicable benefit limit of this plan.

(5) Right to receive and release needed information. Certain facts are needed to apply these coordination of benefits rules. [The XYZ Company] has the right to decide which facts it needs. It may get needed facts from or give them to any other organization or person. [The XYZ Company] need not tell, or get the consent of, any person to do this. Each person claiming benefits under this plan shall give [The XYZ Company] any facts it needs to pay the claim.

(6) Facility of payment. A payment made under another plan may include an amount which should have been paid under this plan. If it does, [The XYZ Company]

may pay that amount to the organization which made that payment. That amount will then be treated as though it were a benefit paid under this plan. [The XYZ Company] will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

(7) Right of recovery. If the amount of the payments made by [The XYZ Company] is more than it should have paid under this coordination of benefits provision, it may recover the excess from one or more of:

(a) The persons it has paid or for whom it has paid;

(b) Insurance companies; or

(c) Other organizations.

The amount of the payments made includes the reasonable cash value of any benefits provided in the form of services.

History: Effective January 1, 1987.

General Authority: NDCC 26.1-36-38

Law Implemented: NDCC 26.1-36-10, 26.1-36-29, 26.1-41-13

45-08-01-02. Guidelines. In the course of implementing the coordination of benefit provisions, if any, included in a policy, each insurer shall be guided by the following guidelines:-

1- Order of benefit determination:-

a- In determining the length of time a person has been covered under a given plan, two successive plans of a given group shall be deemed to be one continuous plan so long as the claimant was eligible for coverage within twenty-four hours after the prior plan had terminated. Thus, a change in the amount or scope of benefits provided by a plan, a change in the insurer insuring the plan, or a change from one type of plan to another, e.g., single employer to multiple employer plan, or vice versa, or single employer to a Taft-Hartley welfare plan, would not constitute the start of a new plan for purposes of this guideline-

b- If a claimant's effective date of coverage under a given plan is subsequent to the date the

insurer first contracted to provide the plan for the group concerned (employer, union, association, etc.); then, in the absence of specific information to the contrary, the insurer shall assume, for purposes of this guideline, that the claimant's length of time covered under that plan shall be measured from the claimant's effective date of coverage. If a claimant's effective date of coverage under a given plan is the same as the date of the insurer first contracted to provide the plan for the group concerned, then the insurer shall request the group concerned to furnish the date the claimant first became covered under the earliest of any prior plans the group may have had. If such date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the length of time the claimant's coverage under that plan has been in force.

2. Excess coverages, i.e., self-insurance and other nonregulated group plans. Insurers are urged to use the following claims administration procedures when one plan is "excess" to all other coverage and the other policy (group health) contains coordination of benefit provisions. Such other group policy shall pay first if it would be primary under the coordination of benefit order of benefit determination. In those cases where such other group policy would normally be considered secondary, the applicable insurer should make every effort to coordinate in the secondary position with benefits available through such "excess" plan. The insurer should try to secure the necessary information from the "excess" plan. But if such plan is unwilling to provide the insurer with the necessary information, then the insurer should assume the primary position since it has no legal authority to do otherwise.
3. Coordinating benefit payments. Insurers are urged to use the following claims administration procedures to expedite claim payments where coordination of benefits is involved.
 - a. Improving exchange of benefit information.
 - (1) There should be continued and improved education of claims personnel, stressing the need for accurate and prompt completion of the HIG Duplicate Coverage Inquiry (DUP-1) form by the inquiring insurer and the

responding insurer. This educational effort should also be encouraged through local claims associations.

(2) Claims personnel should be encouraged to make every effort, including use of the telephone, to speed up exchange of coordination of benefits information.

(3) Insurer should encourage the administration of each plan to build a local data file with respect to other group plans in the area, with at least basic information on plans of major local employers.

b. Each insurer should establish a time limit after which full or partial payment should be made. Where payment of a claim is necessarily delayed for reasons other than the application of coordination of benefit provisions, investigation of other valid coverage should be conducted concurrently so as to minimize further delay in the ultimate payment of benefits. Occasionally this will necessitate an insurer making payment as the primary insurer, with a right of recovery in the event of subsequent investigation proving that payment as a secondary insurer should have been made.

4. Subrogation. The concept of coordination of benefits is clearly distinguishable from that of subrogation. Provisions for either may be included in a group health insurance policy without compelling the inclusion or exclusion of the other.

5. Small claim waivers. Insurers are urged to waive the investigation of possible other coverage for coordination of benefit purposes with respect to claims of less than fifty dollars. However, should a subsequent additional incurred liability raise the aggregate claim above fifty dollars, then the entire liability should be included in the coordination of benefits computation.

6. Public education. Each insurer has an affirmative obligation to urge its respective group clients to take reasonable steps to assure that those insured under the group policy or subscriber contract have been exposed to reasonably concise explanations, with as little technical terminology as is commensurate with thoroughness, as to the purpose and operation of coordination of benefits. Such educational effort may, for example, take the form

of articles in the employer's magazine or newspaper; speeches before the appropriate labor organization in the case of a unionized employer; brochures enclosed in pay envelopes; notices on the employer's bulletin board; or materials used by the personnel department in counseling employees.

- 7- Retroactivity and effective date- Group and group-type policies which are in force as of the effective date of this chapter and which contain coordination of benefit provisions not fully in compliance with this chapter shall be brought into compliance by the later of the next anniversary of such policy or the expiration of the applicable collectively bargained contract, if any.

The January 1, 1985, amendments of this chapter become effective January 1, 1985, except that the amendment to paragraph 2 of subdivision d of subsection 3 of section 45-08-01-01 becomes effective on July 1, 1985. The provisions of the amendments to this chapter apply to all policy and contract forms subject to this chapter that are issued on or after these effective dates, and all policy and contract forms subject to this chapter that were issued prior to the effective dates must be brought into compliance with the requirements of this chapter, as amended hereby, by the later of the next anniversary date or renewal date of the group policy or contract, or the expiration of any applicable collectively bargained contract pursuant to which they are written.

History: Amended effective January 1, 1985.

General Authority: NDEC 26-1-36-10

Law Implemented: NDEC 26-1-36-10

Repealed effective January 1, 1987.

45-08-01-02.1. Rules for coordination of benefits.

1. Order of benefits.

a. General.

(1) Primary plan. The primary plan must pay or provide its benefits as if the secondary plan or plans did not exist.

(2) Secondary plan. A secondary plan may take the benefits of another plan into account only when,

under these rules, it is secondary to that other plan.

The primary plan determines its benefits first. It always pays the same benefits it would pay in the absence of duplicate coverage. It pays neither more nor less. The secondary plan determines its benefits after the primary plan does. Nothing the secondary plan does or provides ever affects the liability of the primary plan. It neither increases nor decreases that liability.

b. Dependent child/parents not separated or divorced.

- (1) Birthday. The word "birthday" used in the text of the model provision of this chapter refers only to month and day in a calendar year, not the year in which the person was born.
- (2) A group contract which includes coordination of benefits must include the substance of the model provision by:
 - (a) The next anniversary date or renewal date of the group policy or contract; or
 - (b) The expiration of any applicable collectively bargained contract pursuant to which they were written.

c. Longer/shorter length of coverage.

- (1) Treatment of plans. To determine the length of time a person has been covered under a plan, two plans must be treated as one if the claimant was eligible under the second within twenty-four hours after the first ended. Thus, the start of new plan does not include:
 - (a) A change in the amount or scope of a plan's benefits;
 - (b) A change in the entity which pays, provides, or administers the plan's benefits; or
 - (c) A change from one type of plan to another (such as, from a single employer plan to a multiple employer plan).
- (2) Measuring coverage. The claimant's length of time covered under a plan is measured from the claimant's first date of coverage under that plan. If that date is not readily available, the date the claimant first

became a member of the group must be used as the date from which to determine the length of time the claimant's coverage under the present plan has been in force.

2. Reduction in a plan's benefits when it is secondary. A secondary plan may reduce its benefits by using the provision noted below, or any version thereof which is more favorable to a covered person.

a. Total allowable expenses. A secondary plan may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period are not more than total allowable expenses. The amount by which the secondary plan's benefits have been reduced must be used by the secondary plan to pay allowable expenses, not otherwise paid, which were incurred during the claim determination period by the person for whom the claim is made. As each claim is submitted, the secondary plan determines its obligation to pay for allowable expenses based on all claims which were submitted up to that point in time during the claim determination period.

b. Suggested language. The suggested contract provision is as shown in the model coordination of benefits provision on reduction of benefits.

The last paragraph quoted in the reduction of benefits provision may be omitted if the plan provides only one benefit, or may be altered to suit the coverage provided.

3. Reasonable cash value of services. A secondary plan which provides benefits in the form of services may recover from the primary plan the reasonable cash value of providing the services, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this provision may be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan which provides benefits in the form of services.

4. Excess and other nonconforming provisions.

a. Plans not subject to insurance regulation. Some plans have order of benefit determination rules not consistent with this regulation which declare that the plan's coverage is "excess" to all others, or "always secondary". This occurs because certain plans may not be subject to insurance regulation.

b. Coordination between complying and noncomplying plans. A plan with order of benefit determination rules which comply with this chapter (called a complying plan) may

coordinate its benefits with a plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those contained in this chapter (called a noncomplying plan) on the following basis:

- (1) Primary plan. If the complying plan is the primary plan, it must pay or provide its benefits on a primary basis.
- (2) Secondary plan. If the complying plan is the secondary plan, it must, nevertheless, pay or provide its benefits first, but the amount of the benefits payable must be determined as if the complying plan were the secondary plan. In such a situation, the payment must be the limit of the complying plan's liability.
- (3) Identical benefits. If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and must pay its benefits accordingly. However the complying plan, must adjust any payments it makes based on such assumption whenever information becomes available as to the actual benefits of the noncomplying plan.
- (4) Subrogation. If the noncomplying plan: (a) reduces its benefits so that the employee, subscriber, or member receives less in benefits than he or she would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan; and (b) governing state law allows the right of subrogation set forth in subsection 6;

the complying plan must advance to or on behalf of the employee, subscriber, or member an amount equal to such difference. However, in no event may the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid. In consideration of such advance, the complying plan shall be subrogated to all rights of the employee, subscriber, or member against the noncomplying plan. Such advance by the complying plan must also be without prejudice to any claim it may have against the noncomplying plan in the absence of such subrogation.

5. Allowable expenses. The terms "usual and customary," "usual and prevailing," or "reasonable and customary," may be

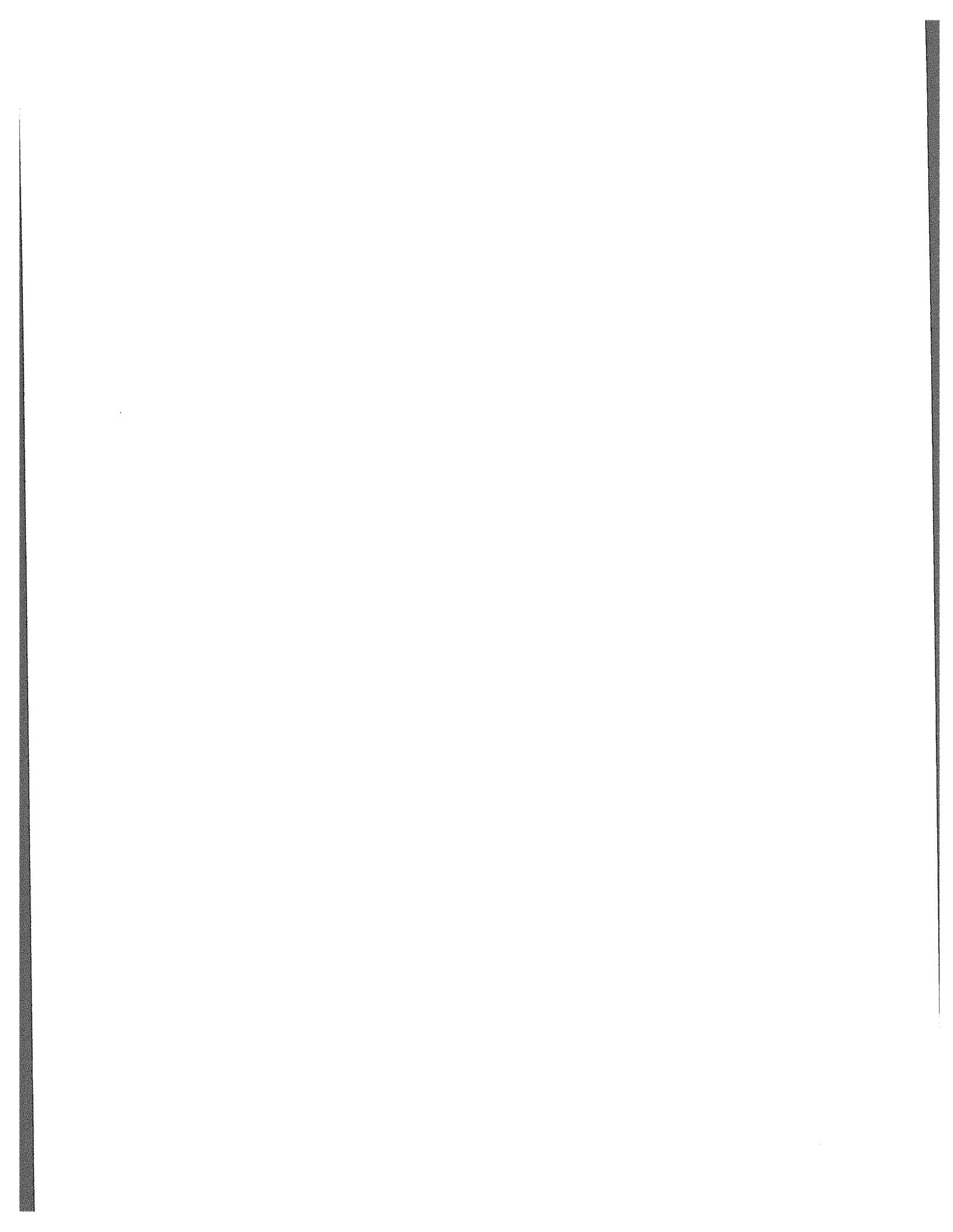
substituted for the term "necessary, reasonable, and customary". Terms such as "medical care" or "dental care" may be substituted for "health care" to describe the coverage to which the coordination of benefits provisions apply.

6. Subrogation. The coordination of benefits concept clearly differs from that of subrogation. Provisions for one may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

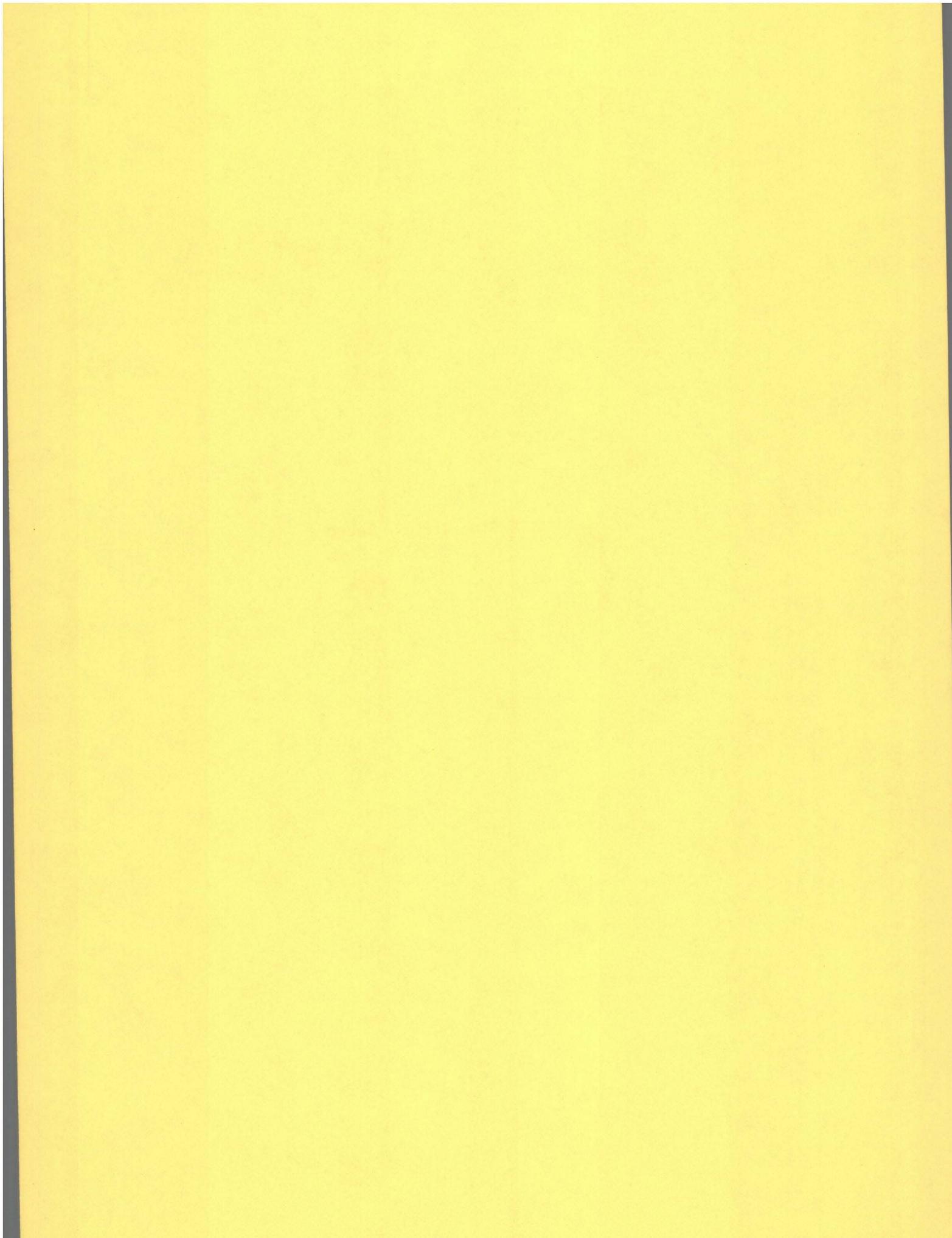
History: Effective January 1, 1987.

General Authority: NDCC 26.1-36-38

Law Implemented: NDCC 26.1-36-10, 26.1-36-29, 26.1-41-13



TITLE 51
Milk Stabilization Board



NOVEMBER 1986

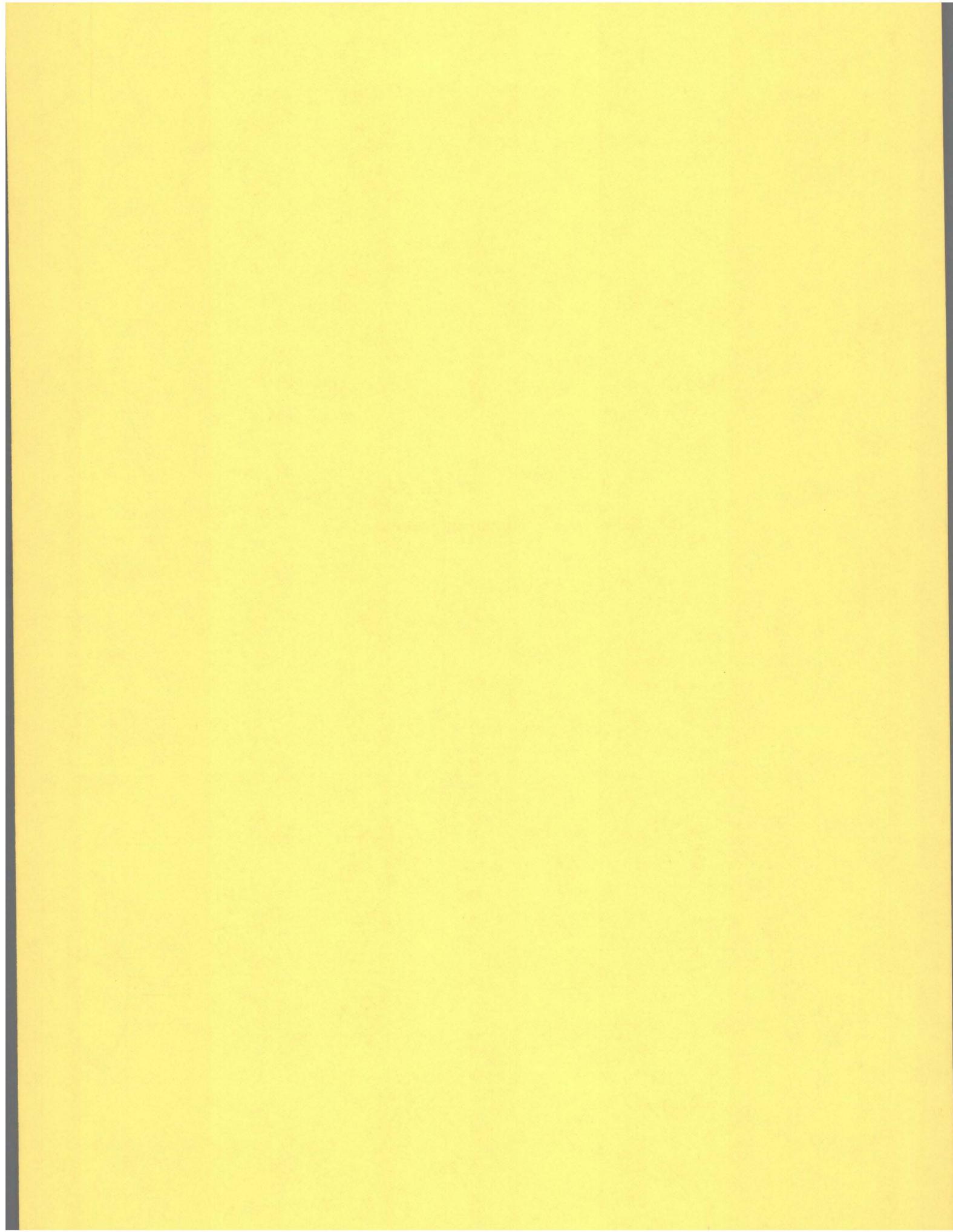
51-02-02-10. Equipment. The leasing, renting, lending, servicing, or repairing of equipment by a dealer to a retailer is prohibited, except that the furnishing of portable merchandisers by a dealer will be permitted for demonstration of dairy products by a dealer. The sale of equipment by a dealer to a retailer shall not be at a price less than the seller's invoice cost plus ten percent or depreciated value in the case of used equipment. All such sales must be fully documented by cash receipts, security agreements, or ledger accounts, and all terms of such sales shall be in accord with normal business practices.

History: Amended effective November 1, 1986.

General Authority: NDCC 4-18.1-01, 4-18.1-11

Law Implemented: NDCC 4-18.1-11

TITLE 54
Nursing, Board of



JULY 1987

54-02-05-03. Renewal fees.

The annual renewal fee for the registered nurse license will be ~~twenty~~ twenty-five dollars.

The annual renewal fee for the practical nurse license will be ~~fifteen~~ twenty dollars.

History: Amended effective November 1, 1979; July 1, 1987.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(3)

54-02-05-04. Increased renewal fee. The relicensure fee for any practicing nurse will be doubled for any renewal application received in the board office postmarked after December thirty-first. The registered nurse shall pay ~~forty~~ fifty dollars and the licensed practical nurse shall pay ~~thirty~~ forty dollars.

History: Amended effective November 1, 1979; June 1, 1982; July 1, 1987.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(3)

54-02-05-05.1. Practice requirements for license renewal. Nursing practice for purposes of relicensure must meet or exceed eighty hours per year or five hundred hours within the preceding five years.

History: Effective July 1, 1987.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(13)

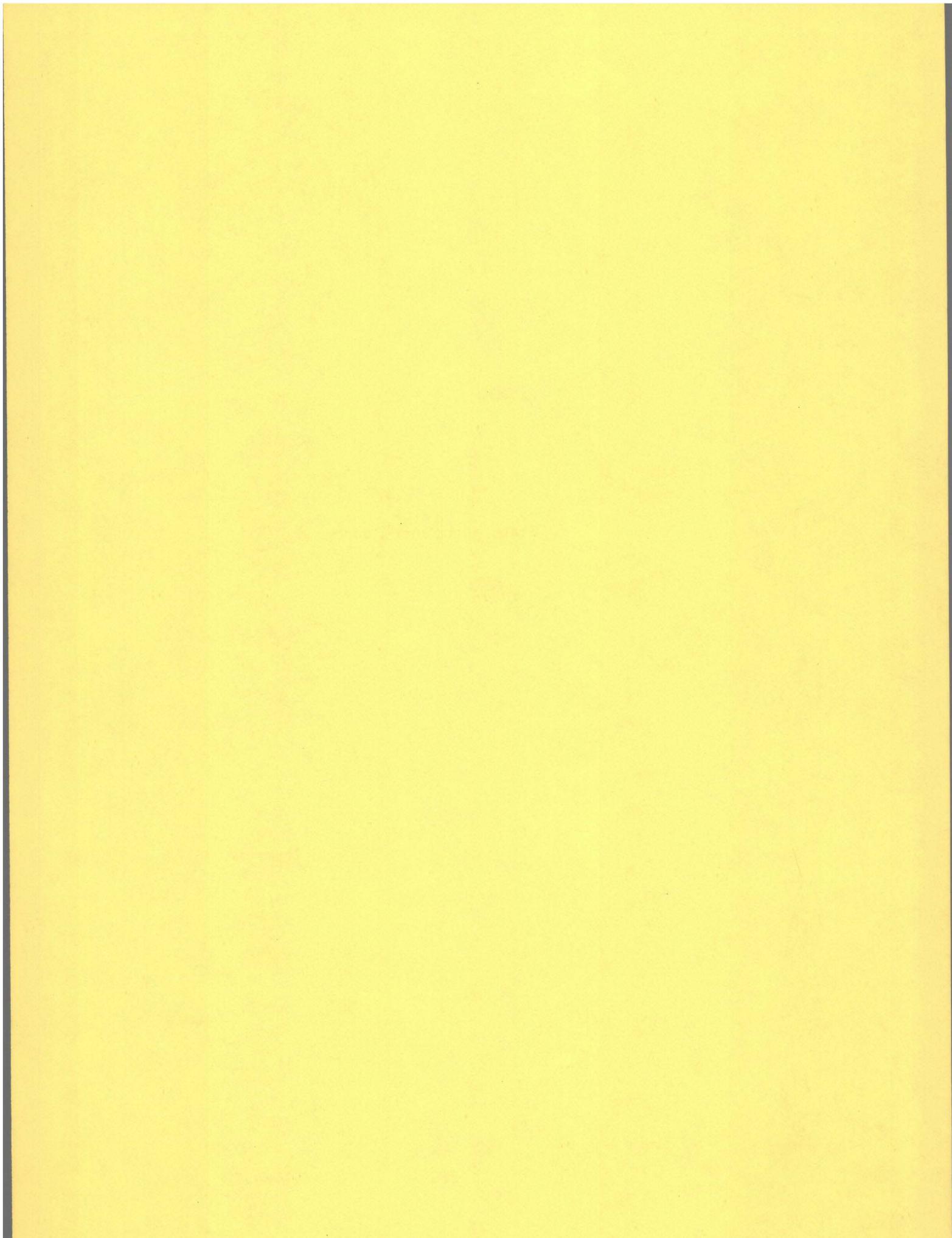
54-05-01.1-05. Role of the licensed practical nurse in intravenous therapy. Selected components in the nursing management of intravenous therapy may be performed by a licensed practical nurse who has completed a board-approved program that included intravenous therapy in the curriculum or one who has successfully completed a course in intravenous therapy that was developed according to board guidelines and approved by the board.

History: Effective July 1, 1987.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(16)

TITLE 59.5
State Personnel Board



MAY 1987

59.5-03-03-02. Definitions. The terms used throughout this title have the same meanings as in North Dakota Century Code chapter 54-44.3, except:

1. "Cause" includes conduct related to the employee's job duties, job performance, or working relationships which is detrimental to the discipline and efficiency of the service in which the employee is or was engaged.
2. "Demotion" includes an involuntary reduction for **cause disciplinary reasons** in the status of an employee from a position in one class to a position in a lower class **having a lower entrance salary or a significant reduction of a resulting in a decrease in base salary in grade.**
3. "Dismissal" includes an involuntary termination of employment of an employee for cause.
4. "Forced relocation" includes the involuntary transfer or reassignment of a classified employee from one work location in the employee's state to another work location in the state when an employee is likely to need to relocate their place of residence.
5. "Reduction-in-force" includes the loss of employment by layoff of an employee from the employee's present position as a result of the elimination of a program, a reduction in the number of full-time equivalent positions by the legislative assembly, lack of work, curtailment of work, lack of funds, expiration of grants, or reorganization.
6. "Reprisal action" includes unfavorable adverse employment-related actions taken against an employee by an appointing authority for either appealing to the state

personnel board or for exercising the employee's rights under the State and Political Subdivision Employees Relations Act of 1985, or for requesting timely assistance under the employee assistance program.

7. "Suspension without pay" includes an enforced unpaid leave of absence for cause or pending an investigation.
8. "Waiver" includes a written agreement between an employee and the appointing authority not to proceed with the internal agency grievance procedure and to permit an appeal to be made directly to the state personnel board when the employee has been dismissed from employment.

History: Effective December 1, 1985; amended effective May 1, 1987.

General Authority: NDCC 28-32-02, 54-44.3

Law Implemented: NDCC 54-44.3

59.5-03-03-04. Demotion. The appointing authority, after giving the employee a written notice of the reason, may demote an employee for cause disciplinary reasons. Classified employees who have satisfactorily completed their probationary periods have the right to appeal a demotion.

History: Effective December 1, 1985; amended effective May 1, 1987.

General Authority: NDCC 54-44.3

Law Implemented: NDCC 54-44.3

59.5-03-03-07. Reduction-in-force. The appointing authority may, after giving written notice to the employee, lay off the employee as a result of a reduction-in-force. Classified employees who have satisfactorily completed their probationary periods have the right to appeal a reduction-in-force only on the basis that approved agency the following four factors that are required to be included in an agency's reduction-in-force policies policy were not followed.

All agencies, departments, and institutions shall include the following as a minimum in their reduction-in-force actions-

1. An analysis of the acquired knowledge, demonstrated skills, and versatility of their employees compared to the work to be done and the available funding. Employees lacking the necessary skills and versatility should be considered for reduction.
2. An analysis of the level of demonstrated work performance. Employees having a consistently low level of performance should be considered for reduction.

3. A review of the length of service of their employees. Appointing authorities should list the number of years and months employees have been in the classified service. Employees with the fewest years of service should be considered for reduction.
4. An analysis of the extent of required training needed to train a reassigned employee to full productivity in a different position. Employees requiring substantial retraining should be considered for reduction.

Agencies shall develop and retain written documentation of the required analysis and review.

An agency may not subject classified employees who have satisfactorily completed their probationary periods to reduction-in-force while there are emergency, temporary, provisional, or probationary employees serving ~~either~~ in the same class, ~~or~~ in the same agency location. Classified employees who are subject to reassignment must possess the skills and abilities required to perform the other work after appropriate training.

Agencies shall conduct reductions-in-force in a nondiscriminatory manner and may not use such actions as a substitute for disciplinary measures.

History: Effective December 1, 1985; amended effective May 1, 1987.

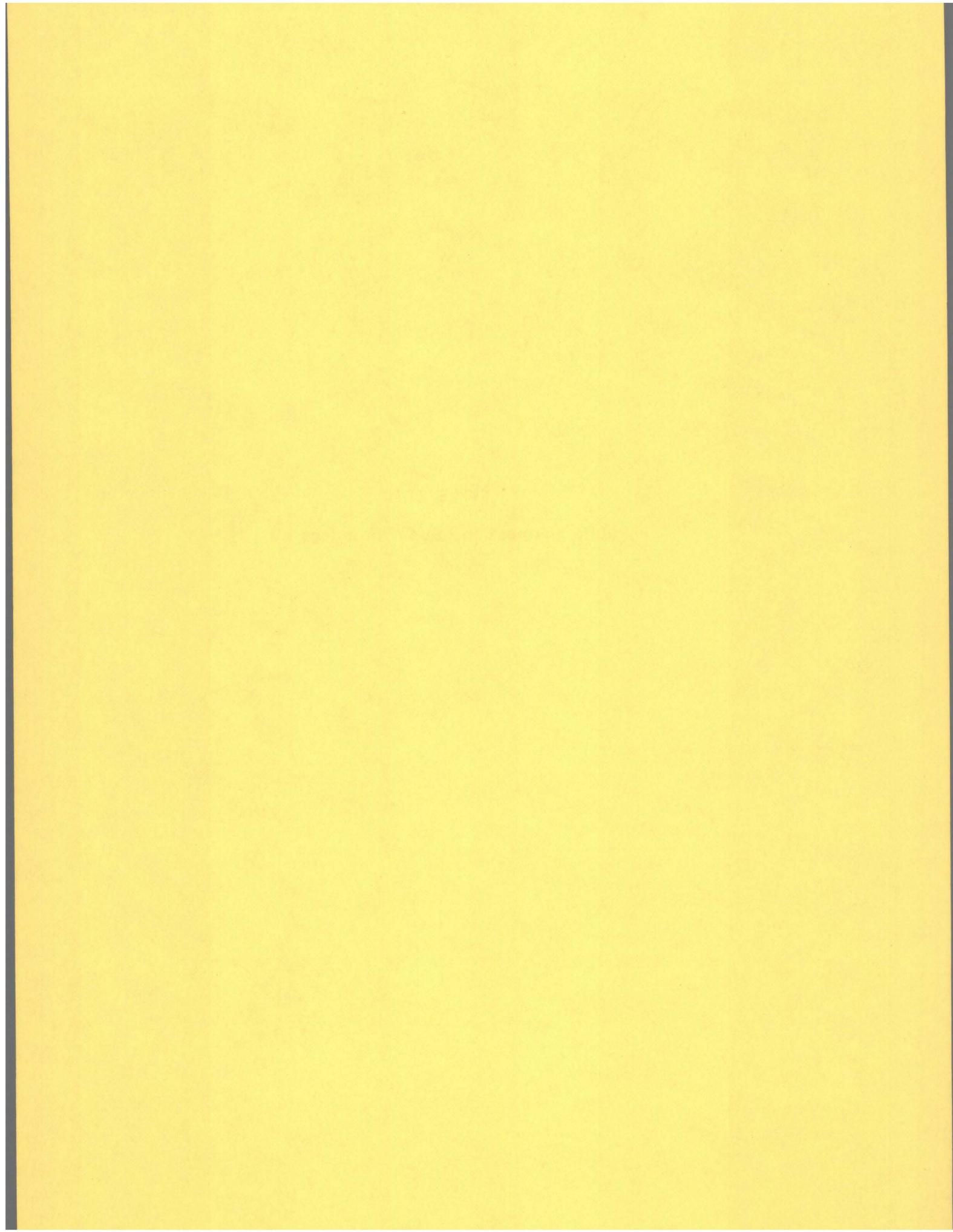
General Authority: NDCC 54-44.3

Law Implemented: NDCC 54-44.3-07



TITLE 67

Public Instruction, Superintendent of



APRIL 1987

67-02-01-01. Student teachers. A student teacher is one who teaches in a regular classroom situation as part of the requirements in professional preparation.

1. All college students in education shall have classroom related preprofessional experience prior to student teaching. This experience should be provided as early as possible. Formal admittance to the teacher education program includes meeting appropriate state program approval requirements.
2. The student teacher should be assigned by a college or university to a cooperating school on a full-time block. A full-time block is construed as a full day for nine ten consecutive weeks with exceptions documented. The student teacher shall be placed in a classroom where the cooperating teacher is regularly assigned. Additional student teaching experiences must be determined by the training institution.
3. In the event of an emergency, the student teacher may be used placed as a substitute teacher in the student teacher's regularly assigned classroom for a period of time not to exceed two consecutive days.
4. Student teachers shall be placed only in approved accredited schools.
5. Teaching experience cannot be used for a waiver of student teaching.

History: Amended effective November 1, 1980; January 1, 1984; April 1, 1987.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67-02-01-02. Cooperating teachers. A cooperating teacher is the teacher in the local situation who works with, helps, and advises the student teacher.

1. Every cooperating teacher shall have acquired a minimum of two semester hours or three quarter hours ~~or the equivalent, continuing education units or inservice in supervision of student teaching~~ in a supervision of student teaching course or an inservice requirement that meets the necessary essentials in preparing cooperating teachers to supervise student teachers. Those cooperating teachers who have served prior to July 1, 1976, may have this requirement waived at the discretion of the host college and cooperating school.
2. The cooperating teacher shall have at least two years of teaching experience. The cooperating teacher shall have at least one year of teaching experience in the school system in which the student teacher is being supervised.
3. Before being accepted and approved as a cooperating teacher, the teacher must be recommended by the administration of the school in which student teaching is performed.
4. A cooperating teacher who cannot recommend a student teacher for teaching or certification shall have a conference with the college supervisor and the student teacher prior to the student teaching evaluation and recommendation.

History: Amended effective April 1, 1987.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67-02-01-03. College supervisors. A college supervisor is the college faculty member who is in charge of guiding, helping, and directing the student teacher.

1. The college supervisor must have elementary or secondary teaching experience at the level of supervision.
2. A college supervisor after meeting with the administration of the school in which student teaching is to be done shall meet with the cooperating teacher and provide a copy of the State Student Teaching Guidelines.
3. The college supervisor shall make a copy of the student teacher's file available to the cooperating teacher prior to the arrival of the student teacher. Such file may contain a brief biography and general information, but shall not contain any specific information that would be in violation of a student's right to privacy.

4. A college supervisor shall make at least two visitations during the student's teaching experience. Following each visitation the college supervisor shall hold a joint conference with the cooperating teacher and the student teacher, or provide each a written critique of the visitation. The college supervisor shall be available for further consultation. The teacher education program staff may provide consultation and assistance for the first year teacher in North Dakota.

History: Amended effective April 1, 1987.
General Authority: NDCC 15-36-01, 28-32-02
Law Implemented: NDCC 15-36-01

67-02-01-04. Program approval of teacher education for certification. The state superintendent shall supervise a system of program approval for teacher education programs for state certification of teachers.

History: Effective April 1, 1987.
General Authority: NDCC 15-36-01, 28-32-02
Law Implemented: NDCC 15-36-01

67-02-01-05. Program approval standards. The state superintendent shall adopt a set of North Dakota teacher education program approval standards.

History: Effective April 1, 1987.
General Authority: NDCC 15-36-01, 28-32-02
Law Implemented: NDCC 15-36-01

67-02-02-02. Entrance certificates. Initial teacher certification for instate graduates shall require the applicant to have a bachelor's degree with a minimum of twenty semester hours or thirty quarter hours in professional education courses, which must include a minimum of nine weeks of full-time participation in student teaching and the recommendation of the college. Student teaching must have been performed under the supervision of a teacher-training institution approved by a state, regional, or national accrediting association completion of a state agency approved teacher education program of a bachelor's level minimum with an overall grade point average of 2.5 and a recommendation from the institution. The program must include twenty-six semester hours or forty quarter hours for secondary professional education or thirty-four semester hours or fifty quarter hours for elementary professional education. This education must include ten weeks of full-time successful participation in student teaching at appropriate grade levels under the supervision of a teacher training institution approved by the state agency. An out-of-state applicant must hold a four-year bachelor's degree with twenty

twenty-six semester hours or ~~thirty~~ forty quarter hours in secondary professional education courses including student teaching and must have three recommendations or thirty-four semester hours or fifty quarter hours in elementary professional education with a minimum overall grade point average of 2.5. The professional education must be part of a state program approved for teacher education training and include successful student teaching at the appropriate grade level. Three recommendations are required. Two of the recommendations must be secured from the most recent employing board, supervisors, and administrators. One of the recommendations may be a person of the applicant's choice. In the event that the applicant has not taught in the last three years or it is impossible to secure recommendations from supervisors or administrators, then the recommendations must be secured from individuals who can speak to the teaching potential and character of the applicant. Verification of eligibility for home state certification may be requested. Acceptable translations for preparations received in foreign institutions will be requested at the applicant's expense.

History: Amended effective April 1, 1987.
General Authority: NDCC 15-36-01, 28-32-02
Law Implemented: NDCC 15-36-01

67-02-03-03. ~~Appeal Denial and appeal.~~ Any educator denied a certificate may after one year apply for a two-year probationary certificate. Appropriate evidence must be provided indicating a positive change in regard to the reasons for the denial. The department of public instruction may deny an application for the issuance of a certificate made by an applicant:

1. Who failed to comply with certification statutes.
2. Who failed to submit appropriate recommendations.
3. Who has been convicted of a crime under the laws of the state or the United States.
4. Who is currently under license suspension.
5. Who has had certification revoked.

If the application for the issuance of certification is denied, an applicant may request a review of the denial before the North Dakota teachers' professional practices commission. The teachers' professional practices commission shall make a recommendation regarding the applicant's request for certification to the state superintendent. In the event the teachers' professional practices commission recommends continued denial of the application for certification, the applicant may appeal this recommendation for reconsideration to the state superintendent who may conduct a public hearing regarding this matter under North Dakota Century Code chapter 28-32.

History: Amended effective April 1, 1987.
General Authority: NDCC 15-36-01, 28-32-02
Law Implemented: NDCC 15-36-01

67-02-03-04. Indian studies. ~~All teachers certified or renewed for certification after April 1, 1982, shall have~~
Any teacher who graduated from a teacher education program after September 1, 1980, is required to meet the North Dakota Native American studies requirement which is two semester hours or three quarter hours of college credit in North Dakota Native American studies, or the equivalent inservice pursuant to approval by the department of public instruction. The two-year certificate will be used for compliance for reentry and out-of-state applicants. Reciprocity will be used.
Substitute teachers are exempt from the Indian studies requirement until a contracted position is accepted.

History: Effective December 1, 1979; amended effective August 1, 1981; April 1, 1987.
General Authority: NDCC 15-36-01, 28-32-02
Law Implemented: NDCC 15-36-01

67-02-03-05. State model for inservice education and staff development. The state superintendent shall adopt a model for inservice education and staff development. The model must include the assessment of statewide inservice and staff development needs, a projection of programs responsive to those needs, and the identification of the resources needed to implement those programs.

History: Effective April 1, 1987.
General Authority: NDCC 15-36-01, 28-32-02
Law Implemented: NDCC 15-36-01

67-02-04-01. Reentry. An applicant who has been out of teaching for a period of more than five years must earn a total of eight semester hours or twelve quarter hours of college or university credit in the area in which the teacher wishes to renew certification during the two-year renewal period first two years of reentry contracted service. One-half of the required credit hours must be earned before entering the second year of the renewal period. Substitute teachers are exempt from the eight semester hour requirement until the individual accepts a contracted position.

History: Amended effective April 1, 1987.
General Authority: NDCC 15-36-01, 28-32-02
Law Implemented: NDCC 15-36-01

67-02-05-01. Elementary endorsement. Reeducation of a certified teacher for elementary schoolteaching may be accomplished in one of the following two ways:

- 1- By completing a college major or minor in elementary education; or
- 2- By presenting a minimum of twenty by completing a college approved elementary teacher education program of twenty-six semester hours or thirty forty quarter hours of elementary education from a college or university with appropriate accreditation including a regular classroom student teaching experience of six quarter hours or a minimum of five consecutive weeks between grades kindergarten through sixth. A verified successful year of college supervised internship with credit may be substituted for student teaching. The hours shall include subject matter, content, and methods courses at The coursework must contain the elementary level methods in reading, language arts, mathematics, science, and social studies along with additional appropriate elementary education coursework. The applicant must have a minimum of one year successful teaching experience in grades kindergarten to six or have supervised student teaching as part of the above program.

An applicant will have two years to fulfill the endorsement requirements.

History: Amended effective December 1, 1979; April 1, 1987.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67-02-05-02. Kindergarten endorsement. Reeducation of elementary teachers for preschool or kindergarten schoolteaching may be accomplished in one of the following two ways:

- 1- By completing a college major or minor in early childhood education; or
- 2- By by presenting a minimum of eight semester hours or twelve quarter hours of early childhood education from a college or university with appropriate accreditation. The hours and work shall include curriculum and skills related to kindergarten-primary instruction, early childhood education and activities for the young child kindergarten coursework in curriculum, methods, materials, skills, and activities for the kindergarten child. The applicant must have a minimum of one year successful teaching experience in grades kindergarten, one, two, or three or student teaching (practicum) of four semester hours or six quarter hours or a minimum of five consecutive weeks applicable to the endorsed area.

An applicant will have two years to fulfill the endorsement requirements.

History: Amended effective December 1, 1979; August 1, 1981; April 1, 1987.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67-02-07-01. Reciprocity. North Dakota will have reciprocity for suspensions and revocations with other states during the suspension time and will determine acceptance of applicants case by case based on applicable North Dakota laws and denial procedures under section 67-02-03-03.

History: Amended effective November 1, 1980; April 1, 1987.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67-02-07-02. Experience. Teaching experience in approved preschool kindergarten, elementary, secondary, or and postsecondary teacher education programs schools will be counted for experience on certificate renewal.

History: Amended effective April 1, 1987.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

67-02-07-04. Endorsements and restrictions. The North Dakota educator's professional certificate is issued to those who hold a bachelor's degree from an accredited college or university approved as a teacher training institution. This degree must include twenty semester hours or thirty quarter hours in education. The coursework in education must include successful student teaching as described in section 67-02-02-02. This certificate qualifies the holder for regular classroom teaching or for functioning in specialized areas with the proper endorsements and restrictions as assigned. The endorsements are could be recently acquired college granted majors or minors or department of public instruction endorsements in kindergarten, elementary, preschool or kindergarten, and secondary. The restrictions are restricted certification is for psychology (master's degree with major in school psychology), speech therapy, mental retardation, deaf education, visually impaired, early childhood education preschool handicapped, and reserve officers' training corps. All other special education categories require regular elementary or secondary qualifications.

History: Amended effective November 1, 1980; August 1, 1981; January 1, 1984; April 1, 1987.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

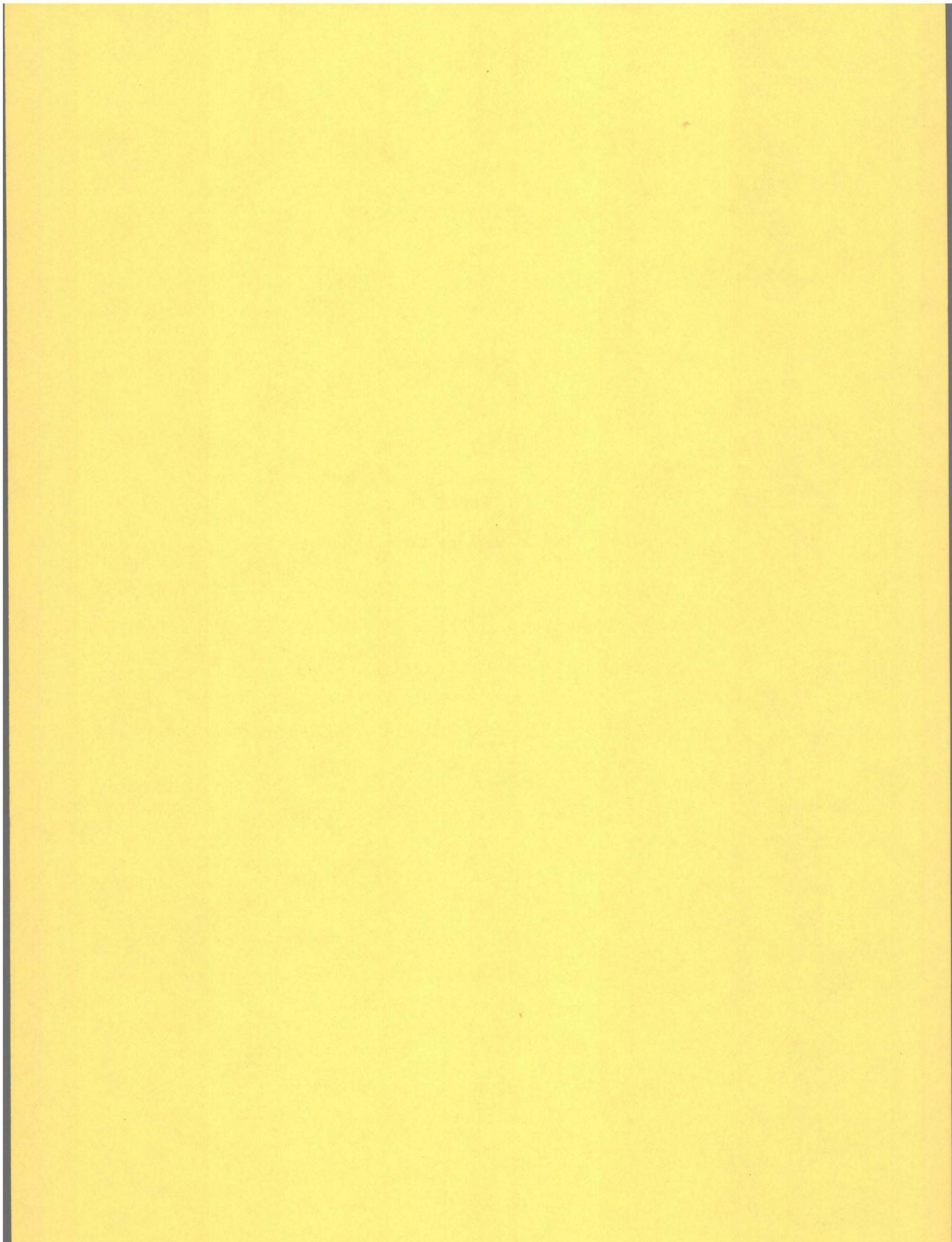
67-02-07-05. Alternate. The content of the laws and regulations for teacher certification may be fulfilled by providing the required documentation through a third party authorized by the candidate through an affidavit provided by the department of public instruction.

History: Effective April 1, 1987.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01

TITLE 69
Public Service Commission



JANUARY 1987

STAFF COMMENT: The text of subsection 11 of section 69-05.2-01-02 is new material; therefore, the remaining subsections 12 through 120 are renumbered accordingly.

69-05.2-01-02. Definitions. The definitions contained in North Dakota Century Code section 38-14.1-02 shall apply to this article and, as used throughout this article, the following terms have the specified meaning except where otherwise indicated:

1. "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation, alluvial valley floors, or other resources may be adversely impacted by surface coal mining and reclamation operations.
2. "Affected area" means any land or water upon or in which surface coal mining and reclamation operations are conducted or located.
3. "Agricultural activities" means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include, but are not limited to, the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. Those uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.
4. "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but

are not limited to, the pasturing, grazing and watering of livestock, and the cropping, cultivation and harvesting of plants.

5. "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.
6. "Best technology currently available" means equipment, devices, systems, methods, or techniques which will:
 - a. Prevent, to the extent possible, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state law.
 - b. Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable.
 - c. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the commission, even if they are not in routine use.
 - d. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities, and design of sedimentation ponds.
 - e. The commission shall have the discretion to determine the best technology currently available on a case-by-case basis.
7. "Blaster" means a person directly responsible for the use of explosives in surface coal mining operations who is certified under chapter 69-05.2-31.
8. "Cash" means:
 - a. All cash items except cash:
 - (1) Restricted by an agreement.
 - (2) Described as earmarked for a particular purpose.
 - b. Short-term investments such as stocks, bonds, notes, and certificates of deposit, where the intent and ability to sell them in the near future is established by the permittee.

9. "Cemetery" means any area of land where human bodies are interred.
10. "Coal mining operation" means, for purposes of restrictions on financial interests of employees, the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.
11. "Coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.
12. "Coal processing preparation plant" means a collection of facilities where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities. The processing plant may consist of, but need not be limited to, the following facilities: loading facilities, storage and stockpile facilities, sheds, shops, and other buildings, water treatment and water storage facilities, settling basins and impoundments, coal processing and other waste disposal areas, roads, railroads, and other transport facilities facility
where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities, storage and stockpile facilities, sheds, shops and other buildings, water treatment and water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.
13. "Coal processing waste" means earth materials which are combustible, physically unstable, or toxic-forming, which are wasted or otherwise separated from product coal and slurried or otherwise transported from coal preparation plants after physical or chemical processing, cleaning, or concentrating of coal.
14. "Collateral bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee and which is supported by the deposit with the commission of cash, negotiable bonds of the United States or of North Dakota, or negotiable certificates of deposit of any bank organized or transacting business in the state of North Dakota or a perfected lien or security interest in real property.
15. "Combustible material" means organic material that is capable of burning, either by fire or through a chemical process

(oxidation), accompanied by the evolution of heat and a significant temperature rise.

16. "Common-size comparative balance sheet" means item amounts from a number of the permittee's or permit applicant's successive yearly balance sheets arranged side by side in a single statement followed by common-size percentages whereby:
 - a. The asset total is assigned a value of one hundred percent.
 - b. The total of liabilities and owner equity is also assigned a value of one hundred percent.
 - c. Each individual asset, liability and owner equity item is shown as a fraction of one of the one hundred percent totals.
17. "Common-size comparative income statement" means a permittee's income statement amounts for a number of successive yearly periods arranged side by side in a single statement followed by common-size percentages whereby net sales are assigned a one hundred percent value, and then each statement item is shown as a percentage of net sales.
18. "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations, or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health, or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.
19. "Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.
20. "Complete inspection" means an onsite review of a permittee's or operator's compliance with all permit conditions and requirements imposed under North Dakota Century Code chapter 38-14.1 and this article, within the entire area disturbed or affected by surface coal mining and reclamation operations and includes the collection of evidence with respect to every violation of those conditions or requirements.
21. "Complete permit application" means an application for a surface coal mining and reclamation operations permit, which contains all information required by North Dakota Century Code chapter 38-14.1 and this article, to allow the commission to

initiate the notice requirements of North Dakota Century Code section 38-14.1-18 and a technical review for the purpose of complying with the permit approval or denial standards of North Dakota Century Code section 38-14.1-21 and of this article.

22. "Cooperative soil survey" means a field or other investigation that locates, describes, classifies and interprets for use the soils in a given area. Such survey must meet the standards of the national cooperative soil survey and is the type of survey that is usually made for counties by the United States department of agriculture soil conservation service in cooperation with agencies of the state and, in some cases, other federal agencies. If such survey is not available and a permit applicant is required to cause such a soil survey to be made, the scale of the soils map produced shall be 1:20,000.
23. "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included.
24. "Developed water resources" means, for land use purposes, land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.
25. "Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings, and also means any other arrangement where the employee may benefit from the employee's holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.
26. "Disturbed area" means those areas that have been affected by surface coal mining and reclamation operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by North Dakota Century Code chapter 38-14.1 and this article is released.
27. "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.
28. "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

29. "Emergency spillway" means the spillway designed to convey excess water through, over, or around a dam.
30. "Employee" means, for purposes of restrictions on financial interests of employees: any person employed by the commission as a state employee who performs any function or duty under North Dakota Century Code chapter 38-14.1; advisory board, commission members, or consultants who perform any decisionmaking functions for the commission under authority of state law or regulations; and any other state employee who performs any decisionmaking function or duty under a cooperative agreement with the commission. This definition does not include: the public service commissioners, who file annually with the director of the office of surface mining reclamation and enforcement, United States department of the interior; and members of advisory boards or commissions established in accordance with state laws or regulations to represent multiple interests, such as the North Dakota reclamation advisory committee.
31. "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.
32. "Essential hydrologic functions" means with respect to alluvial valley floors, the role of the valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, usefully available for agricultural activities, by reason of its position in the landscape and the characteristics of its underlying material. A combination of those functions provides a water supply during extended periods of low precipitation.
- a. The role of the valley floor in collecting water includes accumulating runoff and discharge from aquifers in sufficient amounts to make the water available at the alluvial valley floor greater than the amount available from direct precipitation.
 - b. The role of the alluvial valley floor in storing water involves limiting the rate of discharge of surface water, holding moisture in soils, and holding ground water in porous materials.
 - c. The role of the alluvial valley floor in regulating the natural flow of surface water results from the characteristic configuration of the channel floodplain and adjacent low terraces.

- d. The role of the alluvial valley floor in regulating the natural flow of ground water results from the properties of the aquifers which control inflow and outflow.
 - e. The role of the alluvial valley floor in making water usefully available for agricultural activities results from the existence of floodplains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the presence of earth materials suitable for the growth of agriculturally useful plants, from the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation, from the natural control of alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for growth of agriculturally useful plants.
33. "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction began prior to August 1, 1980.
34. "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable government-financed construction to be accomplished. Only that coal extracted from within the right of way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right of way or boundary of the area directly affected by the construction shall be subject to the requirements of North Dakota Century Code chapter 38-14.1 and this article.
35. "Fish and wildlife habitat" means lands or waters used partially or wholly for the maintenance, production, protection, or management of species of fish or wildlife.
36. "Flood irrigation" means, with respect to alluvial valley floors, supplying water to plants by natural overflow, or the diversion of flows in which the surface of the soil is largely covered by a sheet of water.
37. "Fragile lands" means geographic areas containing natural, ecologic, scientific, or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, state and national natural landmark sites, areas where mining

may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under North Dakota Century Code section 38-14.1-07.

38. "Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.
39. "General area" means, with respect to hydrology, the topographic and ground water basin surrounding an extended mining plan area or permit area which is of sufficient size, including areal extent and depth, to include one or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.
40. "Government-financed construction" means construction funded fifty percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or other equivalent, or in-kind payments.
41. "Government financing agency" means a federal, state, county, municipal, or local unit of government, or a department, bureau, agency, or office of the unit which, directly or through another unit of government, finances construction.
42. "Ground cover" means the area of ground covered by vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.
43. "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.
44. "Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.
45. "Historic lands" means historic or cultural districts, places, structures, or objects, including archaeological and paleontological sites, national historic landmark sites, sites listed on or eligible for listing on the state historic sites

registry or the national register of historic places, sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending.

46. "Historically used for cropland" means:

- a. Lands that have been used for cropland for any five years or more out of the ten years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations;
- b. Lands that the commission determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-ten criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or
- c. Lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

47. "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

48. "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

49. "Important farmland inventory map" means the map published by the soil conservation service, as required by 7 CFR 657, that identifies and locates prime farmland and other farmlands of statewide or local importance.

50. "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

51. "Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by the employee's spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.
52. "Industrial and commercial" means, for land use purposes, land used for:
- a. Extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products. This includes all heavy and light manufacturing facilities such as chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.
 - b. Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage, or shipping facilities.
53. "Intermittent stream" means a stream or part of a stream that flows continuously for at least one month of the calendar year as a result of ground water discharge or surface runoff.
54. "Irreparable damage to the environment" means any damage to the environment that cannot be corrected by action of the permit applicant or the operator.
55. "Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur.
56. "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.
57. "Materially damage the quantity or quality of water" means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial

valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.

58. "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.
59. "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for the germination and growth of plants.
60. "Native grassland" means land on which the natural potential plant cover is principally composed of native grasses, grasslike plants, forbs, and shrubs valuable for forage and is used for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which is adjacent to or an integral part of these operations is also included.
61. "Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.
62. "Noxious plants" means species as defined in North Dakota Century Code section 63-01.1-02 that have been included on the official state list of noxious weeds.
63. "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.
64. "Operation plan" means a plan submitted by a permit applicant which sets forth a detailed description of the surface coal mining operations proposed to be conducted during the term of the permit within the proposed permit area.
65. "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.
66. "Partial inspection" means an onsite review of a permittee's or operator's compliance with some of the permit conditions and requirements imposed under North Dakota Century Code chapter 38-14.1 and this article and includes the collection of evidence of any violation of those conditions or requirements.

67. "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.
68. "Performing any function or duty" means those decisions or actions which, if performed or not performed by an employee, affect surface coal mining and reclamation operations under North Dakota Century Code chapter 38-14.1.
69. "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations which has been approved for retention by the commission and other appropriate state agencies.
70. "Person having an interest which is or may be adversely affected or person with a valid legal interest" includes:
 - a. Any person who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by surface coal mining and reclamation operations or any related action of the commission.
 - b. Any person whose property is or may be adversely affected by surface coal mining and reclamation operations or any related action of the commission.
 - c. Any federal, state, or local governmental agency.
71. "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. "Precipitation event" also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.
72. "Principal shareholder" means any person who is the record or beneficial owner of ten percent or more of any class of voting stock.
73. "Principal spillway" means an ungated pipe conduit with minimum diameter of twelve inches [30.48 centimeters] constructed for the purpose of conducting water through the embankment back to streambed elevation without erosion.
74. "Probable cumulative impacts" means the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regime.
75. "Probable hydrologic consequence" means the projected result of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing, and pattern; the stream channel

conditions; and the aquatic habitat on the permit area and adjacent areas.

76. "Productivity" means the vegetative yield produced by a unit area for a unit of time.
77. "Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.
78. "Public building" means any structure that is owned by a public agency or used principally for public business, meetings, or other group gatherings.
79. "Public office" means a facility under the direction and control of a governmental entity which is open to the public on a regular basis during reasonable business hours.
80. "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.
81. "Public road" means a public way for purposes of vehicular travel, including the entire area within the right of way, all public ways acquired by prescription as provided by statute, and all land located within two rods [10.06 meters] on each side of all section lines. This definition does not include those public ways or section lines which have been vacated as permitted by statute or abandoned as provided by statute.
82. "Qualified laboratory" means a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination or statement under the small operator assistance program.
83. "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.
84. "Recreation" means, for land use purposes, land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.
85. "Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the ten-year, twenty-four-hour precipitation event would be that twenty-four-hour precipitation event expected to occur on the average once in ten years. Magnitude of such events are as defined by the national weather service technical paper no. 40, Rainfall Frequency Atlas of the United

States, May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.

86. "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the commission. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.
87. "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.
88. "Residential" means, for land use purposes, single- and multiple-family housing, mobile home parks and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.
89. "Return on investment" means the relation of net profit for the last yearly period to ending net worth.
90. "Road" means access and haul roads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations. A road consists of the entire area within the right of way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, and such contiguous appendages as are necessary for the total structure.

The term does not include:

- a. Temporary nonsurfaced trails used for vehicle access or suitable plant growth material transport where such trails do not appreciably alter the original contour.
 - b. Coal haulage ramps within the pit area.
 - c. Public roads.
91. "Safety factor" means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.
 92. "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance

with this article and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

93. "Significant, imminent environmental harm to land, air, or water resources" is determined as follows:
- a. An environmental harm is any adverse impact on land, air, or water resources, including but not limited to plant and animal life.
 - b. An environmental harm is imminent if a condition, practice, or violation exists which is causing such harm or may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under North Dakota Century Code section 38-14.1-28.
 - c. An environmental harm is significant if that harm is appreciable and not immediately repairable.
94. "Significant recreational, economic, or other values incompatible with surface coal mining operations" means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on offsite areas which could be affected by mining. Those values to be evaluated for their importance include:
- a. Recreation, including hiking, boating, camping, skiing, or other related outdoor activities.
 - b. Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce.
 - c. Scenic, historic, archaeologic, esthetic, fish, wildlife, plants, or cultural interests.
95. "Slope" means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance, e.g., 1v to 5h = 20 percent = 11.3 degrees.
96. "Soil horizons" means contrasting layers of soil lying one below the other, parallel, or nearly parallel to the land surface. Soil horizons are differentiated on the basis of

field characteristics and laboratory data. The three major soil horizons are:

- a. A horizon. The uppermost layer in the soil profile, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.
 - b. B horizon. The layer immediately beneath the A horizon. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.
 - c. C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.
97. "Spoil" means overburden that has been disturbed during surface coal mining operations.
98. "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties such as by providing a protective surface coating.
99. "Subirrigation" means, with respect to alluvial valley floors, the supplying of water to plants from a semisaturated or saturated subsurface zone where water is available for use by vegetation. Subirrigation may be identified by:
- a. Diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;
 - b. Increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;
 - c. Mottling of the soils in the root zones;
 - d. Existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or
 - e. An increase in streamflow or a rise in ground water levels, shortly after the first killing frost on the valley floor.
100. "Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities.

101. "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.
102. "Surety bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee or permit applicant which is supported by the performance guarantee of a corporate surety licensed to do business in the state of North Dakota.
103. "Surface coal mining operations which exist on the date of enactment" means all surface coal mining operations which were being conducted on July 1, 1979.
104. "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, or by recovery of coal from a deposit that is not in its original geologic location.
105. "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a forty-five hundredths micron filter.
106. "Tame pastureland" means land used for the long-term production of predominantly adapted, domesticated species of forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.
107. "Temporary diversion" means a diversion of a stream or overland flow which is used during surface coal mining and reclamation operations and not approved by the commission to remain after reclamation as part of the approved postmining land use.
108. "Ton" means two thousand pounds avoirdupois [0.90718 metric ton].
109. "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.
110. "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

111. "Transfer, assignment, or sale of rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the commission.
112. "Unconsolidated streamlaid deposits holding streams" means, with respect to alluvial valley floors, all floodplains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than three feet [0.91 meters] in bankfull width and greater than six inches [15.24 centimeters] in bankfull depth.
113. "Undeveloped rangeland" means, for purposes of alluvial valley floors, lands generally used for livestock grazing where such use is not specifically controlled and managed.
114. "Upland areas" means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.
115. "Valid existing rights" means:
 - a. Except for roads:
 - (1) Those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which authorizes the permit applicant to produce coal by a surface coal mining operation; and
 - (2) The person proposing to conduct surface coal mining operations on such lands either:
 - (a) Had been validly issued or had made a good faith attempt to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct such operations on those lands; or
 - (b) Can demonstrate to the commission that the coal is both needed for, and is immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.
 - b. For roads:

- (1) A recorded right of way, recorded easement, or a permit for a road recorded as of August 3, 1977; or
 - (2) Any other road in existence as of August 3, 1977.
- c. Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon applicable North Dakota case law concerning interpretation of documents conveying mineral rights or, where no applicable North Dakota case law exists, upon the usage and custom at the time and place where it came into existence, and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same surface mining activities for which the applicant claims a valid existing right.
 - d. "Valid existing rights" does not mean mere expectation of a right to conduct surface coal mining operations.
- 116. "Viable economic unit" means, with respect to prime farmland, any tract of land identified as prime farmland by the state conservationist of the soil conservation service that has been historically used for cropland.
 - 117. "Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.
 - 118. "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.
 - 119. "Willful violation" means an act or omission which violates North Dakota Century Code chapter 38-14.1, this article, or individual permit conditions, committed by a person who intends the result which actually occurs.
 - 120. "Woodland" means land where the primary vegetation is trees or shrubs. This includes both natural wooded areas and shelterbelts and other woody plantings made by man.
 - 120. "Woody plants" means trees, shrubs, half-shrubs, and woody vines.

History: Effective August 1, 1980; amended effective June 1, 1983; April 1, 1985; June 1, 1986; January 1, 1987.

General Authority: NDCC 38-14.1-03, 38-14.1-38

Law Implemented: NDCC 38-14.1-02, 38-14.1-03, 38-14.1-21, 38-14.1-38

69-05.2-08-05. Permit applications - Permit area - Geology description.

1. The description shall include a general statement of the geology within the proposed permit area down to and including the first aquifer to be affected below the lowest coal seam to be mined.
2. Test borings or core samples from the proposed permit area shall be collected and analyzed down to and including the stratum immediately below the lowest coal seam to be mined. The minimum density shall be one drill hole per forty acres [16.19 hectares] or a comparable spacing, or as otherwise specified by the commission. Overburden samples are to be taken at five-foot [1.52-meter] intervals and are to be taken dry whenever possible. Both dry and wet samples can be used for analysis. Laboratory analyses shall be made by the methods outlined in United States department of agriculture handbook 525, Laboratory Methods Recommended for Chemical Analyses of Mined Land Spoils and Overburden in Western United States, by Sandoval and Power, or United States department of agriculture handbook 60, Diagnosis and Improvement of Saline and Alkali Soils, by the United States salinity laboratory staff, both available from the United States government printing office, Washington, D. C. The following information shall be provided:
 - a. Location of subsurface water, if encountered.
 - b. Logs of drill holes with gamma ray and density logs included as verification showing the lithologic characteristics and thickness of each stratum and each coal seam.
 - c. Physical and chemical analyses of each overburden sample taken at five-foot [1.52-meter] intervals within the overburden and the stratum immediately below the lowest coal seam to be mined to identify, at a minimum, those horizons which contain potential toxic-forming materials. The analyses shall include:
 - (1) pH.
 - (2) Sodium adsorption ratio (include calcium, magnesium, and sodium cation concentrations).
 - (3) Electrical conductivity of the saturation extract.
 - (4) Texture (by pipette or hydrometer method). Include percentage breakdown of sand, silt, and clay along with a general description of the physical properties of each stratum within the overburden.
 - (5) Saturation percentage.

- d. Analyses of the coal seam, including, but not limited to, an analysis of the sodium, ash, British thermal unit, sulfur, and iron sulfide content.
 - e. Cross sections sufficient to depict the major subsurface variations within the permit area down to the stratum immediately below the lowest coal seam to be mined. The horizontal scale shall be 1:4,800 and the vertical scale shall be one inch [2.54 centimeters] equals twenty feet [6.10 meters]. To assess the suitability of a pit selected for disposal of refuse, ash and other residue from coal utilization processes, the information presented in this subsection shall extend to a depth to be determined by the commission or to the base of the next confining clay stratum occurring beneath the lowest seam of coal to be mined.
 - f. A thickness (isopach) map of the overburden to the top of the deepest seam to be mined. The contour interval shall be ten feet [3.05 meters] and the horizontal scale shall be 1:4,800.
 - g. All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area.
3. If required by the commission, test borings or core samplings shall be collected and analyzed to greater depths within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed activities on the hydrologic balance.

History: Effective August 1, 1980; amended effective January 1, 1987.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-19. Permit applications - Operations and reclamation plans - Coal preparation plants not located within the permit area of a mine.

- 1. This section applies to any person who operates or intends to operate a coal preparation plant outside the permit area of any mine, other than such plants which are located at the site of the ultimate coal use. A permit to operate must be obtained from the commission.
- 2. In addition to meeting the applicable provisions of chapters 69-05.2-05, 69-05.2-06, 69-05.2-07, 69-05.2-08, and this chapter, any application for a permit for operations covered by this section must contain an operation and reclamation plan for the construction, operation, maintenance, modification, and removal of the preparation plant and associated support

facilities. The plan must demonstrate that those operations will be conducted in compliance with section 69-05.2-13-13.

3. No permit may be issued for any operation covered by this section unless the commission finds in writing that, in addition to meeting all other applicable requirements of this article, the operations will be conducted in compliance with the requirements of section 69-05.2-13-13.
4. Any person who operates a coal preparation plant that was not subject to this article prior to January 1, 1987, shall apply for a permit within one hundred twenty days after that date.
5. Any person operating a coal preparation plant that was not subject to this article prior to January 1, 1987, may continue to operate without a permit provided:
 - a. A permit application is timely filed in accordance with subsection 4 of this section;
 - b. The commission has yet to either issue or deny the permit; and
 - c. The person complies with the applicable performance standards of section 69-05.2-13-13.

History: Effective January 1, 1987.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.1-14

69-05.2-13-13. Performance standing - General requirements - Coal preparation plants not located within the permit area of a mine. Each person who operates a coal preparation plant not within the permit area for a specific mine, other than those plants which are located at the site of ultimate coal use, shall obtain a permit in accordance with section 69-05.2-09-19, obtain a bond in accordance with chapter 69-05.2-12, and shall comply with the following:

1. Signs and markers for coal preparation plants, coal processing waste disposal areas, and water treatment facilities must comply with section 69-05.2-13-04.
2. Stream channel diversions must comply with section 69-05.2-16-07.
3. Drainage from any disturbed areas related to coal preparation plants must comply with chapter 69-05.2-16.
4. Permanent impoundments associated with coal preparation plants must meet the requirements of section 69-05.2-16-12. Dams constructed of or impounding coal processing waste must comply with chapter 69-05.2-20.

5. Disposal of coal processing waste, noncoal mine waste, and excess spoil must comply with chapters 69-05.2-19 and 69-05.2-18, respectively.
6. Fish, wildlife, and related environmental values must be protected in accordance with section 69-05.2-13-08.
7. Support facilities related to coal preparation plants must comply with section 69-05.2-24-09.
8. Roads associated with coal preparation plants must comply with chapter 69-05.2-24.
9. Cessation of operations must be in accordance with sections 69-05.2-13-10 and 69-05.2-13-11.
10. Erosion and attendant air pollution must be controlled in accordance with sections 69-05.2-15-06 and 69-05.2-13-07, respectively.
11. Underground mine areas must be avoided in accordance with section 69-05.2-13-06.
12. Reclamation must follow proper suitable plan growth material handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with chapters 69-05.2-15, 69-05.2-21, 69-05.2-22, and 69-05.2-23, respectively.

History: Effective January 1, 1987.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-15-01. Performance standards - Suitable plant growth material - General requirements. To prevent suitable plant growth material from being mixed and contaminated with other materials, all suitable plant growth materials to be saved shall be separately removed and segregated from other materials as required by section 69-05.2-15-02 before disturbing an area. After removal, suitable plant growth material shall either be immediately redistributed as required by section 69-05.2-15-04 or stockpiled pending redistribution as required by section 69-05.2-15-03.

History: Effective August 1, 1980.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

Repealed effective January 1, 1987.

69-05.2-15-02. Performance standards - Suitable plant growth material - Removal.

1. Timing. Suitable plant growth material shall be removed after vegetative cover that would interfere with ~~the~~ its use of ~~the suitable materials~~ is cleared from the areas to be disturbed, ~~but before any mining or other surface disturbance.~~ To prevent suitable plant growth materials from becoming contaminated by other materials, all suitable plant growth materials to be saved must be separately removed and segregated as required by subsection 2 prior to any further surface disturbance.

2. Materials to be removed and saved.

a. The suitable plant growth materials, commonly referred to as topsoil (first lift suitable plant growth material) and subsoil (second lift suitable plant growth material) as identified by the soil survey required by section 69-05.2-08-10 shall be removed and segregated ~~by~~ in two separate operations, unless otherwise ~~required~~ approved by the commission. ~~Prior to beginning the removal of subsoil, the removal and segregation of the topsoil must be approved by the commission. The removal and segregation of subsoil from an area may not begin until the topsoil removal operation for that area has been completed and approved by the commission.~~ If use of other suitable strata is approved as a supplement to suitable plant growth material, all such materials to be saved shall be removed and segregated. Prior to further disturbance by surface coal mining operations which significantly alter the site, the removal and segregation of the subsoil or other suitable strata shall be approved by the commission. Further disturbances which significantly alter an area may not begin until the subsoil or other suitable strata removal operations for that area have been completed and approved by the commission.

b. (1) All topsoil must be removed from all areas to be disturbed, except in situations as provided by subsection 4.

(2) Sufficient subsoil shall be removed from all areas to be disturbed to satisfy the redistribution requirements of subsection 4 of section 69-05.2-15-04.

3. Materials to be removed in shallow suitable plant growth material situations. If the thickness of suitable plant growth materials averages less than six inches [15.24 centimeters], ~~a six-inch [15.24-centimeter] layer that includes the A horizon and the unconsolidated~~

materials immediately below the A horizon, as specified by the commission, shall be removed, segregated, and redistributed as the topdressing layer, unless the commission approves the use of other suitable strata as a supplement to suitable plant growth materials pursuant to subsection 4 the commission may specify other suitable strata to be removed and treated as suitable plant growth material.

4. Suitable plant growth material removal will not be required for minor disturbances which occur at the site of small structures, such as power poles, signs, or fence lines.

5. Suitable plant growth material supplements and substitutes.

a. Topsoil supplements. Selected subsoil or other suitable strata may be used as a supplement to topsoil if the permittee or operator demonstrates that the resulting soil medium is equal to or more suitable for sustaining vegetation than the available topsoil. This demonstration shall include-

(1) The permittee or operator demonstrates that the selected materials to be mixed results in a soil medium that is more suitable than the first lift materials for restoring land capability and productivity based on the results of chemical and physical analyses. These analyses shall include determinations of pH, electrical conductivity, sodium adsorption ratio, percent organic matter, nitrogen, phosphorus, potassium, texture class, and water-holding capacity. The commission may also require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using a mixture of the selected materials. The chemical and physical analyses and the results of field-site trials and greenhouse tests shall be submitted to the commission accompanied by a certification from a qualified soil or plant scientist, stating that-

(a) The proposed soil medium is equal to or more suitable for sustaining the vegetation than is the available first lift suitable plant growth material;

(b) The soil medium is the best available material to support the vegetation; and

(e) The trials and tests were conducted using standard testing procedures.

(2) The permittee demonstrates that thorough mixing of the materials is technologically feasible.

the vertical and areal extent of supplemental materials and determinations of pH, electrical conductivity, sodium adsorption ratio, percent coarse fragments, percent organic matter, texture, and other chemical or physical analyses as required by the commission. The operator may be required by the commission to include the results of any field trials or greenhouse tests to demonstrate the feasibility of using a mixture of such materials. The permittee or operator must also demonstrate that the resulting medium is the best available soil medium in the permit area to support revegetation.

- b. Subsoil supplements. The permittee or operator may be required to use other suitable strata to supplement subsoil materials if the commission determines additional suitable materials for spreading over affected areas are necessary to meet the revegetation requirements the redistribution requirements of subdivision a of subsection 4 of section 69-05.2-15-04, provided other suitable strata are available. Samples of the strata to be saved must be taken at sufficient locations to determine the areal extent of the suitable strata. The sampling locations must be approved by the commission. Chemical and physical analyses of the samples taken shall include pH, electrical conductivity, sodium adsorption ratio, and textural analysis as required by the commission.
- c. Subsoil substitutes. Selected overburden materials may be substituted for subsoil if the operator demonstrates to the commission that the resulting soil medium is equal to or more suitable than the available subsoil for sustaining vegetation. Overburden sampling and chemical and physical analyses must be provided by the operator as required by the commission.
- d. Supplemental and substitute materials shall be removed, segregated, and redistributed according to the applicable requirements for suitable plant growth material in this chapter.

5- **Where the removal of vegetative material, suitable plant growth material, or other suitable strata may result in erosion which may cause air or water pollution.**

- a- The size of the area from which suitable materials are removed at any one time shall be limited;
- b- The suitable materials shall be removed at a time when the physical and chemical properties of such materials can be protected and erosion can be minimized; and
- c- Such other measures shall be taken as the commission may approve or require to control erosion.

History: Effective August 1, 1980; amended effective June 1, 1983; January 1, 1987.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-15-03. Performance standards - Suitable plant growth material - Storage and protection.

1. Suitable plant growth materials removed as required by section 69-05.2-15-02 shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.
2. Stockpiled materials Suitable plant growth material to be stockpiled shall be selectively placed on a stable area within the permit area, not disturbed, and in such a manner that minimizes any loss or deterioration of such material. The stockpiled materials must be protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation when redistributed. Protective measures shall be accomplished either by- During the first normal period for favorable planting after stockpile placement an effective cover of quick growing nonnoxious plants must be established on the stockpiles. However, as an alternative to the establishment of a protective vegetative cover, the stockpiles may be mulched or otherwise protected using methods approved by the commission.
 - a- An effective cover of nonnoxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or
 - b- Other methods demonstrated to and approved by the commission to provide equal protection such as fences, chemical binders, and mulching.

3. Unless approved by the commission, stockpiled suitable plant growth materials shall not be moved until required for redistribution on a regraded area.

History: Effective August 1, 1980; amended effective January 1, 1987.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-15-04. Performance standards - Suitable plant growth material - Redistribution.

1. After final grading is approved pursuant to section 69-05.2-21-06 and before the suitable plant growth material is replaced, regraded land shall be scarified or otherwise treated, if necessary, to eliminate slippage surfaces and or to promote root penetration.
2. Subsoil shall then be redistributed as approved by the commission in a manner that:
 - a. Achieves an approximate uniform thickness consistent with the postmining land use and meets the requirements of subsection 4.
 - b. Prevents excess compaction of the spoil and subsoil.
3. Following commission approval of subsoil respreading, topsoil shall be redistributed as approved by the commission in a manner that:
 - a. Achieves an approximate uniform thickness consistent with the postmining land use and meets the requirements of subsection 4.
 - b. Prevents excess compaction of the suitable plant growth materials.
4. Amount of suitable plant growth materials to be redistributed.
 - a. In areas where the graded spoil materials occur:
 - (1) All suitable plant growth material inventoried and removed according to the soil survey and any other suitable strata required to satisfy section 69 05.2-21-03 must be uniformly redistributed; or
 - (2) The amount of redistributed suitable plant growth material must be based on the graded spoil characteristics as follows:

Suitable Plant Growth Material
Redistribution Thickness

Spoil Properties

Total Redistribution Thickness

Texture	Sodium Adsorption Ratio (SAR)	Saturation Percentage (SP)	(Topsoil Plus Subsoil)	
			Average in Inches	(Centimeters)
Medium*	12	***	24	(61)
Coarse**	12	***	36	(91)
***	12 - 20	95	36	(91)
***	12 - 20	95	42	(107)
***	20	***	48	(122)

- * Loam or finer
- ** Sandy loam or coarser
- *** Not applicable

(a) The minimum thickness of redistributed suitable plant growth material in any random location must be within six inches [15.24 centimeters] of the average thickness required for an area based on the graded spoil characteristics as determined by representative sampling. However, the commission may approve redistribution thicknesses less than those listed in the table if chemical and physical analyses and any available field trials, greenhouse test results or current research findings demonstrate that the overburden materials are equal to or more suitable than the subsoil for sustaining vegetation. In addition, the commission may approve a lesser redistribution thickness if an insufficient amount of material exists based on the results of the soil survey and the availability of other suitable strata pursuant to subdivision b of subsection 5 of section 69-05.2-15-02.

(b) The texture, sodium adsorption ratio, and saturation percentage of the graded spoil materials will be determined by a commission evaluation of the premine overburden data, sample analyses of the graded spoil conducted by the operator, or by a combination of these methods.

(c) This paragraph is effective only for those areas disturbed prior to the year 1992.

b. The amount of redistributed suitable plant growth materials in associated disturbance areas where graded

spoil materials do not occur must be based on the amount removed pursuant to subsection 2 of section 69-05.2-15-02.

5. Following the respreading of suitable plant growth materials, appropriate measures shall be taken to protect the area from wind and water erosion.

5- 6. The suitable plant growth material and other suitable strata and substitutes saved from property owned by one party must be respread within the boundaries of that property if the surface ownership of the permit area is split between two or more parties, unless the parties otherwise agree.

History: Effective August 1, 1980; amended effective June 1, 1983; January 1, 1987.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-04. Performance standards - Hydrologic balance - Water quality standards and effluent limitations.

1. The operator shall comply with the following water quality standards and effluent limitations:

a. All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area.

b. Sedimentation ponds and other treatment facilities shall be maintained until the disturbed area has been restored, the vegetation requirements of chapter 69-05-2-22 have been met, and the quality of the untreated drainage from the disturbed area meets the applicable state water quality standards requirements for the receiving stream removal is authorized by the commission and the disturbed area has been stabilized and revegetated. The structure may not be removed sooner than two years after the last augmented seeding unless the last augmented seeding is a supplemental seeding into an established vegetation stand that is effectively controlling erosion.

c. The commission may grant exemptions from these requirements only when:

(1) The disturbed drainage area within the total disturbed area is small; and

(2) The permittee or operator demonstrates that sedimentation ponds and treatment facilities are not necessary for drainage from the disturbed drainage

areas to meet the effluent limitations referenced in subdivision g and the applicable state water quality standards for downstream receiving waters.

- d. For the purposes of this chapter only, "disturbed area" shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this article and the upstream area is not otherwise disturbed by the operator.
 - e. Sedimentation ponds required by this section shall be constructed in accordance with the plans in the approved permit before beginning any surface mining activities in the drainage area to be affected.
 - f. Where a sedimentation pond or series of sedimentation ponds is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the operator shall achieve the effluent limitations referenced in subdivision g for all of the mixed drainage when it leaves the permit area.
 - g. Discharges of water from areas disturbed by surface mining activities shall be made in compliance with all applicable state laws and rules and with the effluent limitations for coal mining adopted by the North Dakota state department of health pursuant to North Dakota Century Code chapter 61-28.
2. Adequate facilities must be installed, operated, and maintained to treat any water discharged from the disturbed area so that it complies with all state laws and rules and the effluent limitations of this section.

History: Effective August 1, 1980; amended effective September 1, 1984; January 1, 1987.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-09. Performance standards - Hydrologic balance - Sedimentation ponds.

1. General requirements. Sedimentation ponds shall be used individually or in series and shall:
 - a. Be constructed before any disturbance of the undisturbed area to be drained into the pond.
 - b. Be located as near as possible to the disturbed area and out of perennial streams, unless approved by the commission.

c. Meet all the criteria of this section.

2. Sediment storage volume. Sedimentation ponds shall provide a minimum sediment storage volume equal to the accumulated sediment volume from the drainage area to the pond for a minimum of three years. Sediment storage volume shall be determined using the Universal Soil Loss Equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods derived from regional sediment pond studies if approved by the commission.
3. Detention time. Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a ten-year, twenty-four-hour precipitation event (design event). The theoretical detention time shall be sufficient to achieve and maintain applicable effluent standards. The calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times shall be included in the permit application.
4. Dewatering. The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the commission, and shall have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sediment storage volume.
5. Each operator shall design, construct, and maintain sedimentation ponds to prevent short circuiting to the extent possible.
6. The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the operator from compliance with applicable effluent limitations as contained in section 69-05.2-16-04, subject to the exemption contained therein.
7. There shall be no outflow through the emergency spillway during the passage of the runoff resulting from the ten-year, twenty-four-hour precipitation event or lesser events through the sedimentation pond.
8. Sediment shall be removed from sedimentation ponds when the volume of sediment accumulates to sixty percent of the design sediment volume or sooner if required by the commission.
9. An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a twenty-five-year, twenty-four-hour precipitation event, or larger event specified by the commission. Emergency

spillway grades and allowable velocities shall be approved by the commission.

10. The minimum elevation at the top of the settled embankment shall be one foot [30.48 centimeters] above the surface water in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one foot [30.48 centimeters] minimum elevation requirement shall apply at all times, including the period after settlement.
11. The constructed height of the dam shall be increased a minimum of five percent over the design height to allow for settlement, unless it has been demonstrated to the commission that the material used and the design will ensure against all settlement.
12. The minimum top width of the embankment shall not be less than the quotient of $(H+35)/5$, where H is the height, in feet, or $(H+10.7)/5$, where H is the height, in meters, of the embankment as measured from the upstream toe of the embankment.
13. The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.
14. The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.
15. The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal processing waste be used.
16. The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thicknesses as are required to facilitate compaction and meet the design requirements of this section. Compaction shall be conducted as specified in the design approved by the commission.
17. If a proposed impoundment can impound water to an elevation of five feet [1.52 meters] or more above the upstream toe of the structure and can have a storage volume greater than twenty acre-feet [24,669.64 cubic meters], or can impound water to an elevation of twenty feet [6.10 meters] or more above the upstream toe of the structure, the following additional requirements shall be met:
 - a. An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff

resulting from a one hundred-year, six-hour precipitation event, or a larger event as specified by the commission.

- b. The embankment shall be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by the commission to ensure stability.
 - c. Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.
 - d. The criteria of the mine safety and health administration as published in 30 CFR 77.216 shall be met.
18. Each pond shall, upon construction, be certified by a qualified registered professional engineer as having been constructed as designed and as approved in the mining and reclamation plan. In addition, all dams and embankments meeting the criteria of subsection 17 shall be certified annually as having been maintained to comply with the approved plan. The certification shall meet all applicable requirements of the state engineer.
19. The entire embankment including the surrounding areas and diversion ditches disturbed or created by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas where the reestablishment of vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with section 69-05.2-15-06.
20. All ponds, including those not meeting the criteria of subsection 17 shall be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications shall be made in accordance with 30 CFR 77.216-3, except that dams not meeting the criteria of subsection 17 may be examined on a semiannual basis.
21. Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the commission. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the commission shall approve the plans before modification begins.
22. Sedimentation ponds shall not be removed until the disturbed area has been restored, the vegetation requirements of chapter 69-05.2-22 are met, and the drainage entering the pond has met the applicable state water quality requirements for the receiving stream authorized by the commission and the disturbed area

has been stabilized and revegetated. The structure may not be removed sooner than two years after the last augmented seeding unless the last augmented seeding is a supplemental seeding into an established vegetation stand that is effectively controlling erosion. When the sedimentation pond is removed, the affected land shall be regraded, respread with suitable plant growth material, and revegetated in accordance with chapters 69-05.2-15, 69-05.2-21, and 69-05.2-22, unless the pond has been approved by the commission for retention as being compatible with the approved postmining land use under chapter 69-05.2-23. If the commission approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of section 69-05.2-16-12.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; January 1, 1987.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-03. Performance standards - Backfilling and grading - Covering coal and toxic-forming materials --Stabilization - Using waste material as fill.

- 1- All exposed coal seams remaining after mining and any, toxic-forming, and combustible materials, or any other waste materials identified by the commission that are exposed, used, or produced during mining shall be adequately covered with a minimum of four feet {1.22 meters} of nontoxic and noncombustible material, or treated to neutralize toxicity in order to prevent water pollution and sustained combustion and to minimize adverse effects on plant growth and land uses. Spoil materials that are found by the commission to be excessively saline, sodic, or both, are considered to be toxic-forming materials and shall be covered with a minimum of four feet {1.22 meters} of nontoxic material, provided four feet {1.22 meters} of such material is available, however, the thickness of cover shall not be less than the average amount of material that existed prior to mining in areas where the available nontoxic material averages less than four feet {1.22 meters} in depth. The availability and suitability of nontoxic materials shall be determined by the commission based on data provided by the permittee. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the commission shall specify thicker amounts of cover using nontoxic material, provided more than four feet {1.22 meters} of nontoxic material is

available. Toxic-forming materials shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of chapter 69-05-2-16 nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with chapter 69-05.2-16, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

- 2- Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of toxic-forming materials into surface or subsurface waters in accordance with chapter 69-05-2-16 and wherever necessary to ensure the stability of the backfilled materials. The method of compacting material and the design specifications shall be approved by the commission before the toxic materials are covered.

History: Effective August 1, 1980; amended effective January 1, 1987.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

MARCH 1987

69-05.2-12-20. **Liability insurance.** The permittee shall submit to the commission a public liability insurance policy in accordance with subsection 3 of North Dakota Century Code section 38-14.1-14. The minimum coverage of this policy shall be as follows:

1. For bodily injury, one million dollars for each occurrence and ~~two~~ one million dollars aggregate.
2. For property damage, ~~one million~~ five hundred thousand dollars for each occurrence and ~~two~~ one million dollars aggregate.

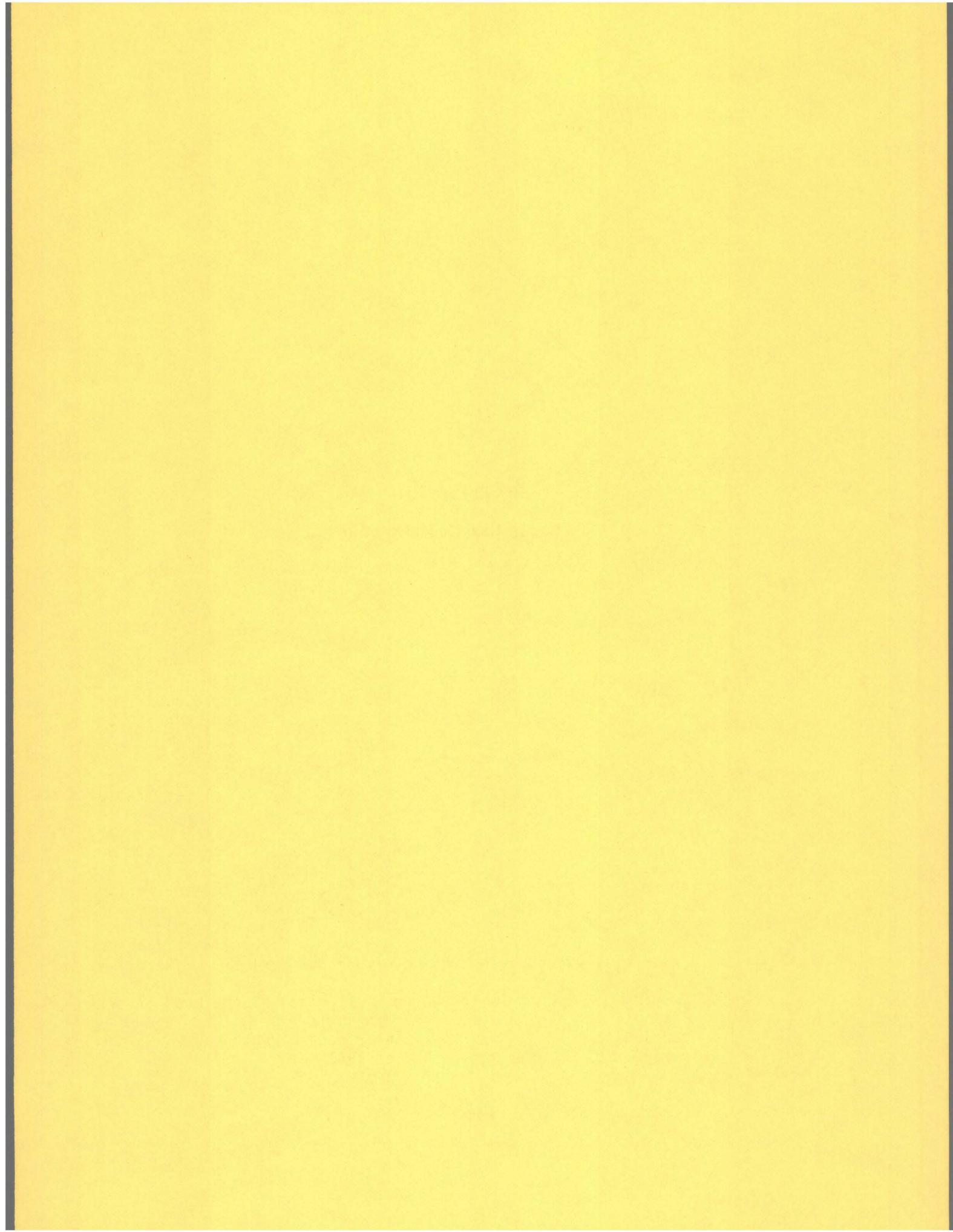
History: Effective August 1, 1980; amended effective June 1, 1983; March 1, 1987.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14



TITLE 73
Securities Commissioner



JULY 1987

73-02-03-01. Limited offeree exemption.

1. **Application form.** Except as otherwise specifically provided, application for approval of the limited offeree exemption under subdivision a of subsection 9 of North Dakota Century Code section 10-04-06 shall be made on the form attached to this section, which is incorporated herein by reference.
2. **Supplemental filings.** In addition to the information specified in the application, the commissioner may require the filing of such supplemental schedules, projections, appraisals, opinions, documents, memoranda, briefs, or other matter as the commissioner deems convenient, appropriate, or necessary to determine whether the application should be approved.
3. **Filing fee.** Except as otherwise specifically provided, the application form shall be accompanied by a nonrefundable filing fee of fifty dollars.
4. **Term of effectiveness.** Unless earlier suspended or revoked or unless otherwise limited or restricted by the commissioner, approval under this section shall be effective for the period of twelve consecutive months beginning with the date of the letter by which approval is granted. A new application must be filed with and approved by the commissioner if offers or sales will extend beyond the twelve-month period.
5. **Conditions.** The commissioner may place such conditions, limitations, or restrictions on this exemption as the commissioner deems appropriate or necessary to carry out the purposes of the Securities Act of 1951.

6. **Reports.** Within thirty days after the end of any quarter of the issuer's fiscal year during which offers or sales of securities are effected in reliance upon this exemption, the offeror shall file a report of such offers or sales on a form prescribed by the commissioner.

7. **Waiver.**

- a. Except as otherwise provided under subdivisions c and d, if the number of offerees in connection with all offers of securities, whether of the same or of a different issue, in this state during a consecutive twelve-month period is three or fewer and if the conditions in **subdivisions a and b** paragraphs 1 and 2 of subdivision a of subsection 9 of North Dakota Century Code section 10-04-06 are met, the application, approval, filing fee, and reporting requirements prescribed under this section are waived.
- b. In addition to the waiver of the filing fee provided under subdivision a, the commissioner may also waive the filing fee in any other case where the commissioner determines that the time and effort involved in processing the application do not justify the imposition of the fee.
- c. The waiver provided under subdivision a shall not apply where any person involved in the offering, either directly or indirectly, as promoter, issuer, underwriter, broker-dealer, salesman, investment adviser, partner, officer, director, manager, controlling shareholder, or in any similar capacity or position:
 - (1) Has been suspended, expelled, fined, barred, censured, or otherwise disciplined by any securities, insurance, banking, real estate, or commodities agency, jurisdiction, or organization; or been refused membership therein or withdrawn an application for such membership; or been refused or denied a license or registration or had one suspended or revoked by any such agency, jurisdiction, or organization or by any other business or profession; or has knowledge of being the subject of any investigation or proceeding by any such agency, jurisdiction, or organization or by any other business or profession.
 - (2) Has been the subject of or has been associated in any capacity with another person against whom a temporary restraining order, temporary or permanent injunction, cease and desist order, or similar order has been issued either by a court or by an administrative agency.

- (3) Has been arrested for, complained against, informed against, or indicted for, convicted of, or pleaded nolo contendere to any felony or misdemeanor, except minor traffic offenses.
 - (4) Is now or has been a defendant or respondent in any litigation or proceeding alleging the violation of any securities, insurance, banking, real estate, or commodities law or regulation.
 - (5) Has been associated with any firm, corporation, or association which has failed in business, made a compromise with creditors, filed or been declared bankrupt under any bankruptcy acts, or for which a trustee has been appointed under the Securities Investor Protection Act of 1970 [Pub. L. 91-598; 84 Stat. 1636; 15 U.S.C. 78aaa et seq.], as amended, or which has been liquidated under any other circumstances.
 - (6) Has been suspended, expelled, fined, barred, censured, or otherwise disciplined by an employer in the securities, insurance, banking, real estate, or commodities industry; or in previous business connections or employment has been a subject of a major complaint or legal proceeding or has been discharged or requested to resign by an employer because of dishonest or unethical acts.
- d. If the security is issued by a corporation engaged in the business of farming or ranching which is organized under and operated in compliance with North Dakota Century Code chapter 10-06, the permissible number of offerees in this state during a consecutive twelve-month period shall not exceed ~~fifteen~~ twenty-five, and the conditions in subdivisions a, b, and e paragraphs 1, 2, and 3 of subdivision a of subsection 9 of North Dakota Century Code section 10-04-06 and the application, approval, filing fee, and reporting requirements prescribed under this section are waived.

History: Amended effective August 1, 1980; July 1, 1981; November 1, 1981; July 1, 1987.

General Authority: NDCC 10-04-06(9)

Law Implemented: NDCC 10-04-06(9)

73-02-03-02. Limited sales exemption.

1. Statement form. The statement required under subdivision b of subsection 9 of North Dakota Century Code section 10-04-06 must be made on the form attached to this section, which is incorporated herein by reference.

2. Supplemental filings. In addition to the information specified in the statement, the commissioner may require the filing of such supplemental schedules, projections, appraisals, opinions, documents, memoranda, briefs, or other matter as the commissioner deems convenient, appropriate, or necessary to carry out the purposes of the Securities Act of 1951.
3. Term of effectiveness. Unless earlier suspended or revoked or unless otherwise limited or restricted by the commissioner, this exemption is effective for the period of twelve consecutive months beginning with the date of the first sale. A new statement must be filed if sales will extend beyond the twelve-month period.
4. Conditions. The commissioner may place such conditions, limitations, or restrictions on this exemption as the commissioner deems appropriate or necessary to carry out the purposes of the Securities Act of 1951.
5. Reports. Within thirty days after the end of any quarter of the issuer's fiscal year during which sales of securities are effected in reliance upon this exemption, the issuer shall file a report of such sales on a form prescribed by the commissioner.
6. Disqualifications.
 - a. Except as otherwise provided in subdivision b, this exemption is not available where any person involved in the offering, either directly or indirectly, as promoter, issuer, underwriter, broker-dealer, salesman, investment adviser, partner, officer, director, manager, controlling shareholder, or in any similar capacity or position:
 - (1) Has been suspended, expelled, fined, barred, censured, or otherwise disciplined by any securities, insurance, banking, real estate, or commodities agency, jurisdiction, or organization; or been refused membership therein or withdrawn an application for such membership; or been refused or denied a license or registration or had one suspended or revoked by any such agency, jurisdiction, or organization or by any other business or profession; or has knowledge of being the subject of any investigation or proceeding by any such agency, jurisdiction, or organization or by any other business or profession.
 - (2) Has been the subject of or has been associated in any capacity with another person against whom a temporary restraining order, temporary or permanent injunction, cease and desist order, or similar order has been

issued either by a court or by an administrative agency.

- (3) Has been arrested for, complained against, informed against, or indicted for, convicted of, or pleaded nolo contendere to any felony or misdemeanor, except minor traffic offenses.
- (4) Is now or has been a defendant or respondent in any litigation or proceeding alleging the violation of any securities, insurance, banking, real estate, or commodities law or regulation.
- (5) Has been associated with any firm, corporation, or association which has failed in business, made a compromise with creditors, filed or been declared bankrupt under any bankruptcy acts, or for which a trustee has been appointed under the Securities Investor Protection Act of 1970 [Pub. L. 91-598; 84 Stat. 1636; 15 U.S.C. 78aaa et seq.], as amended, or which has been liquidated under any other circumstances.
- (6) Has been suspended, expelled, fined, barred, censured, or otherwise disciplined by an employer in the securities, insurance, banking, real estate, or commodities industry; or in previous business connections or employment has been a subject of a major complaint or legal proceeding or has been discharged or requested to resign by an employer because of dishonest or unethical acts.

b. Subdivision a does not apply to any issuer if the commissioner determines, upon a showing of good cause, that it is not necessary or appropriate in the public interest or for the protection of investors that the exemption be defined. Any such determination is without prejudice to any other action by the commissioner in any other proceeding or matter with respect to the issuer or any other person.

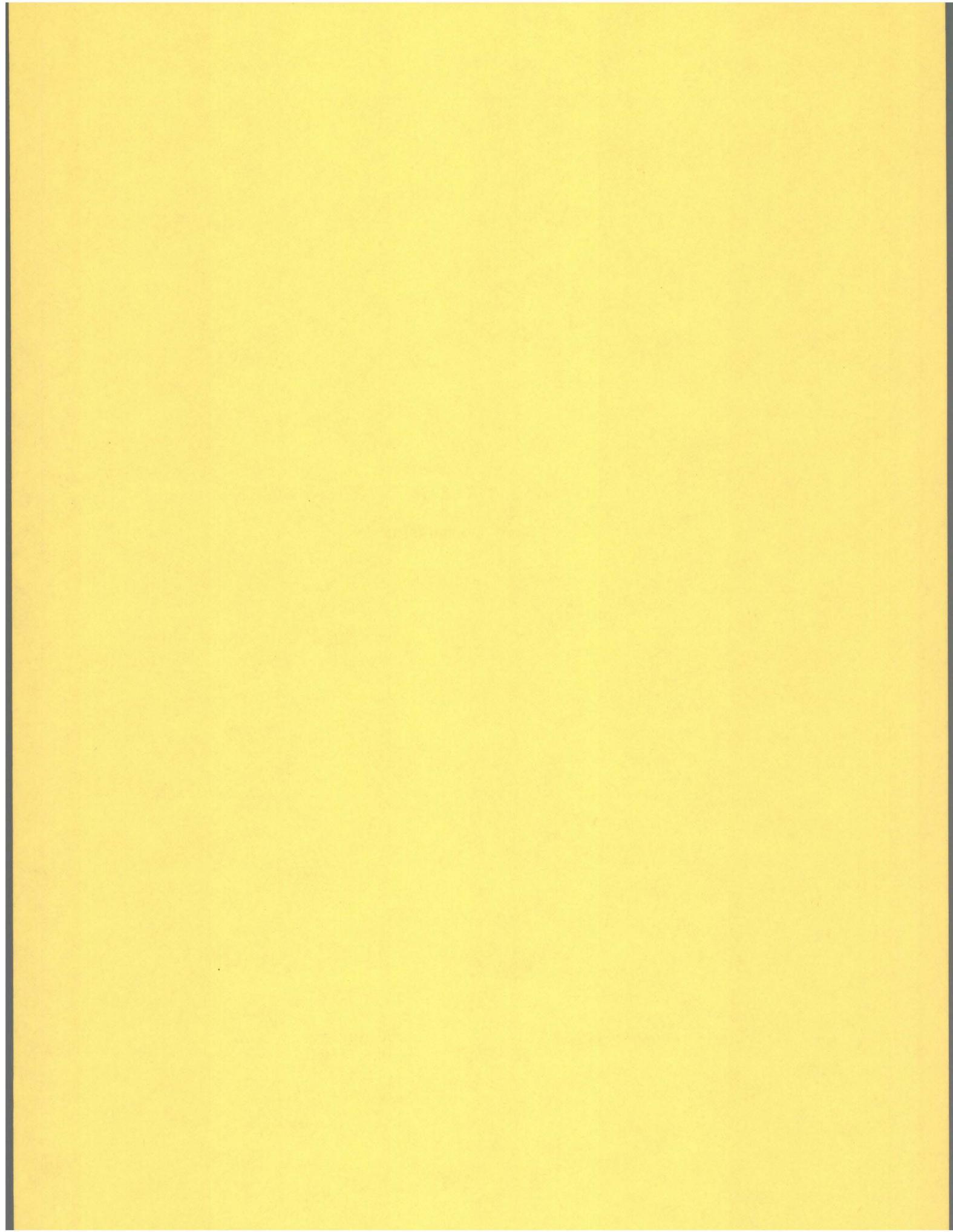
History: Effective July 1, 1987.

General Authority: NDCC 10-04-06(9)

Law Implemented: NDCC 10-04-06(9)



TITLE 74
Seed Commission



MAY 1987

74-03-01-10. Fees. Charges for fees and services are subject to change. For current fees contact the state seed department.

1. Field inspection fees.

Each applicant for field seed certification must pay an application for membership fee of two dollars (only one time) a grower fee of five dollars once annually plus:

	To June 20	After June 20-July 5
Small grains, grasses, legumes, flax and other annual and perennial crops	\$1.50 per acre for the first 100 acres \$1.25 per acre for additional acreage (per field)	\$2.00 per acre for the first 100 acres \$1.75 per acre for additional acreage (per field)
Sunflower open pollinated hybrids	\$2.25 per acre \$3.50 per acre	\$2.75 per acre \$4.00 per acre
Dry field bean	\$2.50 per acre To July 15	\$3.00 per acre After July 15-August 1
Late crops - soybean, millet, field peas, buckwheat	\$1.50 per acre for the first 100 acres \$1.25 per acre	\$2.00 per acre for the first 100 acres \$1.75 per acre

for additional for additional
acreage acreage
(per field) (per field)

Minimum all crops \$20.00 per farm - \$10.00 per field

EXAMPLE

185-acre wheat field:

100-A x \$1.50 = \$150.00	Add membership fee
85-A x \$1.25 = 106.25	(only one time) 2.00
\$256.25	\$258.25

2. Laboratory fees.

Germination tests: grains four dollars and fifty cents, soybean, sunflower, dry field bean five dollars and fifty cents, and flax ~~four~~ five dollars and ~~fifty~~ cents.

Seed purity tests: grains, soybean, sunflower, dry field bean four dollars, and flax ~~four~~ seven dollars and ~~fifty~~ cents.

Barley embryo test for loose smut: eight dollars and fifty cents (one test required for each lot). Regular fee for noncertified barley ~~ten~~ twelve dollars.

Bacterial bean blight test: fifty dollars. Each lot of edible beans passing field inspection must be tested. See current price list for all laboratory charges.

3. Final certification fees.

Minimum fee is two dollars. Two cents per bushel [35.24 liters] plus four cents per tag for annual crops including grains, flax, and row crops.

Six cents per one hundred pounds [45.36 kilograms] plus four cents per tag for alfalfa, clovers, and perennial grasses.

(The two cents for each bushel [35.24 liters] and six cents for each hundred pounds [45.36 kilograms] of alfalfa, clovers, and perennial grasses will be used to promote North Dakota certified seed.)

Bulk certification: ten dollars per lot plus four cents per bushel [35.24 liters].

4. Carryover seed tagging. New certification tags will be furnished for carryover seed at a cost of four cents per tag. All carryover seed must be retested for germination before new certified tags will be issued.

5. **Carryover bulk seed.** All carryover bulk seed must be retested for germination before new bulk certificates will be issued at ten dollars per lot (four certificates - extra copies twenty-five cents per copy). Carryover bulk seed cannot be recertified in bags unless new samples are submitted for analysis.

History: Amended effective May 1, 1986; May 1, 1987.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16, 28-32-01

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-02-05. Seed standards (flax).

Factor	Standards for Each Class		
	Foundation	Registered	Certified
Pure seed (minimum)	99.0 percent	99.0 percent	98.5 percent
Total weed seeds (maximum)	0-05 percent 15 per pound	0-05 percent 15 per pound	0-10 percent 30 per pound
Other varieties (maximum) *	2 per pound	8 per pound	16 per pound
Other crop seeds (maximum)	2 per pound	5 per pound	10 per pound
Inert matter (maximum) **	1.0 percent	1.0 percent	1.5 percent
Prohibited noxious weed seeds ***	none	none	none
Objectionable weed seeds (maximum) + .	none	1 per 2 pounds	3 per pound
Germination (minimum)	85.0 percent	85.0 percent	85.0 percent

* Other varieties shall not include variations which are characteristic of the variety. For golden or yellow varieties the figures should be multiplied by two.

** May not exceed two-tenths percent foreign matter.

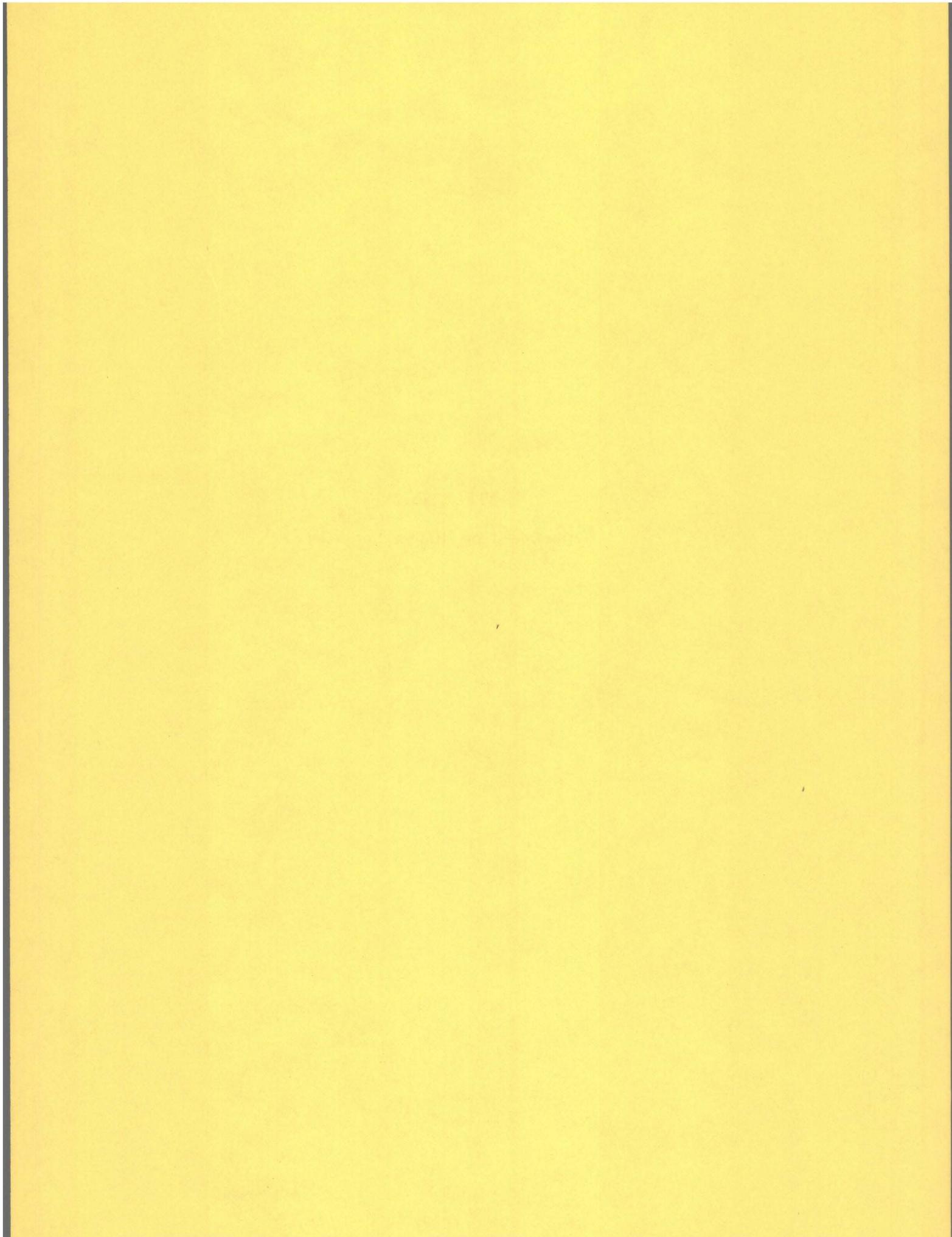
*** Prohibited noxious weed seeds including seeds of quackgrass.

+ Objectionable weed seeds shall include the following:
dodder species, wild mustard, wild oats, field pennycress (frenchweed), hedge bindweed (wild morning glory), giant ragweed (kinghead), small seeded falseflax and American dragonhead.

History: Amended effective May 1, 198; May 1, 1987.
General Authority: NDCC 4-09-03, 4-09-05, 4-09-16
Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

TITLE 75

Department of Human Services



NOVEMBER 1986

AGENCY SYNOPSIS: The North Dakota Department of Human Services has proposed to amend North Dakota Administrative Code section 75-02-02-08. These proposed amendments would exclude "fixed bridgework" from dental coverage under the Medical Assistance program, with exceptions for those instances where dentures would be more expensive or where dentures could not be used to correct the condition. The proposed amendments would also permit dentures to be paid for under the program only when the dentist submits a prior treatment authorization request.

The proposed amendments also specifically provide that the department may refuse payment for any covered service or procedure for which a prior treatment authorization request is received and not secured. The provider would not be permitted to collect from the recipient in the event that payment was refused because a prior treatment authorization request had not been secured. Finally, the proposed amendment would change the prefatory language in subsection 1 to make clear that the available medical and remedial care and services are those which are described in the approved state plan for Medical Assistance.

75-02-02-08. Amount, duration, and scope of medical assistance.

1. Within any limitations which may be established by rule, regulation, or statute and within the limits of legislative appropriations, eligible recipients may obtain the following medical and remedial care and services which are described in the approved state plan for medical assistance in effect at the time the service is rendered and which may include:
 - a. Inpatient hospital services (other than services in an institution for mental diseases). "Inpatient hospital services" are those items and services ordinarily furnished by the hospital for the care and treatment of inpatients provided under the direction of a physician or dentist in an institution maintained primarily for

treatment and care of patients with disorders other than tuberculosis or mental diseases and which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation; and which has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under title XIX of the Act.

- b. Outpatient hospital services. "Outpatient hospital services" are those preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an outpatient by an institution which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
- c. Other laboratory and x-ray services. "Other laboratory and x-ray services" means professional and technical laboratory and radiological services ordered by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and provided to a patient by, or under the direction of, a physician or licensed practitioner, in an office or similar facility other than a hospital outpatient department or a clinic, and provided to a patient by a laboratory that is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
- d. Skilled nursing home services (other than services in an institution for mental diseases) for individuals twenty-one years of age or older. "Skilled nursing home services" means those items and services furnished by a licensed and otherwise eligible skilled nursing home or swing-bed hospital maintained primarily for the care and treatment of inpatients with disorders other than mental diseases which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law.
- e. Intermediate nursing care (other than services in an institution for mental diseases). "Intermediate nursing care" means those items and services furnished by a currently licensed intermediate care facility or swing-bed hospital maintained for the care and treatment of

inpatients with disorders other than mental diseases which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law.

- f. Early and periodic screening and diagnosis of individuals under twenty-one years of age, and treatment of conditions found. Early and periodic screening and diagnosis of individuals under the age of twenty-one who are eligible under the plan to ascertain their physical or mental defects, and health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Federal financial participation is available for any item of medical or remedial care and services included under this subsection for individuals under the age of twenty-one. Such care and services may be provided under the plan to individuals under the age of twenty-one, even if such care and services are not provided, or are provided in lesser amount, duration, or scope to individuals twenty-one years of age or older.
- g. Physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home or elsewhere. "Physician's services" are those services provided, within the scope of practice of the physician's profession as defined by state law, by or under the personal supervision of an individual licensed under state law to practice medicine or osteopathy.
- h. Medical care and any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law. This term means any medical or remedial care or services other than physicians' services, provided within the scope of practice as defined by state law, by an individual licensed as a practitioner under state law.
- i. Home health care services. "Home health care services" in addition to the services of physicians, dentists, physical therapists, and other services and items available to patients in their homes and described elsewhere in these definitions, are any of the following items and services when they are provided on recommendation of a licensed physician to a patient in the patient's place of residence, but not including as a residence a hospital or a skilled nursing home:
 - (1) Intermittent or part-time nursing services furnished by a home health agency.

- (2) Intermittent or part-time nursing services of a professional registered nurse or a licensed practical nurse when under the direction of the patient's physician, when no home health agency is available to provide nursing services.
 - (3) Medical supplies, equipment, and appliances recommended by the physician as required in the care of the patient and suitable for use in the home.
 - (4) Services of a home health aide who is an individual assigned to give personal care services to a patient in accordance with the plan of treatment outlined for the patient by the attending physician and the home health agency which assigns a professional registered nurse to provide continuing supervision of the aide on the aide's assignment. "Home health agency" means a public or private agency or organization, or a subdivision of such an agency or organization, which is qualified to participate as a home health agency under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
- j. Private duty nursing services. "Private duty nursing services" are nursing services provided by a professional registered nurse or a licensed practical nurse, under the general direction of the patient's physician, to a patient in the patient's own home or extended care facility when the patient requires individual and continuous care beyond that available from a visiting nurse or that routinely provided by the nursing staff of the hospital, nursing home, or extended care facility.
- k. Dental services. "Dental services" are any diagnostic, preventive, or corrective procedures administered by or under the supervision of a dentist in the practice of the dentist's profession and not excluded from coverage. Such services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual. "Dentist" means a person licensed to practice dentistry or dental surgery. Any procedure related to the preparation of "fixed bridgework" which involves the use of crowns and bridgework materials in concert with one another, but not including single crowns, is excluded from coverage unless a prior treatment authorization request, submitted by the attending dentist and approved by the department's dental consultant, describes a condition or combination of conditions which render the use of dentures impracticable or which may be more economically ameliorated by fixed bridgework than by dentures.

1. Physical therapy and related services. "Physical therapy and related services" means physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders, and the use of such supplies and equipment as are necessary.
 - (1) "Physical therapy" means those services prescribed by a physician and provided to a patient by or under the supervision of a qualified physical therapist. A qualified physical therapist is a graduate of a program of physical therapy approved by the council on medical education of the American medical association in collaboration with the American physical therapy association, or its equivalent, and where applicable, is licensed by the state.
 - (2) "Occupational therapy" means those services prescribed by a physician and provided to a patient and given by or under the supervision of a qualified occupational therapist. A qualified occupational therapist is registered by the American occupational therapy association or is a graduate of a program in occupational therapy approved by the council on medical education of the American medical association and is engaged in the required supplemental clinical experience prerequisite to registration by the American occupational therapy association.
 - (3) "Services for individuals with speech, hearing, and language disorders" are those diagnostic, screening, preventive or corrective services provided by or under the supervision of a speech pathologist or audiologist in the practice of the pathologist's or audiologist's profession for which a patient is referred by a physician. A speech pathologist or audiologist is one who has been granted the certificate of clinical competence in the American speech and hearing association, or who has completed the equivalent educational requirements and work experience necessary for such a certificate, or who has completed the academic program and is in the process of accumulating the necessary supervised work experience required to qualify for such a certificate.
- m. Prescribed drugs, ~~dentures~~, and prosthetic devices, and dentures where a request is submitted by the attending dentist and granted prior approval by the department's dental consultant; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select.

- (1) "Prescribed drugs" are any simple or compounded substance or mixture of substances prescribed as such or in other acceptable dosage forms for the cure, mitigation, or prevention of disease, or for health maintenance, by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's professional practice as defined and limited by federal and state law. With respect to "prescribed drugs" federal financial participation is available in expenditures for drugs dispensed by licensed pharmacists and licensed authorized practitioners in accordance with North Dakota Century Code chapter 43-17. When dispensing, the practitioner must do so on the practitioner's written prescription and maintain records thereof.
- (2) "Dentures" ~~are~~ means artificial structures prescribed by a dentist to replace a full or partial set of teeth and made by, or according to the directions of, a dentist. The term does not mean those artificial structures, commonly referred to as "fixed bridgework", which involve the use of crowns and bridgework materials in concert with one another.
- (3) "Prosthetic devices" means replacement, corrective, or supportive devices prescribed for a patient by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for the purpose of artificially replacing a missing portion of the body, or to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.
- (4) "Eyeglasses" are lenses, including frames when necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye, or by an optometrist, whichever the patient may select, to aid or improve vision.

n. Other diagnostic, screening, preventive, and rehabilitative services.

- (1) "Diagnostic services" other than those for which provision is made elsewhere in these definitions, include any medical procedures or supplies recommended for a patient by the patient's physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, as necessary to enable the physician or practitioner to identify the

existence, nature, or extent of illness, injury, or other health deviation in the patient.

- (2) "Screening services" consist of the use of standardized tests performed under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations or to identify suspects for more definitive studies.
 - (3) "Preventive services" are those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability and other health deviations or their progression, prolong life and promote physical and mental health and efficiency.
 - (4) "Rehabilitative services" in addition to those for which provision is made elsewhere in these definitions, include any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.
- o. Care and services in a certified mental institution for individuals under twenty-one years of age or sixty-five years of age or over.
- p. Any other medical care and any other type of remedial care recognized under state law, specified by the secretary. This term includes but is not limited to the following items:
- (1) Transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the agency to be necessary in the individual case. "Travel expenses" are defined to include the cost of transportation for the individual by ambulance, taxicab, common carrier or other appropriate means; the cost of outside meals and lodging en route to, while receiving medical care, and returning from a medical resource; and the cost of an attendant may include transportation, meals, lodging, and salary of the attendant, except that no salary may be paid a member of the patient's family.

- (2) Family planning services, including drugs, supplies, and devices, when such services are under the supervision of a physician. There will be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals can choose in accordance with the dictates of their consciences.
 - (3) Whole blood, including items and services required in collection, storage, and administration, when it has been recommended by a physician and when it is not available to the patient from other sources.
 - (4) Skilled nursing home services, as defined in subdivision d, provided to patients under twenty-one years of age.
 - (5) Emergency hospital services which are necessary to prevent the death or serious impairment of the health of the individual and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital available which is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act, or definitions of inpatient or outpatient hospital services set forth in subdivisions a and b.
2. The following limitations exist with respect to medical and remedial care and services covered or provided under the medical assistance program.
- a. Coverage will not be extended and payment will not be made for diet remedies prescribed for eligible recipients.
 - b. Coverage will not be extended and payment will not be made for alcoholic beverages prescribed for eligible recipients.
 - c. Coverage will not be extended and payment will not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.
 - d. Coverage and payment for eye examinations and eyeglasses for eligible recipients shall be limited to examinations and eyeglass replacements necessitated because of visual impairment. Coverage and payment for eyeglass frames shall not exceed forty-four dollars per pair. A recipient is responsible for copayment of three dollars for the replacement of eyeglasses when the replacement is occasioned by loss or breakage.

3. Remedial services provided by residential facilities such as licensed homes for the aged and infirm, licensed foster care homes or facilities, and specialized facilities are not covered services but expenses incurred in securing such services must be deducted from countable income in determining financial eligibility. For the purposes of this chapter, "remedial services" means those services, provided in the above-identified facilities, which produce the maximum reduction of physical or mental disability and restoration of a recipient to the recipient's best possible functional level.
4. The department may refuse payment for any covered service or procedure for which a prior treatment authorization request is required but not secured, but shall consider making payment if the vendor demonstrates that the failure to secure the required prior treatment authorization request was the result of oversight and the vendor has not failed to secure a required prior treatment authorization request within the twelve months prior to the month in which the services or procedures were furnished.
5. A vendor of medical services which provides a covered service but fails to receive payment due to the operation of subsection 4, and which attempts to collect from the eligible recipient or the eligible recipient's responsible relatives any amounts which would have been paid by the department but for the operation of subsection 4, has by so doing breached the agreement referred to in subsection 4 of section 75-02-02-10.

History: Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986; November 1, 1986.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04; 42 CFR 431.53, 42 CFR 431.110, 42 CFR 435.1009, 42 CFR Part 440, 42 CFR Part 441, subparts A, B, & D, 45 CFR 435.732

JANUARY 1987

75-03-07-02. **Objective of rules.** Under the authority vested in the ~~social service board of North Dakota~~ department pursuant to North Dakota Century Code section 50-11.1-08, the ~~social service board of North Dakota~~ department is empowered to prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08

75-03-07-04. **In-home supplemental parental care registration and standards.**

1. An application for a registration ~~certificate~~ document shall be submitted to the county social service board in the county wherein the applicant proposes to provide in-home ~~supplemental parental care~~ services. Application shall be made in the form and manner prescribed by the ~~board~~ department.
2. Applicants for an in-home ~~supplemental parental care~~ registration ~~certificate~~ document shall be directly responsible for the care, supervision, and guidance of the child or children in the child or children's home and shall comply with the following standards, certifying in the application that the applicants shall:
 - a. Be at least fourteen years of age.
 - b. Be mentally, physically, and emotionally able to provide adequate care for the children in the applicant's charge.

- c. Be able to devote adequate time and attention to the children in the applicant's charge.
 - d. Participate in specialized training related to child care as provided by or approved by the ~~social service board~~ department.
 - e. Provide food of sufficient quantity and nutritious quality which satisfies the dietary needs of the children while in the applicant's charge.
 - f. Provide proper health care and protection for children in the applicant's charge.
 - g. Not use any drugs or alcoholic beverages except for medical purposes while children are in care.
 - h. Never leave children without supervision.
 - i. Discuss methods of discipline and child management with the parent or parents and shall not engage in any method of punishment which humiliates or frightens a child or causes more than minor transient physical or emotional discomfort, or both.
 - j. Provide care on a continuing basis for less than a twenty-four-hour period.
3. If the physical or mental health capabilities of an in-home provider appear to be questionable, the ~~board~~ department may request that the provider present evidence of capability based on a formal evaluation.
4. In-home providers shall ensure safe care for the children in their care. If there exists a probable cause determination under North Dakota Century Code chapter 50-25.1 indicating that any child has been abused or neglected by the in-home provider, the person shall furnish information, satisfactory to the department, from which the department can determine the provider's current ability to provide care free of abuse or neglect. The determination of current ability will be furnished to the operator and to the regional director of the human service center or his designee for consideration and action on the in-home registration document.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02, 50-11.1-06, 50-11.1-07, 50-11.1-08

75-03-08-02. Authority and objective. Under the authority vested in the social service board of North Dakota pursuant Pursuant to North Dakota Century Code section 50-11.1-08, the ~~social~~

service board of North Dakota department may prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08

75-03-08-03. Definitions. As used in this chapter:

1. "Attendance" means the total number of children present at any one time at the home.
2. "~~Board~~" means the ~~social service board of North Dakota~~.
- ~~3-~~ "Caregiver" means any person whose prime responsibility is the provision of direct care, supervision, and guidance to children in a child care home under the guidance and supervision of the family child care provider.
3. "County agency" means the county social service board in the county where the family child care home is located.
4. "Department" means the department of human services.
5. "Emergency designee" means an individual designated by the family child care provider as a backup caregiver for emergency assistance.
- ~~4-~~ 6. "Family child care provider" means the person in whom inheres the legal responsibility and the administrative authority for a family child care home operation. The family child care provider is the applicant for license or the licensee pursuant to this chapter.
7. "Family child care home" means an occupied private residence in which early childhood services are provided for no more than seven children at any one time.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-08-04. Effect of licensing and availability of license.

1. The issuance of a license to operate a family child care home shall be evidence of compliance with the standards contained in this chapter.

2. The current license shall be available in the premises to which it applies.

History: Effective December 1, 1981.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, ~~50-11.1-04-1,~~
50-11.1-06

75-03-08-05. Denial or revocation of license.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the licensee may continue the operation of the facility pending the final administrative determination or until the license expires, whichever first occurs, provided, however, that this subsection shall not limit the actions the board department may take pursuant to North Dakota Century Code section 50-11.1-12.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-10

75-03-08-06. Application for and nontransferability of family child care home license.

1. An application for license may be made to the county social service board office in the county wherein the applicant proposes to provide family child care.
 - a. Application shall be made in the form and manner prescribed by the board department.
 - b. Any license issued by the board department shall serve as public documentation that the provider of family child care has complied with the provisions of North Dakota Century Code chapter 50-11.1 and the requirements contained in subsection 2.
 - c. The license shall be nontransferable and shall be valid only on the premises that are indicated on the license. A new application for a license must be filed by a licensed home upon change of provider or location.
2. Standards for provision of supplemental parental care early childhood services in a family child care home.

- a. Staffing. The staffing requirements are determined on the basis of the number of children physically in care at a given time, rather than total enrollment.
- (1) A family child care provider may provide care to no more than four children ages twenty-four months or younger, or for no more than a total of seven children. Where one or more children is a child with a handicapping condition which requires more than usual care, the child's evaluated developmental age level, rather than chronological age level, will be used in determining the number of children for which care can be provided.
- b. Minimum qualifications of family child care providers. Providers shall:
- (1) Be at least eighteen years of age.
 - (2) Certify attendance at a minimum of ~~four~~ five hours of ~~board-approved~~ county agency-approved training related to child care annually when made available in the provider's community every licensing year.
 - (3) Be physically present in the home no less than sixty percent of the time when children are in care.
 - (4) Be mentally, physically, and emotionally able to provide adequate care for the children in the provider's charge.
 - (5) Report any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1.
 - (6) Select an emergency designee for the home as backup for emergency assistance.
- c. Minimum qualifications of all caregivers who provide direct care, supervision, and guidance to children. Caregivers shall:
- (1) Be at least fourteen years of age ~~or, if a member of the immediate family of the family child care provider, be at least twelve years of age.~~
 - (2) Be mentally, physically, and emotionally able to provide adequate care for the children under their supervision.

(3) Ensure that there has not been a probable cause determination indicating that the individual has abused or neglected a child unless the regional director or day care supervisor, after making appropriate consultation with persons qualified to evaluate the capabilities of the caregiver, documenting criteria used in making the determination, and imposing any restrictions deemed necessary, approves the license, and

(a) The caregiver can demonstrate the successful completion of an appropriate therapy, or

(b) The caregiver can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.

Ensure safe care for the children under their supervision. If there exists a probable cause determination under North Dakota Century Code chapter 50-25.1 indicating that any child has been abused or neglected by a caregiver or a family child care provider, the person shall furnish information satisfactory to the department, from which the department can determine the caregiver's current ability to provide care free of abuse or neglect. The determination of current ability will be furnished to the family child care provider and to the regional director of the human service center or his designee for consideration and action on the family child care home license.

- d. Caregivers under the age of eighteen and all children in care must have adult supervision in the home at all times.
- e. All volunteers, including family members providing direct care for children, shall meet the minimum requirements of caregivers.
- f. Health factors.
 - (1) Family child care home providers and caregivers shall complete a health statement to certify that they do not have health problems that would interfere with their functioning as caregivers or that would be detrimental to the health of the children or other staff.
 - (2) If the physical or mental health of a provider or caregiver appears questionable, the ~~board~~ department may require the provider or caregiver to be evaluated

by appropriate professionals, with the results provided to the ~~board~~ department and any costs for evaluations borne by the provider. Where appropriate, the department may arrange for an evaluation through the use of professional staff with the caregiver signing a release authorizing the use of the evaluation results for licensing purposes.

- (3) Providers or caregivers shall not use any drugs or alcoholic beverages except for medical purposes while children are in care.
 - (4) The provider or caregiver shall at no time place children in an environment that would be harmful or dangerous to their physical or emotional health. Children under care shall never be left without supervision by a person meeting the minimum qualifications of a caregiver.
- g. Liability insurance. The family child care provider shall carry liability insurance ~~coverage~~ for bodily injury and property damage covering their family child care operation. This subdivision is effective on July 1, 1987.
- h. Physical facilities.
- (1) The family child care home shall provide adequate space, indoors and out, for the daily activities of the children. This shall include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered shall exclude bathrooms, pantries, ~~and~~ passageways leading to outdoor exits, and areas occupied by furniture or appliances that children should not play on or under.
 - (2) The home ~~shall~~ must be clean, ~~and~~ maintained to protect the health and safety of children. The home and outdoor play area must be free of clutter, ~~and~~ maintained in a sanitary condition accumulation of refuse, standing water, unprotected wells, debris, attractive nuisances, and other health and safety hazards. Rubbish ~~shall~~ and garbage must be regularly removed.
 - (3) ~~The home shall have~~ There must be adequate heating, ventilation, humidity, and lighting ~~facilities~~ for the comfort and protection of the health of the children. During the heating season, a temperature of not less than sixty-eight degrees Fahrenheit {20 degrees

~~Celsius~~ shall be maintained in all rooms occupied by children.

- (4) The home shall be equipped with at least one smoke detector per floor used by the children and one fire extinguisher per home.
- (5) Elevated areas such as stairs or porches shall have railings and safety gates where necessary to prevent falls.
- (6) The home shall have a drinking water supply from an approved community water system. If water is from another source, a sample shall be tested and approved by the local health department.
- (7) Each child shall have a comfortable and clean place to sleep or rest and an individual blanket. The floor shall be used only when carpeted or padded, warm, and free from drafts. A child who is in care between the hours of eight p.m. and six a.m. shall have an individual sleeping place. Children under twelve months of age and any child unable to walk unassisted shall sleep in a crib, bed with side rails and a firm mattress, or playpen.
- (8) Exterior play areas in close proximity to busy streets and other unsafe areas shall be contained, fenced, or have natural barriers to restrict children from unsafe areas.
- (9) Potential hazards such as guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways must not be accessible to young children. Guns must be kept in locked storage, separate from ammunition.
- (10) Equipment and Indoor and outdoor equipment, toys shall and supplies must be safe, strong, nontoxic, and in good repair.
- (11) Doors and pathways may not be blocked.
- ~~(11)~~ (12) The home shall have a telephone.
- ~~(12)~~ (13) The home shall have an indoor bathroom with a toilet and plumbing.
- (14) The home must have hot and cold running water.
- ~~(13)~~ (15) If the fire/safety, health, or sanitation of the home appears questionable, the board department or county agency may require the provider to obtain an

appropriate inspection or inspections from ~~local~~
~~officials~~ the appropriate fire authority or
environmental health practitioner, and to submit the
results of the inspection to the ~~board~~ county
agency. Fire/safety inspections are required for all
initially licensed family child care homes which are
manufactured or mobile homes, in apartment buildings,
those providing care to children in basements, and
homes that have alternate heating devices such as
woodburning stoves, propane heaters, or fireplaces.
Any fees for inspection are the family child care
home provider's responsibility. Any problems found
shall be corrected.

- (16) Steps and walkways must be kept free from accumulations of water, ice, or snow.
- (17) Combustible materials must be kept away from light bulbs and other heat sources.
- (18) Soiled or wet diapers must be stored in a sanitary, air tight container until they are removed from the home and disposed of.

i. Admission procedures.

- (1) The provider shall request a preadmission visit by the child and the child's parents to acquaint the child and the parent with the home and its surroundings, the other children, and the family ~~day~~ child care provider.
- (2) The provider shall inform parents about the ~~day~~ child care program, places and times of special activities outside the home, policies, and emergency procedures, and discuss information concerning the child so that the child's needs can be identified and accommodated. An explanation of how accidents and illnesses will be dealt with shall be provided as well as methods of discipline and child management techniques to be used.
- (3) Parents shall be notified of the payment rates and the time of payment.
- (4) The provider shall regularly offer parents opportunities to observe their children at any time while in care.
- (5) A licensed health practitioner's statement based upon a health assessment or a health assessment statement completed by the parents shall be obtained at the time of initial enrollment of the child. No more

than six months shall have elapsed between the date the health assessment was completed and the date of initial enrollment. The statement shall indicate any special precautions for diet, medication, or activity. This statement shall serve as evidence that a child is physically able to take part in the day child care program. The statement for each child must be completed annually.

j. Program.

- (1) There shall be a program of daily individual and small group activities appropriate to the ages and needs of the children in the family child care home. The program shall include activities which foster sound social, intellectual, emotional, and physical growth, developed with discussion and consultation with parents as to their children's needs.
- (2) The program shall be designed with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest. The daily routine should foster the development of good health habits and self-discipline, adequate indoor and outdoor play, rest, and sleep with sufficient time and opportunities for various experiences.
- (3) The program shall provide for a variety of educational experiences for all ages of children served with an adequate supply of safe play equipment, toys, and materials for indoor and outdoor activity.
- (4) Areas used for napping shall provide an opportunity for undisturbed rest. Napping schedules should be set for children according to their ages, needs, and parent's wishes.

k. Nutrition.

- (1) All children present at mealtime shall be served a nutritious meal, including a food from each of the four basic food groups. Adequate amounts of food shall be available. A nourishing midmorning and midafternoon snack shall be provided.
- (2) If sack lunches are provided by parents, the day child care provider shall supplement these lunches as necessary.

l. Health protection.

- (1) Children shall receive all immunizations appropriate for their age, as prescribed by the North Dakota state department of health.
- (2) Family child care provider shall be familiar with emergency first aid techniques.
- (3) Caregivers shall wash hands before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that contaminates their hands. Hand soap and towels must be available at each lavatory. Clean towels must be provided daily.
- (4) A copy of a statement signed by the child's parents authorizing emergency medical care for each child shall be in the possession of the provider.
- ~~(4)~~ (5) Sufficient first aid supplies shall be available for minor emergencies.
- ~~(5)~~ (6) The family child care provider shall have plans to respond to illness and to emergencies including evacuation in case of fire, serious injury, and ingestion of poison.
- ~~(6)~~ (7) At least one person who may be called upon for child care assistance in emergencies shall be designated.
- ~~(7)~~ (8) Plans shall be made to respond to minor illnesses when children can be cared for in the provider's home.
- ~~(8)~~ (9) If children in care require medication, proper instruction as to the administration of such medication shall be secured and followed by the caregiver. Medications must be stored in an area inaccessible to children. If medications are stored in a refrigerator, they must be stored collectively in a spill-proof container.
- ~~(9)~~ (10) The family child care provider shall release a child only to the child's parent, guardian, or person in loco parentis, or to an individual authorized in writing by such person to take the child from the day care home.
- ~~(10)~~ (11) No child shall be allowed to play outdoors without clothing appropriate to the climatic conditions.
- ~~(11)~~ (12) No child shall be bathed, permitted to use wading pool, or to play outdoors without adequate supervision.

- (13) Children's personal items such as combs, brushes, pacifiers, and toothbrushes must be individually identified and stored in a sanitary manner.
- (14) There must be a designated cleanable diapering area in the home if children requiring diapering are in care. Diapers must be changed promptly when needed and in a sanitary manner.
- (15) All pets must be properly immunized. Nondomestic animals such as skunks, opossum, or raccoon are prohibited. No pets may be allowed in the kitchen or eating area during meal preparation or meals.

m. Records.

- (1) A current license for the family child care home must be available in the premises to which it applies.
- (2) A copy of the current standards for family child care homes shall be kept in the premises.
- (3) The following records shall be kept and maintained for each child:
 - (a) The child's full name, birthdate, current home address, names of the child's parents or legal guardian and business phone and home telephone numbers where those persons can be reached.
 - (b) A health assessment statement completed annually by the child's parent or a licensed health practitioner.
 - (c) A written statement from the parents or legal guardian authorizing emergency medical care.
 - (d) Names and telephone numbers of persons authorized to take the child from the home.
 - (e) Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the North Dakota department of health, unless the child is a drop-in or school aged.
- (4) All records which are maintained with respect to children receiving child care services shall be deemed confidential, and access shall be limited to the provider, the provider's staff, parents, and to the following:

- (a) Authorized social service board county agency and department representatives.
- (b) Persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the board department, are in a position to serve their interests should that be necessary.
- (c) Persons who possess a written authorization from the child's parent.

n. Punishment-

- (1) No child shall be punished by withholding or force-feeding food, requiring or prohibiting rest, or by placement in isolation. No child shall be punished for wetting or soiling clothes due to a failure of toilet habits.
- (2) Brief, supervised separation from the rest of the children may be used if necessary.
- (3) No method of punishment which humiliates or frightens the child or causes more than minor transient physical or emotional discomfort, or both, shall be used.
- (4) No child of any age may be shaken, spanked, bitten, pinched, or otherwise physically punished.
- (5) Profane, threatening, unduly loud or abusive language shall not be used when addressing children or in the presence of children.

Discipline. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talk with the child about the situation, praise for appropriate behavior, and gentle physical restraint such as holding. Children may not be subjected to physical harm or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury or abuse to any child is grounds for denial or revocation.

- (1) No child may be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by the caretaker or any other adult in the facility.

- (2) Authority to discipline may not be delegated to or be accomplished by children.
- (3) Separation, when used as discipline, must be brief and appropriate to the child's age and circumstances, and the child must be in a safe, lighted, well-ventilated room within hearing of an adult. No child may be isolated in a locked room or closet.
- (4) No child may be physically punished for lapses in toilet training.
- (5) Verbal abuse or derogatory remarks about the child, the child's family, race, religion, or profane, threatening, unduly loud or abusive language may not be used when addressing children or in the presence of children.
- (6) No child may be force-fed unless medically prescribed and administered under a physician's care.
- (7) Deprivation of meals may not be used as a form of discipline or punishment.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC ~~50-11.1-04.1~~, 50-11.1-07, 50-11.1-08

75-03-08-07. Family child care home license. The right to operate a licensed family child care home is dependent upon compliance with the applicable provisions of North Dakota Century Code chapter 50-11.1 and the applicable standards contained in this chapter.

History: Effective December 1, 1981.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, ~~50-11.1-04.1~~, 50-11.1-07

75-03-08-08. Family child care homes registered prior to effective date. Any family day care home registered prior to July 1, 1981, shall retain a valid registration certificate until such registration shall expire or be revoked by the board.

History: Effective December 1, 1981.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08

Repealed effective January 1, 1987.

75-03-09-02. Authority and objective. Under the authority vested in the social service board of North Dakota pursuant Pursuant to North Dakota Century Code section 50-11.1-08, the social service board of North Dakota department may prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08

75-03-09-03. Definitions. As used in this chapter:

1. "Attendance" means the total number of children present at any one time at the home or facility.
2. "Caregiver" means any person whose prime responsibility is the provision of direct care, supervision, and guidance to children in the child care home or facility.
3. "County agency" means the county social service board in the county where the group child care facility is located.
4. "Department" means the department of human services.
5. "Emergency designee" means an individual designated by the group child care operator as a back-up caregiver for emergency assistance.
6. "Group child care supervisor" means any person with the responsibility for overseeing the day-to-day operation of a group child care program.
- ~~4-~~ 7. "Group child care operator" means any person or group in whom inheres the legal responsibility and the administrative authority for the operation of a group child care ~~operation~~ home or facility. The group child care operator is the applicant for license or the licensee pursuant to this chapter.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-09-05. Denial or revocation of license.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.

2. If an action to revoke a license is appealed, the licenseholder may continue the operation of the facility pending the final administrative determination or until the license expires, whichever first occurs; provided, however, that this subsection shall not limit the actions the board department may take pursuant to North Dakota Century Code section 50-11.1-12.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-10

75-03-09-06. Application for group child care license. An application for license and issuance by the ~~social service board~~ shall be submitted to the county ~~social service board in the county wherein the applicant proposes to provide group child care services agency.~~ Application shall be made in the form and manner prescribed by the board department.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-09-08. Provisional license.

1. A group child care operator who applies for a license for a newly opened home or facility, or for a home or facility previously licensed, where the home or facility fails to comply with all applicable standards and regulations of the board department, may, at the discretion of the administrator regional director of the area social service center/human service center or his designee, be issued a provisional license.
2. A provisional license shall:
 - a. Prominently state that the home or facility has failed to comply with all applicable standards and regulations of the board department.
 - b. State that the items of noncompliance are set forth on a document available upon request made to the home or facility's operator or supervisor.
 - c. Expire at a set date, not to exceed six months from the date of issuance.
 - d. Be exchanged for an unrestricted license, which will bear the same date as the provisional license, upon demonstrating compliance, satisfactory to the board department, with all applicable standards and regulations.

3. A provisional license shall be issued only to an applicant who has, in writing, waived:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued shall be accompanied by a written statement of violations signed by the ~~administrator of the area social service center~~ regional director of the human service center or his designee and, in writing, acknowledged by the operator.
5. Subject to the exceptions contained in this section, a provisional license entitles its holder to all the rights and privileges afforded the holder of an unrestricted license.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-07.2, 50-11.1-08

75-03-09-09. Minimum qualifications and duties of operator.

1. The operator of a group child care home or facility is responsible to the ~~board~~ department for compliance with requirements set forth in the standards.
2. The operator may be any individual, group, agency, association, or organization legally responsible for the operation of the home or facility.
3. The operator shall ensure that all standards are complied with and shall:
 - a. Be responsible for establishing the child care program.
 - b. Make application for a license for each home or facility operated.
 - c. Outline a written plan of and policies for the operation ~~for~~ of each home or facility.
 - d. Notify the ~~board~~ county agency of any major changes in the operation or in the ownership or governing body of the home or facility and of any staff or caregiver changes.

- e. Carry liability insurance for bodily injury and property damage for the home or facility. This subdivision is effective on July 1, 1987.
- f. Maintain required records.
- g. Be responsible for all persons who provide child care in the home or facility and for having an emergency designee for back-up emergency assistance.
- h. **Ensure that no caregiver or employee who has access to children shall be employed or retained in the child care home or facility when there has been a probable cause determination that the individual has abused or neglected a child unless the regional director or day care supervisor, after making appropriate consultation with persons qualified to evaluate the capabilities of the caregiver, documenting criteria used in making the determination, and imposing any restrictions deemed necessary, approves the license; and**
 - (1) **The caregiver or employee can demonstrate the successful completion of an appropriate therapy; or**
 - (2) **The caregiver or employee can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.**

Ensure safe care for the children in the home or facility. If there exists a probable cause determination under North Dakota Century Code chapter 50-25.1 indicating that any child has been abused or neglected by a caregiver, group child care supervisor, or employee who has access to children, the person shall furnish information, satisfactory to the department, from which the department can determine the person's current ability to provide care free of abuse or neglect. The determination of current ability will be furnished to the operator and to the regional director of the human service center or his designee for consideration and action on the license or license application.

- i. Ensure that the home or facility is sufficiently staffed at all times to meet the child/staff ratios for children in attendance and that no more children than the licensed capacity be served at any one time.
- j. Request preadmission visits for children and their parents in order that the facility's program, fees, operating policies, and procedures can be viewed and discussed.

Information concerning the child shall be shared so that the child's needs can be identified and accommodated. An explanation of how accidents and illnesses will be dealt with shall be provided as well as methods of discipline and child management techniques to be used.

- k. Ensure that parents of each enrollee are notified of the fees to be paid, methods of payment, and policies regarding delinquency of fees.
 - l. Regularly offer parents opportunities to observe their children at any time while in care.
 - m. Provide parents upon request any progress reports on their individual child or children and the compliance of the home or facility with standards contained in this chapter.
 - n. Provide parents with the name of the home or facility's operator and, the group child care supervisor, and the emergency designee.
 - o. Report any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and develop a procedure to handle this reporting for all caregivers in the home or facility.
4. If the operator of the group child care home or facility is also the group child care supervisor, the operator must also meet the qualifications of the supervisor set forth in section 75-03-09-10.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-09-10. Minimum qualifications of group child care supervisor.

1. A group child care supervisor shall be an adult of good mental and physical health, capable of mature judgment, and possessing knowledge and experience in management and interpersonal relationships.
2. The supervisor shall meet at least one of the following qualifications, in addition to those set out in subsection 1:
 - a. A bachelor's degree in the field of early childhood education.

- b. A bachelor's degree with at least twelve semester hours or fifteen quarter hours in child development, child psychology, or fields directly related thereto.
 - c. An associate of arts degree in the field of early childhood development.
 - d. Certification as a child development associate or similar status where such a local, state, or federal certification program exists.
 - e. Certification from a Montessori teacher training program.
 - f. A minimum of one year's exclusive experience as a registered or licensed day child care provider with positive references from at least two parents whose children were in the provider's care.
 - g. A high school degree or equivalency with certification of completion in a secondary occupational child care program and at least one year's experience working with young children, with references from at least two persons who either had their children in the provider's care or instructed the provider in child care programming.
 - h. A minimum of one year's exclusive experience providing care to three or more preschool age children, with positive references from at least two parents whose children were in the provider's care.
 - i. Qualification under regulations in force and effect for day child care center directors prior to July 1, 1981.
3. The group child care supervisor shall have current certification in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation programs that are approved by the department. The effective date of this subsection is July 1, 1987.
 4. The group child care supervisor shall certify attendance at a minimum of five six hours of board-approved county-approved training related to child care annually when made available in the provider's community to remain qualified.
 5. The group child care supervisor must be physically present in the home or facility no less than sixty percent of the time when children are in care.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-09-12. Minimum qualifications for all caregivers.

Caregivers shall:

1. Be at least fourteen years of age, or, if a member of the immediate family of the group child care supervisor, be at least twelve years of age, provided that any employee under age sixteen has written parental consent for such employment, and the employment arrangements are in conformance with North Dakota Century Code chapter 34-07.
2. Be mentally, physically, and emotionally able to provide adequate care for the children in the caregiver's charge.
3. Receive orientation related to child care, emergency procedures, special needs of children in care, and program activities during the first week of caregiving.
4. Not use any drugs or alcoholic beverages except for medical purposes while children are in care.
5. At no time place a child or children in an environment that would be harmful or dangerous to their physical or emotional health.
6. Certify attendance at county-approved training related to child care annually. A caregiver working thirty to forty hours per week shall certify a minimum of four hours of training annually. A caregiver working twenty to thirty hours per week shall certify a minimum of three hours of county-approved training annually. A caregiver working ten to twenty hours per week shall certify a minimum of two hours of county-approved training annually. A caregiver working less than ten hours per week shall certify attendance at a minimum of one hour of county-approved training annually.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-09-13. Minimum health requirements for all caregivers.

1. All caregivers shall certify, within thirty days of licensing, that they do not have health problems that would interfere with their functioning as child caregivers or that would be detrimental to the health of the children or other staff.
2. There shall be provision for adequate substitution for child caregivers who are too ill to function effectively or who present a serious health hazard to others in the child care program.

3. If the physical or mental health of the operator, supervisor, or a caregiver appears questionable, the board department or county agency may require the individual to present evidence of such capabilities based on a formal evaluation. Where appropriate, the board department may ~~provide~~ arrange for an evaluation through the use of professional staff with the caregiver signing a release authorizing the use of the evaluation results for licensing purposes. Any costs for evaluations needed are to be borne by the caregiver.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-09-14. Group child care minimum state staffing requirements.

1. The number of staff and their utilization shall reflect program requirements, individual differences in the needs of the children enrolled, and shall permit flexible groupings where necessary.
2. The minimum ratio of caregivers or program staff to children in group child care programs shall be:
 - a. Children less than twenty-four months of age, one staff per four children.
 - b. Children twenty-four months of age to thirty-six months of age, one staff per five children.
 - c. Children thirty-six months of age to four years of age, one staff per seven children.
 - d. Children four years of age to five years of age, one staff per ten children.
 - e. Children five years of age to six years of age, one staff per twelve children.
 - f. ~~Children six to ten years of age, one staff per sixteen children.~~
 - g. Children ~~ten~~ six to ~~fourteen~~ twelve years of age, one staff per eighteen children.
3. When a child is in care with a mentally handicapping condition, and requires more than usual care, the evaluated developmental age level, rather than the chronological age of the child, shall be used in determining appropriate staff ratios.

4. Children with special conditions requiring more than usual care and supervision must have provided to them adequate care and supervision without adversely affecting care provided to the remaining children in the home or facility.
5. In each age category, the number of children is divided by the corresponding ratio number and carried to the nearest hundredths. To determine the number of caregivers necessary at any given time, numbers of caregivers for all age categories are added, and any fractional caregiver count then rounded to the next highest whole number whenever the fractional caregiver count amounts to ~~twenty-five~~ thirty-five hundredths or more. If lower than ~~twenty-five~~ thirty-five hundredths, the fractional amount is dropped.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02, 50-11.1-02.1

75-03-09-15. Minimum records for each enrolled child. The following records shall be kept and maintained for each child:

1. The child's full name, birthdate, and current home address.
2. The names and addresses of the parents or other persons legally responsible for the child, as well as their home and business telephone numbers.
3. Names and telephone numbers of persons who can assume responsibility for the child if the person legally responsible for the child cannot be reached immediately in an emergency.
4. The written consent of a parent or legally responsible party for emergency care shall also be obtained.
5. Names and telephone numbers of persons authorized to take the child from the group home or facility.
6. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the North Dakota state department of health, unless the child is a drop-in or school aged.
7. A licensed health practitioner's statement based upon a health assessment or a health assessment statement completed by the parent shall be obtained at the time of initial enrollment of the child. No more than six months shall have elapsed between the date the health assessment was completed and the date of initial enrollment. The statement shall indicate any special precautions for diet, medication, or activity. This statement shall serve as evidence that a child is physically able to

take part in the child care program. The statement for each child must be completed annually.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07

75-03-09-16. Confidentiality of child's records. Information pertaining to the admission, progress, health, or discharge of a child shall be confidential and access shall be limited to staff and parents, and to the following:

1. Authorized ~~board~~ county agency and department representatives.
2. Persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the ~~board~~ department, are in a position to serve their interests should that be necessary.
3. Persons who possess a written authorization from the child's parent. The group child care home or facility shall have a release of information form available and shall have such forms signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07

75-03-09-17. Minimum provisions regarding emergency care for children. The supervisor shall have plans to respond to illness and to emergencies including burns, serious injury, and ingestion of poison. Parents of enrollees shall be advised of these plans. The following provisions shall be made:

1. All caregivers shall be familiar with emergency first aid techniques.
2. Emergency response procedures shall be established.
3. At least one working flashlight shall be immediately available.
4. Sufficient first aid supplies shall be available for minor emergencies and kept in a designated location, so as to be inaccessible to children yet readily accessible to caregivers.
5. The home or center shall have a telephone.
6. Plans shall be made to respond to minor illnesses when children can be cared for in the home or facility. Medical

consultation shall be available regarding special care and medication.

7. If children in the home or facility require medication, written permission to dispense medication must be obtained from the parent, and proper instructions as to the administration of such medication shall be given by the parent or physician.
 - a. Any medication prescribed by a physician shall be accompanied by the doctor's written instructions as to its dosage and storage, and labeled with the child's name and date.
 - b. All medication shall be kept in secure storage ~~so that~~ it is away from food items and out of the reach of children.
8. A supervised temporary isolation area shall be provided for a child who is too ill to remain in the group, or who has an infectious or contagious disease, and the following procedures shall be followed when such signs or symptoms are observed:
 - a. Parents shall be notified immediately.
 - b. First aid shall be provided and medical care shall be sought as necessary.
9. Provisions shall be made to provide emergency transportation. When a child is brought to another place for emergency care, the child shall be accompanied by an adult who shall remain with the child until medical personnel assume the responsibility for the child's care and until the parent or responsible party arrives.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-19. Fire inspections.

1. Annual fire inspections shall be completed by local or state fire authorities. The operator shall have corrected any code violations noted by the fire inspector and shall file reports of such inspections with the ~~board~~ county agency.
2. The home or center shall provide:
 - a. The local fire inspector's written statement of compliance with the local fire code, if there is one;

- b. The local fire inspector's written statement that the home or facility has been inspected and that the inspector is satisfied that it meets minimum fire and safety standards for the facility; or
 - c. A written statement from an appropriate fire official that the home or center meets the minimum fire and safety standards adopted by the state fire marshal.
3. Fire evacuation drills shall be performed in accordance with the local fire department's guidelines.
 4. The facility shall be equipped with sufficient smoke detectors and fire extinguishers as recommended by the local fire department.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-20. Minimum sanitation and safety requirements.

1. Home or facility bathroom lavatories, toilets, tables, chairs, and floors used by children shall be cleaned daily, and cots and sleeping mats shall be cleaned at least weekly. If cots and sleeping mats are used by the same individual children, they shall be cleaned at least monthly or whenever they are soiled or wet. Facilities other than an occupied private residence with license capabilities of thirteen to eighteen children must have an annual health and sanitation inspection completed by an environmental health practitioner. If the health or sanitation of a home or facility appears questionable, the department or county agency may require the operator to obtain a sanitation inspection by an environmental health practitioner. Results of the inspection must be submitted to the county agency and any problems found must be corrected.
2. Group child care home or facility bathroom lavatories, toilets, tables, chairs, and floors must be cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.
3. The home or facility's building, grounds, and equipment shall be located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures shall be established to protect the health of the children and the caregivers.
- ~~3-~~ 4. Caregivers shall wash hands before meals and after using toilet facilities.

4. If the health or sanitation of the home or facility appears questionable, the board may require the operator to obtain a sanitation inspection from local or state public health officials and submit the results of the inspection to the board. Any problems found shall be corrected.
5. Indoor and outdoor equipment, toys, and supplies ~~shall~~ must be safe, strong, nontoxic, and in good repair ~~for children~~. All toys must be easily cleanable and be cleaned and sanitized on a routine basis.
6. The home or facility's ground areas shall be free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards or attractive nuisances.
7. ~~The home or facility shall have adequate light, ventilation, and heating for the comfort and protection of children.~~
8. Garbage shall be kept away from areas used by children and kept in containers with tight lids, made of noncombustible materials. Open burning shall not be permitted.
9. 8. Exterior play areas in close proximity to busy streets and other unsafe areas which are used by the children shall be contained, fenced, or have natural barriers to restrict children from unsafe areas.
- ~~10.~~ 9. ~~Potential hazards~~ Potentially hazardous items such as guns, ~~household cleaning chemicals~~, uninsulated wires, ~~medicines~~, and poisonous plants, and open stairways must not be accessible to young children. Guns must be kept in locked storage, separate from ammunition.
- ~~11.~~ 10. Indoor floors and steps shall not be slippery or have splinters. All steps and walkways shall be kept free from accumulations of water, ice, or snow.
- ~~12.~~ 11. Elevated areas such as stairs or porches shall have railings and approved safety gates where necessary to prevent falls.
- ~~13.~~ 12. The operator shall take steps to keep the home or facility free of insects and rodents. Chemicals for insect and rodent control shall not be applied in areas accessible to children when children are present in the facility.
- ~~14.~~ 13. Doors and pathways shall not be blocked.
14. All light bulbs in areas used by children must be properly shielded.

15. All combustible materials must be kept away from light bulbs and other heat sources.
16. There must be adequate ventilation, heating, humidity, and lighting for the comfort and protection of the health of the children.
- ~~15-~~ 17. All group care buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, shall have surfaces repainted or shall submit evidence that such surfaces do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of health.
- ~~16-~~ All heating devices shall be approved annually by the local fire authorities.
- ~~17-~~ If wading pools are used for group child care, they shall be strictly supervised and shall not be filled with more than six inches {15-24 centimeters} of water. Any swimming pools must be approved by the state department of health's division of water supply and pollution control and operational practices as established by that department shall be followed.
18. Personal items such as combs, pacifiers, and toothbrushes must be individually identified and stored in a sanitary manner.
19. Hazardous or potentially injurious or poisonous substances must be kept in locked storage in a space designed solely for this purpose and must be inaccessible to children. If medications are stored in a refrigerator, they must be stored collectively in a spill-proof container.
20. Caregivers and staff members shall wash hands before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that contaminates their hands.
21. All pets must be properly immunized. Nondomestic animals such as skunks, opossum, or racoon are prohibited. No pets may be allowed in food service area during meal preparation and serving.

22. If wading pools are used by the home or facility, their use must be strictly supervised. Wading pools must be cleaned (emptied) daily. All swimming pools must be approved by the North Dakota state department of health's division of water supply and pollution control. Operational practices as established by the North Dakota state department of health must be followed.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-21. Minimum requirements regarding space.

1. Each home or facility shall provide adequate space for all children in attendance.
2. The group child care home or facility shall provide adequate space, indoors and out, for the daily activities of the children. This shall include a minimum of thirty-five square feet [3.25 square meters] of indoor activity area per child. Unused areas, bathrooms, pantries, and passageways leading to outdoor exits, and areas occupied by furniture or appliances that children do not or should not play under or on shall not be considered when computing minimum space. Every child shall have daily access to at least seventy-five square feet [6.97 square meters] of outdoor play space. If available outdoor play space cannot accommodate the licensed capacity of the home or facility at one time, the operator must have a plan for outdoor playtimes which limits use of the play area to its capacity, giving every child an opportunity to play outdoors.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-22. Minimum requirements for facility.

1. The home or facility shall be properly lighted. If the lighting of the home or facility appears questionable, the board department or county agency may require the operator to obtain additional lights so that a minimum of fifty foot-candles of light is used in the areas generally used for children's activities.
2. Safe and comfortable arrangements for naps for enrolled children shall be provided.
 - a. The floor shall be used only when carpeted or padded, warm, free from drafts, and when each child has an individual blanket or sleeping mat.

- b. There should be a minimum space of two feet [58.42 centimeters] between each crib or cot. Aisles between cots and cribs shall be kept free of all obstructions while they are occupied.
 - c. There shall be a room available, separate from the nap room, where an individual child can go if they are unable to nap, for supervised play so as not to disrupt the other children's rest.
 - d. A child who is in care between the hours of eight p.m. and six a.m. shall have an individual sleeping place.
 - e. Children under twelve months of age and any child unable to walk unassisted shall sleep in a crib, bed with side rails and a firm mattress, or a playpen with adequate padding.
3. Water supply:
- a. Drinking water shall be from a source which is approved by the North Dakota state department of health.
 - b. Hot and cold running water and of sufficient pressure from an approved community system must be available in the home or facility.
4. Toilet and lavatory facilities:
- a. Toilet and lavatory facilities shall be provided and shall be convenient to the areas used by the children and caregivers.
 - b. Toilets shall be located in rooms separate from those used for cooking, sleeping, and eating. A minimum of one lavatory and one flush toilet shall be provided for group child care homes or facilities serving up to and including fifteen children excluding those children who are not toilet trained and able to use larger toilets. In a home or facility serving ~~fifteen~~ sixteen to eighteen children, excluding those children who are not toilet trained and able to use larger toilets, two toilets must be provided.
 - c. ~~Training~~ Child-sized toilet adapters or training chairs (potty chairs) shall be provided for use by children who require them. ~~These~~ Training chairs shall be emptied promptly and thoroughly washed cleaned and sanitized after each use.
 - d. At least one handwashing lavatory shall be provided per toilet room facility or diapering area.

- e. ~~After rinsing, cloth~~ Soiled or wet diapers shall be stored in a sanitary, airtight container until they are removed ~~or washed and disposed of properly.~~ Disposable diapers shall also be disposed in a sanitary airtight container. A flush toilet or flush sink shall be provided for rinsing soiled diapers.
- f. Sanitary hand-drying equipment, individual cloth, or paper towels shall be provided near handwashing lavatories.
5. Sewage and wastewater disposal. ~~The sewage and wastewater disposal system must be approved by the local health authority.:~~
 - a. Any home or facility not on a municipal or public water supply or wastewater disposal system must be approved by a public health sanitarian for its sewage and wastewater system.
 - b. The group home or facility must meet the requirements of the state plumbing code, North Dakota Century Code chapter 62-03.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-23. Minimum standards for food and nutrition.

1. When the operator is responsible for providing food to children, the food supplied shall meet United States department of agriculture standards, and be properly prepared, sufficient in amount, varied according to diets of the children enrolled, and served at appropriate hours.
2. When parents bring sack lunches for their children, the operator may supplement lunches to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.
3. Children shall be served a nutritious morning and afternoon snack, as outlined below and if the parent does not provide a sack lunch, a nourishing lunch as outlined below:
 - a. Children in care for more than three hours shall receive either a snack or lunch, whichever is appropriate for the time of the day.
 - b. Children in care during any normal mealtime hour shall be served food appropriate to that time of the day.

- c. Children in care after school who have not had any food since lunch shall be provided with a snack.
4. Whenever the operator is responsible for providing food to children, menus shall be prepared on a weekly basis and shall be printed or written in such a manner that either the parents, the board department, or other appropriate persons may review them.
5. Information provided by the children's parents as to their eating habits, food preferences, or special needs shall be considered in the feeding schedule and menus.
6. Children shall be served in a manner commensurate with their age using appropriate dishes and eating utensils.
7. Children shall be encouraged to eat the food served, but shall not be subjected to coercion or forced feeding.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-25. Specialized types of care and minimum requirements therefor.

1. Infant care.
 - a. When children from birth to twenty-four months are served, the operator shall provide an environment which protects the children from physical harm and one which is not so restricted as to inhibit physical, intellectual, emotional, and social development.
 - b. Nonwalking children shall have the opportunity during each day for freedom of movement, such as creeping or crawling in a safe, clean, open, uncluttered area.
 - c. Each infant shall have an individual sleeping space. The sheets shall be changed whenever they become soiled or wet. If individual protective coverings are used for each child to protect linens, these shall be laundered at least weekly.
 - d. Children shall be taken out of doors or to other areas within the home or facility for a part of each day to provide some change of physical surroundings and to be with other children. No child shall be confined to a crib or playpen during the entire time at the home or facility, unless the child is preparing to sleep or sleeping for the duration of the care.

- e. Each infant shall have periodic individual personal contact and attention from an adult, such as being held, rocked, talked, or sung to.
- f. Low chairs and tables or infant seats with trays shall be provided for table play and mealtime for children no longer being held for feeding. Highchairs, if used, shall have a wide base and a safety strap.
- g. Children shall never be shaken or jostled in a moderate or severe manner.
- h. All cries of infants shall be investigated.
- i. Infants shall be fed or supervised individually and their diet and pattern of feeding shall be appropriate to their individual developmental needs.
- j. At no time shall infants be left unattended while feeding.
- k. If prepackaged, presterilized formula is used for each child's feeding, any excess shall be discarded in a safe, sanitary manner, if it has been unrefrigerated for a total of four or more hours.
- l. Diapers shall be changed promptly when needed and in a sanitary manner. ~~When more than one infant is in care, infants shall~~ There must be a designated diapering area where infants must be changed on a cleanable surface which is thoroughly cleaned with detergent after each diapering. When more than one infant is in care, the diapering area must be thoroughly cleaned and sanitized between use for each infant.
- m. Soiled or wet diapers must be stored in a sanitary, airtight container. Disposable diapers must be removed at least daily and disposed of properly.

2. Night care.

- a. Any home or facility offering night care shall provide program modification for the special needs of children and their parents during the night.
- b. In consultation with parents, special attention shall be given by the caregiver to provide a transition into this type of care appropriate to the child's emotional needs.
- c. When practical, children shall be left for care and picked up before and after their normal sleeping period so that there is minimal disturbance of the child during sleep, but consideration shall be given to the parent's work schedules.

- d. Preschool age children shall be supervised when bathing.
- e. Comfortable beds, cots, or cribs complete with a mattress or pad shall be available.
 - (1) Pillows and mattresses shall have clean coverings.
 - (2) Sheets and pillowcases shall be changed as often as necessary for cleanliness and hygiene, but not less than weekly. If beds are used by different children, sheets and pillowcases shall be laundered before use by other children.
 - (3) Each bed or cot shall have sufficient blankets available.
- f. The home or facility shall require each child in night care to have:
 - (1) Night clothing.
 - (2) A toothbrush marked for identification.

3. Drop-in facilities.

- a. If the home or facility serves drop-in children, schoolchildren, or before- and after-school children, it shall be sufficiently staffed to effectively handle admission records, and explain the policies and procedures of the group care program. Admission records secured must comply with all enrollment requirements contained in section 75-03-09-15 except the immunization record requirement.
- b. Admittance procedures shall provide for a period of individual attention for the child in order to acquaint the child with the home or facility.
- c. No home or facility shall receive drop-in or part-time children who, when added to the children in regular attendance, cause it to exceed the total number of children for which it is licensed.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-26. Minimum requirements for care of children with special needs. When children with special needs are admitted, there shall be appropriate provisions to meet those needs.

1. When children with special needs are admitted, the supervisor shall consult with the child's parents, and with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants.
2. Caregivers shall receive proper instructions as to the nature of the child's disability, and potential for growth and development.
3. Where the nature of the special needs or the number of children with special needs warrants added care, the home or facility shall add sufficient staff and equipment as deemed necessary by the board department to compensate for these needs.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-27. Punishment of enrollees Discipline.

- 1- No child of any age shall be shaken, hit, spanked, bitten, pinched, or otherwise physically punished.
- 2- Brief, supervised separation from the rest of the children may be used as necessary.
- 3- No method of punishment which humiliates or frightens the child, or causes more than minor transient physical or emotional discomfort, or both, shall be used.
- 4- No child shall be punished by withholding or force-feeding food, requiring or prohibiting rest, or by placement in isolation. No child shall be punished for wetting or soiling clothes due to a failure of toilet habits.
- 5- Profane, threatening, unduly loud or abusive language shall not be used when addressing children, or in the presence of children.

Discipline must be constructive or educational in nature and may include diversion, separation from problem situation, talk with the child about the situation, praise for appropriate behavior, and gentle physical restraint such as holding. Children may not be subjected to physical harm or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury or abuse to any child is grounds for denial or revocation.

1. No child may be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by the caretaker or any other adult in the facility.
2. Authority to discipline may not be delegated to or be accomplished by children.
3. Separation, when used as discipline, must be brief and appropriate to the child's age and circumstances, and the young child must be in a safe, lighted, well-ventilated room within hearing of an adult. No child may be isolated in a locked room or closet.
4. No child may be physically punished for lapses in toilet training.
5. Verbal abuse or derogatory remarks about the child, the child's family, race, religion, or profane, threatening, or abusive language may not be used when addressing children or in the presence of children.
6. No child may be force-fed unless medically prescribed and administered under a physician's care.
7. Deprivation of meals may not be used as a form of discipline or punishment.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-09-29. Allowable time periods for correction of deficiencies.

1. Pursuant to section 50-11.1-07.2 of the North Dakota Century Code, the following time periods are established in which the corrections of those deficiencies noted in the correction order issued, must be made:
 - a. For a violation or deficiency requiring the hiring of a group child care supervisor with those qualifications set forth in section 75-03-09-11, a period of sixty days to correct the deficiency shall be allowed.
 - b. For a violation or deficiency that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-09-19, a period of sixty days to correct the deficiency shall be allowed.
 - c. For a violation or deficiency that requires substantial building remodeling, construction, or change, a period of sixty days to correct the deficiency shall be allowed.

- d. For all other violations or deficiencies a period of twenty days shall be allowed to correct the deficiency.
2. All time periods shall commence with the date of receipt, by the provider, of the correction order.
3. The area regional supervisor of day care services early childhood program licensing shall have the authority to grant extensions of allowable time to correct deficiencies, for a period of one-half the original allowable time to correct the deficiency. These extensions may be granted upon application by the provider and upon a showing that the need for the extension is created by circumstances beyond the control of the provider and that the provider has diligently pursued the correction of the deficiency.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

75-03-09-30. Penalties.

1. A violation of any of the following sections shall subject the licensee to a fiscal sanction of twenty-five dollars per day: subdivision h of subsection 3 of section 75-03-09-09, subsection 2 of section 75-03-09-14, section 75-03-09-19, subsections 6, 7, 10, and 14 of section 75-03-09-20, section 75-03-09-21, and section 75-03-09-27.
2. A violation of any of the following sections shall subject the licensee to a fiscal sanction of fifteen dollars per day: subsection 2 of section 75-03-09-10, section 75-03-09-12, subsections 2, 4, 3, 5, 8, 9, and 12 of section 75-03-09-20, subsection 2 and subdivisions b and f of subsection 4 of section 75-03-09-22, subsection 1 of section 75-03-09-23, subsections 2 and 4 of section 75-03-09-24, subsections 1 and 3 of section 75-03-09-25, and section 75-03-09-28.
3. A violation of any other sections of this chapter not noted in subsections 1 and 2 shall subject the licensee to a fiscal sanction of five dollars per day.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-07.4, 50-11.1-08

Law Implemented: NDCC 50-11.1-07.4, 50-11.1-07.5, 50-11.1-07.6, 50-11.1-07.7

75-03-10-01. Purpose. The purpose of this chapter is to establish minimum standards for licensed child care centers providing supplemental parental care early childhood services and to assure that those standards are maintained.

History: Effective December 1, 1981; amended effective January 1, 1987.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01

75-03-10-02. Authority and objective. Under the authority vested in the social service board of North Dakota pursuant Pursuant to North Dakota Century Code section 50-11.1-08, the social service board of North Dakota department is empowered to prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1.

History: Effective December 1, 1981; amended effective January 1, 1987.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-08

75-03-10-03. Definitions. As used in this chapter:

1. "Attendance" means the total number of children present at any one time at the facility.
2. "Caregiver" means any person whose responsibility is the direct provision of supplemental parental care early childhood services in facilities subject to this chapter.
3. "Child care center director" means any person with the responsibility for overseeing and planning the day-to-day child care center activities.
4. "Child care center operator" means any person in whom inheres the legal responsibility and the administrative authority for a child care center. The child care center operator is the applicant for license or the licensee pursuant to this chapter.
5. "Child care supervisor" means any person with the responsibility for organizing and supervising daily program activities.
6. "Department" means the North Dakota department of human services.
- 6- 7. "Parent" means any person bearing the legal relationship of father or mother to a child enrolled in a child care center, including those persons who legally stand in place of such parent, such as legal guardians or custodians.
8. "School-age child care program" means a child care center providing early childhood services exclusively to school-age children before and after school and during school holidays.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-02

75-03-10-05. Denial or revocation of license.

1. The right to provide ~~supplemental care~~ early childhood services in a child care center is dependent upon compliance with the applicable provisions of North Dakota Century Code chapter 50-11.1 and the required minimum standards set forth in this chapter.
2. The ~~board~~ department may revoke or deny a license to operate a child care center under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.
3. If an action to revoke a license is appealed, the licenseholder may continue the operation of the facility pending the final administrative determination or until the license expires, whichever first occurs; provided, however, that this subsection shall not limit the actions the ~~board~~ department may take pursuant to North Dakota Century Code section 50-11.1-12.

History: Effective December 1, 1981; amended effective January 1, 1987.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-09

75-03-10-06. Application for child care center license.

1. An application for a child care center license shall be made with the county social service board of the county in which the facility is located.
2. Application shall be made in the form and manner prescribed by the ~~board~~ department.
3. A new application for a license must be filed by a licensed center upon change of operator or location.

History: Effective December 1, 1981; amended effective January 1, 1987.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-10-07. Requirements for child care center license. The name, address, and telephone number of the operator as well as the name, address, and telephone number of the director shall be provided to the ~~board~~ department and county agency upon application for license and shall be provided to the parents of enrolled children when the center is in operation.

History: Effective December 1, 1981; amended effective January 1, 1987.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-10-08. Provisional license.

1. Child care center operators who apply for a child care center license for a newly opened facility, or for a facility previously licensed, where the facility fails to comply with all applicable standards and regulations of the board department, may, at the discretion of the ~~administrator~~ director of the area social service center/human service center or his designee, be issued a provisional license.
2. A provisional license shall:
 - a. Prominently state that the center has failed to comply with all applicable standards and regulations of the board department.
 - b. State that the items of noncompliance are set forth on a document available upon request made to the child care center's operator or director.
 - c. Expire at a set date, not to exceed six months from the date of issuance.
 - d. Be exchanged for an unrestricted license, which will bear the same date as the provisional license, upon demonstrating compliance, satisfactory to the board department, with all applicable standards and regulations.
3. A provisional license shall be issued only to an applicant who has, in writing, waived:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued shall be accompanied by a written statement of violations signed by the ~~administrator~~ director of the area social service center/human service center or his designee and, in writing, acknowledged by the operator.

5. Subject to the exceptions contained in this section, a provisional license entitles its holder to all the rights and privileges afforded the holder of an unrestricted license.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-07.2, 50-11.1-08

75-03-10-09. Minimum qualifications and duties of operator.

1. The operator of a child care facility is responsible to the board department for compliance with requirements set forth in the standards.
2. The operator may be any individual, group, agency, association, or organization legally responsible for the operation of the facility.
3. The operator shall ensure that all standards are complied with and shall:
 - a. Be responsible for establishing the child care program.
 - b. Make application for a license for each child care center operated.
 - c. Outline a plan of operation for each child care center.
 - d. Notify the board county agency of any major changes in the operation or in the ownership or governing body of the facility and of any staff or caregiver changes.
 - e. Carry liability insurance for bodily injury and property damage for the center. This subdivision is effective on July 1, 1987.
 - f. Ensure the formulation of written policies and procedures relating to the hiring practices and personnel policies for staff. These must include obtaining references, employment histories, and a method of conducting staff performance evaluations. Written policies and procedures must also be formulated for children's activities and care, enrollment, the responsibilities and rights of staff and of parents.
 - g. Maintain required enrollment, attendance, health, financial, and related records.
 - h. Make available office space, furniture, and equipment for parent conferences, maintenance and storage of records for children and staff and for accommodating administrative responsibilities.

~~h-~~ i. Be responsible for all center staff, volunteers, or others who provide services in the facility and for notifying the board department and county agency of any change of directors.

~~i-~~ j. Maintain necessary information to verify staff qualifications and ~~that ensures~~ ensure that no safe care be provided for the children in the facility. If a caregiver or employee who has access to children ~~shall~~ be is employed or retained in the child care center when there has been a probable cause determination that the individual has abused or neglected a child ~~unless the regional director or day care supervisor, after making appropriate consultation with persons qualified to evaluate the capabilities of the caregiver, documenting criteria used in making the determination, and imposing any restrictions deemed necessary, approves the license, and~~

(1) ~~The caregiver or employee can demonstrate the successful completion of an appropriate therapy, or~~

(2) ~~The caregiver or employee can demonstrate the elimination of an underlying basis precipitating the neglect or abuse-~~

, the person shall furnish information, satisfactory to the department, from which the department can determine the person's current ability to provide care free of abuse or neglect. The determination of current ability will be furnished to the operator and to the regional director of the human service center or his designee for consideration and action on the license or license application.

~~j-~~ k. Cooperate with the board department and other appropriate agencies in all reasonable efforts to improve the quality of care and the competence of caregivers.

~~k-~~ l. Designate a qualified center director.

~~i-~~ m. Ensure that parents of enrolled children and other interested parties are informed of the goals, policies and procedures, and content of the child care center's program. An explanation of how accidents and illnesses will be dealt with shall be provided as well as methods of discipline and child management techniques to be used.

~~m-~~ n. Ensure that the center is staffed sufficiently to provide physical care to each child, to offer individual attention to children as needed and to provide time to interact with

children for the benefit of their social competence, emotional well-being, and intellectual development.

- ~~n-~~ o. Ensure that the child care center shall have sufficient qualified caregivers provided to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty.
 - ~~e-~~ p. Ensure that parents of enrolled children are advised of the center's program, service fees, operating policies and procedures, location, and of any significant changes in the services offered by the center. Written notice shall be provided to the parents and the ~~board~~ department of such changes and their effective date, duration, scope, and impact on the center.
 - ~~p-~~ q. Ensure that written agreements with the parent or parents of each enrollee specify the fees to be paid, methods of payment, and policies regarding delinquency of fees.
 - ~~q-~~ r. Ensure that written policies are established which provide for emergency medical care, the care of children with special physical, emotional, or mental needs (if children with these needs are in care) and the treatment of illness and accident.
 - ~~r-~~ s. Ensure that written policies are established concerning the care and safeguarding of personal belongings brought to the child care center by enrollees or others on their behalf.
 - ~~s-~~ t. Provide parents with opportunities to observe the center at any time children are in care and to discuss their children's needs before enrollment; regularly offer parents opportunities to observe their children and to meet with caregivers to advise and comment on their children's needs.
 - ~~t-~~ u. Provide parents upon request any progress reports on their individual child or children and the compliance of the facility with standards contained in this chapter.
 - v. Report any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and develop a policy for staff to handle this reporting.
4. If the operator of the child care center is also the center director, the operator must also meet the qualifications of the child care center director set forth in section 75-03-10-10.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-10. Minimum qualifications of child care center director.

1. A child care center director shall be an adult of good mental and physical health, capable of mature judgment, and possessing knowledge and experience in management and interpersonal relationships.
2. The director shall certify that at least one of the following qualifications, in addition to those set out in subsection 1, are met:
 - a. A bachelor's degree in the field of early childhood education with eight or more weeks of supervised student teaching experience in a child care center or similar setting.
 - b. A bachelor's degree with at least twenty-four semester hours or thirty quarter hours in child development, child psychology, or fields directly related thereto, with at least six months' experience in a child care center or similar setting.
 - c. An associate of arts degree in the field of early childhood development with at least six months' experience in a child care center or similar setting.
 - d. A teaching certificate in elementary education with at least six months' experience in a child care center and at least twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or related fields.
 - e. Certification as a child development associate or similar status where such a local, state, or federal certification program exists, with at least one year's experience in a child care center or similar setting.
 - f. A bachelor's degree with at least twelve semester hours or fifteen quarter hours in child development, child psychology, or fields directly related thereto, with at least one year's experience in a child care center or similar setting.
 - g. Certification for a Montessori teacher training program with at least one year's experience in a Montessori school, child care center or similar setting and at least twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or related fields.

- h. Qualification under regulations in force and effect prior to ~~November 17, 1980~~ July 1, 1984, and continuous employment as a director from that time, and at all times subsequent, at the same center.
 - i. When responsible for only a school-age child care program, a high school diploma with at least three years' experience as a licensed group child care supervisor and at least three positive reference letters from parents whose children were in the supervisor's care.
3. The director shall meet current certification in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department. This subsection is effective on July 1, 1987.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-11. Duties of child care center director. The child care center director shall, coextensive with the child care center operator:

1. Be responsible for program planning, supervision, and activity.
2. Be responsible for maintaining adequate enrollment, health, attendance, financial, and other related records as required by this chapter.
3. Be responsible for screening, scheduling, supervision, and conduct of staff members.
4. Cooperate with the board department and other agencies designated by the board department in efforts to improve the quality of care and the competence of personnel in the center.
5. At no time shall a child care center be without a director or a designated acting director. The director of a center shall be present at the center at least sixty percent of the time that the center is open.
6. Any person designated as an acting director for an ongoing period of less than thirty days must meet the requirements qualifications of a child care supervisor.
7. Any person designated as an acting director for an ongoing period of more than thirty days must meet the requirements qualifications of child care director.

History: Effective December 1, 1981; amended effective January 1, 1987.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04

75-03-10-12. Minimum qualifications of child care supervisor. A supervisor shall:

1. Have had training and demonstrated ability in working with children.
2. Meet at least one of the following qualifications:
 - a. An associate of arts degree in the field of early childhood development.
 - b. Certification as a child development associate or similar status where such local, state, or federal certification program exists.
 - c. Certification from a Montessori teacher training program.
 - d. A high school diploma with at least one year's experience in a child care or similar setting.
 - e. High school equivalency with at least one year's experience in a child care or similar setting.
3. Possess the capacity and willingness to increase skills and competence through experience, training, and supervision.
4. Be of sufficiently good health so as to be able to provide adequate care for children in a child care center environment.
5. Maintain current certification in cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department. This subsection is effective on July 1, 1987.

History: Effective December 1, 1981; amended effective January 1, 1987.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04

75-03-10-13. Minimum qualifications for all child care caregivers.

1. Caregivers shall:
 - a. Be at least fourteen years of age, provided that any employee under age sixteen has written parental consent for such employment, and the employment arrangements are

in conformance with North Dakota Century Code chapter 34-07.

- b. Be mentally, physically, and emotionally able to provide adequate care for the children in the caregiver's charge.
 - c. Certify attendance at a minimum of ~~five~~ ten hours of ~~board~~ county agency-approved training related to child care annually ~~when made available in the community.~~ Caregivers working thirty to forty hours per week are required to certify ten hours of training annually. Caregivers working twenty to thirty hours per week are required to certify eight hours of training annually. Caregivers working ten to twenty hours per week are required to certify six hours of training annually. Caregivers working less than ten hours per week are required to certify four hours of training annually.
 - d. Not use any drugs or alcoholic beverages except for medical purposes while children are in care.
 - e. At no time place a child or children in an environment that would be harmful or dangerous to their physical or emotional health.
2. The child care center shall provide to newly hired caregivers a two-day, onsite orientation to the child care program during the first week of employment. The orientation must address all of the following:
- a. Emergency health, fire and safety procedures at the center.
 - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children.
 - c. Any special health or nutrition problems of the children assigned to the caregiver.
 - ~~e~~ d. Any special needs of the children assigned to the caregiver.
 - ~~d~~ e. The planned program of activities at the center.
 - ~~e~~ f. Rules and policies of the center.
 - ~~f~~ g. Child abuse and neglect laws.
3. Caregivers under the age of eighteen and all children in care must have adult supervision in the center at all times.

History: Effective December 1, 1981; amended effective January 1, 1987.
General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-14. Minimum qualifications for volunteers. Volunteers shall meet qualifications of ~~attendants~~ child care caregivers, if providing child care, and receive orientation as needed for all assigned tasks.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-15. Minimum health requirements for all caregivers.

1. All caregivers shall certify, within thirty days of employment, that they do not have health problems that would interfere with their functioning as child caregivers or that would be detrimental to the health of the children or other staff.
2. There shall be provision for adequate substitution for child caregivers who are too ill to function effectively or who present a serious health hazard to others in the child care center.
3. If the physical or mental health of the operator, director, supervisor, or any caregiver appears questionable, the ~~board~~ department may require the individual to present evidence of such capabilities based on a formal evaluation. Where appropriate, the ~~board~~ department may ~~provide~~ arrange for an evaluation through the use of professional staff with the caregiver signing a release authorizing the use of evaluation results for licensing purposes. Any costs for evaluations needed are to be borne by the caregiver.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-16. Child care center minimum state staffing requirements.

1. The number of staff and their utilization shall reflect program requirements, individual differences in the needs of the children enrolled, and shall permit flexible groupings where necessary. Service personnel that are engaged in housekeeping and food preparation shall not be counted in the child/staff ratio for periods of time when they are so engaged.

2. The minimum ratio of caregivers or program staff to children in child care centers shall be:
 - a. Children less than twenty-four months of age, one staff per four children.
 - b. Children twenty-four months of age to thirty-six months of age, one staff per five children.
 - c. Children three years of age to four years of age, one staff per seven children.
 - d. Children four years of age to five years of age, one staff per ten children.
 - e. Children five years of age to six years of age, one staff per twelve children.
 - f. ~~Children six to ten years of age, one staff per sixteen children.~~
 - g. Children ~~ten~~ six to ~~fourteen~~ twelve years of age, one staff per ~~twenty~~ eighteen children.
3. Where one or more children is a child with a mentally handicapping condition, and requires more than usual care, the evaluated developmental age level, rather than the chronological age of the child, shall be used in determining appropriate staff ratios.
4. Children with special conditions requiring more than usual care and supervision must have provided to them adequate care and supervision without adversely affecting care provided to the remaining children in the facility.
5. In each age category, the number of children is divided by the corresponding ratio number and carried to the nearest hundredths. To determine the number of caregivers necessary at any given time, numbers of caregivers for all age categories are added, and any fractional caregiver count then rounded to the next highest whole number whenever the fractional caregiver count amounts to ~~twenty-five~~ thirty-five hundredths or more. If lower than ~~twenty-five~~ thirty-five hundredths, the fractional amount is dropped.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-02, 50-11.1-02.1

75-03-10-18. Confidentiality of child's records. Information pertaining to the admission, progress, health, or discharge of a child

shall be confidential, and access shall be limited to staff and parents, and to the following:

1. Authorized board department representatives.
2. Persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the board department, are in a position to serve their interests should that be necessary.
3. Persons who possess a written authorization from the child's parent. The child care center shall have a release of information form available and shall have such forms signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07

75-03-10-21. Fire inspections.

1. Annual fire inspections shall be completed by local or state fire authorities. The operator shall have corrected any code violations noted by the fire inspector and shall file reports of such inspections with the board county agency.
2. The center shall provide:
 - a. The local fire inspector's written statement of compliance with the local fire code, if there is one;
 - b. The local fire inspector's written statement that the facility has been inspected and that the inspector is satisfied that it meets minimum fire and safety standards for the facility; or
 - c. A written statement from an appropriate fire official that the facility meets minimum fire and safety standards adopted by the state fire marshal.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07

75-03-10-22. Minimum sanitation and safety requirements for child care centers.

1. **Child care center bathroom lavatories, toilets, tables, chairs, and floors shall be cleaned daily, and cots and sleeping mats shall be cleaned at least weekly. If children use individual cots or**

mats that are not used by other children and are covered by personal blankets or coverings, the cots shall be cleaned at least monthly.

2. Staff members shall wash hands before meals and after using toilet facilities.
3. The child care center's building, grounds, and equipment shall be located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures shall be established to protect the health of the children and the caregivers.
4. The facility shall have an annual health and sanitation inspection. Reports of such inspections shall be filed with the board and any problems found shall be corrected.
5. Indoor and outdoor equipment and supplies shall be safe, strong, and in good repair for children.
6. There shall be adequate ventilation, and heating in the center. During the heating season when the facility is occupied by children, the room temperature shall not be less than sixty-eight degrees Fahrenheit {20 degrees Celsius} and not more than seventy-four degrees Fahrenheit {23.33 degrees Celsius} measured three feet {91.44 centimeters} above the floor.
7. The child care center ground areas shall be free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards or attractive nuisances.
8. Garbage shall be kept away from areas used by children and kept in containers with tight lids, made of noncombustible materials. Open burning shall not be permitted.
9. Exterior play areas in close proximity to busy streets and other unsafe areas which are used by the child care center shall be contained, fenced, or have natural barriers to restrict children from unsafe areas.
10. Hazardous or potentially injurious or poisonous substances must be kept in locked storage in a space designed solely for this purpose and shall be inaccessible to children.

11. Indoor floors and steps shall not be slippery or have splinters. All steps and walkways shall be kept free from accumulations of water, ice, or snow.
12. Elevated areas such as stairs or perches shall have railings and safety gates where necessary to prevent falls.
13. All heating devices shall be approved by the local fire authorities.
14. Centers shall take steps to keep the facility free of insects and rodents. Chemicals for insect and rodent control shall not be applied in areas accessible to children when children are present in the facility.
15. The center shall provide doors of sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the center.
16. Combustible materials shall be kept away from light bulbs and other heat sources.
17. Doors and pathways shall not be blocked.
18. All center buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, shall have such surfaces repainted or shall submit evidence that such surfaces do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of health.
19. If wading pools are used by the center, they shall be strictly supervised and shall not be filled with more than six inches [15-24 centimeters] of water. Any swimming pools must be approved by the state department of health's division of water supply and pollution control and operational practices as established by that department shall be followed.

1. The facility must have an annual health and sanitation inspection completed by an environmental health practitioner. Reports of such inspections must be filed with the department and any problems found must be corrected.
2. The child care center's building, grounds, and equipment must be located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures must be established to protect the health of the children and caregivers.
3. The child care center ground areas must be free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, attractive nuisances, and other health and safety hazards.
4. Exterior play areas in close proximity to busy streets and other unsafe areas which are used by the child care center must be contained, fenced, or have natural barriers to restrict children from unsafe areas.
5. Garbage must be kept away from areas used by children and kept in noncombustible containers with tight lids. Open burning is not permitted.
6. If wading pools are used by the center, they must be strictly supervised. Wading pools must be cleaned (emptied) daily. All swimming pools must be approved by the North Dakota state department of health's division of water supply and pollution control. Operational practices as established by the North Dakota state department of health must be followed.
7. All center buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children might be present, must have such surfaces repainted or must submit evidence that such surfaces do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating.
8. Indoor and outdoor equipment, toys, and supplies must be safe, strong, nontoxic, and in good repair. All toys must be easily cleanable and be cleaned on a routine basis.
9. Indoor floors and steps must not be slippery or have splinters. All steps and walkways must be kept free from accumulations of water, ice, or snow.

10. Elevated areas, such as stairs or porches, must have railings and approved safety gates where necessary to prevent falls.
11. If the center is providing care to children in wheelchairs, the center shall provide doors of sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the center.
12. Doors and pathways must not be blocked.
13. All light bulbs in areas used by children must be properly shielded or shatterproof.
14. Combustible materials must be kept away from light bulbs and other heat sources.
15. There must be adequate ventilation, heating, and proper humidity in the center. During the heating season when the facility is occupied by children, the room temperature may not be less than sixty-eight degrees Fahrenheit [20 degrees Celsius] and not more than seventy-four degrees Fahrenheit [23.33 degrees Celsius] measured three feet [91.44 centimeters] above the floor. All heating devices must be approved by the local fire authorities.
16. Child care center bathroom lavatories, toilets, tables, chairs, and floors must be cleaned daily. Cots and mats must be individually labeled, and cleaned and sanitized at least weekly. If different children use the same cots or mats, they must be thoroughly cleaned and sanitized between each use. Cots and mats must be constructed of easily cleanable materials. Separate storage must be provided for personal blankets or coverings.
17. Personal items such as combs, pacifiers, and toothbrushes must be individually identified and stored in a sanitary manner.
18. Hazardous or potentially injurious or poisonous substances must be kept in locked storage in a space designed solely for this purpose and must be inaccessible to children. If medications are stored in a refrigerator, they must be stored collectively in a spill-proof container.
19. Caregivers and staff members shall wash hands before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that contaminates their hands.
20. When food is prepared, served, or stored in a child care center, it will be done in a sanitary and safe manner with sanitary and safe equipment.

21. When parents bring sack lunches for their children at the center, the operator shall provide adequate and appropriate refrigeration and storage as required.

22. When prepackaged, presterilized formula is used for a child's feeding, any excess left unrefrigerated for a total of four or more hours must be discarded in a safe, sanitary manner.

23. Diapering:

a. A designated diapering area must be established in centers caring for children requiring diapering. A handwashing lavatory must be immediately accessible to the diapering area.

b. Cloth diapers may not be used in a child care center.

c. Diapers must be changed promptly when needed and in a sanitary manner. Infants must be changed on a cleanable surface which must be thoroughly cleaned with detergent and sanitized after each diapering.

d. Soiled or wet diapers must be stored in a sanitary, airtight container. Disposable diapers must be removed at least daily and disposed of properly.

24. Water supply:

a. Drinking water must be from a source which is approved by the North Dakota state department of health.

b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-service drinking cups.

c. Hot and cold running water of sufficient pressure from a system approved by the North Dakota state department of health must be available in the center.

d. A tempering valve must be provided to control the temperature of hot water supplied to lavatories and bathing facilities to be no greater than one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

25. Toilet and lavatory facilities:

a. Toilet and lavatory facilities must be provided and must be convenient to the areas used by the children and staff.

b. Toilet and lavatory facilities must meet requirements of the environmental health practitioner.

- c. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping. A minimum of one lavatory and one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained and able to use larger toilets.
- d. Separate restrooms must be provided for boys and girls six years of age and over. Partitions must be installed to separate toilets in these restrooms.
- e. If training chairs (potty chairs) or toilet adapters are used, they must be thoroughly cleaned and sanitized between each use.
- f. At least one handwashing lavatory must be provided per toilet room facility. Sanitary hand-drying equipment or materials must be provided near handwashing lavatories.
- g. Safe stepstools must be provided to allow standard-size toilets and lavatories to be used by the children or child-size toilets and lavatories must be provided.

26. Sewage and wastewater disposal:

- a. A child care center must meet the requirements of the state plumbing code - article 62-03.
- b. Any facility not on a municipal or public water supply or wastewater system must be approved by an environmental health practitioner.

27. Laundry: If the facility provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation. Soiled linens must be placed in closed containers or hampers during storage and transportation. In all new or extensively remodeled facilities, the handling, sorting, or washing of soiled linen or blankets must take place in a designated area that is separated from food preparation, serving, and kitchen areas by a permanent partition. In existing centers where physical separation of laundry and kitchen areas is impractical, procedures must be developed that prohibit the washing or transportation of laundry while meals are being prepared or served. Under no circumstances will sorting of laundry be allowed in food preparation, serving, or kitchen areas. If the facility provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, water temperature must be greater than one hundred seventy degrees Fahrenheit [77.2 degrees Celsius]. If water temperature is less than one hundred seventy degrees Fahrenheit [77.2 degrees Celsius], then bleach must be used in the laundry process during the rinse cycle to achieve fifty parts per million of available

hypochlorite at a temperature of at least seventy-five degrees Fahrenheit [24 degrees Celsius].

28. Centers shall take steps to keep the facility free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the facility.
29. All pets must be approved by an environmental health practitioner. All pets must be properly restricted and maintained. The feeding and care must be performed only by nonfood, preparation staff. Nondomestic animals such as skunks, opossum, or raccoon are prohibited.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-23. Minimum requirements regarding space.

1. Each center shall provide adequate space for all children in attendance.
2. There shall be a minimum of thirty-five square feet [3.25 square meters] of indoor activity area per child. Work areas, unused space, permanent crib space, bathrooms, pantries, and passageways leading to outdoor exits, and areas which are not exclusively used for child care center purposes, and areas occupied by furniture or appliances that children do not or should not play under or on, shall not be considered when computing minimum space. Every child shall have daily access to at least seventy-five square feet [6.97 square meters] of outdoor play space. If available outdoor play space cannot accommodate the licensed capacity of the center at one time, the center operator must prepare a written schedule of outdoor play times which limits use of the play area to its capacity.
3. The child care center shall have sufficient space and appropriate furniture and equipment to provide for support functions necessary to the program and to provide for the reasonable comfort and convenience of the staff and parents.
4. ~~There shall be no open flames, open fireplaces, or portable space heaters in use on the premises of the center. All heating elements shall be insulated so as never to be hot to the touch, or shall be installed in such a manner that children cannot come in contact with them.~~

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-24. Minimum requirements for child care center facilities and equipment lighting.

1- If any of the following activities are conducted on the premises, the center shall provide sufficient storage and work areas, exclusive of indoor activity areas for children:-

a- Office facilities:-

(1) Office space separated from areas used by children, other than for isolation purposes, shall be provided for staff used in interviewing, conferences, and other accommodations as needed for administrative responsibilities:-

(2) There shall be provision for maintenance and storage of records for children and staff, and business records of the facility:-

b- Kitchen and food preparation areas:-

(1) A separate area shall be provided for food preparation, equipped with adequate equipment and cleanup facilities appropriate to the size of the child care center:-

(2) If the children are allowed to assist in any food preparation, their activity shall be limited to use of equipment and appliances that do not present a safety hazard:-

(3) Children shall not be allowed in the kitchen area unsupervised:-

c- Laundry:-

(1) Laundry facilities shall be installed and used to safeguard the health of the children:-

(2) Laundry facilities shall not be used during the time that the children are in care unless they are inaccessible to the children:-

2- The child care center shall have sufficient space and appropriate furniture and equipment to provide for support functions necessary to the program and to provide for the reasonable comfort and convenience of the staff and parents:-

- 3- The child care center and all rooms therein shall be properly lighted. The following technical requirements shall be met:
 - a- 1. Sixty-five foot-candles of light for all general use and play areas.
 - b- 2. Twenty-five foot-candles of light for all bathrooms.
 - c- 3. Fifty foot-candles of light for any kitchen, laundry, and office facilities.
 - d- 4. Fifteen foot-candles of light for corridors and storage areas.
- 4- Safe and comfortable arrangements for naps for enrolled children shall be provided:
 - a- There should be a minimum space of two feet {58.42 centimeters} between each crib or cot. Aisles between cots and cribs shall be kept free of all obstructions while they are occupied.
 - b- There shall be a room available, separate from the nap room, where individual children can go if they are unable to nap, for supervised play so as not to disrupt the other children's rest.
- 5- Water supply:
 - a- Drinking water shall be from a source which is approved by the North Dakota state department of health.
 - b- Drinking water shall be easily accessible to the children and shall be provided by either an angle jet-drinking fountain with mouthguard or by a running water supply with individual single service drinking cups.
 - c- Hot and cold running water and of sufficient pressure from an approved community system must be available in the center.
- 6- Toilet and lavatory facilities:
 - a- Toilet and lavatory facilities shall be provided and shall be convenient to the areas used by the children and staff.
 - b- Toilet and lavatory facilities shall meet requirements of the local health department authorities.

- e- Toilets shall be located in rooms separate from those used for cooking, sleeping, and eating. A minimum of one lavatory and one flush toilet shall be provided for each fifteen children who are toilet trained.
- d- Separate restrooms shall be provided for boys and girls six years of age and over. Partitions shall be installed to separate toilets in these restrooms.
- e- Sufficient training chairs (potty chairs) shall be provided for use by children who require them. These shall be emptied promptly and thoroughly washed after each use.
- f- At least one handwashing lavatory shall be provided per toilet room facility or diapering area.
- g- A designated diapering area shall be established in centers caring for children requiring diapering.
- h- Cloth diapers shall not be used in a child care center. Soiled or wet diapers shall be stored in a sanitary, airtight container until they are removed.
- i- Safe step stools shall be provided to allow standard-sized toilets and lavatories to be used by the children in care or child-size toilets and lavatories shall be provided.
- j- Sanitary hand-drying equipment or materials shall be provided near handwashing lavatories.

7- Sewage and wastewater disposal:

- a- A child care center must meet the requirements of the state plumbing code (article 62-03).
- b- The sewer and wastewater disposal system must be approved by the local health authority.

History: Effective December 1, 1981; amended effective January 1, 1987

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-25. Minimum standards for food and nutrition.

1. When the operator is responsible for providing food to children, the food supplied shall meet United States department of agriculture standards, and be properly prepared, sufficient in amount, varied according to diets of the children enrolled, and served at appropriate hours.
2. When parents bring sack lunches for their children at the center, the operator may supplement lunches to provide nutritious and sufficient amounts of food for children.
3. Where such services are available in the community free of charge to the child care center, a dietitian or other food service professional shall be used as a consultant.
4. Children shall be served a nutritious morning and afternoon snack, as outlined below and if the parent does not provide a sack lunch, a nourishing lunch as outlined below:
 - a. Children in care for more than three hours during the time cited above shall receive either a snack or lunch, whichever is appropriate by the time of the day.
 - b. Children in care during any normal mealtime hour shall be served food appropriate to that time of the day.
 - c. Children in care in after-school child care center programs who have not had any food since lunch shall be provided with a snack.
5. When the operator is responsible for providing food to children, menus shall be prepared on a weekly basis and shall be printed or written in such a manner that either the parents, the board department, or other appropriate persons may review them.
6. Information provided by the children's parents as to their eating habits, food preferences, or special needs shall be considered in the child care center's feeding schedules and menus.
7. Children shall be served in a manner commensurate with their age using appropriate dishes and eating utensils.
8. Children shall be encouraged to eat the food served, but shall not be subjected to coercion or forced feeding.
- 9- **When food is prepared, served, or stored in a child care center, such shall be governed by the provisions of the United States public health service food service sanitation ordinance and code (Part IV), food service sanitation manual, public health publication number FDA 78-2081, as adopted and printed by the North Dakota state department of**

health, environmental health and engineering services, or by a subsequent publication similarly adopted and printed. In child care centers without kitchen facilities, the foods and dishes shall be transported by means acceptable to the department of health from an approved food preparation source, and served within thirty minutes of receipt or shall be provided by the parents of a child.

a- The center must be inspected by a department of health representative if it is providing a food service.

b- Food service personnel must meet the established requirements established by the department of health.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-26. Minimum child care center program requirements.

1. A child care center shall establish a planned program of developmentally appropriate activities which promote intellectual, social, emotional, and physical development, and enhance a child's cognitive, creative, and communication skills.
2. The program of the child care center shall be based upon the developmental needs of the children enrolled. It shall be flexible and subject to modification for individual child differences in the characteristics of the groups in the child care center.
3. The planned program shall be written and shall be varied in order to promote the physical and emotional well-being of the children, to encourage the acquisition of information and knowledge, and to foster the development of language skills, concepts, self-discipline, and problem-solving activities. The plan shall describe how the activities planned will meet the children's developmental needs, including the special needs of children in the center who are multilingual or handicapped. The written program shall be made available to parents.
4. The program shall include firsthand experiences for children to learn about the world in which they live. Opportunities shall be provided for older children to participate in supervised visits and recreational activities in the community.

5. Learning experiences shall be conducted in consultation with parents in order to ensure harmony with the lifestyle and cultural background of the children.
6. The program shall provide a balance of quiet and active indoor and outdoor group and individual activities. Within the schedule, a time for supervised child-initiated and self-selected activity shall be established.
7. If the children are allowed to assist in any food preparation, their activity must be limited to use of equipment and appliances that do not present a safety hazard. Children must not be allowed in the kitchen or laundry area unsupervised.
8. Safe and comfortable arrangements for naps for enrolled children must be provided.
9. There must be a room available, separate from the nap room, where individual children can go if they are unable to nap, for supervised play so as not to disrupt the other children's rest.
10. A variety of games, toys, books, crafts, and other activities and materials shall be provided to enhance the child's intellectual and social development and to broaden the child's life experience. Each center shall have enough play materials and equipment so, that at any one time, each child for which the center is licensed can be individually involved.
- ~~8-~~ 11. The cultural diversity of the children shall be reflected in the program through incorporation of their language, food, celebration, and lifestyles, where appropriate.
- ~~9-~~ 12. Equipment and furniture shall be durable and safe and shall be appropriately adapted for children's use.
- ~~10-~~ 13. Sufficient space accessible to children shall be provided for each child to have the child's own clothes and to keep other personal items.
- ~~11-~~ 14. The center shall supplement, augment, and reinforce the child's activities at home, and where applicable, at school.
- ~~12-~~ 15. At the time of enrollment, the child care center personnel shall discuss with the parents the children's habits, activities, and schedules while at home and in school and their parent's special concern about their past and future behavior and development. The schedule and activities in child care shall be designed to complement and supplement the children's experiences at home and in school.
- ~~13-~~ 16. Parents shall be encouraged to visit the facility, observe, and participate in the care of their children.

- ~~14-~~ 17. The child care center personnel shall be responsible for contacting parents to exchange information concerning the child and the ~~day~~ child care program as well as to offer them meaningful opportunities to participate in general program policymaking.
- ~~15-~~ 18. Personal hygiene practices appropriate for a child's age and development shall be stressed.
- ~~16-~~ 19. Any concerns about the health, development, or behavior of any child in the child care center on the part of center personnel, the administering or operating agency shall be communicated to the parent promptly and directly.
- ~~17-~~ 20. Each child's cultural and ethnic background and primary language or dialect shall be respected by the child care personnel.
- ~~18-~~ 21. Each facility shall have a designated area where a child can sit quietly or lie down to rest. There shall be sufficient cots or sleeping mats so that each child in attendance can have an individual napping space. The floor shall be used only when carpeted or padded, warm, free from drafts, and when individual blankets or coverings are used. Napping schedules shall be set for children according to their ages and needs. For children unable to sleep, time and space for quiet play must be available.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-27. Specialized types of care and minimum requirements therefor.

1. Infant care.

- a. A child care center serving children from birth to twenty-four months shall provide an environment which protects the children from physical harm and one which is not so restricted so as to inhibit physical, intellectual, emotional, and social development.
- b. Nonwalking children shall have the opportunity during each day for freedom of movement, such as creeping, or crawling in a safe, clean, open, uncluttered area.
- c. Each infant shall have an individual sleeping space. The sheets shall be changed whenever they become soiled or wet.

- d. Children shall be taken out of doors or to other areas within the facility for a part of each day to provide some change of physical surroundings and to be with other children. No child shall be confined to a crib or playpen during the entire time at the center, unless the child is preparing to sleep or sleeping for the duration of the care.
- e. Each infant shall have periodic individual personal contact and attention from an adult, such as being held, rocked, talked or sung to.
- f. Low chairs and tables or infant seats with trays shall be provided for table play and mealtime for children no longer being held for feeding. Highchairs, if used, shall have a wide base and a safety strap.
- g. Children shall never be shaken or jostled in a moderate or severe manner.
- h. All cries of infants shall be investigated.
- i. Infants shall be fed or supervised individually and their diet and pattern of feeding shall be appropriate to their individual developmental needs.
- j. At no time shall infants be left unattended while feeding.
- k. **Prepackaged, presterilized formula shall be used for each child's feeding, and any excess shall be discarded in a safe, sanitary manner, if it has been unrefrigerated for a total of four or more hours.**
 - i. Diapers shall be changed promptly when needed and in a sanitary manner. Infants shall be changed on a cleanable surface which is thoroughly cleaned with detergent after each diapering.**

There must be a minimum space of two feet [58.42 centimeters] between each crib or cot. Aisles between cots and cribs must be kept free of all obstructions while they are occupied.

- 2. Night care.
 - a. Any child care center offering night care shall provide program modifications for the special needs of children and their parents during the night.
 - b. In consultation with parents, special attention shall be given by the caregiver to providing for a transition into

this type of care appropriate to the child's emotional needs.

- c. When practical, children shall be left for care and picked up before and after their normal sleeping period so that there is minimal disturbance of the child during sleep, but consideration shall be given to the parent's work schedule.
- d. Preschool age children shall be supervised when bathing.
- e. Comfortable beds, cots, or cribs complete with a mattress or pad shall be available.
 - (1) Pillows and mattresses shall have clean coverings.
 - (2) Sheets and pillowcases shall be changed as often as necessary for cleanliness and hygiene, but not less than weekly. If beds are used by different children, sheets and pillowcases shall be laundered before use by other children.
 - (3) Each bed or cot shall have sufficient blankets available.
- f. The center shall require each child in night care to have:
 - (1) Night clothing.
 - (2) A toothbrush marked for identification.
- g. During sleeping hours, the staff shall be awake and within listening distance in order to provide for the needs of children and respond to an emergency.

3. Drop-in centers.

- a. If a child care center serves drop-in children, schoolchildren, or before- and after-school children, it shall be sufficiently staffed to effectively handle admission records, and explain the policies of the center. Admission records secured must comply with all enrollment requirements contained in section 75-03-10-17 except the immunization record requirement.
- b. The program of the center shall reflect the special needs of the children who are provided drop-in service.
- c. Admittance procedures shall provide for a period of individual attention for the child in order to acquaint the child with the facility, its equipment, and the people who can assist the child.

- d. No child care center shall receive drop-in or part-time children who, when added to the children in regular attendance, cause the center to exceed the total number of children for which the center is licensed.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-28. Minimum requirements for care of children with special needs. When children with special needs are admitted to a child care center, there shall be appropriate provisions to meet those needs. The center shall document how the child's special needs shall be met.

1. When children with special needs are admitted, the responsible individual in the center shall consult with the child's parents, the child's source of professional health care, or, when appropriate, other health and professional consultants.
2. The appropriate staff of the center shall receive proper instructions as to the nature of the child's disability and potential for growth and development.
3. Where the nature of the special need or the number of children with special needs warrants added care, the center shall add sufficient staff and equipment as deemed necessary by the board department to compensate for these needs.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-29. Punishment of enrollees Discipline.

- 1- No child of any age shall be shaken, bit, pinched, hit, spanked, or otherwise physically punished.
- 2- Brief, supervised separation from the group for no longer than ten minutes may be used if necessary.
- 3- No method of punishment which humiliates or frightens the child, or causes more than minor transient physical or emotional discomfort, or both, shall be used.
- 4- No child shall be punished by withholding or force-feeding food, requiring or prohibiting rest, or by placement in isolation. No child shall be punished for wetting or soiling clothes due to a failure of toilet habits.

5. Profane, threatening, unduly loud or abusive language shall not be used when addressing children, or in the presence of children.

Discipline must be constructive or educational in nature and may include diversion, separation from problem situation, talk with child about the situation, praise for appropriate behavior, and gentle physical restraint such as holding. Children must not be subjected to physical harm or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury or abuse to any child is grounds for denial or revocation.

1. No child may be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by the caretaker or any other adult in the facility.
2. Authority to discipline may not be delegated to or be accomplished by children.
3. Separation, when used as discipline, must be brief and appropriate to the child's age and circumstances, and the young child must be in a safe, lighted, well-ventilated room within hearing of an adult. No child may be isolated in a locked room or closet.
4. No child may be physically punished for lapses in toilet training.
5. Verbal abuse or derogatory remarks about the child, the child's family, race, religion, or profane, threatening, or abusive language may not be used when addressing children or in the presence of children.
6. No child may be force-fed unless medically prescribed and administered under a physician's care.
7. Deprivation of meals may not be used as a form of discipline or punishment.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-10-31. Allowable time periods for correction of deficiencies.

1. Pursuant to North Dakota Century Code section 50-11.1-07.2, the following time periods are established in which the corrections of those deficiencies noted in the correction order issued, must be made:
 - a. For a violation or deficiency requiring the hiring of a child care center director with those qualifications as

set forth in section 75-03-10-10, a child care supervisor with those qualifications as set forth in section 75-03-10-12, a period of sixty days to correct the deficiency shall be allowed.

- b. For a violation or deficiency that requires an inspection, by a state fire marshal or local fire department authority pursuant to section 75-03-10-21, a period of sixty days to correct the deficiency shall be allowed.
 - c. For a violation or deficiency that requires substantial building remodeling, construction or change, a period of sixty days to correct the deficiency shall be allowed.
 - d. For all other violations or deficiencies a period of twenty days shall be allowed to correct the deficiency.
2. All time periods shall commence with the date of receipt, by the provider, of the correction order.
 3. The area regional supervisor of day care services early childhood program licensing shall have the authority to grant extensions of allowable time to correct deficiencies, for a period of one-half the original allowable time to correct the deficiency. These extensions may be granted upon application by the provider and upon a showing that the need for the extension is created by circumstances beyond the control of the provider and that the provider has diligently pursued the correction of the deficiency.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

75-03-10-32. Penalties.

1. A violation of any of the following sections shall subject the licensee to a fiscal sanction of twenty-five dollars per day: subdivision ~~h~~ j of subsection 3 of section 75-03-10-09; subsection 2 of section 75-03-10-16; section 75-03-10-21; subsections ~~7, 10, and 17~~ 3, 12, and 18 of section 75-03-10-22; subsection 2 of section 75-03-10-23; and section 75-03-10-29.
2. A violation of any of the following sections shall subject the licensee to a fiscal sanction of fifteen dollars per day: section 75-03-10-10; subsection 2 of section 75-03-10-22; subsections 1, 3, 4, 8, 9, and 12 of section 75-03-10-22; subsections 1, 2, 4, 5, 10, 16, and 19 of section 75-03-10-22; and subdivision f of subsection 25 of section 75-03-10-22; subsection 1 of section 75-03-10-23; subdivision j of subsection 6 of section

~~75-03-10-24~~, subsections 3, 7 10, and ~~18~~ 21 of section 75-03-10-26; subdivision a of subsection 1 and subsection 3 of section 75-03-10-27; and section 75-03-10-30.

3. Any violation of any other section of this chapter not noted in subsections 1 or 2 shall subject the licensee to a fiscal sanction of five dollars per day.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-07.4, 50-11.1-08

Law Implemented: NDCC 50-11.1-07.4, 50-11.1-07.5, 50-11.1-07.6, 50-11.1-07.7

75-03-11-01. Purpose. The purpose of this chapter is to establish standards for ~~licensed child care centers operating half-day child care programs and providing supplemental care~~, preschool educational facilities and to assure that those standards are maintained.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01

75-03-11-02. Authority and objective. Under the authority vested in the ~~social service board of North Dakota~~ pursuant Pursuant to North Dakota Century Code section 50-11.1-08, the ~~social service board of North Dakota~~ department may prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08

75-03-11-03. Definitions. As used in this chapter:

1. "Aide" means any person other than a ~~program facilitator teacher~~ or one who works in a half-day child care program preschool educational facility under the supervision of a ~~program facilitator teacher~~ or a supervisor director.
2. "County agency" means the county social service board in the county where the preschool educational facility is located.
3. "Department" means North Dakota department of human services.
4. "Director" means any person with the responsibility of supervising and organizing program activities in a preschool educational facility.

5. "Facility operator" means any person or group in whom inheres the legal responsibility and the administrative authority for a half-day child care program preschool educational facility. The facility operator is the applicant for license or the licensee pursuant to this chapter.
- 3- "Half-day child care program" means a program licensed under this chapter and the provisions of North Dakota Century Code chapter 50-11-1, which serves no child less than two years of age and serves no child more than four hours per day.
- 4- 6. "Parent" means any person bearing the legal relationship of father or mother to a child enrolled in a half-day child care program preschool educational facility, including those persons who legally stand in place of such parent, such as legal guardians or custodians.
7. "Preschool educational facility" means a program licensed under this chapter and the provisions of North Dakota Century Code chapter 50-11.1, which serves no child more than three hours per day, offers early childhood services, and follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled in the facility.
- 5- "Program faeciilitator" means any person with the responsibility of implementing program activities either as the supervisor or under the supervision of the supervisor.
- 6- 8. "Staff" means any person whose prime responsibility is the provision of direct care, supervision, and guidance to children in the facility.
- 7- "Supervisor" means any person with the responsibility of supervising and organizing program activities in a half-day child care program.
9. "Teacher" means any person with the responsibility of implementing program activities either as the director or under the supervision of the director.

History: Effective December 1, 1981; amended effective January 1, 1987.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-02

75-03-11-04. Effect of licensing and display of license.

1. The issuance of a license to operate a half-day child care program preschool educational facility shall be evidence of compliance with the standards contained in this chapter.
2. The license shall be on display in the facility in a conspicuous place.
3. The license shall specify the maximum number of children who may be cared for in the program, and the program shall at no time admit a greater number of children.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03

75-03-11-05. Denial or revocation of license.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the licenseholder may continue the operation of the facility pending the final administrative determination or until the license expires, whichever first occurs; provided, however, that this subsection shall not limit the actions the board department may take pursuant to North Dakota Century Code section 50-11.1-12.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-10

75-03-11-06. Application for a half-day child care program preschool educational facility license. An application for license and issuance by the social service board department shall be submitted to the county social service board agency in the county wherein the applicant proposes to provide operate a half-day child care program preschool educational facility. Application shall be made in the form and manner prescribed by the department.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-08. Provisional license.

1. Half-day child care program Preschool educational facility operators who apply for a license for a newly opened facility, or for a facility previously licensed, where the

facility fails to comply with all applicable standards and regulations of the board department, may, at the discretion of the administrator regional director of the area social service center/human service center human service center, or his designee, be issued a provisional license.

2. A provisional license shall:
 - a. Prominently state that the center has failed to comply with all applicable standards and regulations of the board department.
 - b. State that the items of noncompliance are set forth on a document available upon request made to the program operator.
 - c. Expire at a set date, not to exceed six months from the date of issuance.
 - d. Be exchanged for an unrestricted license, which will bear the same date as the provisional license, upon demonstrating compliance, satisfactory to the board department, with all applicable standards and regulations.
3. A provisional license shall be issued only to an applicant who has, in writing, waived:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued shall be accompanied by a written statement of violations signed by the administrator regional director of the area social service center/human service center human service center and, in writing, acknowledged by the operator.
5. Subject to the exceptions contained in this section, a provisional license entitles its holder to all the rights and privileges afforded the holder of an unrestricted license.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-07.2, 50-11.1-08

75-03-11-09. Responsibilities of facility operator.

1. The operator of a half-day child care program preschool educational facility is responsible to the board department for compliance with requirements set forth in the standards.
2. The operator may be any individual, group, agency, association, or organization legally responsible for the operation of the program.
3. The operator shall ensure that all standards are complied with and shall:
 - a. Be responsible for establishing the half-day child care program preschool educational facility.
 - b. Make application for a license for each half-day child care program preschool educational facility operated, if more than one program is operated.
 - c. Outline a written plan of and policies for the operation for of each program.
 - d. Notify the board county agency of any major changes in the operation or in the ownership or governing body of the program and of any staff changes.
 - e. Carry liability insurance for bodily injury and property damage for the facility. This subdivision is effective on July 1, 1987.
 - f. Ensure the formulation of written policies and procedures relating to hiring practices and personnel policies for staff. These must include obtaining references, employment histories, and a method of conducting staff performance evaluations. Written policies and procedures must also be formulated for the children's activities and care, enrollment, the responsibilities and rights of staff and of parents.
 - g. Maintain required records.
 - h. Be responsible for all center staff, volunteers, or others who provide services in the facility and for notifying the board of any change of supervisors.
 - i. Ensure that no staff member or employee who has access to children shall be employed or retained in the half-day child care program when there has been a probable cause determination that the individual has abused or neglected a child unless the regional director or day care supervisor, after making appropriate consultation with persons qualified to evaluate the capabilities of the staff member,

documenting criteria used in making the determination, and imposing any restrictions deemed necessary, approves the license, and Report any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and develop a policy for staff to handle this reporting.

(1) The staff member or employee can demonstrate the successful completion of an appropriate therapy, or

(2) The staff member or employee can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.

j. Ensure safe care for the children in the facility. If there exists a probable cause determination under North Dakota Century Code chapter 50-25.1 indicating that any child has been abused or neglected by a director, teacher, or staff member, the person shall furnish information, satisfactory to the department, from which the department can determine the person's current ability to provide care free of abuse or neglect. The determination of current ability will be furnished to the operator and to the regional director of the human service center or his designee for consideration and action on the license or license application.

k. Designate a qualified supervisor director.

~~k-~~ l. Ensure that parents of enrolled children and other interested parties are informed of the goals, policies and procedures, methods of discipline and child management to be used, and content of the preschool program.

~~l-~~ m. Ensure that the ~~center~~ facility is sufficiently staffed.

~~m-~~ n. Ensure that written policies are established which provide for emergency medical care, and the treatment of illness and accident.

~~n-~~ o. Provide parents, upon request, any progress reports on their individual child or children and the compliance of the facility with standards contained in this chapter.

~~o-~~ p. Provide parents with the name of the facility's operator and the supervisor director.

4. If the operator of the half-day child care program preschool educational facility is also the supervisor director, the operator must also meet the qualifications of the supervisor director set forth in section 75-03-11-10.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-10. Minimum qualifications of a supervisor director.

1. A supervisor director shall be an adult of good mental and physical health, capable of mature judgment, and possessing knowledge and experience in management and interpersonal relationships.
2. The supervisor director shall certify that the supervisor director has met at least one of the following qualifications:
 - a. A bachelor's degree- A bachelor's degree in the field of early childhood education with eight or more weeks of supervised student teaching experience in a child care center, preschool educational facility, kindergarten, elementary school, or similar setting;
 - b. A teaching certificate- A bachelor's degree with at least twenty-four quarter hours or sixteen semester hours in child development, child psychology, or fields directly related thereto, with at least six months' experience in a child care center, preschool educational facility, kindergarten, elementary school, or similar setting;
 - c. An associate of arts degree in the field of early childhood education- An associate of arts degree in the field of early childhood development with at least six months' experience in a child care center, preschool educational facility, kindergarten, elementary school, or similar setting;
 - d. Certification as a child development associate or similar status where such a local, state, or federal certification program exists, with at least one year's experience in a child care center, preschool educational facility, kindergarten, elementary school, or similar setting;
 - e. A bachelor's degree with at least eight semester hours or twelve quarter hours in child development, child psychology, or fields directly related thereto, with at least one year's experience in a child care center, preschool educational facility, kindergarten, elementary school, or similar setting;
 - f. Certification from a Montessori teacher training program with at least one year's experience in a Montessori school, child care center, preschool educational facility, kindergarten, elementary school, or similar setting; or

g. Continuous employment as a director of a preschool educational facility or child care center for at least three years prior to July 1, 1985, provided the director qualifies under an option under subdivisions a through f by July 1, 1989.

h. Continuous employment as a teacher in a preschool educational facility for at least five years prior to July 1, 1985, provided the director qualifies under an option under subdivisions a through f by July 1, 1989.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-11. Minimum qualifications of a program facilitator teacher.

1. A program facilitator teacher shall be an adult of good mental and physical health, capable of mature judgment, and possessing knowledge of teaching and working with young children.
2. The program facilitator teacher shall have met at least one of the following qualifications:
 - a. A bachelor's degree with at least eight semester hours or twelve quarter hours in child development, child psychology, or fields directly related thereto.
 - b. A teaching certificate in elementary education or kindergarten endorsement.
 - c. At least an An associate of arts degree in the field of early childhood education.
 - d. Certification as a child development associate or similar status where such a local, state, or federal certification program exists.
 - e. Certification from a Montessori teacher training program.
3. If the program facilitator teacher is also the supervisor director, that person must meet the qualifications of the supervisor director and perform the function of a supervisor director as defined in section 75-03-11-10.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-13. Minimum health and training requirements for staff.

1. All personnel shall certify, within thirty days of employment, that they do not have health problems that would interfere with their functioning or that would be detrimental to the health of the children or other staff.
2. There shall be provision for adequate substitution for staff who are too ill to function effectively or who present a serious health hazard to others in the facility.
3. If the physical or mental health of a staff member appears questionable, the board department may require the employing operator to present evidence of such capabilities based on a formal evaluation. Where appropriate, the board department may provide arrange for an evaluation through the use of professional staff with the caregiver signing a release authorizing the use of the results for licensing purposes. Any costs for evaluations needed are to be borne by the staff member.
4. All staff shall annually certify attendance at county agency approved training related to early childhood services. Staff working thirty to forty hours per week must certify ten hours of training. Staff working twenty to thirty hours per week must certify eight hours of training. Staff working ten to twenty hours a week must certify six hours of training. Staff working less than ten hours per week must certify four hours of training.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-14. Half-day child care program Preschool educational facility minimum state staffing requirements.

1. The number of staff and their utilization shall reflect program requirements, individual differences in the needs of the children enrolled, and shall permit flexible groupings where necessary.
2. The minimum ratio of staff to children in half-day child care programs preschool educational facilities shall be:
 - a. Children two years of age to three years of age, one staff per ~~five~~ six children.
 - b. Children three years of age to four years of age, one staff per ~~ten~~ eleven children.

- c. Children four years of age to ~~six~~ five years of age, one staff per ~~twelve~~ thirteen children.
 - d. Children five years of age to six years of age, one staff per sixteen children.
 - e. ~~There~~ Unless otherwise provided in subsection h, there shall be at least one ~~program facilitator~~ director or ~~supervisor~~ teacher per group of twenty-four children, ages four to six.
 - e- f. ~~There~~ Unless otherwise provided in subsection h, there shall be at least one ~~program facilitator~~ director or ~~supervisor~~ teacher per group of twenty children, if the group includes three year olds but no younger children.
 - f- g. ~~There~~ Unless otherwise provided in subsection h, there shall be at least one ~~program facilitator~~ director or ~~supervisor~~ teacher per group of ten children, if the group includes two year olds and no younger children.
 - h. There shall be at least one Montessori-certified director or teacher per group of thirty children in accredited Montessori programs.
3. Where one or more children is a child with a ~~mentally~~ handicapping condition, and requires more than usual care, the evaluated developmental age level, rather than the chronological age of the child, shall be used in determining appropriate staff ratios.
 4. Children with special conditions requiring more than usual care and supervision must have provided to them adequate care and supervision without adversely affecting care provided to the remaining children in the facility.
 5. The number of children in each age category is divided by the corresponding ratio number and carried to the nearest hundredths. Numbers of necessary staff for all age categories are added, and any fractional staff count then rounded to the next largest whole number, in order to determine the number of staff necessary to staff the facility at any given time.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02, 50-11.1-02.1

75-03-11-15. Minimum information for each enrolled child. The following information shall be kept and maintained in the registration forms for each individual child enrolled in the ~~half-day child care program~~ preschool educational facility and shall be updated as appropriate. Such information shall include:

1. The child's full name, birthdate, and current home address.
2. The names and addresses of the parents or other persons legally responsible for the child, as well as their home and business telephone numbers.
3. Names and telephone numbers of persons who can assume responsibility for the child if the persons legally responsible for the child cannot be reached immediately in an emergency.
4. The written consent of parent or legally responsible party for emergency care.
5. Names and telephone numbers of persons authorized to take the child from the facility.
6. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the North Dakota state department of health.
7. Verification from parents, within thirty days of enrollment, that the child does not have health problems that would interfere with the child's functioning or be detrimental to the health of others. This parent-certified health assessment would be updated annually.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07

75-03-11-16. Minimum provisions regarding emergency care for children. The program facility shall have plans to respond to illness and to emergencies including fire, serious injury, and ingestion of poison. These plans shall be in writing. Plans shall include the conspicuous posting of emergency response procedures.

1. At least one department of health approved first-aid kit shall be maintained and kept in a designated location, so as to be inaccessible to children yet readily accessible to staff members.
2. The placement of a telephone immediately accessible to the staff with a list of emergency telephone numbers conspicuously posted adjacent to such telephone.
3. If children in the program require medication, written permission to dispense medication must be obtained from the parent, and proper instructions as to the administration of such medication shall be given by the parent or physician.

- a. Any medication prescribed by a physician shall be accompanied by the doctor's written instructions as to its dosage and storage, and labeled with the child's name and dated.
 - b. All medication shall be kept in secure storage so that it is out of the reach of children.
4. The director shall maintain at all times at least one staff person who has a current cardiopulmonary resuscitation certification effective July 1, 1987.
5. A supervised temporary isolation area shall be provided for a child who becomes ill and cannot remain in the group, and the following procedures shall be followed when such signs or symptoms are observed:
- a. Parents shall be notified immediately and asked to pick up their children.
 - b. First aid shall be provided and medical care shall be sought as necessary.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-17. Fire inspection and minimum fire safety standards.

1. Annual fire inspections shall be completed by local or state fire authorities with any fees for inspection being the operator's responsibility. Emergency plans shall be developed in cooperation with such authorities. The operator shall file a written fire/safety inspection report and have corrected any code violations noted by the fire inspection and shall file reports of such inspections with the board county agency. The program shall provide the following as approved by an appropriate fire official:
- a. The local fire inspector's written statement of compliance with the local fire code, if there is one, Approved smoke detectors placed as directed.
 - b. The local fire inspector's written statement that the facility has been inspected and that the inspector is satisfied that it meets minimum fire and safety standards for the facility, or Fire extinguishers that bear approval ratings for 2A classification or better.
 - c. A written statement from an appropriate fire official that the facility meets the minimum

fire and safety standards adopted by the state fire marshal- Emergency exit signs with at least six-inch [15.24-centimeter] stroke letters.

- d. At least two qualifying exits.
 - e. A boilerroom door and frame with a one-hour fire rated enclosure if it faces an exit corridor.
 - f. A self-closing solid core door on any stairwells if the facility is more than a two-story building.
2. Fire evacuation drills shall be performed in accordance with the local fire department's guidelines.
 3. The facility shall be equipped with sufficient smoke detectors and fire extinguishers, as recommended by local fire department.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07

75-03-11-18. Minimum sanitation and safety requirements.

1. The half-day child care preschool educational facility's bathroom lavatories, toilets, tables, chairs, and floors shall be cleaned daily.
2. The half-day child care preschool educational facility's building and equipment shall be located, cleaned, and maintained to protect the health and safety of children.
3. The facility shall have an annual health and sanitation inspection completed by a local, district, or state environmental health practitioner. Reports of such inspections shall be filed with the board county agency and any problems found shall be corrected.
4. Indoor and outdoor equipment and supplies shall be safe, strong, and in good repair for children.
5. There shall be adequate ventilation and heating in the facility.
6. Garbage shall be kept away from areas used by children and kept in containers with tight lids, made of noncombustible materials. Open burning shall not be permitted.
- 7- Exterior play areas in close proximity to busy streets and other unsafe areas which are used by the facility shall be

contained, fenced, or have natural barriers to restrict children from unsafe areas.

- ~~8-~~ 7. Hazardous or potentially injurious or poisonous substances should be kept in locked storage in a space designed solely for this purpose and shall be inaccessible to children.
- ~~9-~~ 8. Indoor floors and steps shall not be slippery or have splinters. All steps and walkways shall be kept free from accumulations of water, ice, or snow.
- ~~10-~~ 9. Elevated areas such as stairs or porches shall have railings and safety gates where necessary to prevent falls.
- ~~11-~~ 10. All heating devices shall be approved by the local fire authorities.
- ~~12-~~ 11. The operator shall take steps to keep the facility free of insects and rodents. Chemicals for insect and rodent control shall not be applied in areas accessible to children when children are present in the facility.
- ~~13-~~ 12. Combustible materials shall be kept away from light bulbs and other heat sources.
- ~~14-~~ 13. Doors and pathways shall not be blocked.
- ~~15-~~ 14. All buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, shall have such surfaces repainted or shall submit evidence that such surfaces do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of health.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-19. Minimum requirements regarding space.

1. Each facility shall provide adequate space for all children in attendance.
2. There shall be a minimum of thirty-five square feet [3.25 square meters] of indoor activity area per child. Work areas,

unused space, and areas which are not exclusively used for the half-day child care program's early childhood facility's purposes shall not be considered when computing minimum space.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-22. Minimum half-day child care preschool educational facility program requirements.

1. A half-day child care preschool educational program shall have a written schedule curriculum which describes the program's philosophy, goals, objectives, and a program evaluation process.
2. The scheduled program curriculum shall promote intellectual, social, emotional, and physical development of children in care.
3. The scheduled program curriculum shall be based on the developmental levels and needs of children enrolled.
4. The supervisor director shall be responsible for exchanging information with parents concerning the program, its activities, and the adjustment of the child to the program.
5. Each child's cultural and ethnic background and primary language or dialect shall be respected by the half-day child care program's preschool educational facility's staff.
6. There shall be a written daily plan of program activities for the children enrolled in the program.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-23. Minimum requirements for facilities that serve children with special needs. When children with special needs are admitted to a half-day child care preschool educational program, there shall be appropriate provisions to meet those needs.

1. When children with special needs are admitted, the responsible individual in the center shall consult with the child's parents, the child's source of professional health care, or, when appropriate, other health and professional consultants.

2. The ~~supervisor~~ director shall receive proper instructions as to the nature of the child's disability and potential for growth and development.
3. Where the nature of the special need or the number of children with special needs warrants added care, the facility shall add sufficient staff and equipment as deemed necessary by the ~~board~~ department to compensate for these needs.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-24. Punishment of enrollees Discipline. Discipline must be constructive or educational in nature and may include diversion, separation from problem situation, talk with the child about the situation, praise for appropriate behavior, and gentle physical restraint such as holding. Children may not be subjected to physical harm or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury or abuse to any child is grounds for denial or revocation.

1. No child of any age shall be shaken, hit, spanked, bitten, pinched, or otherwise physically punished. No child may be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by the caretaker or any other adult in the facility.
2. Brief, supervised separation from the group for no longer than ten minutes may be used, if necessary. Authority to discipline may not be delegated to or be accomplished by children.
3. No method of punishment which humiliates or frightens the child, or causes more than minor transient physical or emotional discomfort, or both, shall be used. Separation, when used as discipline, must be brief and appropriate to the child's age and circumstances, and the young child must be within hearing of an adult in a safe, lighted, well-ventilated room. No child may be isolated in a locked room or closet.
4. No child shall be punished by withholding or force-feeding food, requiring or prohibiting rest, or by placement in isolation. No child shall be punished for wetting or soiling clothes due to a failure of toilet habits. No child may be physically punished for lapses in toilet training.
5. Profane, threatening, unduly loud or abusive language shall not be used when addressing children, or in the presence of children. Verbal

abuse or derogatory remarks about the child, the child's family, race, religion, or cultural background may not be used or permitted.

6. No child may be force-fed unless medically prescribed and administered under a physician's care.
7. Deprivation of meals may not be used as a form of discipline or punishment.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-25. Minimum standards for provision of transportation.

1. The operator shall establish a written policy governing the transportation of children to and from the ~~half-day child care~~ preschool educational program, if the facility provides transportation. Such a policy shall specify who is to provide transportation and how parental permission is to be obtained for special field trips and related activities which occur outside the facility. When the facility provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children shall be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided by the facility, children shall be protected by adequate staff supervision, safety precautions, and liability/medical insurance.
 - a. Child/staff ratios shall be maintained to assure the safety of children while being transported.
 - b. No child shall be left unattended in a vehicle.
3. Children shall be instructed in safe transportation conduct as appropriate to their ages and stages of development.
4. The driver shall be in compliance with all relevant state and local laws.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-26. Allowable time periods for correction of deficiencies.

1. Pursuant to North Dakota Century Code section 50-11.1-07.2, the following time periods are established in which the

corrections of those deficiencies noted in the correction order issued, must be made:

- a. For a violation of deficiency requiring the hiring of a ~~supervisor~~ director with those qualifications as set forth in section 75-03-11-10 or a ~~program facilitator~~ teacher with those qualifications as set forth in section 75-03-11-11, a period of sixty days to correct the deficiency shall be allowed.
 - b. For a violation or deficiency that requires an inspection, by a state fire marshal or local fire department authority pursuant to section 75-03-11-17, a period of sixty days to correct the deficiency shall be allowed.
 - c. For a violation or deficiency that requires substantial building remodeling, construction, or change, a period of sixty days to correct the deficiency shall be allowed.
 - d. For all other violations or deficiencies a period of twenty days shall be allowed to correct the deficiency.
2. All time periods shall commence with the date of receipt, by the provider, of the correction order.
 3. The area regional supervisor of day care services early childhood program licensing shall have the authority to grant extensions of allowable time to correct deficiencies for a period of one-half the original allowable time to correct the deficiency. These extensions may be granted upon application by the provider operator and upon a showing that the need for the extension is created by circumstances beyond the control of the provider operator and that the provider operator has diligently pursued the correction of the deficiency.

History: Effective December 1, 1981; amended effective January 1, 1987.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

Pages 459 -
484

JULY 1987

STAFF COMMENT: Chapter 75-03-16 contains all new material but is not underscored so as to improve readability.

AGENCY SYNOPSIS: Existing NDAC Chapters 75-03-03, Foster Care Group Homes, and 75-03-04, Residential Child Care Facilities, were originally promulgated effective September 1, 1978. There has been no change to those rules since their promulgation.

Over the past several months, the department, with the assistance of advisory committees, reviewed the existing rules governing the licensing of foster care group homes and residential child care facilities, with a view towards updating and improving those rules. It was concluded that both types of facilities could properly be governed by a single body of rules. This determination led to the presentation of proposed new rules, rather than the amendment of the two existing chapters.

The subject matter of proposed new Administrative Code Chapter 75-03-16 is largely inclusive of existing rules found at Chapter 75-03-03 and Chapter 75-03-04. Additional revisions are proposed to ensure that licensed facilities are properly equipped and staffed to meet not only the custodial needs of foster children, but the treatment needs as well.

75-03-16-01. Definitions. Defines two terms used throughout this chapter.

75-03-16-02. Effect of license. Refers to NDCC Chapter 50-11 and states the term of the license, that it should be nontransferable, and valid only on the premises indicated on the license.

75-03-16-03. Organization and administration. Requires that the facility organize so as to have a governing body, and imposes specific responsibilities on the governing body.

75-03-16-04. Financial records and reports. Identifies recordkeeping requirements with respect to financial records, and requires new facilities to provide a budget documenting the facility's ability to meet operating costs for the first year of operation.

75-03-16-05. Personnel records. Identifies the minimum content of the personnel file to be maintained on each employee of such a facility.

75-03-16-06. Facility administrator. Requires the governing body of the facility to designate an administrator and sets forth requirements with respect to the administrator.

75-03-16-07. Program director. Requires a program director to be hired or designated and sets forth the standards and responsibilities for program directors.

75-03-16-08. Social service staff. Requires minimum standards for social service staff and describes functions of such staff.

75-03-16-09. Social service staff supervision. Requires a facility to adequately supervise social service staff.

75-03-16-10. Child care staff. Identifies facility requirements with respect to the provision of child care, and establishes minimum standards.

75-03-16-11. Volunteers and student field placements or internships. Requires that the use of volunteers or students meets certain standards.

75-03-16-12. Personnel policies. Requires a facility to have written personnel policies and states specific requirements for those policies.

75-03-16-13. Minimum staff requirements. Establishes the minimum number and type of staff required to serve facilities of various sizes.

75-03-16-14. Staff development. Requires a licensed facility to assure that staff are sufficiently trained to perform adequately the tasks assigned.

75-03-16-15. Child abuse and neglect. Requires facilities to take pains to assure that all staff members understand the laws concerning the reporting of child abuse and neglect, and requires the facility to cooperate in any investigations of child abuse or neglect.

75-03-16-16. Intake and discharge committee. Requires facilities to establish groups of individuals who are responsible for making intake and discharge decisions, and imposes standards with respect to the making of such decisions.

75-03-16-17. Case plan. Requires a written individualized plan of care for each child in the facility, and establishes minimum standards for such plans.

75-03-16-18. Interstate compact on the placement of children. Requires timely compliance with interstate compact arrangements for children moving across state lines into or out of the facility.

75-03-16-19. Law enforcement notification. Requires the facility to notify law enforcement officials if the child's whereabouts are unknown, and to report the child's absence or return to the child's parents, guardian, or legal custodian as well as law enforcement officials.

75-03-16-20. Programs and services. Requires the facility to establish a written description of the programs which it offers for residents.

75-03-16-21. Case file. Establishes minimum standards for the content of the case file concerning each child receiving care in the facility.

75-03-16-22. Religious opportunities. Requires the facility to make reasonable effort to see that the child has an opportunity to attend religious ceremonies, and requires appropriate consideration and respect for the religious belief of the child and the child's family.

75-03-16-23. Medical care. Requires the facility to establish procedures to respond to a need for routine or emergency medical care by a child, to maintain prescription drugs in a secure area, and to maintain records concerning the administration of medication to children.

75-03-16-24. Nutritional requirements. Requires that the facility ensure that children in care are adequately and safely fed.

75-03-16-25. Resident needs. Imposes upon the facility a duty to assure that the children have appropriate clean and well-fitting clothing and shoes, requires that jobs and household responsibilities for children not conflict with educational schedules or physical health or preclude opportunities for socialization, and requires that recreational and social activities accommodate the individual needs and goals of the children.

75-03-16-26. Discipline. Requires discipline to be constructive, and precludes certain kind of physical discipline. Requires written records of the administration of certain kinds of physical discipline.

75-03-16-27. Confidentiality. Precludes the facility from unconsenting publicity of pictures or identifying materials concerning a child or his family, and requires that the facility allow private family visits with children in care.

75-03-16-28. Education. Requires any facility offering an educational program to comply with standards established by the Department of Public Instruction, and requires compliance with all state school attendance laws.

75-03-16-29. Buildings, grounds, and equipment. Establishes fire safety, sanitary, and other facility standards to assure the physical structure and its operation does not present any unreasonable danger to children in care.

75-03-16-30. Variance. Permits the department to grant variances from requirements unless the requested variance would permit or authorize a danger to the health or safety of a child cared for in the facility.

**CHAPTER 75-03-16
LICENSING OF GROUP HOMES AND
RESIDENTIAL CHILD CARE FACILITIES**

Section	
75-03-16-01	Definitions
75-03-16-02	Effect of License
75-03-16-03	Organization and Administration
75-03-16-04	Financial Records and Reports
75-03-16-05	Personnel Records
75-03-16-06	Facility Administrator
75-03-16-07	Program Director
75-03-16-08	Social Service Staff
75-03-16-09	Social Service Staff Supervision
75-03-16-10	Child Care Staff
75-03-16-11	Volunteers and Student Field Placements or Internships
75-03-16-12	Personnel Policies
75-03-16-13	Minimum Staff Requirements
75-03-16-14	Staff Development
75-03-16-15	Child Abuse and Neglect
75-03-16-16	Intake and Discharge Committee
75-03-16-17	Case Plan
75-03-16-18	Interstate Compact on the Placement of Children
75-03-16-19	Law Enforcement Notification
75-03-16-20	Programs and Services
75-03-16-21	Case File
75-03-16-22	Religious Opportunities
75-03-16-23	Medical Care
75-03-16-24	Nutritional Requirements
75-03-16-25	Resident Needs
75-03-16-26	Discipline
75-03-16-27	Confidentiality
75-03-16-28	Education
75-03-16-29	Buildings, Grounds, and Equipment
75-03-16-30	Variance

75-03-16-01. Definitions. As used in this chapter:

1. "Department" means the North Dakota department of human services.

2. "Facility" means a residential child care facility or group home.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

75-03-16-02. Effect of license. Upon a finding by the department of the applicant's compliance with the provisions of North Dakota Century Code chapter 50-11 and this chapter, the applicant must be issued a residential child care facility or group home license. The license is in force and effect for a period of one year, is nontransferable, and is valid only on such premises as are indicated on the license.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-01, 50-11-02

75-03-16-03. Organization and administration.

1. All facilities must have a governing body that is responsible for the operation, policies, activities, and practice of the facility.
 - a. Where the facility is owned by a corporation, the board of directors of that corporation must be regarded as the governing body.
 - b. Where the facility is owned by a partnership, the partners must be regarded as the governing body.
 - c. Where the facility is owned by a sole proprietor, the proprietor must be regarded as the governing body.
 - d. All partnerships and sole proprietorships must have an advisory committee consisting of no less than five members who are not relatives of the proprietor or partnership. The advisory committee must meet at least once a year.
2. All facilities shall provide the department with the names and addresses of the members of the governing body and any advisory committee.
3. The governing body shall:
 - a. Adopt a written statement of the purpose and philosophy of the facility.
 - b. Adopt written policies for the facility regarding personnel, admission and discharge, and program services.

A copy of these policies must be submitted to the department with the application for license and must be on file at the facility or other designated location within the state of North Dakota.

- c. Meet on at least an annual basis with the appropriate personnel of the department to discuss the facility, its programs, and any other pertinent issues that have to do with meeting the needs of the children cared for in the facility.

History: Effective July 1, 1987.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-16-04. Financial records and reports.

1. Where a facility is owned by a corporation, the certificate of incorporation must be on file at the facility or other designated location within the state of North Dakota.
2. The facility shall maintain complete financial records regarding the facility. The financial books must be audited annually by a certified or licensed public accountant. A copy of the accountant's most recent annual report must be submitted with the application for license. The annual audit report must be kept on file at the facility or other designated location within the state of North Dakota.
3. A projected twelve-month budget must be submitted to the department based on predictable funds for the forthcoming year of operation. A new facility shall have funds or documentation of available credit sufficient to meet the operating costs for the first twelve months.

History: Effective July 1, 1987.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-16-05. Personnel records. The facility shall maintain an individual personnel file on each employee. The personnel file must include, but is not limited to, all the following:

1. The application for employment, including a record of previous employment, and the applicant's statement in answer to the question, "Have you been convicted of a crime?"
2. Annual performance evaluations.
3. First-aid training record.

4. Cardiopulmonary resuscitation training record.
5. Annual staff development and training record.
6. Any other evaluation or background check deemed necessary by the administrator of the facility.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-06. Facility administrator. The governing body of the facility shall designate an administrator for the facility.

1. The responsibilities of the administrator must be clearly defined in writing by the governing body of the facility.
2. The administrator shall have a bachelor's degree in business administration, social work, or a related behavior field, from an accredited college or university.
3. The administrator shall assure that the facility provides adequate supervision to all staff members who are working with residents.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-07. Program director. The administrator shall hire or designate a program director for the facility.

1. The responsibilities of the program director must be clearly defined in writing by the administrator.
2. The program director will be a licensed, certified social worker and will demonstrate a practice knowledge of the casework process.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-08. Social service staff. The administrator shall hire or designate social service staff for the facility.

1. All facilities shall have sufficient social service staff to meet minimum child to staff ratios.

2. The duties and responsibilities of the social service staff must be clearly defined in writing by the administrator.
3. Social service staff shall serve as a liaison between the facility and other community resources.
4. Social service staff responsible for the supervision of other employees, volunteers, or students on field placement or internship must be allowed sufficient time to perform such tasks.
5. Social service staff shall have, as a minimum, a bachelor's degree in social work or a related field and must be licensed social workers.
6. Social service staff time must be devoted to the provision of social services.
7. If the facility holds itself out as furnishing or using a specific treatment method, there must be documented proof that the staff has had appropriate training.
8. Social service staff beginning employment in the facility will be on probation for a specified time to be determined by the administrator.
9. Social service staff must have achieved the competencies necessary to implement any item of care or service which they are designated to perform in any child's individualized plan of care.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-09. Social service staff supervision.

1. The program director shall provide, and shall document the provision of, a minimum of one hour of supervision per week for each staff member who is under the program director's supervision.
2. No more than six social service staff may be assigned to each full-time supervisor.
3. There will be a written plan for inservice training for the program director calculated to maintain and improve competence in the supervisory role and in social service practice.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-10. Child care staff.

1. A facility shall employ the minimum required number of child care staff.
 - a. The duties and responsibilities of the child care staff must be clearly defined in writing by the administrator.
 - b. The facility shall have on duty at all times sufficient staff to meet minimum child to staff ratios.
 - c. All child care staff must be twenty-one years of age or older.
 - d. Child care staff shall have annual verification from a qualified medical professional that they are able to provide for children.
2. Persons teaching school at a facility shall have current North Dakota teaching credentials.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-11. Volunteers and student field placements or internships.

1. A facility which uses volunteers or student field placements or internships who work directly with children on a regular basis shall:
 - a. Develop a description of duties and specify responsibilities for volunteer and student placement or internship positions to be provided to the volunteer and to the student and his or her school;
 - b. Designate a staff member to supervise and evaluate volunteers and student placement or internships; and
 - c. Develop a plan for the orientation and training of volunteers and student placements or internships in the philosophy of the facility, the needs of the children in care, and the needs of their families.
2. Provide for volunteers and student placements or internships to participate in developing and carrying out the service plans for the children and families they are working directly with.

3. Volunteers and student placements or internships may provide services in support of, but not in substitution for, paid staff members.
4. For the purpose of record maintenance, volunteers and student placements or interns must be treated as employees.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-12. Personnel policies. All facilities shall have clearly written personnel policies. These written policies must be made available to each employee in writing and include, at a minimum:

1. Staff training and development plan.
2. Procedures for reporting suspected child abuse and neglect.
3. Procedures for staff evaluation, disciplinary actions, and terminations.
4. Procedures for employee grievances.
5. Evaluation procedures which include a written evaluation following the probationary period for new staff and at least annually thereafter.
6. A plan for review of the personnel policies and practices with staff participation no less than once every three years, or for revision when necessary.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-13. Minimum staff requirements.

1. During waking hours, each facility shall comply with the following minimum staff to child ratio requirements:
 - a. One child care person, one social service person, and one administrator for a facility providing services to one to eight children.
 - b. Two child care staff, one social service person, one program director, and one administrator for a facility providing services to nine to sixteen children.

- c. Three child care staff, two social service staff, one program director, and one administrator for a facility providing services to seventeen to twenty-four children.
 - d. Four child care staff, two social service staff, one program director, and one administrator for a facility providing services to twenty-five to thirty-two children.
 - e. Five child care staff, three social service staff, one program director, and one administrator for a facility providing services to thirty-three to forty-one children.
 - f. Six child care staff, three social service staff, one program director, and one administrator for a facility providing services to forty-two to fifty children.
 - g. Seven child care staff, four social service staff, one program director, and one administrator for a facility providing services to fifty-one to fifty-nine children.
2. During sleeping hours there must be staff readily available to each living unit.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-14. Staff development.

1. Each facility shall ensure that the administrator, program director, social service staff, child care workers, educational staff, and all other staff working directly with children shall receive at least twenty hours of training during each year of employment.
2. This training may include, but is not limited to, the following subject areas:
 - a. Administrative procedures and techniques.
 - b. The establishment of goals and objectives.
 - c. Children's emotional needs and problems.
 - d. Forming relationships and the impact of separation.
 - e. Recognizing, preventing, and treating substances abuse.
 - f. The identification and reporting of child abuse and neglect.
 - g. Program procedures and services.

- h. Behavior management techniques, including crisis management.
 - i. Techniques of passive physical restraint.
 - j. Emergency and safety procedures.
3. All training provided to employees should be current and applicable to each employee's job description or function.

History: Effective July 1, 1987.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-16-15. Child abuse and neglect.

1. The administrators and staff of a facility shall abide by and make provision for all facility employees reading and understanding the law requiring the reporting of suspected child abuse and neglect (North Dakota Century Code chapter 50-25.1).
2. Each facility shall have the following written procedures requiring any employee to report cases of suspected child abuse and neglect. The procedures must include the following statement:

All employers will comply with North Dakota Century Code chapter 50-25.1, child abuse and neglect. Therefore, it is the policy of this facility that any employee who knows or reasonably suspects that a child in residence whose health or welfare has been, or appears to have been, harmed as a result of abuse, neglect, or sexual molestation shall immediately report this information to the regional human service center in the region in which the facility is located.

Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment and referral of the employee to the office of the state's attorney for investigation of possible criminal violation.

The facility shall maintain written verification that each staff member has been given a copy of this written procedure.

3. The facility shall cooperate fully with the department throughout the course of any investigation of any allegation of child abuse or neglect made concerning care furnished to a child residing at the facility, or of any licensing review. The facility shall, at a minimum, provide the investigators or reviewers with all documents and records available to the

facility and reasonably relevant to the investigation and permit confidential interviews with both staff and children.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-25.1-03

75-03-16-16. Intake and discharge committee.

1. Intake, admission, and discharge policies must include age, sex, and characteristics of children that shall be eligible for admission.
2. No child may be denied acceptance on the basis of race, color, creed, religion, or national origin.
3. Intake procedures.
 - a. The facility shall have an admissions committee. This committee shall screen applications and have the responsibility of deciding which children shall be accepted into the facility for care. These decisions must be made within thirty days of the receipt of sufficient information or a completed application.
 - b. In order to determine the appropriate placement of a child, the facility will require, and the referring agency will be responsible to provide to the facility, at a minimum, the following information within thirty days after making the referral:
 - (1) Social and family history.
 - (2) Education records including a copy of the school district notification.
 - (3) Psychiatric or psychological history, if indicated.
 - (4) Medical history, physical, and examination records.
 - (5) Terms and methods of payment for the child's maintenance, clothing, personal allowance, medical care, and other expenses.
 - (6) Arrangements for the child's necessary special education or training.
 - (7) The name, address, and telephone number of the legal custodian or guardian, if any, and copies of the documents which establish the authority of the legal custodian or guardian.

- c. The referring agency is responsible for informing the facility, in writing, as to what services the parents or guardians will be receiving and who is providing this service in their home community while the child is in placement.
 - d. The agency providing services to the parents shall report the progress, or lack thereof, to the facility and the referring agency on a quarterly basis.
 - e. If the parents refuse to cooperate, this must be documented in writing by the referring agency or the agency providing the service and a written report submitted to the facility and referring agency.
 - f. In any direct placement by a parent or guardian, the person making the placement is the referring agency.
4. In the event that a child is not admitted, the facility must indicate why he or she was not accepted.
 5. Prior to discharging a child, the facility and the referring agency must be given time to plan for the needs of the child. The discharge report must include, but not be limited to, the following:
 - a. Progress report concerning the resident in care.
 - b. Reason for discharge.
 - c. Future services recommended for the resident and resident's family.
 - d. Potential for replacement in the facility.
 6. The admissions and discharge committees in the facility may include, but not be limited to, the following:
 - a. Program director.
 - b. Social service representatives.
 - c. Child care staff representatives.
 - d. Educational staff where appropriate.
 - e. The resident at the discretion of the facility.
 7. In the event of a discharge on an emergency basis, the parent or legal custodian must be immediately informed.

8. When an emergency placement is necessary, evidence that placement requirements were followed must be available within thirty days of the emergency placement.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-17. Case plan.

1. There must be a written, individualized plan of care developed by social service staff for each child within thirty days of admission to the facility. The case plan must demonstrate that the facility has made reasonable efforts to gather information from staff within the facility, parents, referring agency, courts, schools, or any other appropriate persons or agencies. The plan developed must be based on a thorough assessment of the situation and circumstances of the child, and his or her needs, strengths, and weaknesses. If a plan was developed by another agency prior to admission, it must be reviewed to determine the relevancy to the current needs of the resident. The plan must delineate the person or entity responsible for providing any item of care or service required. The plan of care must be reviewed for appropriateness and effectiveness at least every thirty days by the responsible social service staff with changes and modifications made and documented in writing.
2. When development of a written, individualized plan of care occurs, it is critical for the care of the child that all involved caretakers be invited, including the facility personnel and their consultants and the referring agency; the agency providing services; the family, if possible; the child, if possible; and others involved in the overall care of the child or its family system. It is critical that parental involvement be included in this phase.
3. The written, individualized plan of care must include a description of the services that will be provided for the parents in their home community, plans for visitation by the child's parents or guardians to the facility or for the child to visit outside the facility, an indication of who will provide primary case management and service, and the child's signature.
4. The written, individualized plan of care must include an indication of the services the parents may receive from the facility or outside agencies.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-18. Interstate compact on the placement of children.

1. All placements of children made from any state which is a member of the interstate compact on the placement of children or the interstate compact on juveniles must be made in compliance with the appropriate compact. It is the responsibility of the facility to ensure that, prior to the placement in the facility, all necessary procedures pursuant to the interstate compact on the placement of children or the interstate compact on juveniles have been completed.
2. All placements from any state which has not adopted the interstate compact on the placement of children or the interstate compact on juveniles shall comply with all North Dakota laws and regulations prior to the arrival of a child into a facility.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 14-13, 27-22

75-03-16-19. Law enforcement notification. Law enforcement officials must be notified immediately after it is confirmed that the resident child's whereabouts are unknown. The facility shall notify the child's parents, guardian, or legal custodian within twelve hours after the child's whereabouts become unknown. When the child is found, the child's return must be reported immediately to the law enforcement and the child's parents, guardian, or legal custodian.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-01

Law Implemented: NDCC 50-11-02

75-03-16-20. Programs and services. The facility shall have a written program plan on file at the facility or other designated location.

1. The program plan must include a description of the facility's plan for the provision of services required in this chapter, as well as assessment and evaluation procedures to be used in program planning and delivery.
2. The program plan must clearly state which services are provided directly by the facility and those services that must be provided in cooperation with community resources such as public or private schools, and other appropriate agencies.
3. The facility shall provide information to referral sources which must include, but not be limited to:

- a. Identification of what the facility provides to the resident.
- b. To whom they will provide services.
- c. Who is appropriate for referral and admission to the facility.
- d. By what process the facility intends to achieve its goals.
- e. Treatment orientation of the facility.
- f. Information required with the referral.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-21. Case file. Within thirty days after placement, the facility shall establish and shall thereafter maintain a case file for each child receiving care in the facility. This file must include, but not be limited to:

1. The child's full name, birthdate, and other indentifying information.
2. Signed placement agreement, contract, or updated court order establishing the facility's authority to accept and care for the child.
3. Explanation of custody and legal responsibility for consent to any medical or surgical care.
4. Explanation of responsibility for payments for care and services.
5. Explanation for ongoing services.
6. Projected planning for discharge.
7. An explanation of the treatment that is being provided to the parents or guardian in their home community. This information should be provided to the home or facility by the appropriate county social service board, regional human service center, or any other agency that is involved with the family.
8. A copy of the appropriate interstate compact forms.
9. A copy of the written individualized plan of care.

10. Copies of periodic, but not less than quarterly, written reports to the child's legal custodian, developed by social service staff.
11. Documentation that the program director or administrator has reviewed each case file every thirty days.

History: Effective July 1, 1987.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-16-22. Religious opportunities. The facility will make a reasonable effort to make opportunities available for the children to attend religious ceremonies, giving appropriate consideration to any requests by the child or child's parents, within the community in which the facility is located. The facility shall respect the religious beliefs of the child and the child's family.

History: Effective July 1, 1987.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-16-23. Medical care.

1. The facility shall make provisions and establish procedures for all routine and emergency medical care.
2. Any serious accident or illness requiring hospitalization or resulting in death must be reported to the parent or legal custodian. Any deaths must immediately be reported to the department.
3. A record must be kept of medication received by each child, including the physician's medication order, the time, means and frequency of administration, and the individual administering such medication.
4. All prescription medicines and drugs must be labeled and stored in locked compartments except those requiring refrigeration which must be properly stored.

History: Effective July 1, 1987.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-16-24. Nutritional requirements.

1. The facility shall ensure that the nutritional requirements of the children in care are met.

- a. Nutritionally balanced meals will be served each day.
- b. Special diets must be prepared for those children requiring them.
2. All homegrown food, poultry, meat, eggs, and milk must be from an approved source as determined by the state or local health authorities. The facility shall document the approval of state or local health authorities.
3. No home-canned foods may be served.
4. Frozen homegrown food products, such as garden produce, may be served if maintained at not less than zero degrees Fahrenheit [-17.78 degrees Celsius].

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-25. Resident needs.

1. Arrangements must be made for children to have their own personal supply of clean, well-fitting clothing and shoes for both indoor and outdoor wear, such clothing to be appropriate for the season.
2. Jobs and household responsibility for children must be assigned so that they do not conflict with the educational schedule or physical health of the children or preclude the children's opportunity for socialization activities.
3. Participation in recreational and social activities must be on the basis of the individualized needs and goals of each child.
4. All children must be advised in writing of the day-to-day rules of the facility.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-26. Discipline. Discipline must be constructive or educational in nature. It may include diversion, separation from a problem situation, discussion with the child about the situation, praise for appropriate behavior, and gentle, physical restraint such as holding.

1. Only adult staff members of the facility shall discipline children.

2. No child may be slapped, punched, spanked, shaken, pinched, roughly handled, or struck with an object by any staff of the facility.
3. Authority to discipline may not be delegated to or be accomplished by other residents.
4. Isolation, when used as discipline, must be brief and appropriate. A child who is isolated from his peers for disciplinary reasons must be checked on at reasonable intervals by the staff. A child may not be locked in a room under the guise of isolation.
5. Verbal abuse or derogatory remarks about the child, the child's family, religion, or cultural background may not be used or permitted.
6. Physical restraints may not be used for punishment, for the convenience of staff, or as a substitute for programming.
7. Physical restraint or isolation may only be used as a necessary complement to positive programming designed to strengthen desirable and adaptive behavior.
8. The facility shall have specific written policies when using isolation or physical restraint for disciplinary reasons, which must include a requirement that each use of isolation or physical restraint will be documented.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-27. Confidentiality.

1. A facility may not make public any pictures or identifying material of a child or his family, or allow public appearances by children as representatives of a facility, without first securing the consent of the child and the written consent of the child's parents or legal custodian.
2. A facility shall ensure that, when a family visits their child, they are assured privacy. Reasons for restrictions on communication or visitation rights must be recorded in writing in the child's case file.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-06-15, 50-11-02, 50-11-05

75-03-16-28. Education. Any primary or secondary program offered by a facility must be in compliance with standards established by the department of public instruction. All children who are residents of a facility shall comply with all state school attendance laws.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-29. Buildings, grounds, and equipment.

1. A facility shall comply with all state, county, and local building and zoning codes and ordinances as well as all applicable state, county, and local safety, sanitation laws, codes, and ordinances.
2. A facility must be inspected annually by the local fire department, or if not available, the state fire marshal's office. A facility is required to correct any deficiencies found during these inspections. A written report of the annual inspection must be kept on file at the facility or other designated location, and a copy sent to the licensing authority.
3. All chimneys, flues, and vent attachments to combustion-type devices must be structurally sound, appropriate to the unit or units attached to them, and cleaned and maintained as necessary to provide safe operation.
4. There shall be at least one 2A 10BC fire extinguisher on each floor and in or immediately adjacent to the kitchen, incinerator, and combustion-type heating units. Additional fire extinguishers must be provided so it is never necessary to travel more than seventy-five feet [22.86 meters] to an extinguisher. Fire extinguishers must be mounted on a wall or a post where they are clearly visible and at a readily accessible height. All required fire extinguishers must be checked once a year and serviced as needed. Each fire extinguisher must have a tag or label securely attached indicating the month and year the maintenance check was performed last and identifying the company performing the service.
5. The facility shall provide the following smoke detectors:
 - a. One unit for each bedroom hallway;
 - b. One unit at the top of each interior stairway; and
 - c. One unit for each room with a furnace or other heat source.

- d. Battery-operated smoke detectors must signal when the battery is exhausted or missing, and be tested at least once a month.
6. A facility shall have written plans and procedures for meeting disasters and emergencies.
 - a. Staff members are required to know all plans and procedures for meeting disasters and emergencies.
 - b. All children in the facility must be advised of all emergency and evacuation procedures upon their admission to the facility and these procedures shall be reviewed with the children every two months.
 - c. The facility shall have telephones centrally located and readily available for staff use in each living unit of the facility. Emergency numbers such as the fire department, police, hospital, physician, and ambulance must be written and posted by each telephone. There must be telephone service in all buildings housing children.
 - d. There must be at least two independent exits from every floor. The exits must be located so that children can exit from each floor in two separate directions, without going through a furnace room, storage, or other hazardous area.
7. All facilities shall carry general comprehensive liability insurance.
8. Any vehicle used by a facility for the transportation of children or staff must be licensed in accordance with the laws of North Dakota and must be maintained and periodically inspected to ensure its safe operating condition.
 - a. Vehicles used to transport children shall carry liability insurance.
 - b. The number of persons in a vehicle used to transport children may not exceed the number of available seats. Seatbelts must be used when required by state law.
 - c. Any operator of any vehicle shall hold a valid and appropriate North Dakota driver's license.
9. A facility shall have a written policy governing smoking by staff.
10. A facility which has swimming facilities shall have written rules and procedures for water safety.

11. A facility shall have a copy of the Red Cross manual on first-aid measures, or a book of its equivalent, and shall have first-aid supplies.
12. Any employee or resident of a facility suffering from a serious communicable disease must be isolated from other employees and residents of the facility who have not been infected and they must be excluded from working.
13. Household pets must be inoculated against disease in accordance with local regulations and ordinances.
14. All buildings must be equipped with furnishings which are suitable to needs of the children. Recreational space and equipment must be safe, functional, and available for all children in the facility.
 - a. The facility shall have one centrally located living room for the informal use of children.
 - b. The facility shall have a dining room area large enough to accommodate the number of persons who normally are served.
15. A facility shall provide space and privacy for individual interviewing and counseling sessions. This space must be separate and apart from rooms used for ongoing program activities.
16. A facility shall have bedroom accommodations for the children.
 - a. All children shall have their own beds with clean mattresses and clean bedding. Blankets must be available to each child when necessary. Sheets and bedding must be changed at least weekly and more often, if necessary.
 - b. The facility shall have at least one bedroom for each four children.
 - c. The facility may not permit nonambulatory children to sleep above the first floor.
 - d. There must be no more than one child per bed.
 - e. No child six years of age or older may share a bedroom with a child of the opposite sex.
 - f. All bedrooms must have at least one window which opens to the outside.
 - g. No sleeping room may be in an unfinished attic, hallway, or other room not normally used for sleeping purposes.

- h. A basement which has over half its outside walls below grade and no door opening directly to the outside may not be used for bedrooms.
 - i. Furnishings must be safe, attractive, easy to maintain, and selected for their suitability to the age and development of the children in care.
 - j. A facility shall have sufficient storage to accommodate each child's clothing and other personal belongings.
17. A facility shall have one complete bathroom for each six residents. A complete bathroom includes toilet, washbasin, and a tub or shower.
- a. All bathroom facilities must be indoors and equipped with hot and cold running water and must be kept clean.
 - b. When bathroom units contain more than one toilet, tub, or shower, each must be in a separate compartment.
 - c. Each child must be provided personal toilet articles, including washcloths and towels. These must be changed at least weekly and more often, if necessary.
 - d. The facility shall provide bathrooms with nonslip surfaces in showers or tubs.
18. Facilities shall ensure that kitchen facilities meet the standards prescribed by the health department. Compliance with these standards must be documented annually and the documentation kept on file at the facility or other designated location within the state of North Dakota.
- a. Food storage space must be clean and containers must be covered and stored off the floor.
 - b. Dishes, cups, and drinking glasses used by the children must be free of chips, cracks, and other defects, and must be sanitized after every use by a washing process, sanitization solution, and air-drying or commercial dishwasher.
 - c. Personnel preparing food shall wash their hands before handling food and take precautions to keep hair out of food.
 - d. Refrigeration for perishable food must be provided and must be maintained at forty-five degrees Fahrenheit [7.22 degrees Celsius].
 - e. Kitchen floors must be reasonably impervious to water and be slip-resistant.

19. Laundry facilities must be located in an area separate from areas occupied by children. Space for sorting, drying, and ironing must be made available to children who are capable of handling their personal laundry.
20. The water supply of a facility must be from an approved municipal system where available. Where a municipal system is not available, the facility shall obtain approval for the water supply from the health department. Each water outlet accessible to children must be supplied with safe and potable water.
21. All firearms and poisons must be stored in a locked cabinet. No resident may be permitted to possess any firearms while at the facility.
22. A facility shall have a suitable, quiet area to be used for studying.
23. All rooms in a facility must have adequate lights, heat, and ventilation.
 - a. All baths and toilet rooms must have a window which opens to the outside or exhaust ventilation.
 - b. All windows and outside doors that will be opened must be screened in the summer. All screened doors must be self-closing.
 - c. The heating system of each facility must be inspected at least once per year by a qualified individual.
24. Buildings and grounds of a facility must be maintained in a clean, comfortable, sanitary, and safe condition.
 - a. The facility may not be located within three hundred feet [91.44 meters] of an aboveground storage tank containing flammable liquids used in connection with a bulk storage or other similar hazards.
 - b. The grounds must be attractive, well-kept, and spacious enough to accommodate recreational areas that take into consideration the age and interest levels of the children.
 - c. Rooms, exterior walls, exterior doors, skylights, and windows must be weathertight and watertight.
 - d. Stairways, porches, and elevated walks and ramps must have structurally sound and safe handrails.
 - e. Buildings must be free of materials which contain asbestos.

- f. Lead paint may not be used within a building or on the exterior, grounds, or recreational equipment.
25. Notice must be immediately given to the responsible placing agency and the department of a fire or other disaster which endangers or requires the removal of children for reasons of health and safety.
26. Flashlights must be available to all staff for emergency purposes.

History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

75-03-16-30. Variance. Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance from the provision of this chapter upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of any child cared for by the facility.

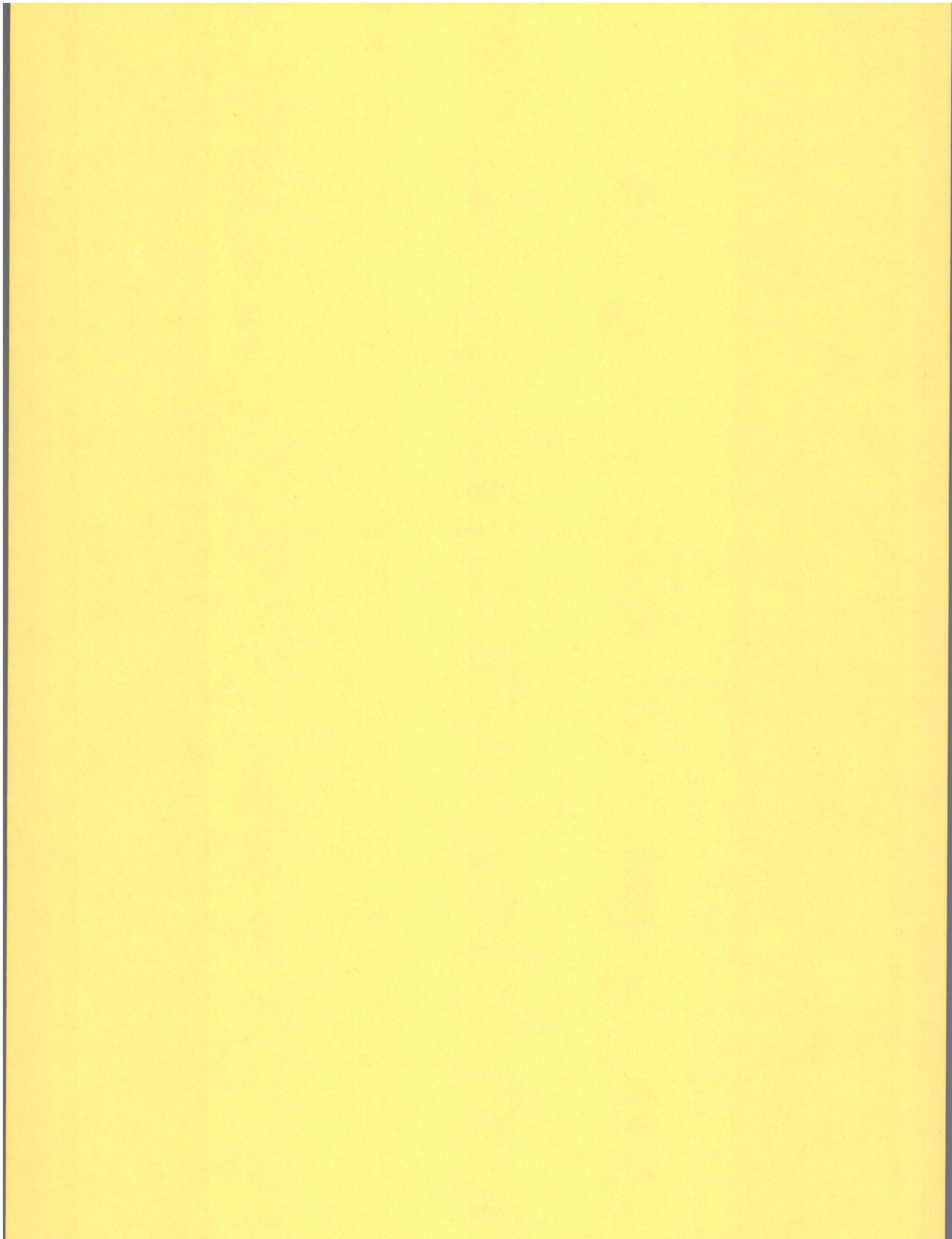
History: Effective July 1, 1987.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

TITLE 75.5

Social Work Examiners, Board of



JANUARY 1987

STAFF COMMENT: Title 75.5 contains all new material but is not underscored so as to improve readability.

AGENCY SYNOPSIS: The 1983 Legislative Assembly enacted comprehensive legislation regulating the practice of social work, including the licensing of social workers. A six-member board oversees the process. Administrative rules were promulgated essentially for two purposes: First, to provide the operational details which the legislature delegated to the board (such as establishing the specific amount of the license fee, license examination procedures, and the like), and, secondly, to attempt to resolve certain problems inherent in the law that began to surface after the law went into effect. Other than the standard "general administration" article required in all rules, they address six primary areas:

1. INTERPRETIVE RULES:

Social Work Practice - The so-called "grandfather clause" in the law permitted persons who had engaged in "social work practice" as defined therein for a specified period of time prior to its effective date, to receive a license without having to pass the examination or to meet the education requirements. Difficulties arose, as a result of the the vague definition of "social work practice," in trying to winnow out license applicants who had not been practicing social work in its traditionally understood sense. This rule addresses that problem.

Accredited College or University - When the licensing law was enacted, students enrolled in college social work programs which hadn't yet been accredited stood to have the door closed on their chosen careers by the rigid requirement of a degree from an "accredited" college. Likewise, highly respected and qualified career social workers who move to North Dakota after the "grandfather clause" expires would likewise be barred from

practicing their profession. This rule was promulgated in an effort to soften some of the harshness of the law's effect, although it cannot solve the problem completely. Well-intentioned students who found themselves part way through a social work degree program at a college or university in which the accreditation process had not yet begun when the law was passed, as well as experienced social workers who graduated years ago before accreditation existed, will still be prevented from practicing their chosen profession.

2. WAIVER OF BACCALAUREATE DEGREE, AND LICENSE EXAMINATION REQUIREMENTS:

The two rules promulgated under this chapter address problems encountered with applicants attempting to qualify under the "grandfather clause." The rule regarding residency was aimed at out-of-state applicants who could not get licensed in their state of residence because they could not meet education or examination requirements. Such persons recognized the absence of an express residency requirement in North Dakota's "grandfather" provision and hoped to be licensed in North Dakota and then apply for a license in their state of residence through the so-called "reciprocity" procedure.

3. THE LICENSING PROCESS:

The rules under this chapter were promulgated essentially to flesh out the law in this area. An initial license fee of \$100 and a renewal fee of \$20 were set.

4. REGISTRATION FOR PRIVATE PRACTICE:

Again, these rules were promulgated to provide the necessary details for this specialized area of social work.

5. RECIPROCITY:

This rule exists primarily for instructional purposes. Persons from other states who are interested in being licensed in North Dakota by "reciprocity" need to be provided with a source for the specific information North Dakota requires in this regard.

6. CODE OF ETHICS:

The law directs the board to adopt a "code of ethics." The only code of ethics that is generally recognized and readily available is that of the National Association of Social Workers (NASW). However, that code, as is the case with virtually all codes of ethics, is not written in such a way as to lend itself to enforcement by way of the disciplinary actions the board is expected to pursue under its statutory powers and duties. So the NASW Code of Ethics was given some minor revisions (the word "should" was replaced with "shall", for example) in order to give

LICENSURE

Chapter	
75.5-02-01	Interpretive Rules
75.5-02-02	Waiver of Baccalaureate Degree and License Examination Requirements
75.5-02-03	The Licensing Process
75.5-02-04	Registration for Private Practice
75.5-02-05	Reciprocity
75.5-02-06	Code of Ethics

CHAPTER 75.5-02-01 INTERPRETIVE RULES

Section	
75.5-02-01-01	Social Work Practice
75.5-02-01-02	Accredited College or University

75.5-02-01-01. Social work practice. License applicants shall demonstrate that they meet the statutory definition of social work practice set forth in North Dakota Century Code section 43-41-01 in the context of actually providing specified social work services or the involvement of specified social work practice areas, along with demonstrated knowledge of human development and behavior, of social, economic, and cultural institutions, and of the interaction of all of these factors.

Because the law is subject to being interpreted very broadly so as to encompass almost all persons employed in a professional capacity by a social service organization (if not specifically exempted from the mandatory licensure requirement), and because the basic intent of the law is to protect clients from unscrupulous or incompetent service practitioners or providers, the following eligibility conditions will be applied:

1. Supervisors. License eligibility is limited to those supervisors who either provide a direct social work service to clients or client groups, or directly provide case supervision to social workers who then provide the direct client services. Social work supervisors who do not regularly provide direct services to clients or client groups and who do not regularly provide direct case supervision may not be considered to be engaged in the practice of social work.
2. Educators. License eligibility is limited to those educators who teach or supervise students in courses that are identified

as social work courses and taught by faculty of a department or school of social work.

3. Researchers. License eligibility is limited to those persons who engage in research relating to social work practice or policy issues and engage in such research on a continuing and regular basis.
4. Generally, license eligibility is limited to those persons who not only provide tangible services, but also provide some or all of the intangible services identified in the law.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-01

75.5-02-01-02. Accredited college or university. With regard to the statutory requirement set forth in North Dakota Century Code section 43-41-04, that an applicant for a social work license have a degree from a college or university accredited by the council on social work education:

1. The following statutes shall be defined as meeting the accreditation requirement:
 - a. Programs currently accredited.
 - b. Programs in initial accredited review status.
 - c. Programs in approved candidacy status.
 - d. Programs in conditional accredited status.
2. The following statutes shall be defined as not meeting the accreditation requirements:
 - a. Programs that have been rejected for candidacy status.
 - b. Programs that have been denied candidacy status.
 - c. Programs that have been denied initial accreditation.
 - d. Programs that have been denied reaccreditation.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-04

**CHAPTER 75.5-02-02
WAIVER OF BACCALAUREATE DEGREE AND LICENSE
EXAMINATION REQUIREMENTS**

Section	
75.5-02-02-01	Proof Required of Past Social Work Practice
75.5-02-02-02	Residency or Practice Requirements for Waiver Eligibility

75.5-02-02-01. Proof required of past social work practice. Satisfactory proof of engagement in the practice of social work must be determined on the basis of a form completed by present or former employers attesting to the fact that the applicant has been engaged in the practice of social work. For those social workers who have been engaged in the private practice of social work, satisfactory proof consists of submission of public advertisements indicating engagement in the private practice of social work along with lists of referral agencies and at least three references from persons licensed as social workers in this state who can attest to the worker's engagement in private practice.

History: Effective January 1, 1987.
General Authority: NDCC 43-41-09
Law Implemented: NDCC 43-41-06

75.5-02-02-02. Residency or practice requirements for waiver eligibility. An applicant must be in one of the following categories to be eligible for social work licensure on the basis of the waiver provision:

1. A North Dakota resident who is engaged in the practice of social work in North Dakota.
2. A non-North Dakota resident who is engaged in the practice of social work in North Dakota.
3. A North Dakota resident who is engaged in the practice of social work in another state.
4. A non-North Dakota resident who is engaged in the practice of social work in another state but who has been offered employment in a social work position in North Dakota. This offer must be verified by the offering social work agency. If the board verifies that the applicant is presently engaged in the practice of social work and meets the conditions stipulated the board shall issue a provisional license. The provisional license will be replaced by a regular license as soon as the applicant meets the two years of social work practice requirement and remains in compliance with the special provisions of this section.

In determining residence the board shall apply the provisions of North Dakota Century Code section 54-01-26, pertaining to determination of residence.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-06

CHAPTER 75.5-02-03 THE LICENSING PROCESS

Section

75.5-02-03-01	Application
75.5-02-03-02	License Examination
75.5-02-03-03	License Fees
75.5-02-03-04	Provisional Licenses
75.5-02-03-05	License Renewal

75.5-02-03-01. Application. At least three written responses from references provided by the applicant must be received by the board, each of which shall provide evidence that the applicant meets the requirements for professional conduct and competence required under the licensing act. Two of these references must be from social workers at the applicant's level of licensure or above. The references must be familiar with the applicant's work. One of the references must be from a social work faculty member if the applicant is a recent graduate. For all others, one reference must be from the current social work supervisor.

Requests for application forms must be made with the executive secretary. The type of license requested must be specified. The application must be notarized and submitted to the executive secretary, together with the following:

1. Academic social work transcripts or proof of receipt of a baccalaureate degree and completion of a social work program, where applicable.
2. Where applicable, a statement of recent work history (past three years), including:
 - a. Names and addresses of employers.
 - b. Dates of employment.
 - c. Job description.
 - d. Approximate hours per week in social work activities.

3. A notarized statement from the applicant indicating that the applicant has not been found in violation of any of the causes for denial of a license.
4. A notarized statement from the applicant affirming the applicant's intent to adhere to the code of ethics.
5. The full amount of the fee.

The executive secretary shall contact previous employers to verify actual social work practice where licensing is sought under the waiver provisions, and shall inquire into the existence of ethical or legal violations or other hinderances to practice.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-04

75.5-02-03-02. License examination.

1. The license examination must be the examination approved by the board. The examination must be administered in North Dakota at least two times a year. The board shall certify the eligibility of all applicants to take the examination and shall determine uniform passing and failing cutoff points. Students currently enrolled in accredited social work programs may apply for and take the examination during the semester or quarter in which they will graduate; however, a license may not be granted until satisfactory proof of graduation is received by the board.
2. Only those applicants who meet the educational requirements of a bachelor's or master's degree in social work or social welfare from an accredited school of social work or who satisfy the waiver conditions with respect to such requirement, may be permitted to take the qualifying examination.
3. Applicants are entitled to written notification of the results of the examination. Written notification must be sent to the applicant within fourteen days of the date on which the board receives the examination results. If the examination results are delayed for longer than ninety days after the examination date, the applicant is entitled to written notification from the board regarding the reason for the delay.
4. An applicant who is denied a license is entitled to notification that includes the specific reason the applicant was denied, the right to request reconsideration of the application, and an explanation of appeal procedures.

5. An applicant may request, in writing to the executive secretary, reconsideration of the application if the board has determined that the applicant does not meet the board requirements for licensure or relicensure. The request for reconsideration must be received by the executive secretary within thirty days of the date on the denial notice. The applicant is entitled to notification in writing of the board's decision on reconsideration of the application.
6. An applicant who fails an examination may take the examination again at the next scheduled examination date upon tender of the examination fee.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-04, 43-41-09

75.5-02-03-03. License fees. All applicants for a license shall submit a one hundred dollar initial licensure fee. Applicants who are denied a license or withdraw their application for a license prior to issuance of the license must be refunded all but twenty-five dollars of that fee, which must be retained to cover the costs of processing. The board shall have the discretion of refunding the full amount in those instances where it is determined that no administrative costs were incurred.

All licensees applying for a renewal of the license shall submit a renewal fee of twenty dollars.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-03-04. Provisional licenses. Provisional licenses are temporary licenses the board may issue in the following circumstances:

1. To applicants who are eligible for the waiver provisions of North Dakota Century Code section 43-41-06. The provisional license must be replaced by a regular license when the board is able to verify that the applicant has met the two years of social work practice requirement. The time period for which the provisional license is valid will be determined by the board at the time the provisional license is issued.
2. To individuals who can provide satisfactory documentation of an offer of employment in North Dakota but who must first pass the North Dakota licensure examination. A provisional license may be issued until the board receives the examination results from the next available test administration. Failure to take or pass the next available examination following submission of the application will result in the automatic expiration of the

1. A private practitioner of social work is one who, on either a full- or part-time basis, is responsible for that person's own practice, establishes conditions of exchange with clients, and identifies oneself as a social worker in offering services.
2. A social worker is considered in private practice if such person provides social work services and exercises sole responsibility for the client, regardless of the organizational structure in which the services are provided.
3. Services that are provided by a social worker are not considered to constitute private practice unless those services are provided independent of any supervising or sponsoring organization, or are provided within a private agency framework in which the social worker is a partner or shareholder, and a fee is collected from or on behalf of the client.
4. If the social worker provides a continuation of services following termination of services to the client by the social worker's employing agency, the social worker must be considered as engaging in the private practice of social work unless the follow-on service is expressly designated as part of the social worker's responsibilities and the sponsoring agency or organization retains responsibility for the social work services that are provided.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-05

75.5-02-04-02. Application for registration. A licensed certified social worker who wishes to be registered for private practice shall make a formal application to the board. This application must include:

1. A description of the types of services that will be provided in the private practice; and
2. The names of licensed certified social workers or persons eligible for licensure as licensed certified social workers who provided supervision to the applicant for a minimum of three years after the applicant received the master's degree in social work.

The board shall verify that the applicant has met the three year post-master's supervision requirement prior to registering such applicant to engage in the private practice of social work.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-05

**CHAPTER 75.5-02-05
RECIPROCITY**

Section
75.5-02-05-01 Procedure for Issuance of Licenses by Reciprocity

75.5-02-05-01. Procedure for issuance of licenses by reciprocity.
An applicant for a license under the reciprocity provisions of North Dakota Century Code section 43-41-07 shall submit the following items to the board:

1. A photostatic copy of the applicant's current license.
2. A copy of the licensure law of the other state or territory along with any additional information requested by the board indicating the basis for awarding a social work license in that state.
3. The names and addresses of previous social work employers.
4. The name and address of the licensing board in the other state or territory.

The executive secretary shall verify that the license is in good standing, that the licensing state imposes substantially the same requirements as North Dakota, and that there is no other reason constituting good cause for refusing to issue such license.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

**CHAPTER 75.5-02-06
CODE OF ETHICS**

Section	
75.5-02-06-01	Propriety
75.5-02-06-02	Competence and Professional Development
75.5-02-06-03	Service
75.5-02-06-04	Integrity
75.5-02-06-05	Scholarship and Research
75.5-02-06-06	Primacy of Clients' Interests
75.5-02-06-07	Rights and Prerogatives of Clients
75.5-02-06-08	Confidentiality and Privacy
75.5-02-06-09	Fees
75.5-02-06-10	Respect, Fairness, and Courtesy
75.5-02-06-11	Dealing with Colleagues' Clients
75.5-02-06-12	Commitments to Employing Organization
75.5-02-06-13	Maintaining the Integrity of the Profession

75.5-02-06-14 Community Service
75.5-02-06-15 Development of Knowledge
75.5-02-06-16 Promoting the General Welfare

75.5-02-06-01. Propriety. The social worker shall maintain high standards of personal conduct in the capacity of identity as social worker.

1. The private conduct of the social worker is a personal matter to the same degree as is any other person's, except when such conduct compromises the fulfillment of professional responsibilities.
2. The social worker may not participate in, condone, or be associated with dishonesty, fraud, deceit, or misrepresentation.
3. The social worker shall distinguish clearly between statements and actions made as a private individual and as a representative of the social work profession or an organization or group.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06-02. Competence and professional development. The social worker shall strive to become and remain proficient in professional practice and the performance of professional functions.

1. The social worker shall accept responsibility or employment only on the basis of existing competence or the intention to acquire the necessary competence.
2. The social worker may not misrepresent professional qualifications, education, experience, or affiliations.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06-03. Service. The social worker shall regard as primary the service obligation of the social work profession.

1. The social worker shall retain ultimate responsibility of the quality and extent of the service that individual assumes, assigns, or performs.

2. The social worker shall act to prevent practices that are inhumane or discriminatory against any person or group of persons.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06-04. Integrity. The social worker shall act in accordance with the highest standards of professional integrity and impartiality.

1. The social worker must be alert to and resist the influences and pressures that interfere with the exercise of professional discretion and impartial judgment required for the performance of professional functions.
2. The social worker may not exploit professional relationships for personal gain.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06-05. Scholarship and research. The social worker engaged in study and research must be guided by the conventions of scholarly inquiry.

1. The social worker engaged in research shall consider carefully its possible consequences for human beings.
2. The social worker engaged in research shall ascertain that the consent of participants in the research is voluntary and informed, without any implied deprivation or penalty for refusal to participate, and with due regard for participants' privacy and dignity.
3. The social worker engaged in research shall protect participants from unwarranted physical or mental discomfort, distress, harm, danger, or deprivation.
4. The social worker who engages in the evaluation of services or cases shall discuss them only for the professional purposes and only with persons directly and professionally concerned with them.
5. Information obtained about participants in research must be treated as confidential.

6. The social worker shall take credit only for work actually done in connection with scholarly and research endeavors and credit contributions made by others.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06-06. Primacy of clients' interests. The social worker's primary responsibility is to clients.

1. The social worker shall serve clients with devotion, loyalty, determination, and the maximum application of professional skill and competence.
2. The social worker may not exploit relationships with clients for personal advantage, or solicit the clients of one's agency for private practice.
3. The social worker may not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, mental or physical handicap, or any other preference or personal characteristic, condition, or status.
4. The social worker shall avoid relationships or commitments that conflict with the interests of clients.
5. The social worker shall under no circumstances engage in sexual activities with clients.
6. The social worker shall provide clients with accurate and complete information regarding the extent and nature of the services available to them.
7. The social worker shall apprise clients of their risks, rights, opportunities, and obligations associated with social service to them.
8. The social worker shall seek advice and counsel of colleagues and supervisors whenever such consultation is in the best interest of clients.
9. The social worker shall terminate service to clients, and professional relationships with them, when such service and relationships are no longer required or no longer serve the clients' needs or interests.
10. The social worker shall withdraw services precipitously only under unusual circumstances, giving careful consideration to

all factors in the situation and taking care, to minimize possible adverse effects.

11. The social worker who anticipates the termination or interruption of service to clients shall notify clients promptly and seek the transfer, referral, or continuation of service in relation to the clients' needs and preferences.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06-07. Rights and prerogatives of clients. The social worker shall make every effort to foster maximum self-determination on the part of clients.

1. When the social worker acts on behalf of a client who has been adjudged legally incompetent, the social worker shall safeguard the interests and rights of that client.
2. When another individual has been legally authorized to act in behalf of a client, the social worker shall deal with that person always with the client's best interest in mind.
3. The social worker may not engage in any action that violates or diminishes the civil or legal rights of clients.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06-08. Confidentiality and privacy. The social worker shall respect the privacy of clients and hold in confidence all information obtained in the course of professional service.

1. The social worker may not share with others, confidences revealed by clients, without their consent, except as permitted by law.
2. The social worker shall inform clients fully about the limits of confidentiality in a given situation, the purposes for which information is obtained, and how it may be used.
3. The social worker shall afford clients lawful and reasonable access to official social work records concerning them.
4. When providing clients with access to records, the social worker shall take due care to protect the confidences of others contained in those records.

5. The social worker shall obtain informed consent of clients before taping, recording, or permitting third party observation of their activities.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06-09. Fees. When setting fees, the social worker shall ensure that they are fair, reasonable, considerate, and commensurate with the service performed and with due regard for the clients' ability to pay. The social worker may not divide a fee or accept or give anything of value for receiving or making a referral.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06-10. Respect, fairness, and courtesy. The social worker shall treat colleagues with respect, courtesy, fairness, and good faith.

1. The social worker shall cooperate with colleagues to promote professional interests and concerns.
2. The social worker shall respect confidences shared by colleagues in the course of their professional relationships and transactions.
3. The social worker shall create and maintain conditions of practice that facilitate ethical and competent professional performance by colleagues.
4. The social worker shall treat with respect, and represent accurately and fairly, the qualifications, views, and findings of colleagues and use appropriate channels to express judgments on these matters.
5. The social worker who replaces or is replaced by a colleague in professional practice shall act with consideration for the interest, character, and reputation of that colleague.
6. The social worker may not exploit a dispute between a colleague and employers to obtain a position or otherwise advance the social worker's interest.
7. The social worker shall seek arbitration or mediation when conflicts with colleagues require resolution for compelling professional reasons.

8. The social worker shall extend to colleagues of other professions the same respect and cooperation that is extended to social work colleagues.
9. The social worker who serves as an employer, supervisor, or mentor to colleagues shall make orderly and explicit arrangements regarding the conditions of their continuing professional relationship.
10. The social worker who has the responsibility for employing and evaluating the performance of other staff members, shall fulfill such responsibility in a fair, considerate, and equitable manner, on the basis of clearly enunciated criteria.
11. The social worker who has the responsibility for evaluating the performance of employees, supervisees, or students shall share evaluations with them.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06-11. Dealing with colleagues' clients. The social worker has the responsibility to relate to the clients of colleagues with full professional consideration.

1. The social worker may not solicit the clients of colleagues.
2. The social worker may not assume professional responsibility for the clients of another agency or a colleague without appropriate communication with that agency or colleague.
3. The social worker who serves the clients of colleagues, during a temporary absence or emergency, shall serve those clients with the same consideration as that afforded any client.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06-12. Commitments to employing organization. The social worker shall adhere to commitments made to the employing organization.

1. The social worker shall work to improve the employing agency's policies and procedures, and the efficiency and effectiveness of its services.
2. The social worker may not accept employment or arrange student field placements in an organization known by the social worker to have violated standards of professional conduct by imposing

limitations on, or penalties for, professional actions on behalf of clients.

3. The social worker shall act to prevent and eliminate discrimination in the employing organization's work assignments and in its employment policies and practices.
4. The social worker shall use with scrupulous regard, and only for the purpose for which they are intended, the resources of the employing organization.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06-13. Maintaining the integrity of the profession. The social worker shall uphold and advance the values, ethics, knowledge, and mission of the profession.

1. The social worker shall protect and enhance the dignity and integrity of the profession and shall be responsible and vigorous in discussion and criticism of the profession.
2. The social worker shall take action through appropriate channels against unethical conduct by any other members of the profession.
3. The social worker shall act to prevent the unauthorized and unqualified practice of social work.
4. The social worker shall make no misrepresentation in advertising as to qualifications, competence, service, or results to be achieved.

History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09

75.5-02-06-14. Community service. The social worker shall assist the profession in making social services available to the general public.

1. The social worker shall contribute time and professional expertise to activities that promote respect for the utility, the integrity, and the competence of the social work profession.
2. The social worker shall support the formulation, development, enactment, and implementation of social policies of concern to the profession.

History: Effective January 1, 1987.
General Authority: NDCC 43-41-09
Law Implemented: NDCC 43-41-09

75.5-02-06-15. Development of knowledge. The social worker shall take responsibility for identifying, developing, and fully utilizing knowledge for professional practice.

1. The social worker shall base practice upon recognized knowledge relevant to social work.
2. The social worker shall critically examine, and keep current with emerging knowledge relevant to social work.
3. The social worker shall contribute to the knowledge base of social work and share research knowledge and practice wisdom with colleagues.

History: Effective January 1, 1987.
General Authority: NDCC 43-41-09
Law Implemented: NDCC 43-41-09

75.5-02-06-16. Promoting the general welfare. The social worker shall promote the general welfare of society.

1. The social worker shall act to prevent and eliminate discrimination against any person or group on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, mental or physical handicap, or any other preference or personal characteristic, condition, or status.
2. The social worker shall act to ensure that all persons have access to the resources, services, and opportunities which they require.
3. The social worker shall act to expand choice and opportunity for all persons, with special regard for disadvantaged or oppressed groups and persons.
4. The social worker shall promote conditions that encourage respect for the diversity of cultures which constitute American society.
5. The social worker shall provide appropriate professional services in public emergencies.
6. The social worker shall advocate changes in policy and legislation to improve social conditions and to promote social justice.

7. The social worker shall encourage informed participation by the public in shaping social policies and institutions.

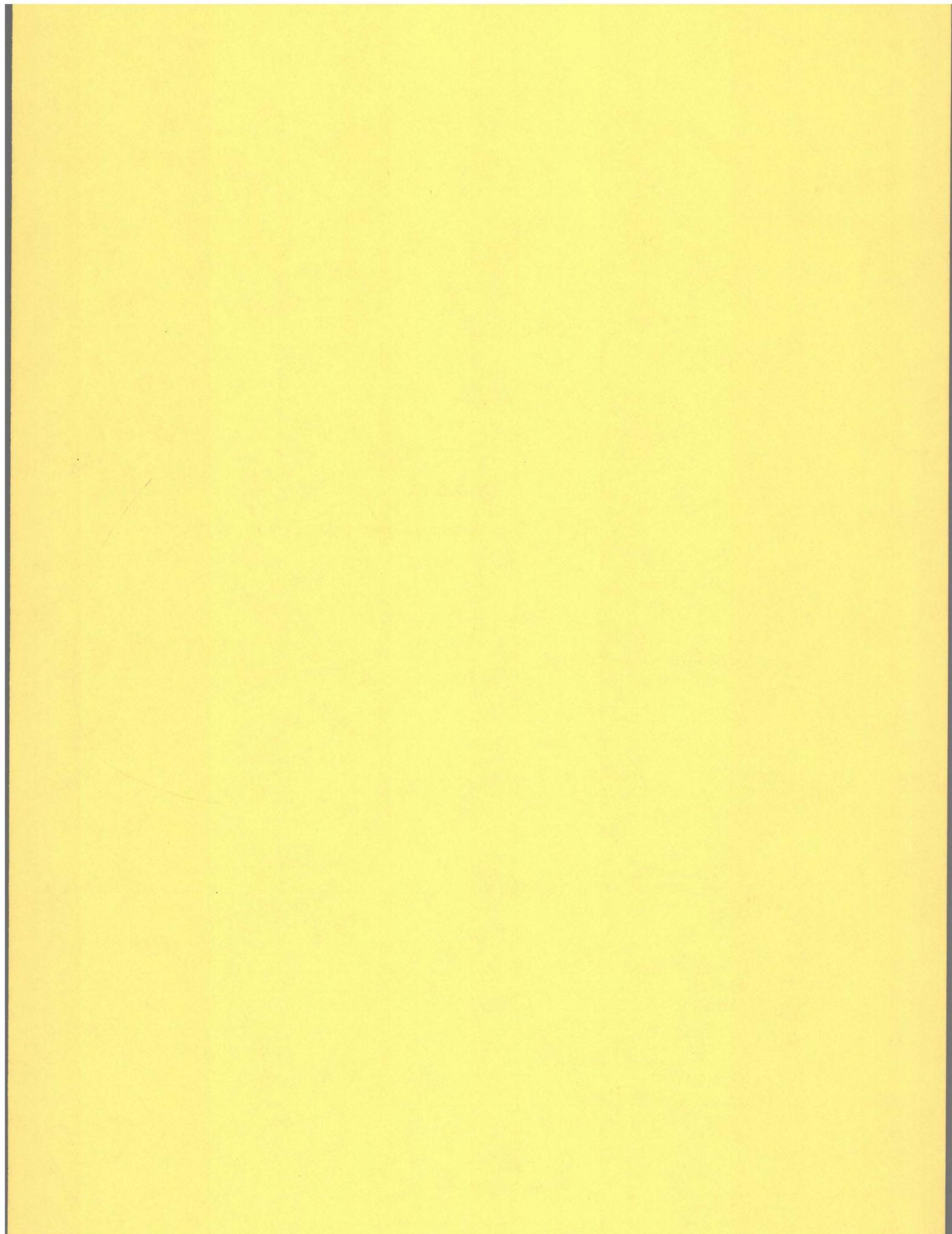
History: Effective January 1, 1987.

General Authority: NDCC 43-41-09

Law Implemented: NDCC 43-41-09



TITLE 81
Tax Commissioner



JULY 1987

81-04.1-04-02. Agriculture - Farm machinery and equipment -
Farm machinery repair parts. Farm machinery and irrigation equipment used principally for producing agricultural crops or livestock, including leasing or renting of farm machinery and equipment, are subject to sales tax at a reduced rate.

Machinery sold for nonagricultural purposes is subject to sales tax at the full rate. ~~Items such as snowmobiles, snowblowers, lawn mowers, garden type tractors, and garden tillers are not farm machines and are subject to sales and use tax at the full rate.~~ Motor vehicles required to be registered with the motor vehicle department, including vehicles such as trucks, pickups, cars, snowmobiles, all-terrain vehicles, and garden tractors, do not qualify as farm machinery. Irrigation equipment sold for nonagricultural purposes is subject to sales tax at the full rate. Tires, ~~batteries, repair or replacement parts,~~ accessories, communication equipment, tools, shop equipment, grain bins, feed bunks, fencing material, and other farm supplies are subject to sales tax at the full rate.

Contractors installing barn cleaners, milking systems, automatic feeding systems, irrigation systems, and similar installations which become a part of real property are subject to use tax on the cost of the materials.

The reduced rate applies to parts, excluding tires, used to repair qualifying farm machinery. The reduced rate on farm machinery repair parts applies only when the machinery is used exclusively for agricultural purposes. These same parts are subject to the general North Dakota sales and use tax rate when sold to contractors or others who do not use the machinery exclusively for agricultural purposes.

Farm repair parts include any durable goods, except tires, used to repair a qualifying farm machinery. Durable goods do not include

fluids, gases, oils, greases, lubricants, paints, and waxes. Farm machinery repair parts do not include items like tools, lumber, twine, fencing material, or storage tanks.

Sales of parts not clearly identified for use in farm machinery are subject to the reduced rate when used by the seller to repair farm machinery.

When parts are sold over the counter, the seller should use discretion but should generally accept in good faith the purchaser's word as to their intended use. When the purchaser intends to use the parts on a qualifying farm machine, the reduced rate applies. If the parts are for nonfarm machinery use, the general sales tax rate must be charged.

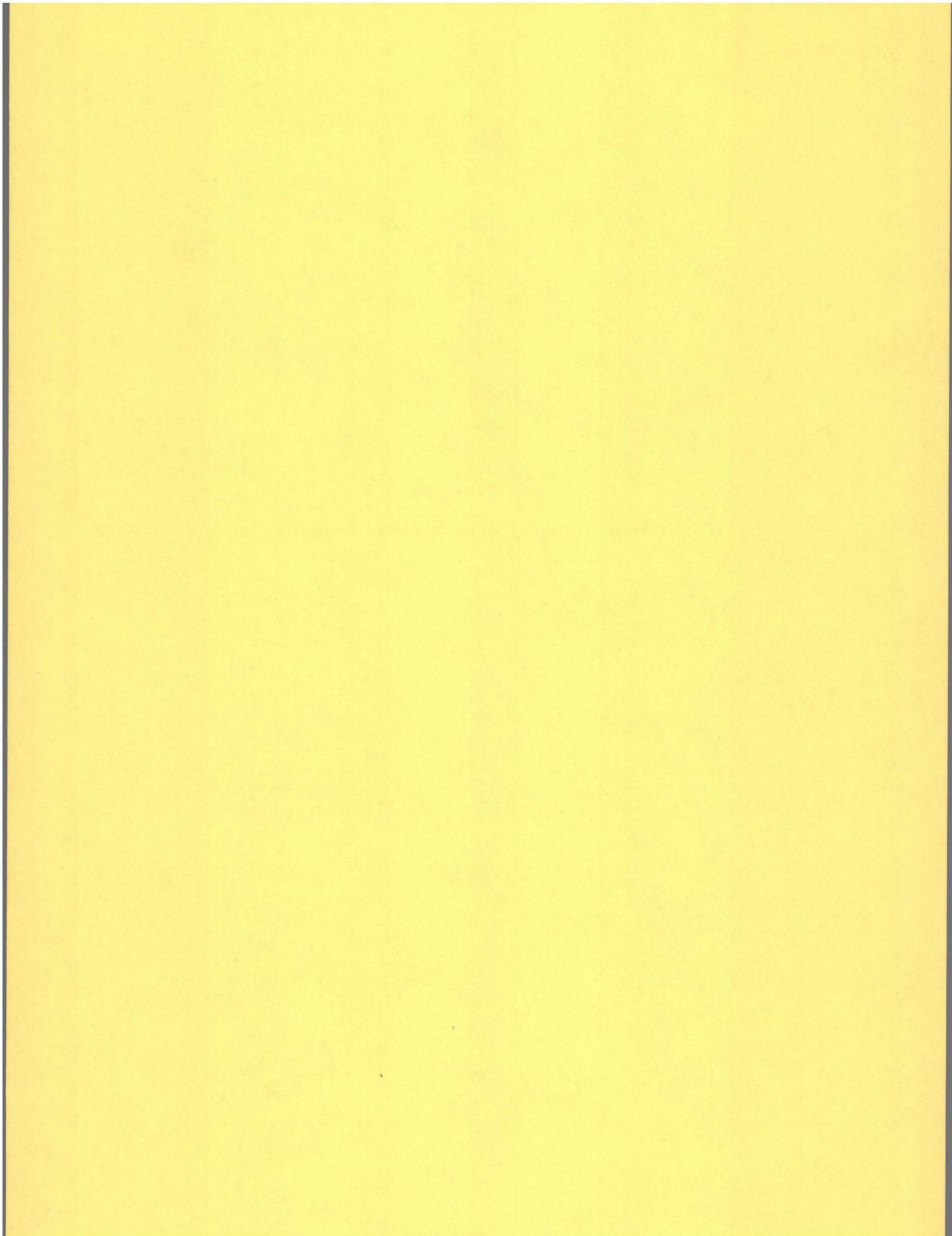
History: Effective June 1, 1984; amended effective July 1, 1985; July 1, 1987.

General Authority: NDCC 57-39.2-19, 57-40.2-13

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-08.2, 57-40.2, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.3, 57-40.2-05, 57-40.2-12

TITLE 86

Veterans' Affairs, Administrative Committee on



MAY 1987

STAFF COMMENT: Article 86-03 contains all new material but is not underscored so as to improve readability.

ARTICLE 86-03

**RULES AND REGULATIONS FOR ADMISSION AND RESIDENCY
AT THE NORTH DAKOTA VETERANS' HOME**

Chapter	
86-03-01	Admissions - Application, Eligibility Requirements, Board of, Denial of, Orientation, Readmission
86-03-02	Resident - Funds, Charges, Finances
86-03-03	Services Available to Residents
86-03-04	Resident Room Policies
86-03-05	Resident - Rights, Privileges, Responsibilities
86-03-06	Activities - Restrictions - Employment
86-03-07	Hours - Passes and Leaves - Discharges
86-03-08	Rules Governing Property
86-03-09	Deaths - Wills - Disposition of Estates
86-03-10	Violation - Enforcement of Rules and Regulations

**CHAPTER 86-03-01
ADMISSIONS - APPLICATION, ELIGIBILITY REQUIREMENTS,
BOARD OF, DENIAL OF, ORIENTATION, READMISSION**

Section	
86-03-01-01	Application for Admission - Form, Content, Approval

86-03-01-02	Admission Eligibility Requirements
86-03-01-03	Board of Admissions - Composition, Duties
86-03-01-04	Denial of Admission - Appeal
86-03-01-05	Admission Orientation
86-03-01-06	Readmission Requirements

86-03-01-01. Application for admission - Form, content, approval.

1. Application must be made on forms provided by the veterans' home.
 - a. The financial statement is a part of the application and all information requested must be included in the application.
 - b. The applicant must be examined by a physician whose findings shall become a part of the application and recorded under the caption "Medical Certificate" of the application.
 - c. If a member of the board of admissions determines that insufficient medical, psychiatric, or financial information is available to properly process the application, a release of information form must be sent to the applicant to be signed and returned so that additional specific information may be obtained.
 - d. A certificate of residency must be signed by an elected or appointed county official of the county of residence at the time of application. An individual seeking admission to the home does not lose legal residency of the county of residence at the time of admission to the home. If the applicant entered the service from North Dakota, and this state received credit for the applicant's service, the residency requirement shall be waived if the applicant is not a resident of this state at the time application is made.
2. The completed application for residency, together with the discharge or certificate of service from the last period of service in the armed forces, must be forwarded to the commandant who shall submit the application and discharge papers to the board of admissions for action. Upon approval, the applicant must be admitted for residency. The priorities for admission must be in accordance with North Dakota Century Code section 37-15-10.1.
3. An applicant whose application for admission has been approved, shall report to the home between eight a.m. and four p.m., Monday through Friday, holidays excluded. Special arrangements must be made if an applicant wishes to report at

any other time. Applicants whose applications for admission have been approved, and who fail to report within thirty days from the date of acceptance, unless an extension has been approved, must be denied admission until another application has been submitted and approved.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-15-10, 37-15-10.1

86-03-01-02. Admission eligibility requirements.

1. All residents must voluntarily choose to reside at the home, as the home is not staffed or equipped to accept an individual committed by a court. An applicant must come within the definition of "domiciliary care" as defined in the North Dakota Century Code section 37-15-00.1 to be eligible for admission to the home. No applicant may be considered eligible for residency whose last period of service in the armed forces was terminated under dishonorable conditions.
2. No applicant may be admitted to the home who has been convicted of a felony or a crime involving moral turpitude, without producing sufficient evidence of subsequent good conduct and reformation of character so as to be satisfactory to the board of admissions. An applicant who has a history of chronic alcoholism or drug addiction may be accepted only if the problem is under control as determined by a home physician or addiction counselor and assurance is received from the applicant that prescribed medical advice shall be followed after admission to the home. Stipulations for admission shall be contained in the acceptance letter. An applicant who has a history of substance abuse shall become involved in counseling programs, evaluation periods, or other stipulations as a requirement for admission.
3. An applicant who is eligible for Medicare must be enrolled in the program to assist the applicant in defraying the costs of hospitalization in the event that the applicant may become hospitalized while a resident of the home. Applicants who are not eligible for Medicare when admitted, but become eligible while a resident, shall enroll in the program.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-00.1, 37-15-02, 37-15-03

86-03-01-03. Board of admissions - Composition, duties.

1. The board of admissions shall consist of a multidisciplinary team with each member having specific as well as general items

of concern to review in the application. All applications shall be processed by the board of admissions for action. The board of admissions shall consist of five members which include: the commandant, or the assistant commandant in the commandant's absence, a home physician, addiction counselor, a licensed or registered nurse, and a social worker. The commandant, or the assistant commandant in the commandant's absence, shall act as chairman of the board of admissions.

2. All members of the board shall review the medical records and application file completely before making a decision. Each board member shall make their decision on the merits of the submitted application, or additional information received, and shall be responsible for their decision. Each board member, with the exception of the commandant or assistant commandant, shall record their vote on a preprinted form. A decision for disapproval of the application must be fully documented.
3. Each board member, or the assistant commandant in the commandant's absence, with the exception of the commandant, shall have one vote to accept or reject the application. If a tie vote occurs, or an application is disapproved, the commandant, or the assistant commandant in the commandant's absence, shall call a meeting of the board the reasons for denial shall be reviewed. The commandant or his designee shall vote to break the tie, request additional information if sufficient information is not available to make a decision, or write a letter of denial to the applicant.
4. Processing of an application shall be completed within ten working days of receipt; provided the application is completed properly, and sufficient medical information is available to make a determination.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-01-04. Denial of admission - Appeal.

1. If an application is disapproved, the applicant must be notified promptly. Any personal papers such as a will or honorable discharge must be returned to the applicant. All other information remains the property of this state. The applicant must be notified, in writing, as to the reason or reasons for denial of admission to the home. The applicant must also be given notice of the right to appeal the decision, and that any appeal must be in writing and received by the commandant within thirty days of the notice of denial of admission. Any appeal of the denial must contain a statement of the grounds for the appeal.

2. Any notice of appeal received by the commandant must be reviewed and forwarded to the chairman of the administrative committee on veterans' affairs. All documents submitted with appellant's application for admission must also be forwarded to the said chairman. The administrative committee on veterans' affairs must give the appellant at least forty-five days' notice as to the time, date, and place of the hearing of the appeal. This notice must be sent by certified mail return receipt requested. If the appellant is not satisfied with the decision of the administrative committee on veterans' affairs, the appellant may appeal to a court under the procedures outlined in the Administrative Agencies Practice Act as set forth in North Dakota Century Code chapter 28-32.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05, 37-15-03, 37-15-10(3), 37-18.1-03(2)

86-03-01-05. Admission orientation.

1. All residents shall have a social intake completed upon admission. If any special requirements for admission were stipulated in the acceptance letter, they must be discussed upon admission. Any additional recommendations made by the counselor must also be discussed. Any followup required of a new resident must be in writing and signed by the new resident. All new residents must be interviewed by medical, administration, housekeeping, food service, and resident services personnel to determine a new resident's needs, review procedures, and answer any questions.
2. New residents shall receive a temporary room assignment, and after a week or two, a permanent assignment must be made. During a new resident's stay in the temporary room, a resident must be assigned to assist in familiarizing the new resident with the home. A new resident must be given a limited physical examination. Various staff members shall visit with a new resident to inform the resident of the services provided by the various departments and to learn more about the new resident. The staff shall provide the new resident with opportunities to become acquainted with the home's facilities, staff, and other residents. After the initial orientation, a new resident must be assigned to a room with a roommate or roommates the staff determines to be the most compatible with the new resident from the prospective roommates available. However, if a resident has a specific request for a room change, it must be directed to the staff person responsible for room assignments. If a new resident is married, every effort must be made to allow the new resident and spouse to share a room.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-01-06. Readmission requirements. A former resident may be readmitted if a new application has been submitted and approved by the board of admissions and all money which may have been owed to the home by the former resident has been paid. If the behavior of a former resident has resulted in a disciplinary or medical discharge, the former resident may readmitted only if the board of admissions is satisfied that the conduct leading to such discharge will not be repeated.

History: Effective May 1, 1987.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-15-10(3), 37-18.1-03(2)

CHAPTER 86-03-02 RESIDENT - FUNDS, CHARGES, FINANCES

Section	
86-03-02-01	Membership Contribution Fund
86-03-02-02	Hospital Emergency Fund
86-03-02-03	Residents - Payment of Charges
86-03-02-04	Resident Income
86-03-02-05	Annual Review of Resident Finances

86-03-02-01. Membership contribution fund. A membership contribution fee based on the resident's ability to pay and on the rate structure established by the administrative committee on veterans' affairs must be charged monthly. The rate structure varies in accordance with a resident's net income.

History: Effective May 1, 1987.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-15-14.1

86-03-02-02. Hospital emergency fund.

1. Residents shall make a deposit, as determined by the administrative committee on veterans' affairs into the hospital emergency fund. The deposit may be made either in a lump sum or in the amount of twenty percent per month of the resident's net income until fully paid. Applicants who have no income and cannot make the deposit may not be denied admission because of the requirement. Residents may earn money through the home's work therapy program and may make payments into the fund from such earnings.

2. Money from the hospital emergency fund deposit may be used, at the discretion of the commandant, to defray the cost of hospital care, drugs, ambulance fees, doctor fees, and other expenses which may arise in emergencies. Any part or all of the deposit may be expended on behalf of a resident if the resident is unable or unwilling to pay these costs. Residents are not allowed to make withdrawals from this account if they become "short of funds". If a resident is discharged, the balance of the resident's money in the account must be returned to the resident or the resident's guardian as outlined in subsection 3 of section 86-03-07-03. In the event of a resident's death, the balance of the resident's money in the account becomes part of the resident's estate for disposition in accordance with the laws of this state.
3. Any resident with a full hospital emergency fund deposit on account on January first of each year, and maintains the full deposit on account during the year, will earn five percent interest.
4. A resident who makes a full deposit at any other time during the year, or who withdraws from the fund, will not receive interest for that year.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-02-03. Resident - Payment of charges. Residents have an obligation to pay charges which they incur at the home. Residents who become delinquent in paying these charges may be subject to discharge. Residents or their guardians are responsible for payment of monthly charges. All payments must be made within thirty days following the month in which they were incurred. Residents shall pay their charges prior to going on leave. A resident who is hospitalized may wait until returning to the home before making payment.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-02-04. Resident income. Residents who receive monthly income or who have net worth may handle their own finances unless they are declared incompetent. However, residents may not retain large sums of money on their person or in their quarters. If a resident chooses not to deposit money with a financial institution, the money may be deposited with the home's office for safekeeping. The resident may have access to those funds at any time during normal business hours as posted by the office.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-02-05. Annual review of resident finances. Each resident's finances must be reviewed annually. Generally, the review must be after the veterans' administration income questionnaires have been returned to the veterans' administration, processed, and adjustments made. Residents shall declare all of their assets which include, but are not limited to, real estate, personal property, monthly income received, retirement checks, savings accounts, checking accounts, and certificates of deposit. A resident unable to furnish such information shall sign a release form to allow the home to obtain the necessary financial information it needs to complete the annual review. A resident who refuses to divulge such information is subject to discharge.

History: Effective May 1, 1987.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

CHAPTER 86-03-03 SERVICES AVAILABLE TO RESIDENTS

Section	
86-03-03-01	Medical Services
86-03-03-02	Meal Service Policies
86-03-03-03	Mail
86-03-03-04	Laundry
86-03-03-05	Transportation
86-03-03-06	Beauty and Barber Services
86-03-03-07	Religious Services

86-03-03-01. Medical services.

1. A new resident must be given an admission physical by a staff physician within ten days after arrival at the home. Each new resident shall have a chest X-ray taken or shall provide the results of a chest X-ray taken within one year of admission. Generally, a veteran will be sent to the veteran's administration hospital for a chest X-ray. A nonveteran who is unable to have a chest X-ray taken at the veterans' administration hospital shall assume the expense for obtaining a chest X-ray.
2. All residents must be given annual physicals by one of the home's staff physicians to detect any new medical problems.
3. A resident who is on medication shall turn the medication in to the infirmary; and the nursing supervisor or a staff

physician shall determine whether the resident be placed on self-medication or whether the medications be dispensed from the infirmary. All prescription medications must be ordered through the infirmary. A resident may not order prescription medication without specific authorization by the nursing supervisor or a staff physician.

4. Residents on mood-altering drugs shall remain on them if deemed necessary by a staff physician. If a resident's failure to take the prescribed medication results in interference with the resident's behavior, it is grounds for an immediate discharge. Appropriate placement shall be recommended. If it becomes apparent that a resident presents a danger to self or others, emergency commitment procedures must be followed, and the resident must be sent to the state hospital.
5. If a resident requires medical attention due to a fever, symptoms of an infection, fall, or other medical problems, the nurse must be notified immediately. Appropriate steps must then be taken, either through treatment at the home by a staff physician, or transfer to the veterans' administration hospital or local hospital. All life-threatening emergencies must be referred to a local hospital first.
6. Residents who require outpatient care or inpatient treatment must be referred to the veterans' administration hospital unless they request otherwise. Nonveterans may choose where they wish to be treated.
7. Residents who have scheduled appointments shall notify the nurse of the appointment to ensure that the necessary followup is made.
8. Residents treated on an outpatient basis or who are hospitalized shall sign a release of medical information form, which is confidential and must be used to update the resident's medical file.
9. Residents in need of dental care, eye examinations, physical examinations, speech therapy, occupational therapy, or other medical services are responsible for payment of such services with the exception of the admission physical and annual physical given by a staff physician. Residents who are ineligible for medication through the veterans' administration are responsible for the costs of their medication.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-03-02. Meal service policies.

1. Residents must be provided three meals per day. Meals must be served at seven a.m., eleven-thirty a.m., and five p.m. Meals must be served cafeteria style, and residents shall carry their own tray unless the nursing supervisor or a staff physician has granted an exemption. To facilitate taking roll at meals, seats must be assigned.
2. If a resident wishes to be excused from a meal, the nurse on duty or the office must be notified at least one hour before mealtime. A resident who wishes not to be present for a meal must check out in person and failure to do so must be treated as an unexcused absence subject to disciplinary action. An exception must be made for a resident who is unable to check out in person because of illness.
3. A resident who wishes to extend an invitation to a meal shall obtain the consent of the commandant or a subordinate in charge.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-03-03. Mail. Each resident must be assigned a mailbox at the home. Mail that a resident receives must be properly addressed to the resident in care of the North Dakota veterans' home. The home is responsible for most postal services for the residents.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-03-04. Laundry. A resident need not launder his or her own clothing as the home is equipped to launder all personal washable clothing. However, if a resident chooses to launder his or her own clothing, it must be done in the resident laundry area, where coin-operated washers and dryers are available. A resident may not use the laundry facilities located in the washrooms or janitor closets at the home. A resident may not hang wet clothing on furniture, doors, or heat registers. Wet clothing must be dried in the resident laundry area in the dryers. A resident's clothing must be marked with a stamp provided by the home or with laundry tags ordered at the resident's own expense.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-03-05. Transportation. The home furnishes limited transportation to the residents. Transportation is provided once a day

to the Lisbon business district on business days. Transportation to Lisbon for medical purposes is furnished on an individual basis. Transportation to Fargo is provided by the home on Tuesdays and Wednesdays, and by the Ransom County seniors on Thursdays. Other transportation is the responsibility of the individual resident.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-03-06. Beauty and barber services. A resident may utilize the services of local beauticians and barbers, provided that the resident is responsible for payment for such services. Transportation to a local beauty shop or barber shop shall be provided if arrangements cannot be made with the local beautician or barber to provide services at the home. However, in such event, a resident shall request a member of the staff to make the necessary appointment. A resident may not cut or trim another resident's hair unless the resident has a current barber or beautician license, and in addition, has received the approval of the commandant.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-03-07. Religious services. Residents may participate in a religious program of their choice. Catholic and nondenominational services are conducted at the home. Residents with individual preferences may attend a local church of their choice, with transportation being the responsibility of the resident.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

CHAPTER 86-03-04 RESIDENT ROOM POLICIES

Section

86-03-04-01	Room Decoration and Maintenance
86-03-04-02	Food in Resident Rooms - Restrictions
86-03-04-03	Electrical Appliances in Resident Rooms - Restrictions
86-03-04-04	Resident Room Furniture
86-03-04-05	Resident Telephones

86-03-04-01. Room decoration and maintenance.

1. Residents may decorate their rooms in a manner which is tasteful and not offensive to other residents or the public. Tape, glue, or nails may not be used on the walls or woodwork. Hanging decorations may be suspended only from the cork strips provided.
2. Residents shall make their own beds, and shall change their bedding weekly or whenever designated by housekeeping or medical personnel. Residents shall also assist in sweeping and maintaining their quarters in a clean and orderly manner.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-04-02. Food in resident rooms - Restrictions. Food which may spoil, such as fresh fruit, cheese, meats, and open canned goods may not be kept in a resident's room unless authorized by the commandant.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-04-03. Electrical appliances in resident rooms - Restrictions. Electrical appliances used in connection with food preparation, heating of water, or appliances that are heat producing, are not allowed in a resident's room. Other appliances may be used in a resident's room only with the approval of the commandant.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-04-04. Resident room furniture. The home supplies all the necessary furniture to equip a resident's room. A resident who wishes to bring a piece of their own furniture must first obtain the permission of the commandant.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-04-05. Resident telephones. Telephones are located in all the rooms. Residents may receive their calls and place local calls using their telephone. Residents wishing to make long distance calls may use the coin-operated telephones, or install their own private line at their expense.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

CHAPTER 86-03-05
RESIDENT - RIGHTS, PRIVILEGES, RESPONSIBILITIES

Section	
86-03-05-01	Resident Bill of Rights - Responsibilities
86-03-05-02	Resident Dress Code - Violations
86-03-05-03	Smoking - Restrictions
86-03-05-04	Use of Alcohol or Controlled Substances - Prohibited
86-03-05-05	Guests - Visitation
86-03-05-06	Children - Visitation
86-03-05-07	Resident Council - Composition
86-03-05-08	Monthly Meetings
86-03-05-09	Resident Complaints - Appeals

86-03-05-01. Resident bill of rights - Responsibilities. The home has compiled a resident bill of rights which is available to all residents, guardians, next of kin, and other interested individuals upon request. Its purpose is to ensure residents of rights guaranteed to them in the Constitution of the United States. The home imposes the same responsibilities on a resident as citizens are subject to in any community. These responsibilities include: respecting the rights of others, obeying the rules, helping to keep the home safe and clean, and taking care of one's health. A resident must be courteous to visitors, friends, and staff. If a resident's behavior is disruptive or disgraceful, or affects the well-being and comfort of other residents, such behavior shall not be tolerated. Residents are asked to report safety hazards and keep themselves neat and clean, and to assume the major responsibility for personal health and hygiene.

History: Effective May 1, 1987.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-05-02. Resident dress code - Violations.

1. Clothing must be neat, clean, and mended. Pajamas, nightgowns, robes, or housecoats may not be worn to the dining room or first floor areas accessible to the public. White T-shirts, undershirts, and underwear must be adequately covered with an outer garment and may not be worn in the dining room as outerwear. Trousers, shirts, skirts, and blouses must be properly closed. Generally, residents may not wear shorts in the dining room unless they are Bermuda shorts or reach midhigh.

2. Hair curlers or clips may not be worn in the dining room at mealtime, and hair must be neatly groomed. Socks and shoes, which include boots, tennis shoes, and sandals, must be worn in the dining room. If neither shoes nor socks can be worn, permission must be received from the infirmary and cleared through food service before the resident is served.
3. Violations of the dress code must be reported to the food service supervisor or the commandant or his assistant. A resident violating the dress code must be refused dining room service.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-05-03. Smoking - Restrictions. Smoking is permitted in the home with the exception of the kitchen and dining room, elevators, infirmary, front lobby, and other areas which are specifically marked. Residents may not smoke while in or on the beds.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-05-04. Use of alcohol or controlled substances - Prohibited. Residents shall comply with the provisions of North Dakota Century Code section 48-05-06. Intoxicating liquors or a controlled substance may not be used on the grounds or in the buildings. A resident's person, personal effects, car, and room may be searched if a staff member has reasonable cause to believe that a resident is under the influence of intoxicating liquors or a controlled substance, or is suspected of bringing contraband of any kind onto the grounds or into the buildings. A resident who is intoxicated or who brings liquor or other controlled substances onto the premises shall become involved in the home addiction program. A resident who refuses to do so is subject to immediate disciplinary discharge. A resident who is repeatedly intoxicated or found to have any alcoholic beverages or controlled substances on the premises is, without excuse, subject to discharge.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2), 48-05-06

86-03-05-05. Guests - Visitation. A resident may have family or friends visit at the home. Guests may visit each day from eight a.m. to nine-thirty p.m. A resident shall remain with his or her guests. Residents and guests may visit either in the resident's room or in the visitor lounges. Residents and guests may play cards, and residents may treat their guests to coffee in the recreation room. However, visitors

may not participate in home activities which include, but are not limited to, bingo, movies, and other events sponsored by outside groups or by the home itself. A resident is responsible for the behavior of the resident's guests, and visitors may be asked to leave if they become disruptive. A resident may invite guests to meals, provided that the resident pays a nominal fee for each meal, and that nursing or food service personnel are notified one hour before the meal is served.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-05-06. Children - Visitation. Children under eighteen years of age are not allowed in the building unless they are supervised by and remain with a staff member or an adult supervisor. Children visiting a resident unaccompanied by an adult visitor are allowed only in the lobby, recreation rooms, and lounge areas where they can be supervised by a staff member.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-05-07. Resident council - Composition. A resident council consisting of a delegate and alternate delegate from each floor must be elected by the residents and serve for a term of eight months. A chairman must be elected from the delegates and is the representative of the council to the administration.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-05-08. Monthly meetings. Residents shall attend monthly meetings unless they are away on pass or leave. Generally, monthly meetings are scheduled for the third working day of each month, and are conducted by the commandant or a subordinate. The agenda for monthly meetings includes: announcements, observations, complaints, and other matters which may require discussion by staff or residents.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-05-09. Resident complaints - Appeals.

1. A resident who has a complaint may take it to the addiction counselor, activity therapist, chaplain, supervisors, aides, or administrative personnel. A complaint which cannot be

resolved in this manner must be forwarded to the commandant for appropriate action.

2. A resident who has a complaint or problem with the home or staff may take it to the commandant during regular business hours. If a resident is dissatisfied with the commandant's response, the matter may be appealed to the administrative committee on veterans' affairs, provided that the appeal is in writing, contains reasons for the resident's dissatisfaction, and is submitted to the commandant within seven working days of the commandant's response.
3. The commandant shall forward the appeal together with his report, investigations, and other relevant data to the chairman of the administrative committee on veterans' affairs. The appeal must be reviewed at the next meeting of the administrative committee on veterans' affairs.
4. A resident who is dissatisfied with the decision of the administrative committee on veterans' affairs may appeal the decision to a court under the procedures outlined in the Administrative Agencies Practice Act as set forth in North Dakota Century Code chapter 28-32.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05, 37-15-03, 37-18.1-03(2)

CHAPTER 86-03-06 ACTIVITIES - RESTRICTIONS - EMPLOYMENT

Section	
86-03-06-01	Canvassing - Peddling - Soliciting
86-03-06-02	Searches to Enforce Home Rules and State Laws
86-03-06-03	Resident Possession of Firearms
86-03-06-04	Resident Automobiles
86-03-06-05	Riding of Bicycles at the Home
86-03-06-06	Use of the Home's Park
86-03-06-07	Fishing on the Premises
86-03-06-08	Off-Limit Areas
86-03-06-09	Work Details at the Home
86-03-06-10	Resident Employment

86-03-06-01. Canvassing - Peddling - Soliciting. Canvassing, peddling, or soliciting may not be conducted in the buildings or on the grounds of the home. However, the commandant may authorize and establish conditions for solicitation at the home by charitable or veterans' organizations. Solicitations may not be made, in any event, from room to room.

History: Effective May 1, 1987.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-06-02. Searches to enforce home rules and state laws. The commandant or other staff may examine automobiles, baggage, clothing, and other personal items if such examination is considered necessary to enforce the rules and regulations of the home and the laws of this state and is based upon a reasonable suspicion.

History: Effective May 1, 1987.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-06-03. Resident possession of firearms. A resident may not possess or discharge a firearm in the buildings or on the grounds of the home without the permission of the commandant. A resident shall turn firearms and other weapons in to the commandant; failure to do so is grounds for a disciplinary discharge.

History: Effective May 1, 1987.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2), 62.1-02-05

86-03-06-04. Resident automobiles.

1. An applicant who wishes to have an automobile at the home shall make that desire known during the initial interview. The applicant's name must be placed on a waiting list and a parking space must be assigned when one becomes available. An applicant who has been admitted to the home may not bring an automobile to the home without receiving specific authorization prior to arrival.
2. A resident with an automobile at the home must show proof of a paid liability insurance premium and must possess a valid driver's license. Failure to comply with these requirements shall result in the loss of a parking space and loss of the privilege to have an automobile on the premises.
3. A resident may park in the resident parking lot only, and not in the public parking area or in front of or on the side of the barracks building.
4. A resident convicted of driving under the influence shall automatically lose their parking space and remove the vehicle from the premises until such time as it is regranted at the discretion of the commandant.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-06-05. Riding of bicycles at the home. Residents may ride their own bicycle or a bicycle provided by the home when weather permits. All cyclists shall remain on the main roadways or bicycle trails. Cyclists who have been advised of these requirements and who continue to disregard them must be reported to the commandant or his assistant.

History: Effective May 1, 1987.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-06-06. Use of the home's park. Residents and their guests may use the home's park. Children who are unsupervised are not allowed in the park unless permission has been obtained from the commandant or other designated subordinates. Under no circumstances may bicycles be allowed in the area.

History: Effective May 1, 1987.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-06-07. Fishing on the premises. A resident may fish in the Sheyenne River which borders the home's grounds; provided that the resident has purchased a fishing license in compliance with the laws of this state. Fish caught by a resident must be cleaned outside in an area away from the home's buildings. A resident shall obtain the approval of food service personnel before storing fish in the home's refrigerator or freezer.

History: Effective May 1, 1987.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-06-08. Off-limit areas. Only authorized personnel may enter the home's kitchen or storage rooms. Residents may enter these areas only with the permission of staff members. A resident may not enter buildings on the grounds other than the barracks building unless it is in the line of duty or with the permission of the commandant or staff supervisors.

History: Effective May 1, 1987.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-06-09. Work details at the home. A resident shall assist the commandant or other staff, when requested, in accomplishing work details at the home. No resident may be excused from a work detail without a written excuse from a staff physician.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-06-10. Resident employment. A resident physically present at the home may engage only in work assigned by the staff, and may not engage in any employment outside of the home. However, a resident on pass or leave may engage in employment.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

CHAPTER 86-03-07 HOURS - PASSES AND LEAVES - DISCHARGES

Section	
86-03-07-01	Hours
86-03-07-02	Passes and Leaves
86-03-07-03	Discharges

86-03-07-01. Hours.

1. A resident may not arise before five-thirty a.m. creating a disturbance in the various wards and corridors to the annoyance and discomfort of others. Radios and televisions in the lounges may not be operated after ten-thirty p.m. unless special permission has been obtained. Radios and televisions in resident rooms may be operated any time, provided that it is agreeable with roommates and no one else is disturbed. Residents who are unable to sleep and do not want to disturb their roommate may watch television all night in the recreation room on the ground floor of the new addition to the home.
2. The home must be locked and all public access lights with the exception of the emergency lights must be turned out at ten p.m. Special arrangements may be made with the aide on duty for a resident to remain out until twelve a.m. on occasion. Residents who desire to remain out later than twelve a.m. may obtain a twenty-four-hour pass, and may not return to the home before six a.m. the following day.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-07-02. Passes and leaves.

1. A resident may obtain a pass for a maximum of ninety-six hours from the commandant or other designated staff member. Residents going on pass or leave must sign themselves out before leaving, and upon returning to the home, must sign themselves in and report to the infirmary. A resident may not return to the home prior to six a.m. or after ten p.m. A resident returning from pass or leave shall remain at the home for twenty-four hours or more before being granted another pass or leave.
2. A resident absent without leave for a period of twenty-four hours must be issued a disciplinary discharge. A resident may be on regular leave for a maximum of one hundred twenty consecutive days. Prior to going on leave, a resident shall sign out, and at that time, must be issued a leave slip. During a leave period a resident's papers must be left in the care of the commandant. A resident going on leave may place personal effects in storage or shall sign a waiver releasing the home from responsibility for the loss of items which are left in the resident's room. The home assumes no financial or personal responsibility for a resident on pass or leave.
3. A resident who wishes a longer leave than one hundred twenty consecutive days shall return to the home prior to the leave expiration date and obtain another leave slip from a staff physician during the physician's regular visit to the home. A resident who fails to return to the home to obtain another leave slip must be discharged. A resident who chooses not to return within the one hundred twenty days shall notify the home and request a discharge. Failure to do so shall result in the resident receiving a disciplinary discharge as absent without leave.
4. A leave may be extended in special circumstances. Outside employment of a resident, or avoidance of hardship may be considered by the commandant in granting extensions. However, the extensions may not be granted if other applicants have been denied and are awaiting admission to the home due to lack of space.
5. A resident who is admitted to a hospital must be placed on medical leave for a maximum of sixty consecutive days, after which a medical discharge must be issued. After receiving a medical discharge, an individual need only resubmit a medical certificate provided by the home. An individual must reapply for admission prior to discharge from the hospital or follow the regular application procedure.

6. Enforced disciplinary leaves may be issued by the commandant for infringement of the home's rules and regulations.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-07-03. Discharges.

1. A resident may obtain an honorable discharge at any time upon request.
2. The commandant may issue a disciplinary discharge for infringement of the home's rules and regulations. Arrest and conviction of a resident, or conduct of a resident off the premises that would be considered unacceptable by community standards, are grounds for disciplinary discharge. Issuance of a disciplinary discharge disqualifies a resident from gaining readmission to the home for six months thereafter and requires submission of another application and medical certificate. A resident who receives a disciplinary discharge must leave the premises immediately, unless specific authorization is obtained from the commandant to remain overnight.
3. Upon discharge, a resident's personal property must be returned to the resident and must then be removed from the buildings and grounds. Money credited to a resident shall be released only after all outstanding bills have been paid.
4. A resident must be given a medical discharge, if in the opinion of the commandant, the resident is no longer able to care for his or her personal needs. Prior to discharge, every effort must be made to place a resident. A resident refusing placement is responsible for making his or her own arrangements after discharge.
5. Under the rules and regulations prescribed by the administrative committee on veterans' affairs for admission and residency at the North Dakota veterans' home, when a resident can no longer care for their personal needs, the resident shall become a charge of the county of residence at the time of admission to the home.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

CHAPTER 86-03-08 RULES GOVERNING PROPERTY

Section	
86-03-08-01	Borrowing of Money Prohibited
86-03-08-02	Concealment and Removal of State Property - Prohibited
86-03-08-03	Disposition of Personal Property Upon Discharge
86-03-08-04	Gift of Property by a Resident
86-03-08-05	Loan of Property to a Resident
86-03-08-06	Sale of Property by a Resident

86-03-08-01. Borrowing of money prohibited. A resident may not borrow from, nor loan money to another resident or staff member. A resident violating this rule is subject to discharge.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-08-02. Concealment and removal of state property - Prohibited. The concealment or removal of state property from the buildings or grounds is prohibited, and violators are subject to discharge and may be prosecuted for their actions.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-08-03. Disposition of personal property upon discharge.

1. A resident who is discharged and who has personal items remaining at the home must be notified in writing, at the resident's last known address, and shall have thirty days to remove those items from the premises. If a resident fails to make arrangements for the disposition of personal items remaining at the home within the allotted time, the commandant may dispose of the property at his discretion.
2. A resident who receives a medical discharge must be notified in writing of personal items remaining at the home. These items must then be sent or delivered at the resident's own expense to the discharged resident or the named individual to be notified in the event of an emergency.

History: Effective May 1, 1987.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-08-04. Gift of property by a resident. A gift of property by a resident to a nonresident is invalid unless the donee received physical possession of the gifted property at the time of the gift, and such property has been removed from the home's premises prior to the death of the donor. A gift made by a resident to another resident or a nonresident during the donor's lifetime is invalid if made with the understanding that the resident donor may retain physical possession of the gifted property until the resident donor's death, or if the gift is to take effect only upon the death of the resident donor. In these cases, such property becomes part of the estate of the resident donor.

History: Effective May 1, 1987.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

86-03-08-05. Loan of property to a resident. Property loaned to a resident must be declared loaned property at the time possession is transferred to the resident. The lender at the time of transfer shall file a sales slip, invoice, or other evidence of ownership with the home's office. The lender shall attach an identifying tag to the loaned property which shall remain attached to the property during the resident's stay at the home. Loaned property not so identified becomes part of the deceased resident's estate.

History: Effective May 1, 1987.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

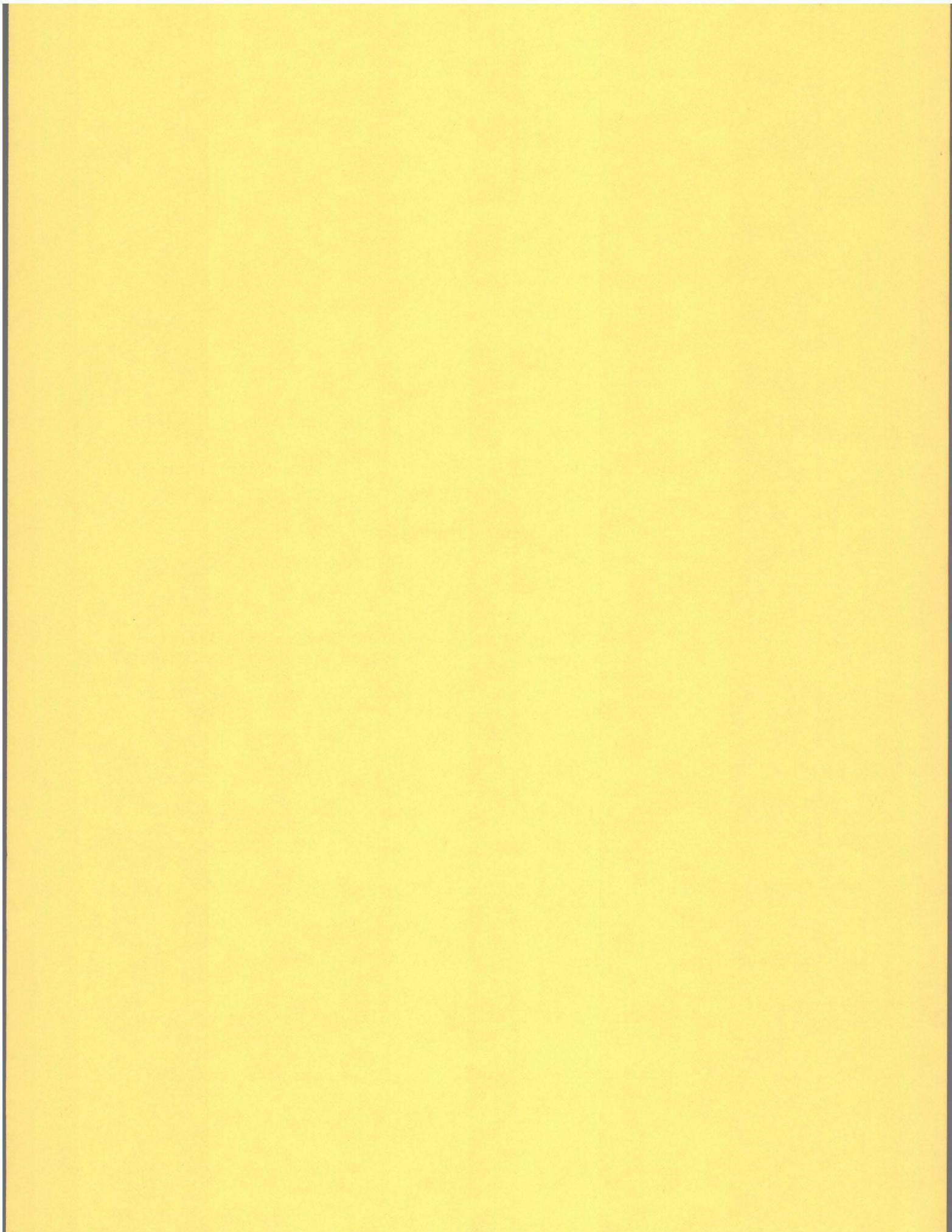
86-03-08-06. Sale of property by a resident. Property sold by a resident to another resident or a nonresident must be declared at the time of transfer from the seller to the buyer. A sales slip, invoice, or other evidence of ownership which must include serial numbers, model numbers, or other identifying features shall be filed with the home's office. Any property sold by a resident, not so identified, becomes a part of the estate of the resident seller if the sale is questioned by the seller's next of kin.

History: Effective May 1, 1987.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 37-15-03, 37-18.1-03(2)

CHAPTER 86-03-09 DEATHS - WILLS - DISPOSITION OF ESTATES

Section	
86-03-09-01	Death of Residents at the Home
86-03-09-02	Disposition of Estates Without Wills

TITLE 89
Water Commission



JUNE 1987

STAFF COMMENT: Article 89-06 contains all new material but is not underscored so as to improve readability.

ARTICLE 89-06

FUNDING FROM THE RESOURCES TRUST FUND

Chapter
89-06-01

Rules Governing the State Water Commission's Analysis
of a Proposed Water Project or Study Seeking Financial
Assistance from the Resources Trust Fund

CHAPTER 89-06-01

RULES GOVERNING THE STATE WATER COMMISSION'S ANALYSIS
OF A PROPOSED WATER PROJECT OR STUDY SEEKING FINANCIAL
ASSISTANCE FROM THE RESOURCES TRUST FUND

Section

89-06-01-01	Definitions
89-06-01-02	Initial Review
89-06-01-03	Study of the Proposal

89-06-01-01. Definitions. The following definitions apply to this article:

1. "Commission" means the North Dakota state water commission.

2. "Resources trust fund" means that fund established by North Dakota Century Code section 57-51-07.1.
3. "Proposal" means an application submitted to the commission for financial assistance from the resources trust fund either for a water-related study or a water-related project.
4. "Applicant" means the party submitting a proposal.

History: Effective June 1, 1987.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 57-51.1-07.1

89-06-01-02. Initial review. The commission will make an initial review of a proposal to decide whether the proposal is eligible for funding from the resources trust fund and to decide whether it merits a study.

1. **Information required for the initial review.** An applicant must submit the following information:
 - a. Information explaining the need for the proposal, including its objectives and benefits.
 - b. Either the area in which the proposed water-related project is to be physically located or, if the proposal concerns a water-related study, the area in which the study is to be undertaken.
 - c. The area to be served by the proposal.
 - d. Maps, diagrams, and other illustrated documentation should be submitted if these will make the proposal more understandable.
 - e. The approximate cost of carrying out the proposal.
 - f. The amount of funding sought from the resources trust fund and the amount the applicant intends to contribute to carrying out the proposal.
 - g. Efforts made, and the results, to secure funds from sources other than the resources trust fund.
 - h. An explanation why assistance from the resources trust fund is necessary.
 - i. An explanation how the proposal relates to the commission's comprehensive state water plan.

- j. An explanation how the project relates to the master plans of water resource districts affected by the proposal, if such districts have master plans.
 - k. A preliminary report on the engineering feasibility of the proposal if it is for a water-related project.
 - l. A general discussion of any objections to the proposal made by any person.
 - m. Any other information the applicant believes pertinent or that the commission may request.
2. **Alternatives.** The applicant must consider whether an alternative project or study can satisfy the objectives of the proposal. In its application to the commission for review the applicant must set forth a general explanation of all alternatives considered.
 3. **Time.** To ensure review of an application at a regularly scheduled meeting of the commission, an applicant must submit the information required by these rules thirty days prior to such meeting.
 4. **The commission's decision upon initial review.** After initial review the commission may decide:
 - a. The information provided is inadequate to review the proposal and may order the applicant to provide more information, or may obtain more information itself.
 - b. The proposal is not eligible for support from the resources trust fund, and upon such a decision the commission shall prepare a report setting forth its reasons.
 - c. A study of the proposal should be undertaken and may order the applicant to conduct the study or may conduct the study itself.

History: Effective June 1, 1987.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 57-51.1-07.1

89-06-01-03. Study of the proposal. A study of a proposal is to provide the commission with the information necessary for it to make an informed decision whether to recommend that the legislative assembly support the proposal with money from the resources trust fund.

1. **Study contents.** A study of a proposal must include all the following information:

- a. All the information required by subdivisions a, f, g, h, i, and j of subsection 1 of section 89-06-01-02 and subsection 2 of section 89-06-01-02. This information, however, must be updated and submitted in more detail and clarity. The reason for these latter requirements is that the study provides the basis of the commission's final decision, rather than its initial review, and it must, therefore, be comprehensive.
 - b. If the proposal is for a water-related project, an explicit explanation of the area where the project is to be physically located and the area and interests to be served by it.
 - c. If the proposal is for a water-related study, an explicit explanation of the area in which the study is to be conducted.
 - d. Compliance with subdivisions b and c requires submission of maps.
 - e. An itemization of the proposal's cost.
 - f. A complete examination of the engineering feasibility of the proposal if it is for a water-related project.
 - g. A general statement of all objections to the proposal or to funding it from the resources trust fund. The identity of persons and entities making the objections. This subsection only applies to written objections made to the applicant and to oral objections made at any meeting of the applicant.
 - h. Any other information the applicant believes pertinent or that the commission may request.
2. **Study undertaken by the commission.** If the commission decides to conduct the study of a proposal itself, it may require the applicant to assist in the study.
 3. **Time.** To ensure that a study of a proposal is reviewed at a regularly scheduled meeting, an applicant, if he has been ordered to carry out the study, must submit the results of the study thirty days prior to such meeting.
 4. **The commission's decision upon the study.** After its consideration of a study of the proposal the commission may decide:
 - a. The information provided is inadequate to make a final decision on the proposal and may order the applicant to provide more information, or may obtain more information itself; a means by which the commission may obtain more

information is by exercising its discretion to hold a public hearing.

- b. The proposal is not eligible for support from the resources trust fund, and upon such a decision shall prepare a report setting forth its reasons.
- c. The proposal is eligible for support from the resources trust fund and whether it merits such support, and upon such a decision shall prepare a report setting forth its reasons and recommendation to the legislative assembly.

History: Effective June 1, 1987.

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 57-51.1-07.1

